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AMENDMENT OF THE COMPANIES ACT AND THE CORPORATE LAW AS OF 1ST SEPTEMBER

Legal harmonization of EU member states on enterprises has extreme importance, in terms of economic integration to achieve free movement of goods, people, services and capital. The primary purpose of harmonization of corporate laws is to make easier the establishment of companies and acquisition of interest in companies established in other member states.

A means assisting of the above goals is making assure that the same publication rules apply to all companies, the costs of their establishment and operation should be more or less the same, and the same guarantees should apply for the protection of their capital and the interest of their creditors wherever they are. During the last couple of years it seemed that legal regulation of corporate laws are becoming a primary factor to achieve competitiveness, so it is not by chance that in several countries of Western Europe company laws and corporate legislation have undergone significant changes.

The trends of Western European law development are thus fundamentally two-folded, something that legislators have also taken into account in wording Act IV of 2006, that is, the New Companies Act (Hungarian abbreviation: Gt., henceforth called: New CA), too. In addition to broadening the decision making freedom of owners, the range of choices available to them and making the establishment of companies faster and easier, certain rules, specially those relating to the control of the management of companies and those providing for the financial reports to become more transparent, had to be made more strict and this latter trend shall continue in the future, as well.

The regulations of substantive law regarding enterprises are closely interrelated with the procedural regulations, such as companies come to existence by their entry into the Trade Registry and terminate when they are struck off the Trade Register, and their (good) standing is supervised by the court of registration.

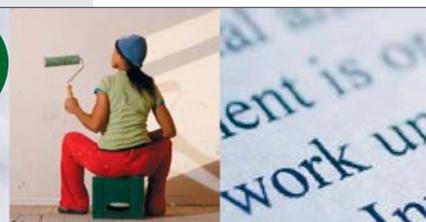
On the following pages we would like to introduce the provisions of corporate law that are modified, and draw your attention to certain amended regulations that are associated with it. Should you need any additional information, please feel free to contact us!

Dr. Arne Gobert

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Changes in Corporate Law ?



AMENDMENT OF ACT V OF 2006 ON PUBLIC COMPANY INFORMATION, COMPANY REGISTRATION AND WINDING-UP PROCEEDINGS

Not even a year has passed since the coming into force on 1st July, 2006, of Act V of 2006 on the **Public Company Information, Company Registration and Winding-up Proceedings** (henceforth called by its Hungarian abbreviation: Ctv.), when the Parliament on its session of 11th June, 2007 adopted and, then, in Vol. 75 of 15th June, 2007 of the Hungarian Gazette proclaimed Act LXI of 2007 ("the Act") providing for the amendment of Ctv. and other related acts. In addition to Ctv., this Act amends Act IV of 1959 on the Civil Code, Act XCIII of 1990 on Duties, Act XLIX of 1991 on Bankruptcy and Final Settlement and Act XI of 1998 on Attorneys-at-Law and Act IV of 2006 on Business Associations.

The bill to amend Ctv. that came into force on 1st July, 2006, was tabled by the Minister of Justice and Law Enforcement on 4th March, 2007. Although the Ctv. of 2006 already contained significant changes, of which the most important was, that from 1st July, 2006, the establishing procedure of any kind of legal entities and the changing procedure of every data before the Court of Registry can be conducted electronically. According to the reasons in the bill the present amendment is necessary because the modifications proclaimed by Act V of 2006 were not enough to treat the situation and they were not consistent either. Further, in March, 2006, in addition to the demand to facilitate the establishment and operation of small and medium enterprises the session of the Presidium of the European Council also set down as goal that by the end of 2007, a week in average should be enough in all member states of the EU for a company to be established, and also that the entering of enterprises on the market should be quicker, more simple and cheaper.

MOST IMPORTANT NOVELTY INTRODUCED BY CTV.: FROM 1ST JULY, 2008, PROCEDURES UNDER THE CORPORATE LAW SHALL BE HANDLED SOLELY AND EXCLUSIVELY ELECTRONICALLY

The predominant part of the provisions of the Act shall come into force on 1st September, 2007. The most important novelties, however, shall become effective as of 1st July, 2008, as this shall be the deadline from which procedures under the corporate law shall be handled solely and exclusively electronically. Hungarian attorneys-at-law shall thus have one year to prepare for it that is to purchase the equipment necessary for the procedures under the corporate law to be handled electronically, and to acquire the necessary IT-skills. The securing of the technical base for the electronically handled corporate procedures may impose considerable financial burdens on the attorneys-at-law, and those who have no adequate skills in the use of electronic systems may become unable to manage corporate cases.

