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OF YOUNG LAWYERS

Who is not afraid to be a company director?

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1. The legal position/status of a director and/or managing director in the different jurisdictions?

1.1 General legal position of executive officers

The New Civil Code provides a definition of management, according to which decisions that are related to the governance of a company, and are beyond the competence of the members, shall be adopted by one or more executive officers or by a body consisting of executive officers.

The executive officer shall manage the operations of the company, either on the basis of an assignment or an employment agreement. The executive officer shall manage the operations of the company independently, based on the primacy of the company's interests. In this capacity, the executive officer shall discharge his duties in due compliance with the relevant legislation, the founding document of the company and the resolutions of the company's supreme body. It is important to note that the executive officer may not be instructed by the members of company and his competence may not be frustrated by the supreme body. As regards to single-member companies, the sole member may instruct the management, and the executive officer is required to carry out such instructions.

It shall be noted that the company's supreme body may decide to appoint one or more company secretaries to assist the executive officers in their work. Company secretaries shall carry out their activity under an employment agreement. In addition to general company secretaries, the supreme body of the company or – upon the authorization of the supreme body – the management may appoint company secretaries with restricted competence to the branches of the company.

1.2 Specific legal position of executive officers

In the case of limited liability companies, the management shall consist of one or more managing directors. Any restriction or division of the power of representation vested upon the managing director or rendering such managing directors actions conditional or subject to approval shall not be effective as against third parties. If a company has more than one managing director, they shall be entitled to handle management issues independently; however, the managing director is entitled to raise an objection against the planned or

executed actions of any other managing director. In that case, the objection shall be decided by the quota holders' meeting, and the planned measure cannot be carried out pending such a decision.

A private company limited by shares shall be managed by a board of directors. The board of directors shall consist of at least three members. The board of directors shall elect its chairman from among its members. Similarly to the executive officers of a limited liability company, the board of directors shall exercise its rights and perform its duties as an independent body. Any restriction or division of the power of representation vested upon members of the board of directors, or rendering such members actions conditional or subject to approval, shall not be effective as against third parties.

Furthermore, the management board shall adopt its decisions at least by a simple majority of the votes of the members present. The articles of association of a private company limited by shares may provide that a single general director shall function instead of a board of directors.

Public companies limited by shares may be controlled by a board of directors under a one-tier system instead of the parallel operation of a board of directors and a supervisory board. In this case, the board of directors operating under a one-tier system shall consist of at least five members. As also detailed below under Point 7, the majority of the one-tier board of directors shall consist of independent individuals.

In addition to the above, all companies are obliged to have a supervisory board if their annual average number of full-time employees exceeds two hundred, and if the works council did not relinquish employee participation in the supervisory board. The supervisory board shall consist of at least three members.

In addition to the above, public companies limited by shares not operating a one-tier system shall also have a supervisory board irrespective of the number of their employees.

1.3 Most important differences between executive officers carrying out their duties under an assignment or an employment relationship

The below points of the current report raise several points where there is a significant difference between an executive officer carrying out his/her duties under an assignment and an executive employee (such as liability, non-compete obligations, remuneration etc.). The only remaining outstanding issue is the termination of the executive employee's agreement. It is important to note in this regard that – as opposed to a normal employee – the company shall not give a justified reason to the executive employee that forms the reason of the termination of the agreement. Consequently, the company is not bound by the otherwise quite strict rules of terminating an employment relationship when it comes to executive employees

2. What is the impact of corporate governance legislation or soft-law (such as corporate governance codes) for the position of a director / managing director ?

The New Civil Code requires that the management board of a public company limited by shares present to the annual general meeting the company governance and management report prepared according to the rules applicable to the given stock exchange it is registered at.

In Hungary, the above mentioned rules of the given stock exchange and the corporate governance objectives arise out of the Recommendations of the Budapest Stock Exchange (BSE) on Corporate Governance, which are based on the recommendations of the European Commission, such as the Commission Recommendation of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies (2004/913/EC) and the Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC).

The Recommendations on Corporate Governance (RCG) is considered to be a soft-law. Therefore, the RCG of the BSE has no binding force, which means that its adherence is recommended but not mandatory for the public companies limited by shares listed on the Budapest Stock Exchange.

