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## **PRACTICAL ISSUES CONCERNING HUNGARIAN LIQUIDATION RULES: DELIVERY OF THE CREDITOR'S PAYMENT NOTICE TO THE DEBTOR**

*In this article, we provide a brief overview of some of the practical issues concerning the rules applicable to Hungarian liquidation.*

Under Hungarian law, liquidation dissolves an insolvent company with no legal successor. Act no XLIX of 1991 on Bankruptcy and Liquidation Proceedings (the "**Bankruptcy Act**") explicitly provides for the circumstances that may serve as grounds for liquidation.

Pursuant to the Bankruptcy Act, liquidation may take place if the competent court establishes that a company against which a request for liquidation has been submitted is insolvent. The court declares a company insolvent if any of the following conditions are met:

- (i) the debtor company failed to comply, within 15 days from the due date, with its contractual obligation which obligation was not challenged, or was explicitly acknowledged by the debtor company and the debtor company did not pay its debts following the respective payment notice by the creditor;
- (ii) the debtor company failed to pay its debts based on a final and binding judicial decision within the deadline set therein;
- (iii) the enforcement procedure against the debtor company has proven to be unsuccessful;
- (iv) the debtor company failed to comply with its obligations set forth in the settlement agreement concluded during a bankruptcy procedure;
- (v) the court terminated a previous bankruptcy procedure on the grounds that no settlement agreement was reached by the debtor and the creditors or the settlement agreement is not in compliance with Hungarian laws or
- (vi) the debts of the debtor exceed the debtor's assets within the proceeding initiated by the debtor or the final accounting manager or the debtor was or will presumably be unable to satisfy its debts on the due date and the owners of the debtor - despite being



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called upon to do so - do not assume an obligation to ensure satisfactory funds for the payment of the debts upon the due date.

If any of these conditions are met, the court is required by law to establish the insolvency and therefore also the liquidation of the debtor within 60 days of receipt of the request for liquidation. The court also simultaneously appoints a liquidator from the liquidators list at random. The first instance order is subject to appeal and the liquidation order is published in the Companies Gazette when it becomes final and binding.

Creditors are required to report their claims to the liquidator within 40 days from publication of the liquidation order in the Companies Gazette. During liquidation, all creditors' claims are to be satisfied to the extent possible and in the order prescribed by the Bankruptcy Act. In the event a creditor fails to report its claim within the 40-day period, it may report the same to the liquidator within 180 days from publication of the liquidation order. The liquidator will automatically reject any claim reported after this 180-day period.

Upon reporting the claim, the creditor is required to pay a so-called "registration fee" to a specific bank account. The fee is currently set at 1% of the amount claimed and a maximum of HUF 200,000 (approx. EUR 735).

As most liquidation procedures are in practice ordered on the basis of clause (i) above, this article focuses on some of the practical issues associated with the delivery of the creditor's payment notice to the debtor.

As far as clause (i) above is concerned, pursuant to the Bankruptcy Act, if a creditor's payment notice was sent to a debtor by mail, it is considered to have been delivered on the date indicated on the certificate of delivery (if it was a registered letter sent with an acknowledgement of receipt form) or, in the case of a simple registered mail, on the fifth working day following the date of mailing, unless proven to the contrary. In the event that clause (i) above applies, the debtor may file its contest in writing by the last day preceding the day of receipt of the creditor's payment notice. If the debtor fails to contest the claim in time, settlement of the debt may not be considered an acknowledgement of the debt, and does not prevent the debtor from instituting legal proceedings for recovery of the paid amount.

Taking the above rules into account, the following main questions arise in practice:



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- (i) Is the creditor's payment notice deemed to have been delivered to the debtor if it was mailed to the debtor as a registered letter with acknowledgement of receipt and the acknowledgement of receipt form was returned by the post to the creditor with the indication "*non-réclamé*" (i.e. the debtor did not pick up the letter from the post)?

The answer is that in this case, the creditor's payment notice is not deemed to have been delivered to the debtor and the debtor has managed to prolong its possibility to successfully contest the creditor's claim (since the payment notice has not been successfully delivered to the debtor).

This problem does not arise if the payment notice is mailed to the debtor as a simple registered letter. This is because simple registered letters are simply placed by the postman in the mailbox and there is a (refutable) statutory presumption for the delivery of the payment notice as a simple registered letter as described above.

- (ii) Is the creditor's payment notice deemed to have been delivered to the debtor if it was mailed to the debtor as a registered letter with acknowledgement of receipt and the acknowledgement of receipt form was returned by the post to the creditor with the indication "unknown" (i.e. the debtor cannot be found at the address to which the letter was mailed)?

In this case, the letter is not deemed to have been delivered to the debtor. In fact, even if the creditor's payment notice was mailed to the debtor as a simple registered letter, the letter is not deemed to have been delivered if the letter is returned by the post indicating that the addressee could not be found at the address.

- (iii) Is the creditor's payment notice deemed to have been delivered to the debtor if it was mailed to the debtor as a registered letter with acknowledgement of receipt and the acknowledgement of receipt form was returned by the post to the creditor with the indication "*refusé*" (i.e. the debtor refused to take over the letter)?

In this case, the letter is not deemed to have been delivered to the debtor.

This problem does not arise if the payment notice is mailed to the debtor as a simple registered letter. This is because simple registered letters are simply placed by the postman in the mailbox and there is a (refutable) statutory presumption for the delivery of the payment notice as a simple registered letter as described above.



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Taking the above into account, it is worth mailing the creditor's payment notice both as a registered letter with acknowledgement of receipt and a simple registered letter. This is to minimize the risk of the debtor being able to prolong the timeframe open for successful contest. If the claim is contested by the debtor in due time, no liquidation may be successfully initiated against the debtor.

*The contents of this article are intended to provide only a general overview of the subject matter. Specialist advice should be sought for specific matters. Queries relating to this article should be addressed to the author at:*

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