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SOME CURRENT ISSUES IN SYNDICATE CONTRACTS

In the last decades, the syndicate contract, as a type of contract outside the Civil Code, has acquired a number of functions. The widespread use of this type of agreement has naturally had an impact on case-law. The present study will examine the situations in which syndicate contracts are typically concluded, whether this type of agreement is an adequate response to the legal problems it is intended to regulate, and what dilemmas arise, mainly because our existing law does not yet take sufficient account of the specific features that give rise to syndicates.

Keywords

syndicate contract, investor relations, family business, civil law partnership

The concept of a syndicate contract

Before turning to the various functions of syndicate contracts, it is worth briefly reviewing what is actually called a syndicate contract and, typically, when it is encountered. We do not find this type of contract in our current Civil Code, as the Code does not mention such a contract at all.¹ The literature considers the syndicate contract to be a so-called contract outside the Civil Code, i.e. its right to exist is not contested, in the spirit of the contractual freedom declared by the Civil Code, but it is not included in the category of typical contracts.²

According to some views, the syndicate contract is nothing other than a civil law partnership as defined in the Civil Code, but this view is not generally accepted.³ In my view, this identification is not (entirely) correct either, because the Civil Code assigns to civil law partnerships the obligation of the members to make a financial contribution, which is not the case for syndicate contracts. While it is true that the Civil Code itself makes it easier by allowing the financial contribution to be embodied in personal work, this is also alien to syndicate contracts. The commitment of the parties in the context of a syndicate is typically of a different nature and is more likely to relate to future conduct of a non-material nature. This is confirmed by the case-law, according to which a cooperation agreement alone, if it is not accompanied by the requirement of a financial contribution, does not give rise to a civil law partnership agreement, but can at most be considered an atypical contract.⁴

While consortium agreements - for example, in the case of joint tenders and bids - can be equated with the concept of a civil law partnership under the Civil Code, „in the case of a syndicate contract, if we consider its strictly classical aspects of company law, when the members of the company regulate a company situation merely in their relationship with each other, the civil law partnership under the new Civil Code, which doesn't include a coordinating civil law partnership, does not always correspond to syndicate cooperation and vice versa”⁵

1 On which commercial contracts have been included in the new Hungarian Civil Code, see: See for example: Boóc, Ádám: *Gazdasági szerződések Magyarország új Polgári Törvénykönyvében*; *Gazdaság és Jog* 21:9; pp. 3-8.; 2013.

2 See, for example: VERESS, Emőd: *A szindikátusi szerződés tartalmának néhány alapkérdéséről*, in: *Jogtudományi Közlöny*, Budapest, HVG-ORAC Kiadó, 2018/11, 464-476.

3 According to § 6:498 of the Hungarian Civil Code (Ptk.), by means of a civil law partnership contract, the parties undertake to cooperate in order to achieve their common purpose, to make the necessary material contribution to the realisation of the common purpose and to bear the risk of their activities jointly. According to § 6:499, the object of the contribution may be money, property of pecuniary value, rights of pecuniary value or any other service, in particular personal work.

4 See case decision BH1993.247.

5 NAGY BARNÁ, Krisztina: *A konzorciumi és a szindikátusi szerződés a polgári jogi társaság reláció-*

Consortium agreements, on the other hand, are more likely to have the characteristics of a civil law partnership. These latter agreements are institutionalised forms of joint tendering in public procurement procedures and may therefore naturally also affect family businesses. It should be pointed out, however, that consortia do not have legal personality separate from their members and are not legal persons, which is why they are not, for example, entitled to be a party to legal proceedings.⁶ “The internal legal relationship of the consortium can be defined by contract at the discretion of the members. The contract is not bound to a form. It may freely determine the proportion of the members’ contributions, the management and the distribution of profits and losses.”⁷

In the light of the above, a syndicate contract is nothing more than an underlying agreement of a cooperative nature - i.e. a simple contractual agreement - between the members of a business company to achieve a common objective.⁸ According to some views, the commitments contained in a syndicate contract bear the hallmarks of a pre-contract.⁹ In this context, the question arises as to how the principle of *clausula rebus sic stantibus* and the issue of normal commercial risk can be applied to the syndicate contract and the commitments contained in it. All in all, given the dilemmas that have arisen in practice, sooner or later there will be a need for precise and clear regulation in view of the growing number of syndicate contracts.¹⁰

The drafting of syndicate contracts, particularly in sensitive situations, is nowadays usually entrusted to lawyers, but there are still risks arising from the specific nature of such agreements and the fact that the parties often do not even think of the need to regulate certain situations. Precise, accurate and unambiguous word-

jában III.; in: *Céghírnök*, Budapest, HVG-ORAC Kiadó, 2017/1., pp. 4-6.

