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Contributing editor
Michael J Albano
Cleary Gottlieb Steen & Hamilton LLP

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Chapter 7

HUNGARY

Barnabás Buzási, Melinda Pelikán, János Pásztor, Bence Kálmán and Helga Szkok[1]

I INTRODUCTION

The term 'executive' is mostly associated with managing directors, CEOs and other people involved in the senior management of a company, regardless of the company's legal form. However, from a labour law perspective these persons are only considered as executives in Hungary if they work within the framework of an employment agreement. In this case, the provisions of the Labour Code apply to their legal relationship with certain differences from the rules applicable to regular employment relationships.

Another group of employees also forms part of the executive body based on the nature of their position and on the parties' agreement included in their employment contract.

As these positions are particularly important from an employer's point of view, the related rules grant to the contracting parties a greater freedom in defining the terms of their agreement. However, regarding the rules related to remuneration, the two groups mentioned above must be examined differently, as the levels of protection differ for each.

Apart from the salary prescribed by labour law, an employer may decide to introduce different types of allowances and compensate executives' work and loyalty and motivate their productivity by other means (e.g., bonuses and ensuring the possibility of taking part in employee share schemes). These allowances are usually incorporated in a detailed internal policy by taking into account the potential methods of amendment and their difficulties, which is the most economic solution to ensure adequate protection of an employer's interests.

Collective agreements do not apply to executives.

II TAXATION

i Income tax for employees

Personal income tax consequences of executive compensation

The rules applicable to personal income tax (PIT) are set out in the Act on PIT.[2] Any consideration received by a private individual in any way or form – in cash or non-cash assets – can qualify as income for the purposes of the Act on PIT. If an executive's income becomes taxable in Hungary, the employment income will be subject to 15 per cent PIT.

In general, Hungarian tax residents are subject to PIT on their worldwide income, regardless of whether the funds are transferred to Hungary. Non-residents are taxed on

[1] Barnabás Buzási and Melinda Pelikán are counsel, János Pásztor is a senior associate and Bence Kálmán and Helga Szkok are associates at Wolf Theiss.

[2] Act CXVII of 1995 on Personal Income Tax.

income from Hungarian sources only. Therefore, the tax residency of an executive must be determined to ascertain whether and to what extent Hungarian PIT liability arises concerning their income.

Hungarian tax-resident status

According to Section 3 of the Act on PIT, the following should be regarded as being resident for PIT purposes in Hungary:

a Hungarian citizens;

b EEA nationals who spend at least 183 days per calendar year (including the day of entry and the day of exit) in Hungary; and

c third-country nationals who have a permanent residence permit or stateless status in Hungary.

Individuals also qualify as being resident in Hungary for PIT purposes if:

a their only permanent home is in Hungary;

b their centre of vital interests is in Hungary if there is no permanent home in Hungary, or if Hungary is not the only country where they have a permanent home; or

c their habitual abode is in the domestic territory if there is no permanent home in Hungary, or if Hungary is not the only country where they have a permanent home and if their centre of vital interests is unknown.

For the purpose of a permanent home, any form of dwelling may be taken into account (e.g., a house or apartment belonging to or rented by an individual, or a rented furnished room). However, the permanence of the home is essential; this means that an individual has arranged to have a dwelling available to them at all times continuously, and not occasionally for the purpose of a stay that is necessarily of a short duration (e.g., for business or educational travel). To substantiate that an individual has a permanent home in Hungary, the requirement is usually to have at least a rented flat for which they are paying public utility, telephone and internet bills.

As regards the notion of centre of vital interests, the Hungarian public guideline largely follows the OECD Commentary and claims that the centre of vital interests is the country with which the personal and economic relations of the individual are closer. Thus, their family and social relations, occupation, political, cultural and other activities, place of business and the place from which they administer their properties should be considered. The circumstances must be examined as a whole, but considerations based on the personal circumstances of the individual (e.g., close family relatives living in the same household) must receive special attention.

Avoidance of double taxation

It may occur that an executive not qualifying as a Hungarian tax resident derives remuneration in respect of an employment exercised in Hungary. If there is a double tax treaty in force between Hungary and the other jurisdiction concerned, the relevant double tax treaty rules will apply to eliminate double taxation.

