

Drastically stricter liability
for executive officers in
New Hungarian Civil Code
Legal newsletter



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Deloitte LegalSzarvas, Erdős and Partners Law Firm, a member of Deloitte Legal's international network, provides its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases.

As the new Civil Code, the first one drafted since the regime change, will enter into force as of 15 March 2014 and will affect nearly all areas of the economy, in the coming months we will devote several editions of our newsletter to the rules of the new Code.

The current newsletter deals with the stricter liability for executive officers in the New Hungarian Civil Code.

“As of 15 March 2014, with the amended Civil Code entering into force, the responsibilities of executives are widened.”

As of 15 March 2014, with the amended Civil Code entering into force, the responsibilities of executives are widened in the companies they lead in cases within their control. They may be liable for warranty claims, late performance, bad financial decisions (investments) or bad business decisions (pricing, supplier selection) with their personal wealth.

Furthermore, under the amended Civil Code, in certain cases the executives of companies may bear joint and several liability with the company they lead, with their personal wealth to third parties for damages caused, such as the breach of environmental, consumer protection or competition laws as well as claims arising in relation to work accidents.

Since the amended Criminal Code's entry into force last year, the executive may be punishable with imprisonment if he fails to meet his control and supervisory obligations being responsible for the payment, administration and filing of taxes, contributions and budgetary aids and such default results in a budgetary fraud.

“Since the amended Criminal Code's entry into force last year, the executive may be punishable with imprisonment.”

Case studies

The below case studies highlight examples where the executive may be liable for any intentional or unintentional malpractice, accident or damage caused:

- 1) A company guest leaves his car in the company parking lot and a large pile of snow falls under from the building as nobody took care of snow prevention during the sick leave of the cleaning person.
- 2) Several faulty products are supplied due to the obvious negligence of an employee. Hundreds of customers keep filing warranty complaints and claims through months, causing serious material damage to the company.
- 3) The CFO, responsible for tax filing at the company commits fraud in the company's VAT reclaim. As he is fully responsible at the company for taxes and contributions and their administration, the CEO fails to control his work day by day.
- 4) One of the company's managers agrees upon a price cartel with a competitor without the CEO knowing, and consequently, the competition authority condemns the company.
- 5) Due to the breakdown of a piece of old equipment, a work accident occurs at the company and several workers are seriously injured.

“Based on a comprehensive risk analysis, development of codes and policies and set-up of a more secure corporate governance system is desired to be planned.”

Companies should be paying attention to the following

First of all, **information gathering** and processing the text of the law and the nature and scope of the new rules is needed. Based on that it is necessary to **analyse the specific risks arising at your company**. After a comprehensive risk analysis, **development of codes and policies** and set-up of a **more secure corporate governance system** is desired to be planned.

Executive liability insurance contract may be taken out, many Hungarian and multinational insurers offer these products. Insurers reimburse the aggrieved party those financial losses that are caused by insured executives or board members.

Review or preparation of some contracts is also essential:

- **Management and indemnity contracts** in the light of the new liability.
- **Amendment of the Articles of Association** with a view to the detailed regulation of executive indemnities as more widely allowed by the new Civil Code.
- Review of **the company's key customer and supplier contracts**, advisory pertaining to the application of limitations of liability as allowed by the new Civil Code.

To minimise the personal responsibility of executives to third parties and criminal liability proceedings, **review of internal policies, reporting and control lines as well as the development of the appropriate documents** is also necessary.

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