Прегледни чланак 347.72(439)(094.5)
doi:10.5937/zrpfns56-39596

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CHANGED RULES OF LIMITED PARTNERSHIPS IN THE HUNGARIAN CIVIL CODE- WITH PARTICULAR REFERENCE TO AMENDING THE MANAGEMENT OF A LIMITED PARTNERSHIP

Abstract: *The Act XCV of 2021 amending Act V of 2013 on the Civil Code (hereinafter: Civil Code) introduced significant changes concerning business associations in Hungary. In my study, I examine certain amendments affecting limited partnerships, with a particular reference to the rules for the election of a limited partner as managing director and whether the corporate form is shifting from a limited partnership to a capital partnership under the changed provisions.*

Keywords: *limited partnership, general partner, limited partner, executive director, Act V of 2013 on the Civil Code, dissolution without succession, the election of a limited partner as managing director, Act XCV of 2021 amending Act V of 2013 on the Civil Code, additional monetary contributions, partnerships, capital mergers.*

1. INTRODUCTION

The limited partnership is a micro-enterprise form of business associations in the Hungarian company system[1] based on the number of incorporations in Hungary. According to the central statistical office statistics, in 2021, 33,279 companies were established in Hungary, of which 1975 were limited partnerships.[2] Most often, family companies are established as limited partnerships.

[1] Judit Gál- „A közkereseti társaság és a betéti társaság szabályai az új Ptk.-ban I." *Céghírnök,* 2013/12., 3.-5.

[2] 105,000 limited partnerships operating in Hungary in 2022 https://www.ksh.hu/stadat_files/gsz/hu/gsz0051.html https://www.ksh.hu/stadat_files/gsz/hu/gsz0006.html

The act XCV of 2021 amending Act V of 2013 on the Civil Code (hereinafter: Civil Code) introduced significant changes concerning business associations. The changed provisions entered into force in three phases- on 1st July 2021, 1st January 2022, and 1st July 2023.

According to the justification of the amendment[3], the derogation rules for legal persons, and the freedom of contract approach, are still justified and are also a guarantee of the competitiveness of company law, but the regulatory proposals developed by case law encourage the amendment of certain provisions concerning legal persons.

The changes also respond to several problems that have arisen in the case of limited partnerships in practice. In my study, I examine certain amendments to the limited partnership, with particular attention to the rules of management, the rules for the election of the limited partner as executive director, and the risks involved.

I also examine the amended rules in the light of how the traditional partnership nature of the limited partnership is being changed, and the extent to which this trend is in line with EU company law rules.

2. THE CONCEPT OF A LIMITED PARTNERSHIP

A limited partnership is defined by the legislator as a micro-enterprise operating as a partnership. An important conceptual element is that it must have at least one general partner and one limited partner.[4] In the limited partnership, there are two types of liability, the general partner and the limited partner, and only the general partner has full financial liability for debts exceeding the assets of the partnership,[5] while the limited partner's liability is, as a general rule, limited to the contribution of assets.

Similar to other business companies, a limited partnership is a legal entity under Hungarian law.[6] Based on the provisions of the Civil Code companies, legal persons established by the monetary or in-kind contributions of their members for the pursuit of their common businesslike economic activities, where members are jointly entitled to a share in the profit and obliged to bear the losses.[7] The

[3] Final Explanatory Memorandum to Act XCV of 2021 amending Act V of 2013 on the Civil Code – Schedule of Explanatory Memoranda 2021/83.

[4] Judit Gál- „A közkereseti társaság és a betéti társaság megszűnésének új szabályai" *Gazdaság és Jog* 2022/1-2 52.

[5] Gábor Kertész-„A családi cégek helyzete váláskor az új Ptk. tükrében" *Multidiszciplináris kihívások, sokszínű válaszok*. Budapesti Gazdasági Egyetem, Kereskedelmi, Vendéglátóipari és Idegenforgalmi Kar, Közgazdasági Intézeti Tanszéki Osztály 81.

[6] The limited partnership became a legal entity with the entry into force of Act V of 2013 on the Civil Code on 15 March 2014.

