



SZECSKAY  
ÜGYVÉDI IRODA • ATTORNEYS AT LAW

## NEWSLETTER SEPTEMBER 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:

- M&A, Privatization
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- Competition/Antitrust Law
- Labor
- Real Estate
- Intellectual Property Law and Media Law
- Telecommunications, Information Technology and E-Commerce
- Environment
- Energy
- Litigation  
Dispute Resolution / Arbitration

### Content

- *Focus - Topic of the month:* Provision of financial services in the territory of Hungary in the form of cross-border services by way of agencies
- *Banking Law:* Establishment of branch offices of Hungarian credit institutions within the EU
- *Capital Markets:* State subsidy for companies intending to be listed on the stock exchange

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### ***Focus - Topic of the month: Provision of financial services in the territory of Hungary in the form of cross-border services by way of agencies***

In the recent past, the State Supervision of Financial Organizations (the "SSFO") has published its guidelines on its official website regarding the possibility of providing financial services in the territory of Hungary by credit institutions/financial enterprises with a registered seat in a Member State of the European Union in the form of cross-border services through agencies by means of the Hungarian Bank Act. We give a short overview of the applicable banking law regulation, and the main aspects of the published guidelines below.

As Hungary has become a Member State of the European Union on May 1, 2004, - among others - credit institutions, investment firms and insurance companies with a head office in a Member State of the European Union - after notification to the supervisory authority of the home country and in compliance with the regulation of the relevant directives - may establish a branch or may exercise the freedom to provide financial services in the territory of Hungary (*cross-border service*).

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HUNGARY



In accordance with the relevant European Union directives, the Hungarian Bank Act sets forth that

- (i) credit institutions with a registered seat in another Member State of the European Union may provide financial services in the territory of Hungary through their Hungarian branch offices or in the form of cross-border services, and
- (ii) financial enterprises with a registered seat in the European Union may provide financial services in the territory of Hungary through their Hungarian branch offices and financial enterprises, which comply with specific criteria defined in the Hungarian Bank Act may also be engaged in cross-border services.

Credit institutions with a registered seat in a Member State of the European Union and financial enterprises that comply with the conditions specified in the Hungarian Bank Act need not obtain an authorization for activities pertaining to cross-border services or services performed by their Hungarian branch offices. It is sufficient if such activities have been authorized by the competent supervisory authority in whose jurisdiction they are registered.

The Hungarian Bank Act also makes it possible to provide financial services through intermediation (*agent*). From among financial services, the intermediation of financial services (*agency*) is a peculiar activity the pursuit of which on a commercial basis is allowed not only to financial institutions. The Hungarian Bank Act identifies two types for agency activities; accordingly, the intermediation of financial services (*agency*), under the Hungarian Bank Act, means activities pursued for, in the name and behalf of, and at the risk of a financial institution

whose purpose is the performance of financial services and/or activities auxiliary to financial services of the financial institution within the scope of an agency contract ("*A*" type agent); and activities pursued in order to facilitate a financial institution's financial services and activities auxiliary to financial services without any involvement in handling the customer's money or assets and in the course of which no commitments are made on behalf of the financial institution ("*B*" type agent).

The Bank Act determines the conditions of performing agency activities and the persons entitled to perform such activities depending on whether type "*A*" or "*B*" of agency activities is performed, and whether they are performed for credit institutions or financial enterprises.

If an "*A*" type agent performs the agency activities for a credit institution, both the agent and the credit institution must obtain authorization from the SSFO. However, if a "*B*" type agent performs the agency activities for a credit institution, neither the credit institution nor the agent is obliged to request a license for such activities. In this event, the credit institution must notify the SSFO of the identity of the agent.

If an agent (whether "*A*" or "*B*" type agent) performs the agency activities for a financial enterprise, neither the financial enterprise nor the agent is obliged to request license for such activities. In this event, the financial enterprise must notify the SSFO of the identity of the agent.

Business associations and cooperatives vested with legal personality other than financial institutions may also engage in the "*A*" type intermediation of financial services. Business associations, cooperatives and private entrepreneurs



other than financial institutions may also engage in the "B" type intermediation of financial services as well.

In the recent practice of the SSFO, the issue has often occurred, whether a financial institution with a registered seat in a Member State of the European Union may provide cross-border services in the territory of another Member State by way of agents (whether "A" type or "B" type agent) under the Hungarian banking regulation. The SSFO has established that neither the Hungarian regulation nor the applicable European Union rules set forth provisions regarding the method or the form of provision of cross-border services. Consequently, it is not explicitly prohibited that a financial institution duly notified and registered by the SSFO as a financial institution providing cross-border services pursues its financial activities through an agent subject to the Hungarian Bank Act. The above guidelines have been published on the official website of SSFO. It is important to note that the SSFO is not bound by its former guidelines or decisions, e.g. in a potential authorization dispute it may derive from the above opinion.

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### ***Banking Law: Establishment of branch offices of Hungarian credit institutions within the EU***

Following the accession of Hungary to the European Union, Hungarian credit institutions have the possibility to provide services in another Member State of the EU as cross-border services or through establishment of branch offices in another Member State. Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (the "**Directive**")

was implemented into Act CXII of 1996 on credit institutions and financial enterprises (the "**Bank Act**"), which means that the provisions of the Directive with respect to the establishment of branch offices are also included in the Bank Act.

According to the Bank Act, credit institutions registered in Hungary do not need to acquire a license neither from the State Supervision of Financial Organizations (the "**SSFO**") nor the supervisory authority of the host Member State for the establishment of a branch office in a Member State of the European Union. However, credit institutions have certain notification requirements to be fulfilled under the Bank Act towards the SSFO.

The SSFO shall inform the competent supervisory authority of the host Member State on the establishment of the branch office in writing within 3 months following the receipt of the notification from the credit institution if the management structure of the reporting credit institution and its financial situation are in accordance with the relevant statutory provision. The SSFO shall issue a resolution informing the credit institution concerned within three months if the SSFO refuses to communicate the information specified above. Such resolution shall be reasoned by the SSFO and may be challenged by the credit institution before the court.

The competent supervisory authority of the host Member State may inform the credit institution in writing regarding the conditions concerning the envisaged activities within two months following the receipt of the information from the SSFO.

The branch office may be established and commence operations after the information concerning the envisaged activities has been



received from the competent supervisory authority of the host Member State or the two-month disclosure period has passed without the receipt of any information.

In accordance with the provisions of the Directive, the SSFO has the competence for the prudential supervision of the branch offices of the credit institution registered in Hungary. The SSFO may carry out inspections on the premises of the branch office or it may request the supervisory authority of the host Member State to carry out the necessary inspections on the spot.

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### ***Capital Markets: State subsidy for companies intending to be listed on the stock exchange***

The Ministry of Economy and Traffic has published a tender for companies intending to be listed on the Budapest Stock Exchange (the "BSE"). The tender was published in the form of the Decree of the Minister of Economy and Traffic no. 56/2006 (VIII. 3.).

In 2005, four companies were granted with state subsidy is being listed on the stock exchange and three of them (Állami Nyomda Nyrt., TvNetWork Nyrt. and Bookline Nyrt.) have been listed on the BSE until now.

The applicants may require an amount up to 50% of the certified costs of the listing but maximum EUR 100,000.

The shares of the applicants who are granted with the state subsidy must be listed on the BSE until June 1, 2007 and they have to undertake that they will not delist their shares within 2 years following the listing.

The applications may be submitted until November 17, 2006. The necessary documents and

more information on the tender may be found on the website of the Ministry of Economy and Traffic ([www.gkm.gov.hu](http://www.gkm.gov.hu)).

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.

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