The IT-background of electronically handled corporate procedures requires, among others, a PC operated under Windows 2000 or Windows XP, a scanner, and an adequate internet connection. In addition, a card reader and card for authentic (qualified) facsimile signatures, subscription for the time stamp service and the downloading of the required programs are also inevitable. Nowadays, the number of attorneys-at-law who have electronic signatures and use the electronic corporate procedures is around 400, while the aggregate number of Hungarian attorneys-at-law is approximately 10 thousand.

AMENDMENTS REGARDING REGISTERED COMPANY NAME AND SEAT

While according to the Act, in addition to the chosen company form the company name had to include at least the principal activity of the Company, from the date that the amendment shall come into force in addition to the corporate form only a lead word shall be added to the company name, which means that instead of the description of the activity pursued, this lead word shall be the obligatory element of the company name. The lead word shall stand on the first place in the company name, and it can be in any foreign language; it can be an abbreviation or acronym, too,



From 1 July 2008



only that it should be written in Roman letters. Except for the lead word the company name shall include only words in the Hungarian language, in accordance with the rules of Hungarian spelling.

Following the amendment of Ctv. the seat of a company shall be its registered office. The registered office shall be deemed as the mailing address of the company, that is, the place at which its business and official documents can be served, filed, kept and be made available for inspection. The obligation of the companies to indicate their seats by a name plate shall remain in force. It is possible for the constituting document of a company to rule that the seat of a company is also the place where its affairs are managed from. If these are not the same, then the place where administrative management of the company is exercised should be stated in the constituting document of the company and should also be recorded in the Trade Register.

E EXTENDED SCOPE OF SERVICES BY ATTORNEYS-AT-LAW: PROVIDING SEATS FOR COMPANIES IN A BUSINESS-LIKE MANNER AND THE ISSUE OF SPECIMENS OF SIGNATURE

After the coming into force of the amendment any attorney-at-law may provide seat for companies in a business-like manner, that is, according to the law, as seat of a company the address or seat of the attorney-at-law or, as the case may be, law office can be registered, who or which, as the case may be, has been commissioned by the company with taking delivery, filing, archiving of the business or official documents of such company, making them available for inspection and performing all other duties and obligations prescribed. In addition to this, the registered (incorporated) companies may exercise their activities with primary nature in any member state of the European Union, and they can move the primary place of their activities to any other member state of the European Union.

It is an important novelty, that in addition to the specimens of signatures attested by notaries public for the incorporation and amendment procedures the attested specimens of signature of the representatives of companies can also be prepared by the attorneys-at-law preparing and countersigning the constitutional documents of the company or the amendments thereof, provided that the specimen of signature shall be used as enclosure to the application for entry into the Trade Register or application for entry of an amendment into the Trade Register.

N NEW FORM OF MEETING THE PUBLICATION REQUIREMENT

In as much as the Act VI. of 2006 on Business Association places a direct obligation on the company to publish a notice in the Company Gazette the amendment of the Ctv. makes it possible for the company to meet this obligation by publishing the notice in question on its own website. In this case, publication can be evidenced not by attaching the relevant volume of the Company Gazette, but by giving the accurate address of the website of the company. If the company decides to publish the notices on its website, it shall be registered in the Trade Register, and that the company's website shall operate uninterruptedly and, simultaneously with the publication on the website the company shall send the notice or announcement in question electronically to all of its known creditors.

The company can also choose to publish simultaneously with starting the activity concerned, at the latest, the official permit(s) required for the business on its website.

If the company decides to publish the above notices on its website, it has to operate it website uninterruptedly, the non-compliance with this obligation can be the base of initiating judicial oversight proceedings against the company. The amendment of the publication shall be registered at the Trade Register with attaching the previous notices.