[7] Civil Code Section 3:88

Civil Code provides for a formal requirement[8], according to which a business company can only be established in a specific form (general partnership, limited partnership, private limited liability company, stock company). On the basis of these two provisions, it can be concluded that under the Civil Code in force, all companies are legal persons, thus, a limited partnership cannot be considered a "company without legal personality" in the terminology of the former Commercial Companies Act[9]. Before the new Civil Code's entry into force, the limited partnership was regulated in all three Commercial Companies Acts[10] as a form without legal personality, but with legal personality under its own company name and absolute legal capacity[11], with the new Civil Code entering into force, the limited partnership became a legal entity.

Therefore, as of 15th March 2014, the limited partnership is a legal entity under the provisions of Hungarian law and as such has absolute legal capacity.

Despite the change in legal form, the limited partnership can still be defined as a small partnership enterprise in Hungary.[12] Due to its partnership nature, the basis for the operation of the company lies in the members of the company- the expertise of the members is necessary for the activities of the company, and the value and percentage of the financial contribution is less important. [13] In the case of these partnerships, the value of the company's assets does not have a significant effect but is primarily a partnership of persons. In Hungary, the two forms of partnerships are the general partnership and the limited partnership (limited liability companies and stock companies operate as capital mergers). With the derogations applicable only to limited partnerships, the rules on general partnerships shall apply accordingly to limited partnerships.[14] Thus, even in this form of company, the managing director can only be elected from among the members of the company, there is no possibility to elect a third party.[15] Only a member of the

[8] Civil Code Section 3:89

[9] Act IV of 2006 on Commercial Companies

[10] Act VI of 1988 on Commercial Companies Act CXLIV of 1997 on Commercial companies, Act IV of 2006 on Commercial Companies

[11] György Wellmann- „A közkereseti és a betéti társaság szabályozása az új Polgári Törvénykönyvben" *Gazdaság és Jog* 2011/7-8. 10-13.

[12] Judit Barta-Judit-Gyöngyi Harsányi-Tünde Majoros-Edit Antal Ujváriné- *Gazdasági társaságok a Polgári Törvénykönyvben* Budapest, Patrocinium 2016 130.

[13] Judit Barta-Judit-Gyöngyi Harsányi-Tünde Majoros-Edit Antal Ujváriné- *Gazdasági társaságok a Polgári Törvénykönyvben* Budapest, Patrocinium 2016 30-31.

[14] Civil Code Section 3:155

[15] Civil Code Section 3:144 [Management and representation] (1) Management of general partnerships shall be performed by one or more managing directors appointed or elected from among the members. In the absence of appointment or election, all members shall act as managing directors. (2) Any provision of the memorandum of association appointing or allowing for the appointment of a person who is not a member to act as managing director shall be null and void.

limited partnership, i.e. either a limited partner or general partner, can be elected as the managing director of the limited partnership.

Act XCV of 2021 amending the Civil Code introduced significant changes to the Legal Persons regulated in the Book of the Civil Code. [16] The amendment also made significant changes to limited partnerships, in line with the needs of case law.

I examine in my study whether the amended provisions affect the traditional partnership nature of the limited partnership form. In the following, I present this changed provision of the Civil Code by comparing it with the previous regulation and considering the problems arising from the amendment in case law.

3. CHANGES TO THE RULES ON THE DISSOLUTION OF A LIMITED PARTNERSHIP WITHOUT SUCCESSION

The amendment introduced a significant change regarding the dissolution of a limited partnership- in effect from 1 July 2021.

Under the previous legislation, the company would be dissolved without legal succession if the number of members of the company falls to one and the company does not notify the court of registration about the entry of a new member within a six-month time limit.[17] The date of the death of the limited/general partner is the date of termination of his/her partnership. Before the date of the amendment, if the application for registration of the change was not filed within the time limit prescribed by law, the company ceased to exist by operation of law.

In practice, the cogent provision, which does not allow for this derogation, has raised many questions, often leading to the dissolution of companies that were otherwise economically viable, but the members were not aware of the six-month limitation period.