The double tax conventions (DTC) concluded by Hungary usually follow the OECD Model Convention on the Avoidance of Double Taxation in eliminating the double taxation of income from employment. Therefore, the remuneration of an executive would be taxable in Hungary unless they stay no more than a total period or periods of 183 days in Hungary in the relevant fiscal year, the remuneration is paid by or on behalf of an employer that is not resident in Hungary and the remuneration is not borne by a permanent establishment located in Hungary.

Stock option

Under Hungarian law, granting stock options to employees is not taxable in itself. Employees will only recognise taxable income upon the exercise of an option in an amount equal to the difference between the fair market value of the shares on the date of exercise and the amount of the purchase price, acquisition and transaction costs, if any. The income of a Hungarian-resident private individual arising upon exercising options would be subject to PIT at a rate of 15 per cent in Hungary.

The dividend income from the shares of a Hungarian-resident private individual is subject to PIT at a rate of 15 per cent. Capital gains realised by a Hungarian-resident private individual on the sale of the shares is subject to PIT at a rate of 15 per cent.

Retirement planning

The Act on PIT incentivises retirement planning by providing preferential tax treatment for pension insurance contracts, and for placing assets in voluntary mutual pension insurance funds and in retirement accounts. Such incentives are not restricted to executives; they can also apply to other employees.

ii Social taxes for employees

If an executive becomes subject to Hungarian social security, their employment income will be subject to 18.5 per cent social security contribution payable by the employee.

According to the Act on Social Security,[3] an employee can become subject to the Hungarian social security system if their employment relationship is governed by Hungarian law, or the employee carries out activities in Hungary or in another Member State of the European Union to which the Social Security Regulation[4] applies. The Social Security Regulation has precedence over the Act on Social Security when ascertaining whether an executive is subject to Hungarian social security.

The dividend income of a Hungarian-resident private individual is subject to PIT at a rate of 15 per cent and social tax at a rate of 15.5 per cent (this latter is capped at approximately €1,900). Dividend payments distributed by or on behalf of a legal person or other organisation seated in a low tax jurisdiction are subject to social tax at a rate of 15.5 per cent, payable by the recipient, whereby the aforementioned cap would not apply in addition to the PIT.

Capital gains realised by a Hungarian-resident private individual will be subject to PIT at a 15 per cent rate and social tax at a rate of 15.5 per cent (the latter is capped at approximately €1,900). Capital gains arising from the sale of shares in a legal person or other organisation seated in a low tax jurisdiction would be subject to social tax at a rate of 15.5 per cent whereby the aforementioned cap would not apply, in addition to the PIT.

[3] Act CXXII of 2019 on Social Security.

[4] Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

iii Tax deductibility for employers

Executives' remuneration, the social tax and the training fund contribution can be accounted for as employment expenses. These expenses also reduce the corporate income tax base of employers.

The Act on PIT defines certain allowances, including services in connection with business trips and amounts paid by employers to voluntary mutual insurance funds for targeted services (to be provided to employees). These allowances, and the PIT due on them payable by employers, also qualify as employment expenses; therefore, they reduce the corporate income tax base of employers.

III TAX PLANNING AND OTHER CONSIDERATIONS

i Tax planning

If the taxes on the remuneration of an executive payable in the country of residence exceed the amount of tax that should be paid were the income taxable in Hungary, the lower Hungarian tax rates and the exemption method under the applicable DTC can result in significant tax savings when posting an executive to Hungary. This posting structure is demonstrated in the following example (note: the tax rate applicable in the foreign jurisdiction of the example is fictional).

Posting an employee to Hungary to act as an executive in a Hungarian entity would require that the Hungarian entity and the foreign entity posting the employee conclude a management service agreement under which the foreign entity would provide management services to the Hungarian entity via its employee. Based on the management services agreement, the foreign entity should be compensated on an arm's-length basis, which usually means that such compensation should cover its expenses and some margin.

The annual salary of an employee posted to Hungary payable by the employer (the foreign entity) would be €200,000. That would be the amount of salary expenses at the foreign entity.

The amount of the management services fee would be the sum of the above-mentioned salary expenses of €200,000 and of a margin of €5,000, that is, €205,000.

In the case of a favourable DTC between Hungary and the jurisdiction of the foreign entity, the salary income would be taxable in Hungary. The PIT payable in Hungary would be €30,000 (€200,000 multiplied by 15 per cent). This income should be fully exempted from taxation in the jurisdiction of the foreign entity, which would otherwise be €60,000 by applying the 30 per cent PIT rate. Therefore, the tax savings on the PIT would be €30,000 per year.

