

## „BOARD MEETING IN CONNECTION WITH THE CHANGES IN THE CIVIL CODE FROM THE 15TH OF MARCH 2014 CONCERNING EXECUTIVE OFFICERS’ LIABILITY”



The event of Risk Partners Ltd. on the 3rd of June 2014 took place in BGF Lotz hall. The location and the presentations of the invited experts gave an excellent framework for the participants to understand the topic and to receive answers for their specific questions. The moderator of the event was Janos Ivanyos (Trusted Partners Ltd.) who added his corporate governance and risk management point of view to the conversations as he is a board member of the Corporate Governance Section of the Hungarian Economic Association.

During the first presentation Dr. Judit Gaal lawyer explained the content of the law change and she represented several practical examples in order to understand it better. **The essence of the problem is that after 15th March 2014 the claims can be made by third parties against the leaders directly.** Prior to that if the loss had been occurred by the leader's careless behavior, the harmed party would have claimed compensation from the company, which first arranged the loss and then brought an action against the executive officer who joined as a defendant into the lawsuit with his/her total property. **So the exposure of executive officers has increased as they can be the subject of compensation cases more often and more quickly in the future.** However we should emphasize that the exposure had been existed before the implementation of the new Civil Code. Thus, so far the executive officers were also responsible with their total possession in case of careless act.

Dr. Rita Solti (Pontmundi) shared her 15 years’ experience in the Netherlands as Dutch legal counsel, so the participants could gain insight how a more established market economy manages this risk. Executive officers in the Netherlands try to reduce their risk exposure in three fields:

1. Operation of a good corporate governance system, where well-founded decision-making processes and the application of principles of good corporate governance laid down in internal rules reduce the personal liability of executive officers.
2. Legal instruments: indemnity and discharge. However, it is important to mention that the listed instruments do not cover the entire risk and that they will not be available if the company is insolvent.
3. Directors’ and Officers’ Liability insurance (D&O): it is widespread in the Netherlands and it is a necessary "guarantee" for executive officers. Not only its existence but also the thorough knowledge of the terms of insurance contract is vitally important.

During the last section the participants could hear about the most important facts in connection with the transfer of executive officers' risk to insurer:

- The claim against the executive officer can be initiated by several directions, directly or indirectly (through the Company): e.g. the Company, the owner, the employee, the authority, the competitor, third party or creditor.
- Typical managerial errors: careless decision, ultra vires act, misleading declaration, giving information not in time, which may result in property damage, personal injury or financial loss.
- Transferring risks concerning managerial responsibility besides the D&O affects at least 10 other types of insurances. Executive officers need insurance expert knowledge to decide which risks and what extent of them can be transferred to what type of insurance.
- In Hungary 6-7 insurers provide Directors' and Officers' insurance but only two companies have several years substantial experience.
- It is also very important to be aware of the fact that in case of some risks D&O pays only the legal costs not the imposed compensation. However these covers mean significant financial assistance and the appropriate extent of legal support is priceless.
- The temporal extension of D&O is also an essential - but it is not obvious and generally known - factor which should be taken into account. Such elements of the insurance contract are the prior cover for the damages caused before the establishment of the contract (!), the extended claim reporting period, valid coverage for the leaving director even after the termination of the insurance contract (!).
- Purchasing D&O insurance is not the matter of money. An average firm is able to buy even 100 million HUF coverage for the price of an average lawyer's fee for some hours. What is more, the insurance purchased by the company not only protects the manager but also the company itself. It is not easy or sometimes impossible to compensate a significant damage from the possession of the executive officer. The insurance can be a good solution for this problem.

After the event the participants (managers, lawyers and risk management experts) had long professional conversations, and every guest got two check list form the arising legal and insurance tasks concerning the topic.

The board meeting successfully completed, **Risk Partners Ltd. and our professional partners are available to help you in any further arising need.**

Risk Partners Ltd. is a Hungarian owned insurance broker company, established in 2006. The founding managing director previously was the risk manager of a Hungarian multinational company. The aim of the company is to operate as a consultant in the area of corporate risk management industry. Risk Partners has significant company audit experiences with the help of its own methodology, the risk based auditing of the insurance contracts. The company has major D&O insurance references in connection with different sized, different business forms or group of companies. Risk Partners completed several consulting mandate where they had to assess management risks and their insurance.

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