The previous legislation was of particular importance in inheritance cases.[18] Under Hungarian rules, a share in a limited partnership cannot be inherited; the heir of the deceased member or the legal successor of the terminated member may join the partnership as a member if agreed so with the other members.[19] In the

[16] Explanation of the amendment – Final explanatory memorandum to Act XCV of 2021 amending Act V of 2013 on the Civil Code -the derogation rules for legal persons, the approach based on freedom of contract, are still justified and also constitute a guarantee of the competitiveness of company law, but the regulatory proposals developed by case law encourage the amendment of certain provisions relating to legal persons.

[17] Civil Code Section 3:158.§ (1) as of 30 June 2021

[18] Ádám Boóc-„A jogi személyekre irányadó új szabályok a legújabb Ptk. módosítás tükrében" *Szakál, Róbert (szerk.) Tájékoztató füzetek: Az MKIK Jogi Szekciójában elhangzott szakmai előadások alapján* Budapest, Magyarország : Magyar Kereskedelmi és Iparkamara (2021) 253.

[19] Civil Code Section 3:149 Death or termination of a member

event of the death of a member, his or her membership shall cease, but there shall be no inheritance of membership rights in their unchanged form[20], the heir shall not become ipso iure a member of the company. [21]

Despite this, in the event of the death of the general/limited partner of the limited partnership, the remaining external partners await the final decision of the inheritance proceedings to restore the legal operation of the partnership, in case of the absence of this procedure, the company is liquidated due to their improper actions.

In many cases, the length of the inheritance procedure meant that members were unable to comply with the six-month time limit for restoring legal operation, even though they should have been able to join the company independently of this procedure. This has resulted in several cases where companies that have been operating profitably for a long time were wound up, despite the intention of the members to act according to the rules.[22]

According to the explanatory memorandum to the Act that amends certain provisions of the Civil Code, a solution should also be provided for partnerships with the aim of restoring the lawful functioning of the partnership. The reason for this is that, since the new Civil Code's entry into force, the limited partnership is a legal person and, as such, its operation is separate from its members.[23]

Under the provision (Civil Code Section 3:158) which entered into force on 1 July 2021, the obligation to notify a new member within six months of joining remains, but is no longer time-barred in the event of failure to do so. This is an important change, considering the fact that the dissolution of a company without legal succession does not occur by operation of law if the six-month deadline for notification is missed.[24]

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[20] Code Civil Section 7:1

[21] Decision BH 2019.2.53.

[22] In the case before the Kúria, a public limited company with eighty-six employees and a significant role in the economy was dissolved. One of the members of the general partnership, which had two members, died on 30 September 2016. On 2 May 2017, the limited liability company submitted an application for registration of a change of name, requesting, inter alia, the deletion of the deceased member and the registration of new members in the commercial register, on the basis of an amendment to the articles of association adopted at the meeting of members held on 29 March 2017. The cancellation of the public limited liability company was due to a period of more than six months between the deceased member's cancellation and the new members' application for registration. The Curia held that the courts could not apply equity in the case in question, as they had no procedural power to do so in the absence of a legal mandate. Companies that had been operating legally for a longer period of time were struck off on the basis of the exclusion of the application of equity. BH 2019.2.53.

[23] Final Explanatory Memorandum to Act XCV of 2021 amending Act V of 2013 on the Civil Code – Schedule of Explanatory Memoranda 2021/83.

[24] Section 3:158 [Termination of the membership of all general partners or all limited partners] (1) If the membership of all general partners or all limited partners terminates, the partnership shall

If the company fails to comply with the six-month limitation period, the registering court will carry out a legal supervision procedure, and the company will only be deleted in a compulsory liquidation procedure if it does not restore its legal operation or register a new member during the supervision procedure.

On the basis of the amended rules, it can be concluded that the legislator has made a concession in the light of the problems encountered in practice with regard to the existence of a general/limited partner in the case of limited partnerships, and does not automatically delete companies without a general/limited partner, but ensures that they are restored in the procedure for the supervision of legality. On this basis, in my view, the limited partnership form is moving, even if only minimally, towards the capital mergers, and the absence of a general or limited partner member is no longer ipso iure a reason for dissolution.

4. CHANGES TO THE RULES ON THE MANAGEMENT OF LIMITED PARTNERSHIPS

The change to the rules on the management of a limited partnership is effective from 1 January 2022.

