

Hungary

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Cross-border mergers

Until recently, national corporate law made cross-border mergers into Hungary or out of Hungary highly complicated. On an EU level, several milestones have been achieved in the past decade: the SE-Regulation, the ECJ's Sevic judgement and the Cross-Border Mergers Directive (Tenth Directive, 2005/56/EC, of October 26 2005). The Directive was implemented in Hungary with the new EU Merger Act (*Act CXL of 2007, A t_kegyesít_társaságok határokon átnyúló egyesüléséről*, EU Merger Act). The new provisions entered into force on December 15 2007.

In the past, Hungary has regularly fulfilled its obligation to implement EU Company Law Directives. When implementing the Cross-Border Mergers Directive, the Hungarian legislator saw no reason to depart from the general substantive and procedural law of merger. Consequently, in cases not regulated by the EU Merger Act, the provisions of Act IV of 2006 on Business Associations and Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings are applicable.

In line with the Directive, the EU Merger Act provides for cross-border mergers of public limited liability companies (*Részvénytársaság, Rt*) and private limited liability companies (*Korlátolt felel_esség_társaság, Kft*). Considering that provisions on private limited liability companies are not yet harmonised throughout Europe, this is a major challenge.

The Tenth Directive and the EU Merger Act are roughly in line with the Third Directive (78/855/EEC of October 9 1978) and its implementation. Regarding minority shareholder and creditor protection the following rules are relevant to cross-border mergers out of Hungary.

Minority shareholders of an entity merging out of Hungary have a right of exit against adequate cash compensation. No minimum threshold is required to exercise this right. Minority shareholders of entities merging into Hungary should be protected by their own national implementation acts.

Creditors of an entity merging out of Hungary have a preliminary protection: the merging entity must publish a notice once

a final decision on the merger has been adopted by all the companies concerned. Such a notice must be published in two consecutive volumes of the Company Gazette within eight days of the date when the final decision was made. The publication must include a notice to the creditors. They are entitled to a security before the merger can be effected if they can credibly show that the merger endangers the basis of satisfaction of their claims (provided that the companies involved in the merger have not previously granted them any collateral security). In the case of mergers with a so-called capital decreasing effect (less nominal capital and restricted reserves in the merged entity than in the transferring company), any creditors whose outstanding claims against the merging entity originated before the first publication of the notice, can always ask for a security within a 30-day period following the second publication of such notice.

Finally, in line with the Directive, the instrument of pre-merger certificates has been introduced into Hungarian corporate law. For outbound merging companies with a seat in Hungary, the Hungarian Courts of Registration are competent to issue a certificate attesting that the merger complies with Hungarian corporate law provisions.

Practitioners and clients had been awaiting the implementation of the Directive with keen interest. Cross-border mergers are now quickly becoming a reality in Hungary.

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