Based on the above, depending on the corporate income tax positions of the group companies and the social taxes payable in each country, it can be established that, because of the difference between the PIT burdens in Hungary and the jurisdiction of the foreign entity, significant tax savings can be achieved if the income for the foreign employee is channelled through a Hungarian entity.

ii Employee shareholder plans

An employee shareholder plan (ESP) organisation may be set up by an employer to distribute securities issued by an employer or its parent company (e.g., shares, bonds and rights on securities) and profits therefrom to the employees. Employees do not incur PIT on the benefit from the acquisition of securities distributed by the ESP organisation. Based on statutory requirements, an improvement in financial results or certain other indicators of the entity issuing the securities concerned are a precondition for payments to employees from the ESP. In sum, distributing funds to employees through an ESP can be a tax-effective method of paying bonuses while making employees vested in the business performance of their employer.

iii Other considerations

The reimbursement by an employer of nursery and kindergarten fees or a part thereof to an employee based on an invoice issued to the name of the employer is also exempt from PIT.

IV EMPLOYMENT LAW

i Special agreement

By underlying the special nature of this type of relationship, the related rules are to be found in the special rules of the Labour Code.

Assuming that the executive's position does not require the same level of protection, the legislator grants to the parties greater flexibility and freedom in defining the content of the employment agreement. Accordingly, an executive's employment agreement can deviate from most of the general rules of the Labour Code.

ii Conclusion

The possibility of the application of these rules (i.e., the conclusion of this type of agreement) is limited to certain cases.

'Executive' means the director of an employer, and any other person under their direct supervision and authorised – in part or in whole – to act as the director's deputy. These are typically the managing directors, CEOs and other employees filling such a position, and if the preconditions are met, a procurist may also belong to this group. In these cases, it is not a matter of choice that the employee is an executive if they perform their work within the framework of an employment agreement.

The term of the employment agreement must be in line with the term of appointment for the position indicated in the company register.

The parties can also agree to invoke provisions on executives if the employee fills a position of considerable importance from the point of view of the employer's operations (e.g., CFO or HR director) or a post of trust (chief accountant or IT manager), provided that their salary reaches seven times the mandatory minimum wage (which is approximately €4,220).

iii Rules of termination

If an employment agreement has been concluded for an indefinite term, neither the employee nor the employer must justify the termination. This solution creates a more favourable situation on the employer's side; however, the termination cannot violate the prohibition on the abuse of rights. The principle of equal treatment must also be respected. Despite the fact that there is no obligation of justification, the employee has the right to sue the employer; however, it is more difficult for the employee to determine the truth.

In the case of employees participating in the management of a company, and who are typically appointed for a definite term, lawful termination requires justification from both sides. A fixed-term employment relationship may be terminated only in limited, defined cases detailed in the Labour Code.

Accordingly, an employer may terminate the employment relationship concluded for a fixed term exclusively during a liquidation or bankruptcy procedure against the employer, for reasons connected to an employee's abilities or if maintaining the employment becomes impossible because of unavoidable external reasons. Alternatively, the executive employee may be terminated without justification, with immediate effect. However, in this case the employee will be entitled to absentee pay due for 12 months, or if the time remaining from the definite term is less than one year, for the remaining term.

An employee may terminate the employment relationship only based on such reasons that would make it impossible for them to maintain the employment or that would cause disproportionate harm to them considering their circumstances.

Breaching these rules may imply an obligation to pay compensation for damage resulting from a breach of the agreement.

iv Allowances due to employees upon termination

Upon termination, employer and employee account with each other, including the return of equipment provided by the employer during the employment relationship.

Based on the Labour Code – unless otherwise agreed by the parties – the employee may be entitled to the following types of allowances.

If it is the employer who decided to terminate the employment relationship, the employee may be entitled to severance payment. The entitlement depends on the length of service, except if the employee is recognised as a pensioner at the time when the notice of dismissal is delivered or when the employer is terminated without succession, or they are dismissed for reasons in connection with their behaviour in relation to the employment relationship or on grounds other than health reasons.

The severance payment equals the sum of absentee pay due for one month in the case of an employment relationship for up to three years, which will be increased gradually up to six months after at least 25 years of service.

The employee would also be entitled to compensation for unused holidays, regardless of which party terminated the employment. This is the only case when compensation may be paid in lieu of allocation and ordering the use of holiday.