Based on the previous legislation, the Civil Code states that the limited partner of a limited partnership cannot be a managing director of the partnership.[25] However, despite the statutory provision, in view of the dispositive nature of the rules of the Civil Code applicable to legal persons, a limited partner of the company could also be elected as the company's managing director, since the relevant legislation is also permissive, it does not prohibit derogation from the provision. Dispositivity is regulated by Section 3:4 of the Civil Code, according to which the instrument of incorporation, the members and founders of the legal person may derogate from the provisions of the Civil Code relating to legal persons when regulating their relations with each other and to the legal person, as well as the organisational structure and operating rules of the legal person, except when it is prohibited by the Civil Code; or manifestly violates the rights of the creditors, employees or a minority of members of the legal person, or prevents the effective supervision of the lawful operation of legal persons.[26]

The previous provision of the Civil Code[27], despite the fact that it stated that the limited partner could not be the managing director, was a rule that allowed

be required to notify within a time limit of six months following that date the court of registration that the memorandum of association was amended in order to restore the conditions for operation as a limited partnership, or the limited partnership was transformed into a general partnership, or the transformation, merger, or the termination without succession, of the partnership was decided.

[25] Civil Code Section 3:156 The limited partner may not be an executive director of the company. as at 31 December 2021

[26] Section 3:4 (2),(3)

[27] Civil Code Section3:156 as of 31 December 2021

for derogation, as members could decide to elect the limited partner as the managing director of the company.[28]

Based on these provisions, the limited partner could also be elected as a managing director of the limited partnership by a decision of the members of the partnership, but it was necessary to amend the text of this law in order to clarify the legislative intention, given that this provision had caused a number of uncertainties in the practice of law.

Reflecting the problems identified in the case law, the amendment to the Civil Code effective from 1 January 2022 introduced a significant change with regard to the management of limited partnerships.

On the basis of the amendment, the limited partner becomes an executive director of the company by appointment or election[29]. This legislative provision already clarifies the possibility that a limited partner of the company can be elected as managing director. It is important to highlight, however, that this is only an option for the members of the limited partnership, and in view of the different responsibilities of the general partner and the limited partner, it is still recommended that the general partner be elected as the managing director.

In relation to the current legislation, it is important to point out that a limited partner cannot automatically become the company's managing director, except by appointment or election.[30]

This provision also confirms the problem resulting from the obligation to stand, as explained in detail above, so it is important that the election of a limited partner as managing director is to be decided by the members.

4.1. The Risks Connected with the election of a Limited Partner as Managing Director

The election of a limited partner as managing director poses an additional risk, mainly in view of the different liabilities.

If the assets of the company don't cover the obligations of the limited partnership the general partner has unlimited liability with his own assets for the duties, but the limited partner is required only to perform its capital contribution.[31]

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[28] Judit Gál: „A közkereseti társaság és a betéti társaság szabályai az új Ptk.-ban II." *Céghírnök* 2014/1. 3. „... there is no argument that the new Civil Code. 3:156 of the new Act as a rule that does not allow for derogation, therefore, in my opinion, there is still no obstacle to the decision of the members of the company to appoint the managing director of the limited liability company as an outsider."

[29] Civil Code Section 3:156

[30] Final Explanatory Memorandum to Act XCV of 2021 amending Act V of 2013 on the Civil Code – Book of Explanatory Memoranda 2021/83.

[31] Tekla Papp-„Law of Business Enterprises Business Law" *Business Law in Hungary*; ed.: István Sándor; Patrocinium Kft.; Budapest; 2016.; 245-266.

The limited partner generally is not liable for the obligations of the company, but there are some exceptions in The Civil Code. For instance, the limited partner is liable conditionally and limited, up to the part due from assets of the company for the debts of pre-company and in case of the termination of the company without succession. In another case at the change of quality of membership, -a general partner becomes a limited partner – the limited partner's liability is unlimited, joint, and several at the overrating of the contribution within a five-year forfeit deadline.[32]

As it is shown, apart from the exceptions, there is a significant difference between the liability of the general partner and the limited partner, so in my opinion, the possibility of electing the limited partner as managing director may give rise to a number of liability disputes and ultimately, in the intersection of the duty of responsibility, may conflict with the essence and definition of the limited partnership, with the regulation based on the different status of the general and limited partners.