⁶ See in this context the administrative principle decision of the Curia (Hungarian Supreme Court) No 2373/2011.

⁷ CSER-PALKOVICS Tamás, MÁRTON Gizella, MÉSZÁROS Áron, PATAY Gábor, PATAY Géza, SMARAGLAY Gábor (ed.): *A közbeszerzés joga – A Közbeszerzésekről szóló 2015. évi CX-LIII. törvény magyarázata*; Budapest: HVG-ORAC Lap- és Könyvkiadó Kft.; 2016.; p. 167.

⁸ VÉKÁS Lajos/GÁRDOS Péter (ed.): *Kommentár a Polgári Törvénykönyvhöz*, Budapest, Wolters Kluwer Kft., second, revised edition; 2018.; see the commentary to § 6:498. of the Hungarian Civil Code.

⁹ This is confirmed, for example, by the case law decision BH1994.8.424, which states in its reasoning that the obligation to purchase in the syndicate contract was essentially a pre-contract between the company and its member.

¹⁰ In the context of the requirements of legislative clarity, see for example: TÓTH J., Zoltán: Clarity of norms in the light of the content requirements of legislation, legislative errors and their consequences – in general and with particular regard to legislative requirements in Hungary; in: *Magyar Nyelvőr* 146; 2022; pp. 3-15.; 2022; DOI: 10.38143/Nyr.2022.5.3.

ing is extremely important, which is why it is advisable to be wary of approaching the drafting of a syndicate contract as a layman.¹¹ There is also the question of whether the articles of association themselves (for example, the articles of association of a family business) should refer to the fact that the rights and obligations arising from the membership status are also governed by a syndicate contract. The question of the extent of the obligation to provide information on the existence and content of the syndicate contract has also been addressed by the domestic courts, albeit rarely. The safest solution is for the articles of association themselves to indicate that the acquisition of a shareholding in the company is conditional on the signing of the syndicate agreement and acceptance of the terms set out therein. Anyone wishing to transfer his share to a third party should therefore be required to ensure, in a demonstrable and accountable manner, that the purchaser is fully acquainted with the syndicate contract. On this basis, it is probably also acceptable that the prospective buyer is only able to consult the part of the syndicate agreement which enables him to assess whether he intends to acquire a shareholding in the company concerned. In any event, it is not always easy to reconcile the interest in keeping sensitive information confidential with the right to know information relevant to the formation of the purchase intention.

It has long been debated whether syndicate contracts have binding force, whether they can be invoked in court and whether they are enforceable. There is now a consensus in both domestic and Western European jurisprudence that the underlying agreement is legally binding if it does not conflict with a company law document, the law, the articles of association or a previous decision of the supreme body.¹² It is another question whether the undertakings contained in the

11 Ádám PÖLCZ points out in his valuable, frontier paper that „Több nyelvi ismeretterjesztésre is szükség van, mert a nyelvhasználók sokszor bizonytalanok, és a norma fogalmát ezért sem temethetjük még el”. (More linguistic awareness is needed, because language users are often uncertain, and the concept of norm cannot be buried yet.”) See: Pölcz Ádám: *Az emberközpontú nyelvművelés és az antik retorikai hagyomány*; Magyar Nyelvőr 2015/4.; pp. 409–428.; p. 426. Pölcz - also referring to Vilmos Voigt – emphasises, that „a jelentés megtalálása (...) egy folyamat (az úgynevezett szemiózis) része, amelynek az eredménye maga a jelentés: amikor valami jellé válik, jelként működik és jelként fogják fel. Ha azonban valaki nem ismeri a jelek rendszerét, akkor nem tudja interpretálni azt, félreérti, vagy rosszul használja.” (Finding meaning (...) is part of a process (the so-called semiosis), the result of which is meaning itself: when something becomes a sign, it functions as a sign and is perceived as a sign. However, if one does not know the system of signs, one cannot interpret it, misunderstands it or uses it incorrectly.) See in detail: Pölcz Ádám: *Hallgatólagos tudás az anyanyelvi nevelésben. A gyermekirodalom szerepe a nyelvi tudatosság kialakításában; Gyermeknevelés Tudományos Folyóirat; 2021/1. pp. 99–114.; DOI: 10.31074/gyntf.2021.1.99.114.*; The quotes were translated into English by Balázs Arató.