The Labour Code takes into account the employer's possibly difficult financial situation at the time of termination. Thus, should the notice of termination be delivered after the opening of bankruptcy or liquidation proceedings, the employer is obliged to pay only an amount up to six months' absentee pay due to the employee. The remaining part of the amount otherwise due will be payable upon the conclusion or termination of bankruptcy proceedings, or upon the conclusion of liquidation proceedings.

v Non-compete

The Labour Code creates the option for an employer to protect its rightful economic interests even after an employment relationship is finished by extending an employee's obligation in this respect by means of a non-competition agreement for a defined term. The non-competition agreement must be made in writing. The non-solicitation obligation makes part of this commitment under Hungarian law; thus, every activity that may violate an employer's legal economic interest can be restricted.

The obligation of confidentiality after termination, which binds an employee without a time limitation, is for a similar purpose, but with the difference that the confidentiality obligation does not require the parties' agreement, and while the obligation of confidentiality does not require compensation, a non-competition agreement cannot be validly concluded without adequate compensation. The two obligations are frequently confused and their boundaries are blurred. The basis of a confidentiality obligation's mandatory and unlimited nature in time is the common interpretation of the Labour Code and the Competition Act.

The aim of non-competition agreements is the protection of an employer's lawful economic interests. However, in accordance with the principle of purpose limitation, the lawful economic interest serving as a legal basis for non-competition will be significant and measurable.

It is also an employer's economic interest that limits the scope of restrictions, as the obligations undertaken by an employee need to be tailored to the purpose. This means that, in order not to make it impossible for an employee to find another job, the territorial scope and type of activity to be avoided must be defined in the agreement by taking into account the potential threat to the employer.

The necessity of a non-competition agreement depends on the position an employee filled at their employer's organisation, the knowledge and expertise gained in this position, the term of the employment relationship and the employer's position on the market, and it will be decided on a case-by-case basis.

The rules related to the conclusion of a non-competition agreement are particularly strict, and breach of these rules may result in the invalidity of a non-competition agreement.

An employee is entitled to adequate compensation in exchange for their undertakings. The minimum amount for the term of a non-competition agreement is defined in the Labour Code, which may not be less than one-third of an employee's base wage due for the same period. However, the amount of adequate compensation must be determined on the basis of the degree of impediment an agreement has on an employee's ability to engage in employment relationships elsewhere, also taking into account their education and experience, which requires the complete evaluation of all these facts. Accordingly, a non-competition agreement is always customised to the employee in question, taking into account the economic and market conditions.

The payment scheduling entirely depends on the parties' agreement. It may be paid in one single amount during or after the employment relationship, or after the whole non-competition period has successfully elapsed. The parties can also agree that the compensation will be paid in monthly instalments during the employment or the non-competition period. However, payment in advance during the employment deserves special attention, as it could happen that the overall amount of monthly instalments provided exceeds the amount otherwise due to the employee. In this case, the employer is not entitled to claim back the undue amounts, which may create a financial disadvantage on the employer's part. Another problem can be if the employment agreement terminates before the employee received the full amount of the compensation. In this case, if an adjustment has not been included in the non-competition agreement it would be invalid, as the amount cannot be replaced afterwards.

However, the parties' agreement may grant to the employer the possibility of withdrawal before the non-competition agreement enters into effect. Accordingly, if during the employment it became clear that the entry into force of the non-competition agreement does not serve the employer's interest, the employer can decide not to pay the compensation and the employee would not be bound by the undertakings after termination of the employment relationship.

If the parties expressly included in the non-competition agreement that the employee will be accountable for the amounts paid in advance during the employment relationship, the employer can reclaim these amounts upon withdrawal.

Another optional provision ensuring safeguard and flat-rate compensation for damage for the employer in the case of a breach of contract is the penalty, which requires a written form. The rate of the penalty may also be defined as a percentage of the compensation. In case of an excessive penalty, the court can reduce this amount upon the employee's request. In addition to a penalty, the employer is entitled to demand payment for damage not covered by the penalty, which will also be included in the non-competition agreement.

One of the core issues is that the non-competition agreement must be concluded before the termination of the employment. If the parties do not conclude this agreement at the beginning of the employment, they can do so at any time until the termination of the employment agreement, but the bargaining power of the employer may be weaker.

V SECURITIES LAW

Pursuant to applicable Hungarian laws, in the case of a company limited by shares (both private and public companies), a specific type of shares (employee shares) may be issued to employees either for a special price (which is usually less than the face value of the shares) or without consideration.

The value of these employee shares is also limited; they may only be issued simultaneously with the increase of the respective company's share capital.