According to the current regulations and the RCG of the BSE, the companies shall express their corporate governance practices in two ways. In the first part of the statement, they have to give an accurate, comprehensive and easily comprehensible

account of the corporate governance practices applied by their company in the given business year, including their corporate governance policy, and a description of any unusual circumstances. In the second part of the statement, in accordance with the "comply or explain" principle, they have to indicate their compliance with those recommendations included in specified sections of the Recommendations ("R" - recommendation) and whether they apply the different suggestions formulated in the Recommendations ("S" - suggestion). In some cases, the Recommendations also contain explanations ("E" - explanation) which give directions regarding the relevant recommendation or suggestion or the manner of compliance with those contained therein.

According to the New Civil Code, the report shall be approved by decision of the general meeting. The general meeting's resolution and the approved report shall be posted on the website of the public company limited by shares.

3. Liability of a company director / managing director?

The uniform liability system applied under the old Civil Code was replaced by a new, more complex liability system under the new Civil Code. The executive officers (managing directors) will not only be liable under the contractual liability rules towards the Company, but also under the rules of liability for damages towards third parties (non-contractual liability). In addition to that, the exculpation system of contractual liability will be stricter. On the other hand, there will be larger elbow-room to exclude (or limit) liability under the new Civil Code.

3.1 Liability towards the company – contractual liability

The executive officer (Managing Director) will be liable towards the Company under the rules of liability for breach of contract. This means that the person (executive officer) who causes damage to the other party (Company) by breaching the contract (for carrying out executive functions) shall be liable for any damage caused with this breach of contract.

The liability of the executive officer may be based, among others, on the breach of law, the breach of the Company's Statutes or violation of the resolution of the Company's shareholder, etc. If the damage is caused jointly by two or more executive officers, their liability shall be joint and several towards the Company.

It should be noted that the Company Secretary is not an executive officer, although certain provisions (on exclusions and conflicts of interests) applicable to the executive officers shall be applied to the company secretary as well. On the other hand, the company secretary is an executive employee of the Company, and thus it is liable for damages caused by breaches of his employment agreement with the Company pursuant to the provisions of the Labour Code applicable to executive employees (Sections 208-209 of Act I of 2012).

According to the exculpation system of the old Civil Code, the executive officer could be relieved of liability if he was able to prove that he had acted in a manner that can generally be expected in the given situation (i.e. there was no willful misconduct or negligence on the executive officer's part).

The new Civil Code introduces a new exculpation system, pursuant to which the executive officer shall only be relieved of liability if he is able to prove that:

- (i) the damage occurred as a consequence of circumstances beyond his control, and
- (ii) such circumstances were unforeseeable at the time of the conclusion of the agreement, and
- (iii) it could not be expected from him to prevent such circumstances or the damage.

The above are joint conditions; i.e. if the executive officer is not able to prove any of the above conditions, he shall bear the liability for breaching the contract. The burden of proof is on the executive officers.

While the new exculpation system seems stricter, substantially it is in line with current court practice (i.e. the courts already set a high requirement of what action could be expected in the given situation).

For the exculpation of the Company Secretary, Section 179 (1) of the Labour Code is applicable, which provide that the employee can be relieved of liability

if he did not act in a manner that can generally be expected in the given situation (i.e. there was no willful misconduct or negligence on the company secretary's part). It is very important that the Company shall prove also that the Company Secretary cannot be relieved, i.e. that he did not act in a manner that can generally be expected in the given situation. In practice this means that the Company shall prove that the Company Secretary caused the damage willfully or negligently.

The extent of compensation is limited compared to the compensation regime of the old Civil Code (under which the liable person had to pay full compensation even for remote losses, which was then limited by the court on a case by case basis).

According to the new Civil Code, compensation shall be provided for the following types of losses:

- (i) loss caused to the subject matter of the service (direct loss, i.e. the value of the officer's services performed to the Company);
- (ii) loss caused by the breach of contract in the Company's property, including lost income (consequential loss), which is such sum the Company is able to prove that the loss, as the potential consequence of non-performance, was foreseeable at the time of the conclusion of the contract (i.e. at the acceptance of the election or re-election as an executive).

However, if the breach of contract was intentional, the Company shall be compensated for all losses.

Pursuant to Sections 179 (3) and 209 (5) of the Labour Code, the Company Secretary – if found liable – shall compensate the Company for the full loss, regardless of intent or negligence. On the other hand, losses that could not be foreseen by the Company Secretary at the time of causing the damage, losses caused by the culpable conduct of the Company and losses arising from the failure of the Company to mitigate damages, shall not be compensated for.