12 See, inter alia, case decision No. BH1998.2.89 I, which declares the primacy of the latter in the context of the relationship between a syndicate contract not mentioned in the civil law relationship and company law, provided that the syndicate contract is concluded in the context of the creation of

syndicate contract are enforceable „in kind” or whether, in certain cases, only a claim for damages arising from a breach of the syndicate contract can be enforced. Over the last decade and a half or so, there have been a number of decisions of the High Court in Hungary which have ruled on the legal binding force of a syndicate contract in accordance with the company law documents and have attached a legal consequence to the breach of the background agreement.¹³

However, it remains to be decided whether and to what extent the injured party can claim damages for breach of a syndicate agreement which is not in conformity with the corporate documents, or whether the invalidity of the syndicate agreement precludes any such claim.

It may be concluded that a syndicate contract may be most necessary when the parties wish to agree on matters which are not publicly known but which are important for the operation of the company, in a manner not contrary to other company law documents. It is this need, which is increasingly felt both in investor-owned and family-owned businesses, that is driving the growing trend towards the use of syndicate contracts.

Syndicate contracts in investor relations

Syndicate agreements in Hungary are most commonly encountered when an investor acquires a stake in a start-up company and expects the members to undertake certain obligations in a back-up agreement supplementing the articles of association, which guarantee the investor's interests. This may include, for example, a commitment to vote in favour on certain issues or to give the investor a veto right. It is also common for the syndicate agreement to contain important anti-dilution provisions in relation to the transfer of shares, such as pre-emption or co-sale rights, or obligations, such as guaranteeing the investor's exit or buy-out rights. Restrictions on the transfer and encumbrance of company shares are also typical.

In start-up companies, a contractual guarantee widely used by venture capitalists is the so-called drag along (co-selling obligation), as well as the tag along, which is a right of co-sale. Both of these special rights, which are in opposite directions to each other, are a means of interest protection that an investor can use in the event of an external takeover bid. First of all, it may be noted that neither of them appears *expressis verbis* in Hungarian law. These technical legal instruments have been imported into Hungarian investment law from the Anglo-Saxon legal sys-

a company by the parties involved in the formation of the company.

¹³ See, for example, the case decision BH2009.1.21., in which the Supreme Court ruled that a shareholder is liable for damages if, in breach of the syndicate contract, he refuses to pay a certain amount of money into the capital reserve without just cause.

tem. The principle of freedom of contract, which pervades our civil law, undoubtedly allows these technical legal instruments to appear in syndicate contracts, surrounded by other legal instruments (e.g. the right to purchase, the right to sell, etc.) as provided for by Hungarian law.

A venture capital investor typically acquires a stake in an early-stage target company through a capital increase. The venture capitalist's investment in this case is expected to be recouped through a targeted exit event linked to various milestones.

A prominent type of exit event is when a third party buys all the shares in the company. It is of course not in the interest of the third party acquiring the company to acquire a minority stake without decisive influence, and therefore a disruption in the targeted transaction may occur if owners other than the investor (e.g. the brainstormers of the business) do not wish to participate in the buy-out process.

Overall, it can therefore be concluded that in the case of start-ups, the syndicate agreement regulates an expected exit event, i.e. the conditions and steps of the sale of the stake.

The most commonly used legal instrument to secure the exit event is the drag along, whereby the members of the target company receiving venture capital undertake that if the company reaches a certain growth level and the investor receives a takeover offer from a third party for its stake in the company, they will accept this offer on the same terms for their own stake, i.e. they will participate in the transaction.

