



SZECSKAY  
ÜGYVÉDI IRODA • ATTORNEYS AT LAW

## NEWSLETTER AUGUST 2006

**Szecskay - Attorneys at Law** is a progressive firm, recognized as one of the top legal advisers in Hungary. The Firm was founded in 1992 by Dr. András Szecskay who had a well established practice with over twenty years of experience in the legal profession at that time.

The Firm is comprised of 20 attorneys, including local counsel and foreign attorneys admitted to practice in Austria, Canada, England, France, Germany and the US.

Main practice areas:

- Competition/Antitrust
- Corporate Law
- Energy Law
- Environmental Law
- Intellectual Property
- Labor Law
- Litigation Dispute Resolution / Arbitration
- M&A, Privatization
- Media and Entertainment
- Project Finance
- Real Estate
- Securities - Private Placements, IPOs, and Public Offerings
- Telecommunications, Information Technology and E-Commerce

### Contents

- *Focus - Topic of the month:* The amendment of the Bankruptcy Act
- *Corporate Law:* Amendment proposal to the Companies Act
- *Commercial Law:* New Commercial Act

---

### ***Focus - Topic of the month:* The amendment of the Bankruptcy Act**

Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings and Voluntary Dissolution (the "**Bankruptcy Act**") - which has been amended many times since its coming into force on January 1, 1992 - has undergone considerable amendments simultaneously with the coming into force of the New Companies Act and the New Act on Public Company Information, Court Registration Proceedings and Voluntary Dissolution on July 1, 2006.

The reason for the amendment of the Bankruptcy Act was - as can be seen in the reasons attached to the text of the act - to develop a body of law which is, as a result of the developments which have been ongoing in the field of corporate law, coherent, transparent and conclusive. In the course of the amendments, the legislator intended to bring clarity into the business life and to enhance the protection of the interests of the creditors.

One of the most important amendments is the supplementation and re-codification - with the relevant case law in mind - of the reasons constituting the basis of the establishment of insolvency, the creation of special rules of liability within insolvency law and the creation of special rights of satisfaction of creditors holding collaterals.

H-1055 BUDAPEST, KOSSUTH TÉR 16-17  
(MAIL: H-1245 BUDAPEST PF/POB 1228)  
HUNGARY

TEL: +36 (1) 472 3000 • FAX +36 (1) 472 3001 • [INFO@SZECSKAY.COM](mailto:INFO@SZECSKAY.COM) • [WWW.SZECSKAY.COM](http://WWW.SZECSKAY.COM)



Pursuant to the old rules, the court established insolvency if the debtor failed to settle its undisputed or acknowledged debt within 60 days of the due date. Pursuant to the new rules, the court establishes insolvency if the debtor fails to settle its earlier undisputed or acknowledged debt within 15 days after receipt of request for payment - containing the notice on the commencement of insolvency proceedings - and if it does not dispute the debt with a written and reasoned declaration.

With respect to the new rules, it can be established that it considerably shortens the earlier 60-day period that followed the due date. On the other hand, it is important to emphasize that the law only acknowledges a challenge on the merits, i.e. which is supported by reasons. In connection with the payment request, it is worth noting that they must contain the notice on the commencement of the insolvency proceedings. Decree no. 15/2006 (IV. 7.) IM on the formal and content-related prerequisites of the payment request preceding the filing of the application for commencement of insolvency proceedings contains further detailed content-related elements with respect to the payment request and the form of the same.

With reference to established case law, the case when the debtor has not paid its debt within the payment deadline established by a legally binding court order has become one of the reasons for insolvency.

In the course of the amendment of the Bankruptcy Act, new and specific liability rules have been included into the act which establish direct liability of the executives of the company against creditors if, following the occurrence of the danger of insolvency, such executives do not primarily act according to the interests of the

creditors. The construction of this provision might be problematic, as in practice it cannot always clearly be ascertained, in which case there is a danger of insolvency.

The amendments to the rules on the satisfaction of claims collateralized by liens resulted in a significant change of the Bankruptcy Act. The new rules which become effective as of January 1, 2007 abolish the earlier differentiation between those liens that were created more than one year and less than one year prior to the commencement of the insolvency proceedings. Pursuant to the new rules, if the lien was created before the commencement of the insolvency proceedings, the liquidator may deduct from the purchase price obtained in the course of the sale of the collateralized object only the costs incurred due to the maintenance and sale of the object and the fees of the liquidator which are regulated by a special act. The liquidator is obligated to use the remaining amount - immediately after the sale of the collateralized object - for the settlement of the claims which were collateralized by the lien encumbering the sold object. Accordingly, the new rules ensure that there is a right for additional satisfaction in the case of creditors raising claims collateralized by liens, i.e. the satisfaction of claims collateralized by a lien overrides the satisfaction of other claims and thus raises the security of creditors who raise claims collateralized by liens.

Please note that in the case of floating charges, the law - maintaining the rules that are currently in force - limits the special right to satisfaction to 50% of the purchase price deriving from the sale of the collateralized object.

---



## **Corporate Law: Amendment proposal to the Companies Act**

Shortly after the entry into force of Act IV of 2006 on companies (the "**Companies Act**"), the Ministry of Justice published its proposal - which can be opined on - on the amendment of certain provisions of the Companies Act (the "**Proposal**"). We would like to emphasize - without claiming completeness - one or two interesting amendments which relate primarily to the Kft (Limited Liability Company).

The Amendment intends to dissolve the rule with respect to minimum capital of the Kft prescribed by the law which has been in existence until now. The Amendment says that the quotaholders may stipulate the amount of the registered capital - unless the law provides otherwise - in the articles of association upon condition that such amount may not be less than HUF 1,000. The Amendment would thus abolish the minimum capital of HUF 3,000,000 currently provided by the Companies Act and would leave the designation of the registered capital up to the quotaholders.

Another proposal for amendment affecting Kfts is that such entities - if the Proposal becomes law - may operate without quotaholders meetings on the basis of appropriate stipulations in the articles of associations. The Proposal would make it possible that the quotaholders may render a resolution on any issue falling within the ambit of a quotaholders meeting without actually holding such meeting. This provision would greatly improve the foreign owners' position, but at the same time it is questionable, whether the new rules of the Companies Act that make the holding of quotaholders meetings possible by means of telecommunication will be used in the future in the

light of the availability of an easier and cheaper solution.

---

## **Commercial Law: New Commercial Act**

On June 1, 2006, Act CLXIV of 2005 on commerce entered into force, replacing the act on domestic commerce containing general rules with respect to commercial activities.

In connection with this act containing general rules on commerce, it is worth noting that the act tries to render increased aid to suppliers vis-à-vis companies with considerable market power. The act provides for the creation of a self-governing ethical codex which has to be drawn up and filed with the Hungarian Competition Authority within 6 months from the entry into force of the act, i.e. until November 30, 2006.

---

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. Szecskay Attorneys at Law do not warrant or guarantee the accuracy, completeness or adequacy of the information set out in this Newsletter. With respect to any specific legal queries and more information, please seek legal assistance.

For more information, please contact:

SZECSKAY ÜGYVÉDI IRODA  
H-1055 BUDAPEST, KOSSUTH TÉR 16-17  
MAGYARORSZÁG

TEL: +36 (1) 472 3000 • FAX +36 (1) 472 3001  
• [INFO@SZECSKAY.COM](mailto:INFO@SZECSKAY.COM) • [WWW.SZECSKAY.COM](http://WWW.SZECSKAY.COM)