Pursuant to the new Civil Code, contractual liability (including liability for damages caused by gross negligence and criminal offenses) may be limited or excluded in the agreement between the Company and the executive officer, save for the liability for intentional breach or for breaches resulting in loss of life or causing harm to physical integrity or health.

This rule gives the parties more freedom than they had under the old Civil Code, which did not allow the limitation (exclusion) of liability for damages caused by gross negligence or criminal offenses.

Furthermore, as opposed to the old Civil Code, the new Civil Code does not require due compensation in the case of the limitation (exclusion) of liability. This means in practice that there is no such legal requirement for the limitation of liability that e.g. the fee of the executive officer should be decreased or other usual benefits curtailed.

Pursuant to Section 43 of the Labour Code, the parties may deviate from the statutory provisions of the Labour Code to the employee's (the Company Secretary's) benefit. This means that liability may also be limited or excluded.

The hold-harmless warrant (in Hungarian: felmentvény) was also known under the Companies Act (which is now incorporated in the new Civil Code), but the new rules are more in line with the needs of the practice (e.g. a hold-harmless warrant can also be provided to executive officers if they leave their position during a financial year). The company's supreme body may provide a hold-harmless warrant to an executive officer at the time of approval of the annual financial report, thereby acknowledging the executive officer's management activities during the previous financial year. In such a case, the Company may only bring an action to claim damages against the executive officer on the grounds of breaching management obligations if the facts and information on which the hold-harmless warrant was based proved to be false or incomplete.

If an executive officer is removed from office in between two meetings approving the financial report, the executive officer may request the supreme body to issue a hold-harmless warrant in their next session.

Due to the different liability provisions and the fact that the Company Secretary acts under the instructions of the Managing Director, such a hold harmless warrant cannot be issued to the Company Secretary.

The rules of contractual liability are covered by the contract between the Managing Director (Company Secretary) and the Company. For contracts concluded before March 15, 2014, the old Civil Code is applicable. Therefore, the above explained changes in the liability of the executive officers will only apply to a Managing Director appointed prior to March 15, 2014 if:

- a new contract is concluded with him;
- the old contract is amended in order to explicitly apply the new regime.

3.2 Liability towards third parties – non-contractual liability

If an executive officer causes damage to a third party in connection with his position (i.e. by actions undertaken in his position as an executive officer), liability towards the damaged person lies with the executive officer and the Company jointly and severally.

The above rule is not applicable if the damage was caused in connection with the Company's contract with the aggrieved third party. This means that if the executive officer causes damages to the Company's clients or other contractual partners in connection with the given contractual relationship, the executive officer's direct liability will not be triggered. In such cases, it is only the Company which shall be liable towards the third party, and the Company then may have claims against the executive officer.

In other words, executive officers are directly liable towards third parties only if they cause damage to a third party who is not in contractual relationship with the Company, or if causing the damage was unrelated to the contract. It is also important to note that executive officers are only liable if the damage was caused as a result of their personal action or omission. Thus, if one of the Company's ordinary employees causes damage to a third party, which the executive officer could not foresee or prevent, then the executive officer will not be directly liable towards the third party.

The executive officer (the Managing Director), as well as the employee (the Company Secretary) may exculpate himself by proving that he acted in a manner that can generally be expected in the given situation (i.e. there was no willful misconduct or negligence on his part).

In the case of the general liability of executive officers under the non-contractual liability regime, the same rules apply as in the case of the limitation/exclusion of contractual liability.

As the liability for intentionally caused damages cannot be excluded, the joint and several liability of the employee cannot be excluded (and he is not directly liable towards third persons for non-intentional damages).

3.3 Criminal liability

The Hungarian Criminal Code contains a few special provisions concerning executive officers. These typically fall under the economic and business related offenses of the code, with two major exceptions. The first is the case of the active corruption of public officials. According to the Criminal Code, if an executive officer - while acting in his role - commits an act of active corruption with a public official, his conduct will fall under an aggravated sanction category. Another important example is that the Criminal Code penalizes the negligence of executive officers in connection with budget fraud. If a director, a member or an employee of an economic operator fails to discharge the obligation of exercising control or supervision, and thus makes budget fraud possible, he can be held liable for a felony.

