BALÁZS & KOVÁTSITS
LEGAL PARTNERSHIP

Dear Readers,

It is my pleasure to inform you that in our present Newsletter we will highlight some of the hottest issues our Legal Partnership has been dealing with nowadays. One of the most relevant recent articles of ours is about the international aspects of probate proceedings from Hungarian perspective. In our present newsletter you can also read about wrongful trading, insolvency and securing claims against directors in Hungary, the utilization of arable land for other purpose and some legislative changes in insolvency law.

Should you have any remarks, questions regarding the articles presented in our newsletter or the activity of our Legal Partnership, please do not hesitate to contact us.

Best regards,

Éva SÁNDOR
Marketing Manager

WHAT'S INSIDE THIS ISSUE:

THE INTERNATIONAL ASPECTS OF PROBATE PROCEEDINGS FROM HUNGARIAN PERSPECTIVE

Our Legal Partnership working in international relation often receives inquiries by foreign citizens with issues related to the acquisition of legacies in Hungary, and also by Hungarian citizens with issues related to the acquisition of legacies abroad.

The most common question that arises first is where (in which state) the probate proceedings should take place, especially if the testator did not die in the state of which s/he was a citizen, or the assets or part of the assets left after the deceased are not located in the state in which the testator died. Regulation (EU) No. 650/2012 of the European Parliament and of the Council entered into force on 17 August 2015 provides guidance primarily in such cases. Under the Regulation, probate proceedings are to be conducted in the state in which the testator had his or her habitual residence at the time of death, regardless of his or her nationality. In case of doubt, it is necessary to examine which state the testator actually had a close relationship with at the time of his or her death and immediately before, where s/he lived habitually. Thus, it may be possible to conduct the probate proceedings not in the state in which the testator was officially registered according to his or her identity documents, if s/he has been living in another state for a long time habitually. Thus it can happen that in the case of a German citizen who has moved to Hungary as a pensioner and has been living here, the probate proceedings including the objects of the estate in Germany will be conducted by a Hungarian notary public, as well as regarding the property located in Italy belonging to a Hungarian citizen living in Hungary. Obviously, the probate proceedings must be conducted in accordance with the law of the state where the probate proceedings take place, so in the above two examples according to the regulations of the Hungarian law of inheritance. However, it is also possible to specify in the testator's will the law of the state of which s/he is a citizen as the applicable law and jurisdiction. In the latter case, the provision of the will shall have to be complied with, regardless of the other state in which the testator had his or her habitual residence at the time of his or her death.

Although the present case concerns European Union legislation, the provisions of the Regulation also apply in certain respects to third-country citizens and to people who have their place of residence there. For example, in a non-EU member state, i. e. in a third country, probate proceedings may be conducted according to the relevant rules there, if the testator was a citizen of that third country or if s/he was not a citizen but had been living there for at least five years prior to the commencement of the probate proceedings.

Dr. Tamás BALÁZS
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WRONGFUL TRADING, INSOLVENCY AND SECURING CLAIMS AGAINST DIRECTORS IN HUNGARY

Insolvency proceedings are typically initiated against a company with existing financial troubles, and therefore it is no surprise that its creditors often find that they can only reclaim a part of what is owned to them. Sometimes, creditors realize only after the start of insolvency proceedings that they might not get anything at all, as all the debtor's assets are gone, its bank accounts are depleted; yet curiously, the management and owners of the insolvent company continue to enjoy life, the debtor's assets turn up freshly incorporated companies of the same owners and management, very much the same business profile. Something is amiss, and foul play is suspected. Undervalued or false transactions of company assets, preferential treatment of certain creditors, payments of dubious 'debts' to linked companies, miraculous disappearance of the company's financial records are far too common themes.

But what can be done about it? If the debtor was a limited liability company, its management and owners have, by default, no liability for the debts of the insolvent company. When the debtor company is gone, the debts are gone, as there will be no legal successor that can be held liable to pay its debts.

Situations like these occur all too often, and desperate creditors often seek our legal advice if there is a solution to this. Luckily, there is a satisfactory and effective legal solution to these cases as well: litigation for wrongful trading practices. Under Hungarian (and European) law, the directors and owners of an insolvent company can be litigated to establish their personal liability, and can be ordered to pay the company's debts by the Court, under Act XLIX of 1991, the Hungarian Act of Insolvency.

If this two-stage wrongful trading litigation is successful, the Court may find and declare that the management (the debtor's directors or 'shadow directors) has been engaging in wrongful trading and have ignored the rightful interest of the debtor company's creditors or outright embezzled its assets, and, more importantly, that they are personally liable to pay for the unpaid claims of all creditors, for which they shall answer with the entirety of their private equity. Creditors in such cases will have to prove the tipping point (date) of threatening insolvency, and that the director have ignored the creditor's rightful interest and/or that the equity of the debtor company has decreased as a result, either by wilful or negligent mismanagement, and the extent of the director's financial liability. Once the extent liability of the director(s) has been established, creditors may sue the director individually for payment. In practice, directors who have been acting in bad faith and mismanaged their company wilfully, and have made sure that its assets are gone by the time of insolvency proceedings start, are likely to take similar steps with regards of their own private equity, and make it 'disappear' by various means once they learn that there is an ongoing litigation threatening their own personal wealth.