Employee shares may only be transferred or sold effectively to another employee of a given company or to former employees of such company provided that the deed of foundation expressly allows such transfer or sale. If an employee ceases to be employed by the company in which it owned employee shares, the former employee must transfer such employee shares in accordance with the above rules. Consequently, employee shares cannot be sold on the market.

In the case of employee shares of a private company limited by shares, the issuance of employee shares only needs to be notified to the Hungarian financial regulator (being the National Bank of Hungary). If a public company limited by shares intends to issue employee shares, registration of such employee shares with the Hungarian financial regulator is required, although no prospectus and announcement must be published with respect of such employee shares.

VI DISCLOSURE

Financial institutions, investment firms and alternative investment fund managers (AIFMs) and undertakings for collective investment in transferable securities (UCITS) management companies must disclose the main principles and information regarding their remuneration policy and practices for those categories of staff whose professional activities have a material impact on the risk profile of the institutions on an annual basis.

The remuneration policies disclosed by the financial institutions and the investment firms must contain, in particular, the following information:

a the most important design characteristics of the remuneration system;

b the ratios between fixed and variable remuneration; and

c aggregated quantitative information on remuneration, broken down by senior management and members of staff whose actions have a material impact on the risk profile of the company.

The relevant laws related to the disclosure requirements for AIFMs and UCITS management companies set out the main principles of the remuneration policies, including, among others:

a the remuneration policy should be consistent with and promote sound and effective risk management;

b the remuneration policy should be in line with the business strategy;

c the remuneration policy should be adopted by the management body of the management company in its supervisory function; and

d guaranteed variable remuneration should be exceptional and fixed, and variable components of total remuneration should be appropriately balanced.

Insurance undertakings are also subject to the obligation to draw up a remuneration policy. When establishing the remuneration policy, the following principles must be taken into account:

a fixed and variable components must be balanced;

b where variable remuneration is performance-related, the total amount of the variable remuneration is based on a combination of the assessment of the performance of the individual and of the business unit;

c financial and non-financial criteria must be taken into account when assessing an individual's performance; and

d persons subject to the remuneration policy must commit to not use any personal hedging strategies.

Insurance undertakings must disclose information and principles of their remuneration policies in the solvency and financial condition report on an annual basis.

Furthermore, public companies limited by shares must also establish and disclose a remuneration policy for their directors. The remuneration policy must:

a describe the different components of fixed and variable remuneration, including all bonuses and other benefits;

b explain how the payment and employment conditions of employees of the company were taken into account;

c set clear, comprehensive and varied criteria for the award of the variable remuneration;

d indicate the financial and non-financial performance criteria; and

e specify vesting periods in connection with share-based remuneration.

In addition to the remuneration policy, public companies limited by shares must also draw up a remuneration report and make it publicly available on an annual basis. The report provides the following information regarding each individual director's remuneration:

a the total remuneration split out by component, the relative proportion of fixed and variable remuneration;

b the annual change of remuneration;

c the number of shares and share options granted or offered and the main conditions for the exercise of the rights including the exercise price and date and any change thereof; and

d information on the use of the possibility to reclaim variable remuneration;

Overall, apart from the public companies limited by shares, any information about remuneration must be disclosed on a group basis. However, in the case of public companies limited by shares, the remuneration report contains specific information about the directors' remuneration without a materiality threshold.

VII CORPORATE GOVERNANCE

In the financial sector, establishing a remuneration committee is required if a financial institution has a market share of at least 5 per cent in respect of their balance sheet total. The remuneration committee of the financial institution oversees the remuneration of the executive officers, who are responsible for risk management and compliance (including employees with internal control responsibilities). Other than this, the remuneration committee is responsible for preparing the decisions on remuneration.

The chairman and the members of the remuneration committee must be the members of the management body of the financial institution and must not be under an employment contract with the financial institution.

The general principles of the remuneration policy are adopted and supervised by the supervisory body of the financial institution and the management body is responsible for the implementation of the remuneration policy. Furthermore, the remuneration policy is reviewed at least annually by the internal control department.

The establishment of a remuneration committee is required if an investment firm has a balance sheet total exceeding 35 billion forints. The remuneration committee of the investment firm must be gender-balanced and provide a competent and independent assessment of remuneration provisions and practices, as well as incentives designed to manage risk, capital adequacy and liquidity.