Regarding economic and business related offenses, we must mention impairment of own capital. If an executive officer appropriates the company's own funds in part or in whole he will become liable for a felony that can be punishable by imprisonment. Another specific case of criminal conduct by an executive officer is failure to comply with the obligation to supply economic data. An executive officer can be held liable for a felony if he partakes in the act of disguising an economic operator, so that it cannot be located at its registered office or permanent establishment, or if he partakes in fraudulent registrations regarding an economic operator.

The abovementioned regulations of the Criminal Code are somewhat executive officer specific. Besides these, there are of course more general provisions that are commonly breached by executive officers such as: the breach of accounting regulations, fraudulent bankruptcy and the concealment of assets to avoid liability.

4. Are there any recent changes in remuneration legislation / policies for company directors / managing directors ?

4.1 Remuneration of state owned company directors

There is a strict limitation with respect to the remuneration of state owned companies which have boards of directors and supervisory boards. Due to political reasons, the remuneration of managing directors of limited liability companies and the general managers of private companies limited by shares have not been limited by the below legislation since August 2010.

In accordance with the Act CXXII of 2009 on the provident operation of state owned companies, each state owned company is obliged to adopt its bylaws with respect to its remuneration policy. After the adoption of the policy, the company may not deviate at all from it.

Pursuant to the Act, the remuneration of the chairman of the board of directors cannot exceed 7 times-, the remuneration of the members of the board of directors and chairman of the supervisory board cannot exceed 5 times-, while the remuneration of the members of the supervisory board cannot exceed 3 times the applicable minimum wage, which is currently HUF 101.500 (approx.: EUR 330). In addition to the above remuneration, the members of the supervisory board shall not be entitled to any kind of remuneration. Furthermore, no additional remuneration can be given to the chairman or members of the board of directors and supervisory board due to the termination of their position. It should also be mentioned that a person is entitled to receive remuneration only for one position held at a state owned company. It is also common to grant certain amounts of premiums to the executives provided that the company reached certain milestones or figures.

4.2 Remuneration of non-state owned company directors

In accordance with Section 3:109 (2) of the New Civil Code, it is the sole competence of the members'/shareholders' meeting to decide over fundamental personal matters. Consequently, any decision over the remuneration of executives shall also lie within the sole competence of the members'/shareholders' meeting. In addition to the above – in accordance with the recommendations of the commission with regards to the regime for the remuneration of the directors of listed companies – it is the sole competence of the shareholders' meeting to adopt the guidelines of the long term remuneration and premium system for members of the board, members of the supervisory board and executive employees.

As explained above, the executives of the company shall proceed under an assignment or an employment agreement.

If the executive of the company acts under an assignment agreement concluded with the company, the parties are free to determine the exact terms of the remuneration. Consequently, there is no limitation on whether it should be a fixed fee or a success fee, or whether it should consist of cash or other share incentives. It should be mentioned that, in connection with publicly listed companies, in its corporate governance recommendations the Budapest Stock Exchange recommends giving a fixed remuneration to the members of the supervisory board.

In general, it can be said that smaller companies – typically operating in the form of limited liability companies – grant fixed remuneration to their executives, while bigger, publicly listed companies tend to motivate the members of the board by paying a part of their remuneration in shares. As opposed to the old regime, according to the new Civil Code as of March 15, 2014, publicly listed companies are not obliged to publish the exact amount of the cash and non-cash remuneration of the members of the board and the supervisory board. However, on the basis of their prior publications, it can be outlined that - apart from some of the biggest publicly listed companies such as OTP Bank – all of the publicly listed companies prefer to pay the remuneration in cash, irrespective of the fact that there is no significant difference between the taxation of cash and share remuneration.

If the executive of the company acts under an employment agreement, certain limitations and specific legislation is applicable. Executives acting on the basis

of an assignment agreement can carry out their duties without having any remuneration. In practice, smaller companies, where the owner and the managing director or the general manager of the company is the same person, tend to give no remuneration to the executive officer, since the owner benefits from his/her activity as executive officer through the dividends of the company. The above scheme only works if the executive works under an assignment agreement. An executive working on the basis of an employment contract cannot work without having any kind of remuneration. The salary of an executive can depend (i) on the working hours he/she worked; (ii) on the performance of the executive or (iii) it can be a mixture of the above.

