

The Constitutional Court has annulled the provision subject to the disqualification of executive officers

The provisions on the disqualification of company law are set out in Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (hereinafter: “Ctv.”). Some amendments to the law since its entry into force have gradually tightened up. At the same time, Act CCLII of 2013 has introduced exceptions to the ban, alleviating the former rigor of regulation. According to the legislation in force, as a result of the search for property, the following three cases may occur in the disqualification of forced cancellation proceedings:

- In the first case, the company court deletes the company from the company register under the forced cancellation procedure if the claim has not been filed and the company has no assets or is not expected to cover the costs of the liquidation procedure, or if the claim has not been filed and the company has assets. In these cases, the disqualification - given that no claim was made - is ignored by the Court of registry.
- According to the other case, the company will also be dissolved under the forced cancellation procedure if a claim has been filed against the company, but the company has no assets available (and this is not the cause of the overdraft). In such a case, the Court of registry must automatically have a ban on disqualification.
- According to the third case, the Court of registry will initiate liquidation proceedings in the event of termination of the forced cancellation procedure if a claim against the company has been filed and the company has assets that are expected to cover the costs of the liquidation procedure; or if a claim has been filed against the company, its assets are presumably not available or significantly reduced due to the collateral transaction. In this case, the disqualification should be applied appropriately during the winding-up proceedings, as a result of which the court decides on the termination of the debtor by order, and then the company can be dissolved ex officio and without discretion.

The Constitutional Court has adopted the Act No. 16/2018 (X.8.). however, by its decision on 31 December 2018, it overturned the Act 28 December 2018, 9/C. § which also abolished the sanction that a prohibited person may not acquire a majority influence in a business company for five years after the firm's definitive cancellation.

According to section 9/A. § of Ctv. the reason for its cancellation is summarized by the Constitutional Court in a detailed legal argument. In essence, one of the main reasons for the cancellation is that on the basis of section 9/C. the Court of registry was obliged to disqualify the persons defined above for a period of five years, even if the disqualified person had no influence over the circumstance giving rise to the forced cancellation. The effective regulation, as it did not provide the possibility of rescuing, because the basis for the liability of the disqualified person is, according to the canceled statutory



provision, was the fact that at the time the forced cancellation proceedings were commenced or one year prior to the start of the forced cancellation procedure or an unlimited member of it, the executive officer had been a member with majority influence in a limited liability company, which in itself gives rise to a disqualification, and therefore the individual's personal liability is not considered in the disqualification and therefore the action applied is completely independent the relevant imputability of the concerned private person. Further reason for the annulment is the forced cancellation proceedings against the company where the person affected by the disqualification has no possibility of defending the circumstances however, he or she is disproportionately disqualified for 5 years, which is a 5-year ban and there is no possibility for the court of appeal to consider the circumstances in order to determine a shorter duration, taking into account that the person concerned with disqualification to what extent contributed to the circumstance that triggered the forced cancellation procedure.

Although the Constitutional Court did not impose a legislative obligation on the legislator, the legislator will presumably set up a ban on disqualification before 31 December 2018 that will be aligned to the aspects which served as basis for the Constitutional Court when it annulled the subject provision deemed unconstitutional.