In light of the different liability obligations, there may be additional risks in the case of a limited partner acting as a company director, given that as a company director he/she may not make decisions in the best interests of the company, or is not generally liable for the payment of creditors' claims with his or her own assets.

In the event of the company being dissolved without legal succession, only the company general partner – who, where relevant, does not act as the company's representative – is liable for unpaid creditors' claims.

Therefore, in the case of the election of a limited partner as managing director, the cooperation and trust relationship between the members is of particular importance. Subject to the liability issues discussed, in many cases, the election of a limited partner as managing director takes place when there is a family relationship, often a spousal relationship, between the member and the outsider.

The legal possibility of electing a limited partner as managing director was justified on the basis of case law. The amended provision of the Civil Code clarifies the possibility for a limited partner to become the executive director of the company by appointment or election. Since the amendment, it is no longer necessary to refer to the rules governing the disposition of legal persons in order for the limited partner to perform the duties of managing director.

Despite the legal provisions, in my view, the election of a limited partner as managing director should always be done with due diligence, taking into account the different responsibilities of the general and limited partners.

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[32] Tekla Papp-„Law of Business Enterprises Business Law" *Business Law in Hungary*; ed.: István Sándor; Patrocinium Kft.; Budapest; 2016.; 245-266. pp.

5. CHANGES IN THE LIABILITY OF THE LIMITED PARTNER

The amendments, effective from 1 July 2021, add to the rules governing the liability of the general partner of a limited partnership, the case where the termination of the membership of the general partner leaves the company with only one limited partner.

In view of the fact that in this case, the limited partner has six months (which is not a period of limitation under the new rules) to arrange for a new general partner to join the company, it is appropriate to regulate his liability for this period as well.[33]

Under the amendment, until the new general partner joins (or until a transformation, dissolution without legal succession, or merger is decided), the liability of the limited partner is the same as that of the general partner. On the basis of this, the limited partner is liable (jointly and severally with the other limited partners) for the company's liabilities not covered by the company's assets during this period.[34] For this period, the liability of the limited partner is the same as the liability rules applicable to the company, i.e. the traditional separation of the two forms of liability for a company is broken down.

6. CHANGES TO THE RULES ON SETTLEMENT IN THE EVENT OF THE TERMINATION OF MEMBERSHIP

The amendment to the Civil Code, effective from 1 January 2022, clarifies the rules of settlement in the event of termination of the membership of a limited partnership's general or limited partner. Under the amended rules, settlement with the former member, his heir or legal successor in the event of termination of membership must take place within three months unless otherwise agreed. [35]

Considering the rules on the settlement with the former member, his/her heir (successor), it gives a more important role to the agreement of the members, on the basis of which they can individually determine the method of settlement, the time of settlement and the amount of the assets to be released.[36] However, a settlement must always take place and any provision in the company statutes which exclude settlement must be null and void.[37]

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[33] Civil Code Section 3:157 (2) If the partnership no longer has a general partner, the limited partner shall be liable for the debts incurred following that date but before the conditions for operation as a limited partnership are restored or the transformation, merger, or the termination without succession, of the partnership is decided according to the rules on general partners.

[34] Civil Code Section. 3:154.

[35] Civil Code Section 3:150 (1)

[36] Civil Code Section 3:150 (2)

[37] Civil Code Section 3:150 (3)

7. EXTENSION OF THE RULES ON ADDITIONAL MONETARY CONTRIBUTIONS TO LIMITED PARTNERSHIPS

Traditionally, the legislator provided for the possibility of additional monetary contributions as a means of loss cover only in the case of limited liability companies. Therefore, under the previous legislation, substitute contributions were not dealt with under the general rules for legal persons or companies but specifically under the rules applicable to limited liability companies.[38]

The legal institution of additional monetary contribution will no longer be exclusively related to limited liability companies but will be defined as a general legal institution under company law, based on the provisions of the Civil Code in force as of 1 January 2022. The justification for this extension is intended to ensure the stability of the operation of companies.

Regarding limited partnerships, this legal institution is special because the Civil Code does not prescribe a minimum amount of assets to be contributed by the members for the establishment and operation of the partnership, unlike in the case of limited liability partnerships, where the minimum amount of share capital is HUF 3 million.

