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**NEWSLETTER**  
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**AMENDMENTS TO ACT XLIX OF 1991 ON BANKRUPTCY PROCEEDINGS  
AND LIQUIDATION PROCEEDINGS EFFECTIVE FROM SEPTEMBER 1, 2009**

**Dr. David Kerpel**

In June 2009, the Hungarian Parliament passed Act LI of 2009, which significantly modifies Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (hereinafter "**Liquidation Act**") as of September 1, 2009. We briefly summarize the most important amendments below.

**(1) AMENDMENTS TO BANKRUPTCY PROCEEDINGS**

The amendment made it possible for a creditor to submit an application for a bankruptcy proceeding if it has a claim pursuant to Section 27 (2) of the Liquidation Act. A creditor can therefore now choose whether it wants to enforce its claim by bankruptcy or by a liquidation proceeding. This choice however is somewhat weakened by Section 8 (4) d) of the Liquidation Act, which obliges the creditor to attach the declaration of the debtor and its supreme body proving that they have no objection against the initiation of a bankruptcy proceeding. The creditor therefore cannot launch bankruptcy proceedings without the approval and active cooperation of the debtor.

*a) Initiation of a bankruptcy proceeding*

A debtor is allowed to submit an application for bankruptcy proceeding only if

- (i)** there is no ongoing bankruptcy proceeding against it; or
- (ii)** the order of first instance on launching the liquidation (if a liquidation process has been opened) has not yet been brought;
- (iii)** creditors' claims that already existed at the moment of the initiation of the previous bankruptcy proceeding have not been satisfied, or the claims arising during the previous bankruptcy proceeding have not been satisfied; and
- (iv)** if two years have passed since the final judgment of the previous bankruptcy proceeding was published or **(v)** if its application for the previous bankruptcy proceeding was denied *ex officio* by the court and one year has not lapsed since the publication of the final order.

A bankruptcy proceeding application can only be made using a form set forth by other legislation (only via an electronic form after July 1, 2010). At a debtor's request, the court takes measures to publish the application and the moratorium in the Company Gazette within 1 working day.

At a creditor's request, the court examines if the application meets the legal requirements within 5 days of receipt. If it is deficient the court returns the application for supplementary information with a 5 working day deadline. If the application does not meet the legal requirements after the submission of supplementary documents the court rejects it within 5 working days. If it meets the requirements, the court forwards the application to the debtor in 5 days and requests a statement from the debtor within 15 days as to whether (i) it acknowledges the claim, (ii) a bankruptcy or liquidation proceeding has been initiated against it (iii) it had submitted an application for bankruptcy proceeding which was rejected *ex officio* and one year has not lapsed following the rejection. If the debtor fulfils its above obligations the court launches the bankruptcy proceeding within 8 working days after the expiration of the 15-day deadline.

The court rejects a creditor's application if (i) the claim is disputed by the debtor or (ii) the debtor certifies that the claim is settled or (iii) the debtor does not meet its requirement to enclose documents. The claim shall not be disputed if it meets the conditions provided by Section 27 (2)-(3) of Liquidation Act and insolvency can therefore be declared.

In the event a creditor or debtor files an application with false information or false documents attached, the court may impose a fine from HUF 200,000 to HUF 800,000 on the person submitting the application.

A further significant change is that according to the amendment, the opening date of the bankruptcy proceeding is the date of publication of the court's order on the initiation of the bankruptcy proceeding. After that time the debtor shall use its name with the abbreviation "cs.a." (meaning under bankruptcy proceeding) and it has the right to the generally 90-day moratorium period.

Relief from the financial obligations does not release the obligation to refund mistaken transfers to the debtor's account in the future. Furthermore, during the period of relief there shall be no off-setting, no prompt collection order against the debtor, the enforcement of pecuniary claims shall be suspended and as a recent change the contracts concluded with the debtor shall not be rescinded or terminated on the grounds that the debtor has failed to comply with its payment obligations during the period of relief.

b) *Administrator*

The amendment contains changes whereby the provisions on the liquidator must also be applied on the legal status of the administrator (appointment, conflict of interests, etc.)

An administrator's scope of duties has broadened to include the joint right for company registration and for disposal of bank accounts. If the debtor fails to fulfill its obligation

to cooperate with the administrator, a maximum fine of HUF 500,000 may be imposed on the debtor. The administrator must proceed with due care as expected from a person in such a position. The administrator shall report on its operation to the court or the creditor's committee within 8 days after their request. The aggrieved party can make an objection against the activity or the negligence of the administrator.

c) *Course of the bankruptcy proceeding*

Within 5 days after the initiation of the bankruptcy proceeding, the debtor shall notify its creditors directly and also via a national daily newspaper and on its own website. The debtor shall request its creditors to submit their claims within 30 days (the claims submitted after the deadline cannot be enforced). In cases where liquidation is initiated against a debtor due to non performance of the bankruptcy settlement, it is an important new rule that only those claims may be enforced in the liquidation proceeding that were submitted in the previous bankruptcy proceeding.

As with the liquidation process, the creditor must pay 1% of the claim (from HUF 5,000 to HUF 100,000) as a registration fee to the administrator's bank account. The claim's categorization as undisputed shall not qualify as acknowledgement of debt.

The debtor is obliged to assemble the creditors for a settlement negotiation within 45 days after the opening of the bankruptcy proceeding. The debtor shall prepare a plan on how to remedy or maintain its solvency and prepare a settlement proposal. The creditors have one vote after each registered claim of HUF 100,000 or each HUF 100,000 registered as undisputed claim on the settlement negotiation. To conclude a settlement the approving votes of the majority of the creditors are necessary in each separate secured and unsecured group of creditors. The settlement must be made in writing.