The drag-along right therefore gives the investor a unilateral right to facilitate the realisation of a majority or total buy-out, thus fulfilling the exit event defined as the purpose of the venture capital investment.

It is also worth pointing out that the existence and exercise of the drag along right is not a technical legal instrument for the unilateral protection of the investor's interests, since it also provides a guarantee for owners other than the investor that they will not be in a vulnerable position in the buy-out process, since they will be joining the buy-out transaction on the same terms.

The general form of the drag along right described above is thus a means of ensuring that the exit event from the target company is fulfilled, but other atypical forms of drag along rights may also arise, for example, in the regulation of the investment relationship, the right may be exercised as a sanction in the event of breach of contract.

The tag along right is an investor guarantee of opposite nature to the above, as it can be exercised when a non-investor holder receives a takeover bid for its own shares. Under the tag along right, the investor is unilaterally entitled to decide whether to match the takeover bid communicated to the owner concerned with its own stake.

In Hungarian law, both drag along and tag along can be enforced by means of the special gender of the sale.

Syndicate contract in family businesses

Syndicate contracts, the main purpose of which is to coordinate the operation of the business empire, the family holding company or the group in the light of the provisions of the family constitution, are becoming more common.¹⁴ In such cases, the syndicate contract is an advantageous solution because it allows a wide range of legal entities to agree without any particular formalities. There are also examples of family members and shareholders in the family business, with the participation of the companies, signing a syndicate contract in order to set aside a certain part of the assets and protect them from business risks in all circumstances, thus creating a lasting family livelihood, a kind of emergency reserve.

Typical areas of regulation in family syndicate contracts include the acquisition of shareholdings, the transfer of shares, decision-making within the company, reporting and accountability to the supreme body, restrictions on the removal of the executive officer, profit-sharing and dividend payments, generational changes and the extent and manner of support for family members in need. Conflict of interest rules are also common, typically requiring syndicate members to refrain from certain conduct and activities that could jeopardise the interests of the family business. Rules to prevent the fragmentation of business shares may also be typical elements of family business syndicate contracts, which may even serve the function of a family constitution. In Western Europe, with the proliferation of syndicate contracts governing the operation of family businesses, we are witnessing not only the emergence of new or little-used (or used for other purposes) legal institutions, but also the spontaneous crystallisation of a specific terminology specific to family businesses, typically found in syndicate contracts.¹⁵

14 In Western European literature, this is what is known as the cohesive or linking function of the syndicate contract. See for example KALSS, Susanne [Univ. Prof., LL. M (Florenz)] – PROBST, Stephan (Univ.-Lektor, dr.): Familienunternehmen, Gesellschafts- und Zivilrechtliche Fragen; Wien (Österreich), Manzsche Verlags- und Universitätsbuchhandlung, 2013; 71. (The term used here: Spangen- oder Klammerfunktion des Syndikatsvertrags.)

15 Mínya Károly describes most eloquently the phenomenon of which the linguistic renewal brought about by family businesses is a good example: „A társadalmi, politikai, gazdasági és technikai változások felgyorsulása következtében az elmúlt években a korábbinál is jóval több új kifejezéssel találkozhatunk a nyelvben, amelyek egy része csak ideig-óráig használatos, mások viszont nemcsak, hogy széles körben elterjednek, de hosszú távon is fennmaradnak.” (The acceleration of social, political, economic and technological change in recent years has led to the introduction of many more new expressions, some of which are only used for a short period of time, while others are not only widespread but also persistent.) See in detail: MÍNYA Károly: Új szavak III.: Nyelvünk

The safest solution for the family business is undoubtedly for the family constitution itself, which lays down general principles and provides a framework for the interpretation of legal documents, to be a syndicate contract signed by all the parties concerned, not just the founder, and which expressly states that any changes can only be made by consensus. The most effective structure, in my view, is for all members of the family to jointly draft and sign a family constitution setting out the principles, which is itself a syndicate contract, and then for the business and its shareholders to sign another syndicate contract between themselves, which puts the general syndicate contract into practice, detailing the family- and business-specific rules that can be derived from it. This type of family constitution, embodied in a series of syndicate contracts, can be enforced in court.