According to the current rules on additional monetary contributions, "If the company's articles of association authorise the supreme body to impose an obligation on members to make additional contributions to cover losses, the maximum amount that the member may be required to pay and the frequency with which such contributions may be imposed must be specified."[39]

Due to the partnership nature of limited partnerships, the amount of the partners' contributions is not predetermined, but if the partners' obligation to make additional contributions is provided for in the partnership agreement, the general partner or limited partner is obliged to make a predetermined contribution to cover losses. Of course, the requirement to make an additional monetary contribution is not a legal obligation but is left to the members to decide in the articles of association.

The possibility of additional contribution also moves the limited partnership away from the traditional partnership form. The way I see it, in line with these provisions, it would also be necessary to provide for a minimum contribution of assets for partnerships, which is currently shaped solely by practice, based on the costs necessary to start up the company.

Under the current rules, there may be cases where the amount of the additional payment significantly exceeds the amount of the contribution in kind. There

[38] Before 1 January 2022, the institution of the additional monetary contribution is regulated by the Section 3:183 of the Civil Code and was exclusively a legal institution related to limited liability companies

[39] Civil Code Section 3:99/A

is no requirement for the minimum asset contribution for the lawful operation of the company, so this legal compliance does not force the members to cover losses, it is questionable to what extent the obligation under this additional contribution can be enforced in practice.

The obligation to cover the losses of a limited partner of a limited partnership may be contrary to the definition of the business association form, given that the essence of a limited partnership is that the person is not liable for creditors' claims not covered by the assets of the partnership. Of course, the imposition of an additional monetary contribution may be at the discretion of the partners, not a mandatory legal requirement. However, in cases where the partners do not have the same number of votes (the partners may deviate from the equal number of votes, but the minimum number of votes required by law is one), where the general partner holds more than the limited partner, or more than three-quarters of the votes, there may be a situation in the course of the company's operation where the limited partner is obliged to make a deficiency payment against his will in the event of the company's loss-making operation.

In this case, a situation may arise contrary to the definition of a limited partnership, with the derogation of the duty of responsibility, because the limited partner would have the same obligation as the inside member to cover the loss during the operation of the partnership.

8. IMPACT OF THE AMENDMENTS ON THE LEGAL STATUS OF LIMITED PARTNERSHIPS

In my opinion, with the change in the rules of the new Civil Code and the acquisition of the legal personality of the limited partnership, there is a tendency in the Hungarian legislation, which is increasingly bringing the provisions governing limited partnerships closer to the rules governing capital companies. Also, in the context of limited partnerships, in line with Hungarian jurisprudence, recognising the limited liability company as a legal person, the rules ensuring the functioning of the company are increasingly being given priority over the persons involved in the company.

On this basis, it can be concluded that, although limited partnerships in Hungary are traditionally partnerships, the changes in company law rules are similar to capital partnership rules. Of course, the Civil Code still does not provide for a minimum share capital requirement for limited partnerships, whatever the amount of capital required to set up these types of companies, this rule continues to reinforce the partnership character of the company.

The two forms of liability remain separate, but the possibility of a limited partner being elected as an executive director seems to blur the line. Where the

limited partner performs the functions of the executive officer, his/her status is complemented by the liability of the executive director.

In this case, there is no longer a sharp distinction between the two types of liability that constitute the conceptual essence of the limited partnership.

In the case of the election of a limited partner as managing director, the obligation of the member to assume liability for the company's debts with all its assets is also called into question, in addition, where appropriate, to the liability of the outsider as managing director. This trend can also be observed when observing the limited partner. If the limited partner is also the managing director of the company, his liability is not limited to the contribution of assets, but may be supplemented by the liability of the managing director. Among the general rules applicable to executive officers, the legislator states that „The legal person shall be liable for any damage caused to a third party by the executive officer acting in his competence. The executive officer and the legal person shall be jointly and severally liable if the executive officer caused the damage intentionally."[40]

On this basis, in the event of the company's dissolution without legal succession, the limited partner can also be held liable for the company's debts if he or she intentionally causes the insolvent situation. In this context, the role of the limited partner may be similar to that of a member of a limited liability company with a traditional capital structure in the context of the breach of limited liability.