If the settlement meets the legal requirements, the court approves it. If it does not meet the requirements, or if a settlement is not even reached (e.g. the creditors do not support the settlement proposal and the debtor does not undertake to rewrite it), the court terminates the bankruptcy proceeding, declares *ex officio* the debtor's insolvency and orders the liquidation proceeding.

In the framework of the settlement, the debtor might agree with the creditors on the conditions of settling the debt (e.g. concessions, payment facilities, cancelling debts in exchange of shares, guarantees, other securities) including any measures to take in the interest of maintaining or remedying the debtor's solvency.

The debtor's executive officer is obliged to report the result of the settlement to the court within 5 working days and to enclose the settlement; failure to do so will result in a maximum fine of HUF 500,000 on the debtor's executive officer.

## (2) AMENDMENTS REGARDING THE LIQUIDATION PROCEEDING

The amendments have also led to a few significant changes in connection with the provisions of the Liquidation Act on the liquidation proceeding, which we summarize briefly below.

### *a) Insolvency cases*

Cases of debtor insolvency have grown. In addition to the previous cases, the court declares the debtor insolvent also if **(i)** on the first trial of the bankruptcy proceeding the creditors declare that they do not accept the settlement proposal and the debtor does not undertake to rewrite it thus the court terminates the proceeding, or **(ii)** if the court terminates the bankruptcy proceeding because the settlement has not been concluded or it does not meet the legal requirements, or **(iii)** if during the proceeding initiated by the receiver or the debtor the debtor's debts exceed its assets or if the debtor could not or predictably will not be able to satisfy its debts at the moment of the due date and the members (owners) of the debtor do not make a statement despite being asked whether they undertake the obligation to secure the assets which are necessary for paying the debts at due date.

### *b) Provisions on the liquidator and on the receiver*

It is a crucial amendment that in the future the court will appoint the liquidator by random electronic selection. A person who has been an employee of the debtor or who has been in business connection with the debtor within the previous three years (except in case of business connection in the scope of the ordinary commercial activity), cannot be appointed as receiver. The dismissal of the liquidator can be initiated by the creditors' select committee (or - in the absence thereof - by the creditors' representative).

### *c) The obligations of the executive officer of the debtor*

The executive officer of the debtor in addition to its previous obligations shall:

- (i)** make a statement that the activity closing balance sheet provides a real and reliable picture on the debtor's financial situation and on the significant changes in the debtor's financial situation that have occurred since the acceptance of the balance sheet;
- (ii)** prepare a list of documents that cannot be discarded and/or which are confidential and give them to the liquidator and make a statement that its obligation to hand over all of its assets is fulfilled; and
- (iii)** provide information on the ongoing matters and on the debtor's activity before the liquidation.

Failure to meet the above requirements is punishable by an increased maximum fine to be imposed on the executive officer of the debtor of HUF 2,000,000 (if the income of the executive officer cannot be determined). The court can oblige the executive officer to pay the costs arising from the measures carried out by an expert and which originally would have been the task of the executive officer. A quotaholder owning at least the

majority of the shares of the debtor (the foreign undertaking in case of a branch office) is liable as guarantor for paying the fine and the costs.

If the debtor's assets that fall within the scope of the liquidation are insufficient to satisfy the creditors' claims, any creditor or the liquidator in the name of the debtor may request by statement of claims to oblige the previous executive officer of the debtor to pay the unsatisfied claims if it can be determined that the previous executive officer did not carry out its managing activity on the basis of the priority of the creditors' interests after the occurrence of the situation threatening with insolvency. As of September 1 2009, the providing of assurances determined in Section 33/A (1) (e.g. an amount paid to the deposit account of the commercial chamber of the court, or an amount pledged kept separately at a financial institution) may also be requested in the above statement of claims. The member having majority control over the debtor is liable as a guarantor for the performance of the assurance determined by the court.

*d) The deadline for submitting a creditor's claim*

This important amendment dropped the final submission deadline from one year to 180 days from the publication of the liquidation. However the 40-day deadline for the submission necessary for the registration of the claim as an "*other claim*" in accordance with Section 57 (1) f) of the Liquidation Act remained unaltered.

According to Section 28 (2) f) of the Liquidation Act, the claims submitted in the previous bankruptcy proceeding shall not necessarily be submitted again in the liquidation procedure.

*e) The termination of the liquidation proceeding*

Besides the settlement concluded during the liquidation proceeding, the situation where the debtor pays all the registered acknowledged or undisputed debts and provides security for the disputed claims and for the payment of the fee of the liquidator, could mean a new method for terminating the liquidation proceeding. In this case the court terminates the liquidation proceeding pursuant to the debtor's request.

Generally speaking, the amendments have shortened several deadlines (e.g. the liquidator shall report the conflicts of interest within 5 working days instead of 8; the executive officer of the debtor shall hand over the activity closing balance sheet within 30 days instead of 45; the deadline for submitting the creditors' claim have dropped from one year to 180 days; the liquidator shall assemble creditors within 75 days from the publication of the order on ordering the liquidation etc.) Also, the amount of the fines and fees in connection with the proceedings have in some cases increased (e.g. the amount to be advanced in case of an appointment of an administrator has increased; the registration fee limit amounts have increased to HUF 5,000 and HUF 200,000; the proof of non-recoverability costs HUF 2,000; the minimum fee of the liquidator has increased from HUF 100,000 to HUF 300,000).

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*The purpose of this Newsletter is to provide general information regarding the issues set out above. This Newsletter is a publication of Szecskay Attorneys at Law and cannot be regarded as legal advice or legal opinion under any circumstances. With respect to any specific legal queries and more information, please seek legal assistance.*

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