It should be outlined that the executives of the company acting under an employment agreement shall qualify as executive employees, meaning that special provisions apply to the termination of the employment agreement, to the liability of the employee and, apart from certain exemptions, the parties can deviate from the provisions of the Labour Code. As a result of the above, the company and the executive can deviate from the general rules and may agree to pay out the salary of the executive in a foreign currency. In addition to the above, it should be outlined that the minimum wage of the executive should be HUF 101.500 (approx.: EUR 330) or HUF 118.000 (approx.: EUR 380) if the executive officer holds a high school decree.

5. Has it occurred in your jurisdiction that management decisions were revised after being challenged by stakeholders (e.g. consumers)?

It is quite rare in Hungary that, due to unfavourable management decisions, stakeholders – mainly consumers – try to put pressure on the management. Before the political and economic change in 1989, it was not conceivable to carry out such protests against management decisions controlled mainly by the state. After the change in regime, consumers became more discerning and the first widely advertised boycotts were organized around 2000. Please find below some of the examples where Hungarian consumers tried to protest against certain management decisions.

In 2001 Pepsi decided to stop distributing cola in recyclable/refundable bottles and it started an extensive campaign announcing that all recyclable/refundable bottles would be returned to the distributors within a certain period of time. The Hungarian Garbage Working Association, together with 19 civil organizations, initiated a

campaign involving certain distributors as well to keep the recyclable/ refundable bottles on the market. Finally, however, the management of Pepsi did not change its decision.

In 2001 there were rumours that Danone had decided to shut down one of its Hungarian subsidiary's factories that produced very popular Hungarian cookies. Consumers started to send out e-mails urging for the boycott of Danone products. Due to the boycott the turnover of Danone was reduced by 10 %. Finally Danone decided not to shut down the factory.

In 2002 T-Com decided not to market one of its most favourable internet packages which enabled consumers to use the internet at night for a discounted price. According to a civil association T-Com abused its dominant position on the market and called upon all internet user to boycott the service of T-Com and all webpages owned and operated by T-Com, for one day. Due to the boycott the internet 'traffic' was reduced by 6-13% on the given day. Although T-com did not change its business decision, even the minister responsible for electronic communication felt that it was necessary to issue a statement requesting that the situation be solved in the near future.

In 2009 one of the online auction web pages called Vatera decided to introduce a minor fee for such auctions where the goods were not sold, in order to prevent the constant advertising of such products that are not capable of being sold due to the lack of interest from the buyers' side. The users of the webpage organized a one day long boycott against the webpage by withdrawing their goods from the webpage. The management did not change its prior decision and rather decided to communicate the reasons behind their decision more actively in public.

6. Has your jurisdiction issued specific legislation on female presence in the board of directors ?

In accordance with the fact sheet published by the European Commission with respect to Gender equality in the Member States, Hungary has the worst figures with respect to gender balance on the boards of the largest publicly listed companies. According to the statistics of the European Commission, only 2.5 % of executives and 3.4 % of non-executives board members are women.

The issue of the equal participation of women and men in economic decision-making has been a hot topic recently in the Hungarian Parliament as well. In 2010, the former Hungarian government adopted the "National Strategy for the Promotion of Gender Equality – Guidelines and Objectives 2010–2021". The National Strategy set forth that women's participation in leading positions should be increased by the end of the period (e.g. by the year 2021), both in the public and the private sectors, by making equal opportunities plans more pronounced, so that the ratio of women on boards would be a 1/3 higher as compared to the starting point and/or the rate of both genders would reach at least 40%.

The importance of women's presence on the boards of companies was pushed into the background by the current government. Hungary was among those Member States which sent a letter to Ms. Viviane Reding, the EU's Justice Commissioner, stating that the ratio of women in economic decision-making should not be a political agenda. The spokesman of the Hungarian Ministry of Foreign Affairs also emphasized that Hungary is against the current legislative process of the EU.

Contrary to the dismissive attitude of the current government, the opposition members of the Hungarian Parliament tried to bring the topic onto the agenda of the Parliament, without much success. Recently, Mr. Lajos Oláh initiated a bill to the Parliament, according to which the ratio of women on the boards of publicly listed companies and state owned private companies limited by shares, together with the executive employees of such companies, should increase by up to 1/3. The respective committees of the Hungarian Parliament rejected the proposal and, as a consequence, the bill was not even debated by the parliamentary session.

7. Is there in your jurisdiction an obligation to have a minimum of independent and/or non-executive directors in the board?

Public companies limited by shares have the opportunity to choose between two types of corporate governance and may operate under one-tier or two-tier system. This choice must be laid down in the statutes of the company.

