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German Tax and Legal News

Extension of a contract with the managing director - The necessity of the approvals of shareholders' meetings

Approval of the contract extension with a managing director by the shareholders' meetings

When an extension of an existing contract between a limited partnership (GmbH & Co. KG) and a managing director of the general partner is intended, frequently the question arises whether approvals of the shareholders' meetings of the limited partnership or the general partner are required.

According to a recent decision of the High Court, the approvals of the shareholders' meetings of the limited partnership and the general partner are under specific circumstances not required with regard to the extension of a contract with the managing director.

Circumstances of the case
The managing director (Geschäftsführer) of a German GmbH that acts as general partner of a limited partnership under German law (GmbH & Co. KG) had entered into a managing director service agreement with the GmbH. Subsequently, the managing director, simultaneously acting for himself as well as in his capacity as legal representative of the GmbH, prolonged the term of that agreement. When the extension was executed, the managing director had been exempted from the restrictions of § 181 German Civil Code (restrictions on self-dealing and multiple representation). Prior to the extension of the agreement, the supervisory board, which according to the Limited Partnership's Articles of Association was responsible for some decisions, had given its approval. The relevant question was whether in addition to the board approval, an approval by the Limited Partnership's or the General Partner's shareholders' meetings was required.

Courts decision
In its decision dated April 19, 2016 the Federal Supreme Court reiterates that unless otherwise provided for in the Articles of Association, only the general partners have the right to represent a limited partnership. An exception is made for so-called "fundamental decisions" which regulate the relationship between the shareholders and for which an approval from the Limited Partnership's shareholders' meeting is required. The conclusion of a managing director service agreement can also be seen as a fundamental decision if it contains regulations pursuant to which the general management authority of the managing director shall be regulated completely different from the model foreseen by statutory law. In the case at hand, the Court came to the conclusion that the mere extension of an existing agreement with a managing director was not to be considered a fundamental decision and therefore no approval by the Limited Partnership's shareholders' meeting was required.

According to the Court's decision, there was also no requirement for an approval by the General Partner's shareholders' meeting. The Court abstained from dealing with the question whether there is a general requirement of obtaining an approval of the General Partner's shareholders' meeting for the conclusion of a service agreement with a managing director as this is discussed in the German corporate law literature. The Court pointed out that the relevant case was not related to a conclusion, but only to an extension of an existing agreement and that, furthermore, there was no need for additional protection by the General Partner's shareholders' meeting as the supervisory board had already granted its approval.

Practical advice
The decision illustrates that under certain circumstances, no approvals from the Limited Partnership's or the General Partner's shareholders' meetings are required for the mere extension of a managing director service agreement. Nevertheless, the circumstances of the individual case are relevant. It is unclear whether the principles laid out by the Federal Supreme Court would also be applied to the conclusion (rather than an extension) of a respective agreement. Although the decision hints at that also under such circumstances no approval would be required, it is advisable to get an approval by the General Partner's

shareholders' meeting for precautionary reasons.

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