For family businesses, it is of paramount importance that the interests of the family and the family business take precedence over individual interests. The dispute resolution mechanisms set out in the syndicate contract can help in this respect. Practical experience shows that family businesses are best able to avoid deadlocks where a syndicate contract is in place to govern decision-making. Deadlocks are those situations from which there seems to be no way out and which, if unresolved, make normal business operation impossible. A typical example is a disagreement between members with equal influence, which cannot be resolved by a majority decision, since no member can outvote the other.

In such situations, a solution may be found in the form of a suspensive or deferral veto, provided for in the syndicate contract, which allows the matter on the agen-

850 új szava értelmezésekkel és példamondatokkal; Budapest; Magyarország: Tinta Könyvkiadó; 2019, 160 p.; p. 7.; ISBN: 9789634092131.; the quote was translated into English by Balázs Arató. Géza Balázs - also aptly - points out that „az emberi társadalom különböző, koronként némileg változó szövegcsoportokat, szövegtípusokat, szövegformákat hoz létre.” (Human society produces different groups of texts, types of texts, forms of texts, which vary somewhat from age to age.) See in detail: BALÁZS Géza: Szövegantropológia. Szövegek többirányú megközelítése; BDF; Szombathely–Inter Kht.; Budapest; 2007; the quote was translated into English by Balázs Arató. With regard to the conscious development and standardisation of terminology, Géza Balázs also emphasises encouragingly that, „A nyelvek kialakulása ösztönös, spontán folyamat, ám a kultúra kialakulásával, a civilizáció fejlődésével a nyelvek spontán változása mellett felbukkannak a tudatos, mesterséges fejlesztés lehetőségei is. Ennek következtében azt mondhatjuk, hogy a mai, változatos, kulturális nyelvi funkciókra képes élő nyelvek mindegyikében kimutatható a tudatos beavatkozás.” (The emergence of languages is an instinctive, spontaneous process, but with the emergence of culture and the development of civilisation, the spontaneous change of languages is accompanied by the emergence of the possibility of conscious, artificial development. As a consequence, we can say that conscious intervention can be detected in all of today’s living languages, which are capable of diverse cultural linguistic functions.) See in detail: BALÁZS Géza: Folyamatos nyelvújítás. A magyar nyelvújítások és értékelésük; Glossa Iuridica; Új folyam (Károli Gáspár Református Egyetem); 2014/1.; pp. 21-28.; the quote was translated into English by Balázs Arató.

da not to be decided immediately on its merits but to be discussed again in a calm atmosphere. Of course, this can only be a positive outcome for the family business if there is a body (such as a council of wise men made up of older managers) which, or whose leader, with appropriate and legitimate authority, can ultimately decide the issue and set the direction for the future.

In such cases, it is particularly important to ensure that the articles of association and the syndicate contract, which sets out the dispute settlement mechanism, are legally consistent, as there may be a seeming contradiction between the number of votes in the articles of association and the decision-making method based on the syndicate contract. It is also common in Western Europe for syndicate contracts with different functions, such as family constitutions included in such agreements, to contain an arbitration clause to ensure that in the event of a dispute a forum is set up to decide on the specific aspects of family businesses.¹⁶ Family businesses are particularly vulnerable to protracted disputes, and the arbitration clauses are typically motivated by the need to reach a final decision on the matter in dispute as quickly as possible.¹⁷ To summarise, there are several arguments in favour of an arbitration clause in family business syndicate contracts.¹⁸

16 Such clauses are usually motivated by the need for a form of arbitration of the arbiter type. For details on this see: Boóc Ádám: *Az arbiter fogalma a római jogban*; Magyar Jog 67:4; pp. 221-226.; 6 p.; 2020. In this work, the author clearly shows that the concept of arbiter has at least two different meanings in Roman law. On the one hand, an arbiter could mean an expert judge who had special knowledge in a particular field and was entitled to rule on a specific dispute between the parties, where the dispute was not merely legal but could also concern other issues.