The remuneration committee is responsible for the preparation of decisions, which will be made by the board of directors. During the preparation of the decisions, the remuneration committee takes into account public interest and the long-term interest of the shareholders, investors and other parties with an interest in the investment firm. The chairman and members of the remuneration committee must be selected from among the members of the board of directors who do not perform any executive function in the investment firm. In case there is an employee representative on the supervisory board, at least one employee representative must be part of the remuneration committee.

VIII SPECIALISED REGULATORY REGIMES

In line with EU regulations, special remuneration policies are to be mandatorily applied to certain employees in the financial and investment sector.

i Remuneration policy in the financial sector

The remuneration policy is applicable to the executive officers of a financial institution as well as to other employees of the given financial institution who have a material impact on the financial institution's risk profile.

The supervisory body adopts and periodically reviews the general principles of the remuneration policy, and the management body is responsible for their implementation and execution. The remuneration policy must be reviewed by the internal control department at least annually.

Financial institutions with a market share of at least 5 per cent in respect of their balance sheet total are required to establish a remuneration committee, which is responsible for reviewing the remuneration of the senior officers of risk management and compliance as well as for the preparation of decisions regarding remuneration. The chair and the members of such remuneration committee must be those members of the management body of the financial institution who are not engaged under an employment contract with the financial institution concerned.

Financial institutions distinguish between basic remuneration and variable remuneration, and fix in their internal policy the ratio that basic remuneration represents within the total remuneration, where the variable component must not exceed 100 per cent of the basic remuneration for each senior executive. In certain cases, financial institutions may provide variable remuneration up to 200 per cent of the basic remuneration.

At least 40 per cent – or at least 60 per cent in the case of a variable remuneration component of an amount exceeding the limit specified in the internal policy – of the variable remuneration component must be deferred (aligned with the nature of the business, its risks and the activities of the senior executive) and paid over a period between three and five years.

Senior executives and employees of a financial institution are not allowed to undertake hedging strategies to mitigate the risk alignment effects embedded in their remuneration arrangements.

ii Remuneration policy in the investment sector

The remuneration policy is applicable to the executive officers of an investment company as well as to other employees of the given investment company whose task is risk management and control activity.

The supervisory body adopts and periodically reviews the general principles of the remuneration policy, and the management body is responsible for their implementation and the execution. The remuneration policy must be reviewed by the internal control department at least annually.

If an investment firm has a balance sheet total exceeding 35 billion forints, it is required to establish a remuneration committee, which is responsible for reviewing the remuneration of the senior officers of risk management and compliance as well as for the preparation of decisions regarding remuneration. The chair and members of the remuneration committee must be those members of the management body of the investment firm who are not engaged under an employment contract with the investment firm concerned.

Investment firms distinguish between basic remuneration and variable remuneration, and fix in their internal policy the ratio that basic remuneration represents within the total remuneration, where the variable component must not exceed 100 per cent of the basic remuneration. In certain cases, investment firms may provide variable remuneration up to 200 per cent of the basic remuneration.

At least 40 per cent – or at least 60 per cent in the case of a variable remuneration component of an amount exceeding the limit specified in the internal policy – of the variable remuneration component must be deferred (aligned with the nature of the business, its risks and the activities of its senior executive) and paid over a period of between three and five years.

Senior executives and employees of an investment firm are not allowed to undertake hedging strategies to mitigate the risk alignment effects embedded in their remuneration arrangements.

IX DEVELOPMENTS AND CONCLUSIONS

The rules related to executives are not dynamically changing parts of the related acts: they are a well-crystallised part of the Labour Code and practice.

However, owing to the entry into force of the new Civil Code in 2014, issues were raised in connection to the liability regime under the Labour and the Civil Codes. The question is whether the liability rules of the Labour Code should be applied in cases of damage caused by an employee to an employer.

In cases where an executive performs their tasks within the framework of an employment agreement, and they breach the obligations stemming from the employment relationship by failure to act as might normally be expected in the given circumstances, an executive's liability towards the employer will be governed by the rules of the Labour Code. In which case, the burden of proof to verify the above-mentioned circumstances, the occurrence of loss and the causal link lies with the employer.

Executives are also subject to full liability for damage caused by negligence. They are not liable, however, for any damage unforeseeable at the time of the breach or that resulted from their employer's wrongful conduct, or that was incurred owing to their employer's failure to perform its obligations to mitigate the damage.

However, if a breach is not related to an executive's obligations based on their employment, their liability will be governed by the Civil Code. The question of liability must be examined on a case-by-case basis.

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