

HUNGARIAN CORPORATE LAW IN MOTION: INCREASING STRINGENCY AGAINST ABUSE

The Parliament has amended three major business law statutes, i.e. Business Corporations Act, Company Registration Act and Bankruptcy Act by Act CXCVII of 2011 at the end of last year. The main underlying rationale for the amendments was taking action against 'sham corporations' and defrauding creditors. Promulgation was immediate; the majority of amendments will enter into force as of March 1, 2012.

Regarding the Business Corporations Act (BCA) an increasing stringency shall prevail: a restraint has been intensified on executive officers incumbent for any length of time in the years before and of the ex-officio deletion of phantom companies with no real activities and no assets. Namely, such persons shall not be appointed to registered executives of another company for a period of 5 years as opposed to the previously applicable 3 years. Also, this rule has now been extended to shareholders of such sham corporations going bankrupt on purpose, as well. Meaning that shareholders of such corporations will also fall under the prohibition, i.e. they will lose their eligibility for 5 years to serve as executive officers of other companies, too. What is more, being a new sanction, the last executive officers and shareholders with sole and majority control in such deleted companies shall not acquire majority shares in other companies or and become general partners in general and limited partnerships for 5 years.

Furthermore, the sanction previously imposed in liquidation proceedings on executives and majority shareholders to prohibit them serving as executives of another company for 5 years, if their liability for unsettled claims in the liquidation proceeding has been established, has been further defined and extended to all proceedings resulting in a company's termination without succession.

As far as sanctions on corporate membership are concerned, however, one can be struck by a difference easy to spot. The amending statute provides that the person subject to the above sanctions may not become the majority (or sole) shareholder of another company or a general partner in a general or limited partnership, but is silent on does not prohibit maintaining majority shareholdings already acquired.

The amending statute has extended the scope of cases, where in the event of a transformation a security should be provided to the creditors. That is, if the company under transformation incurred public debts exceeding half of the own capital, the creditors should be able to resort to a security.

Parallel to the above, the Company Registration Act (CRA) has also been amended.

In an effort to enforce the prohibitions imposed on executive officers the new statute enables the Court of Registration to enquire official information entered into the criminal registry as to the statutory grounds for disqualification. It must be noted here that the BCA and the CRA has raised the upper-limit of the fine up to HUF 900,000.

In order to facilitate shareholder identification not only executive officers', but natural persons' personal data, including the name and address along with the personal identification and tax number thereof, must be indicated in the company's articles of association.

Regarding foreign natural persons without Hungarian residence and foreign shareholders a delivery agent will need to be assigned, this has actually been an available option so far. Also, as opposed to the earlier rule, a sound and logical, substantive modification appears to be that the foreign addressee will be presumed to have become aware of the official document as of the 15th day reckoned from the delivery date to the delivery agent.

It is certainly part of taking more severe actions against sham corporations that in relation to registered seats and sites as well as branch offices the authorization to use the real property will need to be supported with evidence in the company registration process.

In connection with the company registration process, the 1 hour official processing time will not be reckoned from the receipt by the Court of Registration of the application but from the tax authority's issuance date of the prospective company's tax number. Furthermore, in case of registering corporate changes the Court of Registration cannot anymore resort to the speedy registration rules; it will only be bound by general deadlines.

Although not to the extent as originally intended by the Government, there are certain changes concerning the share transfer, too.

The registration of share transfer and change in membership has been complemented by a new process element incorporated in the CRA: the court of registration must notify the tax authority 'ex officio' upon receipt of an application for registration of share transfer. If the tax authority notifies that the corporation has a public debt exceeding HUF 15,000,000, the court of registration must call the company to submit under the general rules a balance sheet certified by an auditor as of the execution date of the share transfer, which may slow down the registration process.

As a new rule, the 'involuntary cancellation' shall also be introduced as an applicable framework to be used instead of the former involuntary dissolution for companies that are not able to close their dissolution process within 3 years. Involuntary cancellation may

only turn into involuntary liquidation if the company holds reserves covering at least the fee of the liquidator.

Another important change to note here is as follows: regulations on company name have been amended to the effect that corporate names must unambiguously differ from that of governmental and administrative bodies.

Beside the modifications presented above, beyond the main activity of a company, all types of business activities will need to be listed in the company's articles of association. Nevertheless, to adjust the AoA and comply with this new rule there will be no need to amend the articles of association, but once the tax authority is notified by the company, the court of registration will register the entire scope of activities 'ex officio'.

In conclusion we wish to draw the attention to the obligation imposed on all corporations following the entry into force of all statutory amendments to modify, adjust and register the relevant corporate data with the court of registration on occasion of the subsequent amendment of the articles of association but not later than February 2013.

The content of our present newsletter is of general information; it shall not qualify as legal counselling, as with respect to the specific circumstances of an individual case and to the ongoing/continuous amendment of the legal provisions in force it may eventually be needed to adopt a position different from the foregoing. Should you have any questions, specific problems, please contact us at budapest@bpv-jadi.com.

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