How to prevent this? Creditors may also seek an injunctive relief against such directors at the very start of the procedure, requesting the Court to order the defendant (the director of the debtor company) to deposit a suitable sum (i.e. up to the entire amount of the debt owned by the insolvent company to all its creditors) at the Court of litigation. Should the director fail to place the ordered deposit, it may be executed upon him (or her) and secured in advance while the proceedings against him are still ongoing. Creditors thus may seek satisfaction and receive their claims on short notice from the deposit so secured, if the Court finds that the director has been engaged in wrongful trading and as such, liable for the debts of the mismanaged, now insolvent company.

For the creditor injunctive relief that secures its claim at the very start of a wrongful trading litigation are essential as this will ensure the claims are not only successfully litigated, but also successfully executed upon, and on short notice. The Court will not allow defensive statements from the defendant (the director); this would defeat its very purpose; decision will be made on short notice and only based on legal arguments and evidence presented in the lawsuit, which have to be convincing to order such a draconian measure at the start of the proceedings. However, if the Court rejects the motion for injunctive relief, the motion cannot be filed again and the chances of full satisfaction of the creditor are considerably lower. Therefore, experienced lawyers in wrongful litigation cases are essential for success.

We have trust that this short summary may help our existing and future Clients to orient themselves in the pitfalls and key points to be successful in wrongful trading litigation in Hungary against directors of insolvent companies, and that they shall continue to place their trust in the expertise of BALÁZS & KOVÁTSITS Legal Partnership in the field of wrongful trading litigations.

Dr. Ádám MILLEI
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UTILIZATION OF ARABLE LAND FOR OTHER PURPOSE

It is well-known that in the 21st century, arable land is one of the most important and valuable natural resources in the world. The Hungarian legislator fully agrees with this point of view, with regard to this fact, the use and utilization of the arable land are regulated in detail.

In principle, arable land is utilizable for agricultural purpose according to the natural designation of it. At the same time, there is an opportunity to change the purpose of the original utilization of the arable land in case of meeting the conditions prescribed by the law.

Under the concerning legal regulation, as a main rule arable land can be utilized for other purpose based on the petition of the owner of the arable land. At the same time, the legal regulation mentions some exceptions which are released from the obligation of authorization (e.g. afforestation, melioration work). The act strictly determines the attachments which have to be enclosed to the petition (delineation on the map, plan for protection of the arable land /saving the top-soil, replacement of the productivity/, decision or decree of the government in some cases, declaration of the petitioner for exemption from payment of contribution etc.). The possible purposes of the other utilization are also defined by the act (for example promotion of agricultural, natural and renewable resources production, satisfaction of claims of public interest).

According to the relevant act, the Land Registry is in charge of carrying out of the procedure for authorization of the arable land for other purpose. The Land Registry is entitled to authorize the utilization for other purpose temporarily or for a definitive period based on the petition. It has to be noted that granting the permit from the Land Registry shall precede the commencement of the use of the arable land for other purpose.

In case of granting the permit, the petitioner is fundamentally obliged to pay the so called contribution to the protection of the arable land in one amount which is determined based on the multiplication of the quality of the arable land and the multiplicative number mentioned in the appendix of the act. The payment of the contribution is not compulsory if the utilization of the arable land for other purpose is required by natural, agricultural or public interest reasons mentioned in the act.

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LEGISLATIVE CHANGES IN INSOLVENCY LAW

The year 2021 has already brought numerous significant changes in insolvency law in Hungary and there are still some more upcoming changes that will only show their effect in the last quarter of the year and in the coming New Year. Beside other innovations, the Hungarian Parliament has decided to expand state control over several activities such as liquidation proceedings and judicial enforcement. There is a new fee to be paid for the registration of the creditors' claims during the liquidation proceeding and the rules of the transition from the cancellation of company registration to liquidation proceeding are now more exact and more articulated.

In order to strengthen the control of the state over its monopolised activities, the Hungarian Parliament created the independent Controlling Authority of Inspected Activities that has multiple tasks from October 2021, for example the registration of judicial enforcement officers and liquidators. The Authority will use a modern, computer-based technology to find the proper liquidator for each case.

Due to the new rules, those creditors who want to report a claim against the debtor company during the liquidation proceedings have to pay an extra fee to the liquidator for the registration of the claim. The amount of the fee is 0.5% of the capital amount of the reported debt, but at least HUF 5,000 (EUR 15) and maximum HUF 40,000 (EUR 116) and it has to be transferred to the bank account of the liquidator within forty days after the publication of the liquidation order. In case there is little chance to have the amount of the creditor's claim enforced, the creditor also has the opportunity not to pay the above mentioned fee, but instead to pay a fee of 2,000 HUF (EUR 6) and get a certificate of irrecoverable debt for it.

The rules of the transition from the cancellation of company registration to liquidation proceedings became more exact. Based on the new rules, if a creditor's claim is reported to the authorities during the procedure of cancellation, but the amount of all the creditors' claims is less than HUF 400,000 (EUR 1,160) while the debtor has less than 400,000 HUF capital, the cancellation will be continued. In case either the amount of the claims exceeds HUF 400,000 while the debtor has less capital than that or the amount of the claims is less than HUF 400,000 but the debtor has a capital that exceeds this amount, the cancellation procedure must be terminated and there is a chance that the claims will be enforced. So these are in fact de minimis rules, because on either side the amount must exceed the limit of HUF 400,000.

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