



SZEC SKAY
ÜGYVÉDI IRODA • ATTORNEYS AT LAW

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***Focus* - Topic of the month: The new Companies Act**

The Hungarian Parliament adopted the new Act on Business Associations (the "**New Companies Act**"), which entered into force as of July 1, 2006. The New Companies Act endeavors to meet the requirements of the legislation of the European Union and the needs of the business community. Simple companies, for instance, may be established on the basis of standardized documents within two business days.

The New Companies Act does not change the legal basis of companies; however, it responds to the cumulative experience of companies over the past few years. One of the main innovations of the New Companies Act is that it makes a clear distinction between *public companies limited by shares* and *private companies limited by shares*. Another important part of the New Companies Act is the introduction of the concept of an acknowledged corporate group (please see the article below).

In order to inspire companies to be flexible and make quick decisions, the New Companies Act makes it possible for the company's supreme body to vest certain decision-making rights in the company's management if the articles of association provide for this possibility. Further leniency toward company decision-making is evident: general meetings may be held by electronic means (e.g. video conferences), and the Supervisory Board and the Board of Directors may also consult and hold meetings this way. For companies limited by shares, this will create a new possibility to pass resolutions without a general meeting.

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Together with the New Companies Act, a new act on the registration of companies entered into force (the "**New Registration Act**"). The New Registration Act sets out the rules of for electronic registration, which aims to make registration simpler and faster.

Corporate Law: Acknowledged Corporate Groups

One of the new legal institutions introduced by the New Companies Act is the *Acknowledged Corporate Group*.

The importance of this new concept is that companies are provided with a new method by which to cooperate in order to achieve the common economical aims of a corporate group. This means that companies interested in an acknowledged corporate group preserve their independence from a corporate law standpoint, but they remain flexible to take advantage of the most effective way to cooperate. In addition, the new concept also attempts to provide sufficient protection to minority members of the company and the company's creditors.

According to the New Companies Act, a company which is obliged to prepare a consolidated annual report in accordance with Act C of 2000 on accounting (the "**Controlling Company**") and a limited liability company or a company limited by shares, in which the Controlling Company has a significant influence (the "**Controlled Company**"), can establish an acknowledged corporate group.

The acknowledged corporate group can be established through a controlling agreement. The

accepted controlling agreement must be submitted to the competent Court of Registration and the establishment of the acknowledged corporate group must be registered in the company register. This means that it is obvious to third parties (e.g. creditors) that the Controlling Company may influence the operations of the Controlled Company and make decisions with respect thereto.

The main achievement of the New Companies Act is that the Controlling Company or its management is entitled to instruct the management of the Controlled Company and pass compulsory resolutions relating to the operations of the Controlled Company. In the case of such resolutions, the Controlling Company is exempted from the special liability provisions set out in the New Companies Act. Such special liability provisions provide that those members (shareholders) who have passed a resolution, in respect of which they knew, or should have known with reasonable care, that it was obviously contrary to the significant interests of the company, shall bear unlimited, joint and several liability for the resulting damages. Practically speaking, this means that the acknowledged corporate group can carry out activities that are disadvantageous to the Controlled Company, but serve the common interests of the whole group.

The chief executives of the Controlled Company must manage the company in a manner to serve and protect the business interests of the acknowledged corporate group.

One of the most important provisions relating to the protection of creditors' and minority members' interests is that the controlling agreement must regulate the method and the framework of the



cooperation between the companies in the acknowledged corporate group. The controlling agreement must contain provisions to share the advantageous and disadvantageous effects originating from operation of the acknowledged corporate group.

Minority members representing at least 5% of the votes of the Controlled Company are entitled to ask for information from management about the execution of the controlling agreement, and can also initiate the convening of the supreme body of the Controlled Company if they become aware of an infringement of the controlling agreement.

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