Under the two-tier system, two separate bodies of the company, the board of directors and the supervisory board, operate independently. As opposed to the two-tier system, under the one-tier system the company is governed by one board, the board of directors, which performs the duties of the management and the

supervisory board. According to the New Civil Code, the board of directors should be comprised at least of five members.

According to the New Civil Code, in order to ensure that the management function will be submitted to an effective and sufficiently independent supervisory body, the majority of the members of the board of directors of a public company limited by shares operating under a one-tier system, and the majority of the members of the supervisory board of a public company limited by shares operating under a two-tier system, should qualify as independent members.

In accordance with the New Civil Code, a member of the board of directors – of a company operating under a one-tier system – and a member of the supervisory board will only be considered to be independent if the member has no other legal relationship with the company apart from his board/supervisory board membership and apart from any transaction conducted within the company's usual activities which aim to satisfy the board member's personal needs.

On the other hand, the New Civil Code provides the following non-exhaustive list, according to which the member shall not be considered to be independent if he/she:

- is an employee or a former employee of the public company limited by shares and his/her employment relationship was terminated within the previous five years;
- provides services as an expert or other similar services under a mandate or contract to the public company limited by shares or its executive officers, in return for consideration;
- is a shareholder of the public company limited by shares who controls - whether directly or indirectly - at least thirty per cent of the votes, or is a close relative or domestic partner of such a person;
- is a close relative or domestic partner of any non-independent executive officer or executive employee of the public company limited by shares;
- is entitled to receive financial benefits based on his board membership if the public company limited by shares operates profitably, or receives any other form of remuneration from the company apart from the salary for his board membership, or from a company that is affiliated to the public company limited by shares;
- is engaged in a partnership / legal relationship with a non-independent board member in another business association, in which the non-independent member is entitled to practice control;

- is an auditor of the public company limited by shares, or an employee or partner of the audit firm, for three years following the termination of the legal relationship between the relevant parties;
- is an executive officer or executive employee of a company, whose independent board member also holds an executive office in the public company limited by shares.

The shareholders' meeting shall determine in the process of the board/supervisory board members' election whether the conditions of independence are met by the candidate. In accordance with the above mentioned provisions of the New Civil Code and the Recommendations of the Budapest Stock Exchange on Corporate Governance, a member should be considered to be independent only if he/she is free of any business, family or other relationship, with the company, its controlling shareholder or the management of either, which would create a conflict of interest such as to impair his judgement. The Budapest Stock Exchange recommends also that the company should require the independent members to have their independence periodically re-confirmed.

Since the one-tier system was only introduced in 2006 in Hungary, few public companies limited by shares have chosen to operate under this type of corporate governance; the two-tier system and as such the obligation to have independent supervisory board members is more common.

8. Are there in your jurisdiction certain obligations that are different for private and for publicly owned companies and which are not yet covered by the above topics?

All important differences between the obligations of such companies are addressed by the other topics.

9. Position of directors/ managing directors in the event of disposal and/or merger of the company?

In the case of a disposal and /or merger of companies, it is typical to grant a hold harmless warrant described in detail under Point 3.1. It is common practice that, if the executive officer is removed from office in between two meetings approving the financial report, the executive officer may request the supreme body to issue a hold-harmless warrant in their next session. As also outlined above, such a hold harmless warrant cannot be issued to the Company Secretary.

In addition to the above, in the case of an acquisition it is also common to sign a non-compete obligation with the removed executive officers/executive employees. Such non-compete obligations shall be in line with the relevant competition law requirements and, in the case of executive employees, with the obligations arising from the Labour Code. In the case of executive employees, the maximum term of such a non-compete clause shall be two years, while it is common practice to also limit the term of non-compete obligations of executive officers acting under assignment to two years as well, due to the need to comply with competition law requirements. A typical non-compete clause would state that:

The Executive Officer shall not, and shall not permit any of his/her Close Relatives to, directly or indirectly, conduct any business operations in the fields of the business carried out by the Group Company, prior to the execution of this Agreement, and, directly or indirectly, invest into businesses or companies engaged in such fields, without preventing them from purchasing or holding shares purely for financial investment purposes, until a deadline of 2 (two) years as of the Closing, in particular, directly or indirectly acquiring management functions, other than management functions at the Company, or any material influence in competitors of the Company or to work or provide services for such competitors. The non-competition obligation shall apply within the territory of Hungary.