17 For more on this advantage of arbitration awards, see: Boóc Ádám: *A választottbírósági ítéletek érvénytelenítése: Jogösszehasonlító elemzés és az új magyar szabályozás bemutatása*; Patrocinium Kiadó; Budapest; 2018; p. 272. Ádám Boóc's book is a monograph dealing with one of the key issues in arbitration proceedings, the annulment of arbitral awards. The work applies a comparative approach, thus presenting the most important rules of Austrian, Swiss, English and US law, with detailed descriptions of a number of cases. The author concludes, inter alia, that „a nemzetközi választottbíráskodás dimenziójában (...) üdvös a nemzetközi vagy nemzetek fölötti közrend-felfogás alkalmazása” [in the dimension of international arbitration (...) it is desirable to apply an international or supranational conception of public policy]. The quote was translated into English by Balázs Arató.

18 The following article is equally instructive in this respect: Boóc Ádám: *Észrevételek a kereskedelmi választottbírósági ítéletek érvénytelenítéséről a közrendbe ütközés okán a magyar jogban*; Jogtudományi Közlöny 75:4; pp. 165-173.; 7 p.; 2020. In his work, which is considered to be an inescapable work from the point of view of Hungarian jurisprudence, the author examines, among other things, the concept of public policy in the practice of the Hungarian higher courts. From the point of view of family businesses, this means that the arbitration clause may indeed be able to guarantee the certainty required by the specific aspects of these companies. See also: Boóc, Ádám: *Elméleti észrevételek a nemzetközi kereskedelmi választottbírósági ítéletek érvénytelenítése vonatkozásában*; in: *Jogtudományi Közlöny* 74:9; pp. 367-372.; 2019.

A further advantage of syndicate contracts is that, unlike other company law documents, they are not subject to any formal requirements, i.e. apart from the requirement to be in writing, they are not subject to any formal requirements imposed by the legislator or case law. The written form is also important for evidential purposes rather than as a validation requirement.

In the case of family businesses, the prohibitions and restrictions which serve to preserve the character of the company, i.e. to keep the shares in the family, are typically laid down in a syndicate contract.¹⁹ These include, for example, the exclusion or restriction of the transfer of shares to a third party, since there is a fundamental interest in keeping the shares in the family. The consistency of the articles of association and the syndicate contract is strengthened if the articles of association also expressly stipulate which rights and obligations may be exercised or performed under the specific provisions of the syndicate contract. This type of harmonisation is also generally a way of avoiding disputes arising from the apparent contradiction between the association and the syndicate contract by highlighting the ancillary, complementary nature of the syndicate contract.

It is also a safety factor if the family business itself, as a separate legal entity, is also subject to the syndicate contract, i.e. not only the members will be subject to the background agreement, but the company itself will also be a signatory, a member of the syndicate.²⁰ This is also useful because it ensures that the company's managers and other officers will at all times conduct themselves in accordance with the syndicate agreement in the performance of their duties. The syndicate contract therefore also serves as a form of additional security. A recent decision of the Hungarian Supreme Court has shown most clearly what the legal consequences are if the company itself is not subject to a syndicate contract (e.g. a contract which fulfils the function of a family constitution). Since „the syndicate contract is not part of the company contract, it cannot impose any obligation on the company as a separate legal entity. The syndicate contract regulates only the relationship, cooperation and expectations of the persons who conclude it towards each other within the company, and thus only creates a contractual obligation for the contracting parties. A decision taken at a general meeting of members of a company cannot be unlawful because it conflicts with the syndicate contract, since the

19 Neither a will nor a deed of gift is suitable for this purpose. For details on gift contracts, see: Boóc, Ádám: Az ajándékozási szerződés néhány kérdése a magyar magánjogban; in: *Állam- és Jogtudomány* 46:1-2; pp. 53-76.; 2005.

20 Obviously, the situation is special if the syndicate contract is concluded at the same time as the company is set up. In this case, the company may be subject to the syndicate contract as a pre-company. However, in the case of family businesses, it is more common for the syndicate to be created after the business has been set up by the first forward-looking head of the family/founder, and for subsequent successors to inherit this as a kind of endowment, a legal framework.

syndicate contract does not govern the company law relationships”.²¹

The problem of exemption from the application of the syndicate contract is specific to family businesses. There is, for example, the question of how to avoid the unintended consequence of a syndicate contract concluded by grandparents being terminated by the death of the contracting parties.