The conventional distinction between the liability of the general and limited partners is also blurred by the amendment on the change in the liability of members, which declares the limited partner to be liable in the same way as the general partner if the company no longer has a general partner. This liability is imposed on the limited partner only until the restoration of the legal operation of the company, with a maximum period of 6 months. However, with the change in the rules on dissolution without succession, i.e. that the company does not ipso iure cease to exist after 6 months, this period may be much longer. Thus, during this period, the conceptual basis of the limited partnership, with the sharp distinction between the two forms of liability, will be disrupted. During this period, the outside member is liable, like the inside member, for the company's debts not covered by its assets.

9. CONNECTION OF THE AMENDED PROVISIONS ON LIMITED PARTNERSHIPS WITH THE EUROPEAN UNION COMPANY LAW DIRECTIVE

The European Union Company Law Directive, DIRECTIVE (EU) 2017/1132 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017

[40] Civil Code Section 3:24 [Liability of executive officers] (2)

relating to certain aspects of company law, governs the EU provisions governing companies.

In addition, individual member states, including Hungary, continue to apply separate company laws, which are amended from time to time to comply with EU directives and regulations. This EU Directive sets out requirements for the EU Member States only in relation to companies with limited liability (limited liability companies, stock companies).[41]

In my opinion, the amendments to the Civil Code concerning the limited partnership discussed in my study and the legal personality acquired by this type of company as of 15 March 2014 follow the trend in Hungary that the type of company is increasingly shifting towards the rules governing capital companies.

With the amendment of the rules on limited partnerships, the application of EU company law rules to these forms of company may also arise.

10. SUMMARY

The way I see it, based on the amendments to the Civil Code governing limited partnerships, which reflect the problems encountered in practice, there is a tendency in Hungarian legislation.

Starting with the change in the legal personality of the limited partnership, this type of company may, at the discretion of its members, operate more and more in a manner similar to the rules of capital mergers, despite the fact that the law does not impose a mandatory asset contribution obligation.

The aim of the regulation is to ensure the long-term operation of companies, the widest possible scope of disposability, and the decision-making of members.

In my view, the amendments provide answers to the questions and uncertainties that arose in legal practice, but in view of the duty of substitution, the possibility of electing a limited partner as a managing director, the imposition of an additional monetary contribution, and the liability of the limited partner until the entry of the general partner in the case of limited partnerships are likely to encounter challenges in judicial practice.

In the case of a limited partnership, the role of the limited partner may no longer be limited to the contribution of assets, but based on the amended provisions described in detail in the study, he/she may also play a decisive role in the representation of the company, in covering its losses, and in the absence of a member, in the overall operation of the company, subject to stricter liability rules.

To sum up, it can be concluded that since partnerships have already been regulated as legal entities in the Civil Code, it was justified to clarify and supplement

[41] https://www.europarl.europa.eu/factsheets/hu/sheet/35/tarsasagi-jog

the relevant provisions on the basis of case law. The rules provide for the possibility for the members to deviate from the general rule of the obligation to provide compensation, therefore it is particularly important to know these rules and to apply them properly in practice.

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Промењена правила командитног друштва у мађарском грађанском законику – са посебним осврtом на измену правила управљања

Сажетак: *Закона XCV из 2021 о изменама и допунама Закона V у вези Грађанског законика (у даљем тексту: Грађански законик) увео је значајне промене које се тичу пословних субјеката у Мађарској. У мом раду, испитаћу одређене измене које се тичу командитног друштва, са посебним осврtом на правила о избору командитора као генералног директора и да ли се наведена правна форма помера из командитног друштва у друштва капитала на основу измењених одредби.*

Кључне речи*: командитно друштво, комплементар, командитор, извршни директор, Закон V из 2013. о Грађанском законику, престанак без следбеништва, избор командитног партнера за генералног директора, Закон XCV из 2021. о изменама и допунама Закона V из 2013. о Грађанском законику, додатни новчани улози, партнерства, спајање капитала.*

Датум пријема рада: 11.08.2022.
Датум достављања коначне верзије рада: 25.10.2022.
Датум прихватања рада: 25.10.2022.