The Executive Officer shall not, and shall not permit any of his/her Close Relatives to, directly or indirectly, either for their own business activities or for any third person or entity, for a period of 2 (two) years after Closing and within the territory of Hungary influence or attempt to influence any customer, supplier, consultant or other third party maintaining a contractual or other business relationship with the Group Company to terminate or discontinue such a relationship or to reduce the volume of goods or services provided thereunder. In addition, the Executive Officer shall not solicit, hire or engage in any capacity any employee of the Company, the Buyer or its Affiliates (or any person or entity who was an employee of Buyer or its Affiliates within twelve (12) months of the date such hiring or engagement occurs) or solicit or seek to persuade any employee of Buyer or its Affiliates to discontinue such employment.

10. Are there in your jurisdiction minimum requirements to become a company director ?

According to the New Civil Code, the executives of a company must be above 18 years old and have full legal capacity in the scope required for discharging his

functions. For example, in extreme cases an executive officer may act as an executive even if his/her legal capacity is limited by the court in a way which means that he/she cannot make legal statements, for example, in relation to family affairs. However, such a limitation does not affect the scope of his/her duties. In addition to the above, anyone who has been sentenced to imprisonment by a final verdict for the commission of a crime may not be an executive officer until exonerated from the detrimental consequences of having a criminal record. Furthermore, naturally those who have been prohibited from practicing the profession of being an executive officer cannot hold an executive office, while those who have been prohibited by final court order from practicing a profession may not serve as an executive officer of a company that is engaged in the activity indicated in the verdict.

Further minimum requirements are set out with respect to companies which carry out special kinds of financial activity, such as insurance institutions, investment firms etc.

For instance, in accordance with the Act LX of 2003 on Insurance Institutions and Insurance Activity, it is a minimum requirement that the Hungarian National Bank issues its approval with respect to the executive.

Furthermore the executive shall have

- a clean criminal record;
- shall possess appropriate professional qualifications and a good business reputation;
- shall have experience in insurance management or experience in business management of a company with at least thirty employees, or at least five years of experience in financial or economic management in the public sector; and
- he/she shall have a degree in higher education.

With respect to executives of investment firms operating in the form of a private or public company limited by shares, the Act CXXVIII of 2007 on Investment Firms and Commodity Dealers sets forth special requirements. The executive officer of such a company should have at least three years of professional experience. In addition to these requirements, the executive officer shall be of sufficiently good repute.

Similar to the above, the Act CXII of 1996 on Credit Institutions and Financial Enterprises requires the prior authorization of the Hungarian National Bank for the appointment of the executive officer, a clean criminal record, appropriate professional qualifications, a good business reputation, a degree of higher education and three years of previous experience.

The degree of higher education is a basic degree, a master's qualification or a doctorate. As for having a degree of higher education in the relevant field, the

following shall be recognized: a university or college diploma in economics under the Act CXXXIX of 2005 on Higher Education, a degree in economics obtained in basic and masters training within the framework of economic sciences; a diploma in law, a diploma in accountancy, a diploma in higher education or a post graduate qualification in the banking profession.

11. Does a company director has specific obligations with regard to:

11.1 Non-compete obligations

Executive officers may not acquire the share/quota of a company – except for the shares of public limited companies – which is engaged in the pursuit of the same economic activity as the company in which they hold an executive office. The respective companies are competitors if their main activity is the same. In addition to the above, in the event of accepting a new executive office, the executive officer shall notify within fifteen days all other companies in which he already serves as an executive officer or a supervisory board member.

Even more severe restrictions apply to those executive officers/company secretaries who – as opposed to an assignment – act as an executive employee. In accordance with the Labour Code, executive employees may not enter into additional employment-related relationships.

11.2 The obligation to reveal so-called “corporate opportunities” towards the company

With the exception of everyday dealings, an executive officer and his close relatives may not conclude any transactions falling within the scope of the main activities of the company under their own name and on their own behalf.

Even more severe restrictions apply to executive employees who:

- shall not acquire shares, with the exception of the acquisition of stocks in a public limited company, in a business association which is engaged in the same or similar activities or that maintains regular economic ties with their employer;
- shall not conclude any transactions falling within the scope of the employer’s activities in their own name or on their own behalf; and
- shall report if a relative has become a member of a business association which is engaged in the same or similar activities or that maintains regular

economic ties with the employer, or has established an employment-related relationship for an executive office with an employer engaged in such activities.