

Changes in the view of the liability of executive officers

The Bill regarding Amendment to Act V of 2013 (the new Civil Code) designed to clarify dubious interpretation of the law concerning liabilities of executive officers has been submitted

The current and highly disputed Section 6:541 of the new Code of Civil contains the following provisions: *“If an executive officer of a legal person causes damage to a third party in connection with his office, s/he shall be held jointly and severally liable together with the legal entity for the damage vis-à-vis the injured person.”*

It can be stated without detailed prospectus and analysis of the disputes regarding the above-mentioned section that in the absence of judicial practice the correct interpretation of the current legislation is rather dubious as compared to the application of the rules of the former Code of Civil and Act IV of 2006 relating to internal and external liability of executive officers. The proposed amendment aimed at repealing the abovementioned section and at supplementing Section 3:24 of the new Civil Code with paragraph (2) below to replace it wishes to intend to cease among others this doubtfulness and market concerns caused by this doubtfulness.

3:24 [Liability of executive officers]

(1) “The executive officer shall be held liable for damages caused to the legal person resulting from his management activities in accordance with the provisions on liability for damages caused by non-performance of an obligation.”

(2) “The legal person shall be liable for any damage caused by the executive officer acting in such capacity to third party.”

According to the explanation to the proposed amendment, it is necessary to the repeal Section 6:541 of the Civil Code due to the fact that “it is badly drafted and difficult to interpret”. In parallel, according to the explanation, by adding paragraph (2) above, the established judicial practice will be enacted according to which if the executive officer causes the damage intentionally; he shall not be relieved of the liability “by hiding behind the liability of the legal person”. Lastly, according to the explanation, by making the aforementioned amendments, the issue of interpretation would no longer be relevant in relation of the establishment of the liability of the executive officer whether there is a legal relationship between the legal person and the injured person or not. By simplifying the interpretation,



the only thing that would be relevant is whether the executive officer has caused the damage acting in such capacity in a particular case or not.

The above amendments shall enter into force with the transitional provision below on 1 July 2016 as stated in the Bill:

Subsection 6:541 of the Civil Code repealed by this law shall be applied **if the damage incurred prior to 1 July 2016 and the damage was caused by tortious behaviour, including any omission, following the entry into the force of the Civil Code and in case of continuous tortious behaviour it was caused by conduct commenced after the entry into force of the Civil Code.** Thus, if the proposed amendment is accepted without any change, the current provision “difficult to interpret” shall only be applied to tortious conducts committed between 15 March 2014 and 1 July 2016. It can be stated relating to the Bill that it is suitable for the purpose of removing the present uncertainty which is apparently necessary as stated above. It is also important to note that the Bill would only establish joint and several liability with the company in case of tortious conduct of the executive officer relating to the liability vis-à-vis third party which means **a restricted** scope of liability as compared to the current legislation as it does not exclude involuntary damage from the facts of the case giving rise to joint liability.

It cannot yet be stated whether the aforesaid parts of the Bill will indeed enter into force and without being modified on 1 July since the Parliament has not yet adopted it. On the other hand, it is worth monitoring the developments and preparing for the practical consequences expected in this respect.