One of the relatively often used legal techniques is to declare that the syndicate contract is to apply to the successors in title and, in addition, to stipulate in the articles of association of the family business that only those who accept the provisions of the syndicate contract as binding on themselves may become members of the company. However, there are safer ways of doing this.

There is a real risk that the syndicate contract can in principle be terminated by the parties in accordance with the general rules on termination of contracts, unless this right is limited by the syndicate contract itself.²² Very delicate situations may arise, for example, if the syndicate contract does not provide for a limitation of the right of termination and the members terminate it within the family business (or “over the head” of the investor), thus freeing themselves from unpleasant obligations.²³ Family businesses are typically set up for an indefinite period of time, so the syndicate contracts linked to them can in principle be terminated in the absence of specific rules, but exercising this right would seriously jeopardise the interests of the family and the company. It is therefore essential to regulate the relationship between the possible termination of the syndicate contract and the fate of the shareholding in the family business. In the case of a syndicate contract of indefinite duration, it is contrary to Hungarian law to exclude the right of termination, so a safe solution is to have both the articles of association and the syndicate contract provide that only persons who are also members of the syndicate may hold shares in the company.

21 Quote from the case decision No. ÍH2014.156. of the Court of Appeal in Szeged.

22 According to § 6:213 (3) of the Hungarian Civil Code, a contract of indefinite duration creating a lasting legal relationship may be terminated by either party by giving appropriate notice. The exclusion of the right of termination is void.

23 „A tartós jogviszonyt létesítő, határozatlan időre kötött szerződéses viszonyokra a Ptk. – új, általános érvényű rendelkezéssel – biztosítja a felmondás jogát. E felmondási jog kizárása semmis.” (The Civil Code provides for the right of termination - with a new provision of general application - for contractual relationships of indefinite duration establishing a lasting legal relationship. The exclusion of this right of termination is null and void.) See: VÉKÁS Lajos/GÁRDOS Péter (ed.): *Kommentár a Polgári Törvénykönyvhöz*, Budapest, Wolters Kluwer Kft., second, revised edition; 2018.; see the commentary to § 6:213. (3) of the Hungarian Civil Code.

Thus, if a person terminates the syndicate contract, he is obliged to divest his share in the company, i.e., for example, the share is sold to others at a fixed purchase price.²⁴

The binding force of syndicate contracts has already been discussed above. The mere fact that a document is legally binding is not in itself a sufficient guarantee that its provisions will actually be followed. The question therefore arises as to whether a syndicate contract can provide for penalties in the event of breach of the syndicate contract. The answer of both Western European and Hungarian case law is in the affirmative, but the sanction must have an appropriate legal title (e.g. a penalty or a fine) and must be proportionate in its stipulation and application. This is not a special feature of syndicate contracts, but a requirement in line with the spirit of the Civil Code. It is common, for example, for the other members of the syndicate (possibly the family firm itself) to have a right to purchase the share of the defaulting party in the family business (option with a penalty clause).

Summary

Although start-ups with fast growth potential and family businesses with organic development (slow capital) operate on the basis of different business models and logics, and have different time horizons for the return of capital, the same legal instrument, the syndicate contract, can be used to create a clear, regulated legal situation in both cases, which is essential for the long-term survival of the business. However, it may be noted that the syndicate contract has the opposite function for these two types of company. While in start-ups it is typically a means of exit planning for the investor, i.e. it guarantees an orderly exit from the company, in family businesses it is a legal solution to keep the shares in the family, and ultimately to keep the company together and preserve its character. Consequently, its duration is also different. Start-ups are typically created for a fixed term, so the exclusion of the right to terminate is not invalid. In contrast, family businesses are typically of indefinite duration, so the regulation of termination in Hungary requires special attention and the application of specific technical legal solutions, otherwise the syndicate contract cannot fulfil its purpose as described above.

²⁴ It is instructive to note the decision of the Supreme Court of Justice in case no. BH2006.7.223., according to which, when assessing a claim for damages for unlawful termination of a syndicate contract concluded before the registration of a company, it must also be taken into account that the members of the company are obliged to cease their activities in the event of refusal to register the company, and therefore it is impossible to perform the syndicate contract relating to the operation of the company.