

KRS: this is how limited partnerships and general partnerships can avoid penalty

The deadline for limited and general partnerships to place their operations under the effect of the Civil Code enacted a year earlier expired on 15th March – cautioned Dr Arvid Hauck the enterprises concerned. According to Dr Arvid Hauck if enterprises want to avoid pecuniary fines it is highly advisable that they remedy any non-compliance with the regulations as soon as feasible.

From 15 March 2015 limited and general partnerships alike must apply the Civil Code provisions, meaning that from this day on their founding documents may not contain clauses that do not conform to the Civil Code provisions.

The expert of Kovács Réti Szegheő Attorneys at law highlighted however, that if it is only less significant provisions of the law which require the amendment of the founding document, then the affected enterprise may be exempted from its amendment obligation.

Provisions of minor significance

Provisions of minor importance are for example, if only the title of the referenced law (Civil Code instead of Companies' Act), or the position of members vested with power of representation (managing director compliant to the Civil Code) need to be amended in the founding document due to the coming into force of the Civil Code. However, as soon as the amendment of the founding document becomes necessary for any other reason, the said minor modifications must also be implemented along with the required amendment.

Although a large number of articles were published last year and various service providers sent out newsletters to remind limited partnerships and general partnerships to the above, and to 15 March 2016 as the deadline set for limited liability companies, few are actually aware of the consequences to be faced by enterprises that do not conform to these requirements by the said deadlines.

Judicial oversight proceedings may be initiated

Judicial oversight proceedings may be initiated against enterprises if their founding documents are illegitimate – cautions Dr Arvid Hauck.

The court of registry may initiate judicial oversight proceedings either ex officio upon gaining knowledge of the breach, or upon being notified about the illegitimacy by a third party who is able to verify his legal interest.

Judicial oversight proceedings may be initiated within 30 days of gaining knowledge of the illegitimacy, but no later than one year's time from the date when the reason for the proceedings has incurred.

The bad news is that limited partnerships and general partnerships may not hazard that with the elapse of these limitation periods they might be exempted from compliance with their obligations, since the illegitimate founding document sustains the violation, whereby the proceedings against nonconforming enterprises may be conducted any time throughout the subsistence of the illegitimacy.



Non-compliance may carry hefty fines

At the outset the procedure the court of registry orders the enterprise to cease the violation. However, if the company should fail to abide by that obligation, the fine imposed on the company or its executive officer may reach HUF 10 million, but not less than HUF 100 thousand.

The expert of Kovács Réti Szegheő Attorneys at Law also warned that the fine may be levied more than once in the course of the procedure.

Considering that the deadline has already expired for limited and general partnerships to amend their founding documents and to bring their operation in compliance with the Civil Code, enterprises whose founding document is not in conformity with the requirements of the Civil Code may be subject to judicial oversight proceedings initiated against them.

Consequently, in order to remain on the safe side and avoid pecuniary fines, it is highly advisable to take the necessary steps to remedy such deficiencies as soon as feasible – concluded Dr Arvid Hauck.