A AMENDMENTS IMPORTANT FOR COMPANIES WITH FOREIGN PARTICIPATION

Another important change is that the headings of the Trade Register shall, if so requested, be shown in English, German, French and Russian languages and, accordingly, it can be asked that the Extract from the Trade Register, the Copy of the Trade Register or the Certificate of Registration be issued in these languages. In addition, the Court of Registration can have in its records the data of the Trade Register and also the corporate documents in any of the official languages of the EU, in case that the company in question shall have attached to its application for entry into the Trade Register a true translation of the data or corporate documents concerned in the language chosen thereby.

The Act also amends the regulations in force concerning delivery agents. Until now, if a foreign legal entity, unincorporated economic partnership or natural person had no residence in Hungary, appointment of a delivery agent was mandatory. Following the entry of the Act into force this shall be only an opportunity and not an obligation. Following the amendment of the Act if no delivery agent is

appointed then the Court shall serve the documents to be served to foreigners by publication in the Company Gazette with the lawful presumption that the document in question can be deemed delivered to the addressee on the fifth day following the publication.

CHANGES IN THE TRADE REGISTER FOLLOWING THE COMING OF THE NEW ACT INTO FORCE

Following the amendment of the Act the Trade Register shall also include – as necessary – the fact that the company has determined (stated) its registered capital in foreign exchange, and in which one, the electronic address (access data) of the company, and if the company so elects that it shall publish its notices and announcements directly on its website, then the certified electronic specimens of signature of its authorized signatories, as well as the statement dates of the business year and the balance sheet of the company, if the business year of the company defers from the calendar year, and if the company prepares a consolidated balance sheet.

It is not only the number in the Trade Register of incorporated domestic enterprises that shall be shown in the Trade Register, but in case that there are social organizations or foundations among its members, then the registration numbers of these and in case of foreign firms or organizations, the registration numbers of these latter and the authorities having registered them shall also be stated.

The Trade Register shall include for all corporate data the dates of their amendments. In their applications for entry of the amendments the companies may define a date from which the amendments should come into force, but such date cannot be prior to the date of passing the underlying resolution.

AMENDMENTS REGARDING ACT IV OF 2006 (ON BUSINESS ASSOCIATIONS – HUNGARIAN ABBREVIATION: GT.)

One of the most important provisions of the present amendment concerning the Gt. is that it prolongs the term open for the companies to introduce the amendments to adjust their Articles of Association to the Rules of Gt., and the other is that it omits reference to the first meeting of the supreme organs of companies. The new regulation grants the companies an additional term until 1st July, 2008, to harmonize their constitutional documents with the provisions of the new Gt. having come into force last year.

The Act also exempts from the above obligation those companies whose Articles of Association as general reference refer to the old Gt. and the limited partnerships and unlimited partnerships whose Articles of Association provide for a Members Meeting. From 1st July, 2008, under these terms automatically terms “Act IV of 2006” and the “Meeting of the members” shall be understood.

A further alleviation is, that if the Articles of Association need no amendment, then the companies may notify the Court of Registration of their adjustment to the new Gt. without the obligation to pay dues or fee for publication. The relevant notice shall include a statement saying that the Articles of Association need not be modified, and also that from the date indicated in the notice the company shall operate under the terms of the new Gt.

An important change regarding the business associations is, that the amendment cancels with respect to the limited liability companies and the closed companies limited by shares alike the opportunity formerly provided thereby, namely, that except for the approval of the annual report to be prepared in conformity with the Act on Accounting, the members or, as the case may be, the shareholders of the company may resolve on issues falling within the competence of the Members’ Meeting (in case of limited liabilities companies) or the General Meeting (in case of closed companies limited by shares) without holding a meeting. This means, that if the Articles of Association or the By-laws rule so, even the annual report can be approved without a meeting, so there will be no exception at all.

It will be possible to establish a closed company limited by shares with a sample contract.

AMENDMENTS REGARDING THE AMOUNT OF PRIMARY CAPITAL

To facilitate the establishment of small and medium enterprises the statutory provisions regulating the minimum capital requirements of these company forms are changed. As opposed to the present HUF 3 M, from 1st September, 2007, the minimum registered capital requirement for limited liability companies shall be HUF 500 Thousand. Following the amendment of the Act, the minimum registered capital of closed companies limited by shares shall be HUF 5 Million, and that of public companies limited by shares HUF 20 Million.

If you have any further questions please contact dr. Attila Fest (attila.fest@luther-lawfirm.com).

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