

Mergers and Acquisitions

Mergers

Under the Companies Act, a company's assets and liabilities may be transferred to another company and a new company (legal successor) may be established with the assets of the existing company through transformation. According to the provisions of the Companies Act, the merger of two or more companies and the de-merger of a company can accomplish transformation.

A merger is a way of amalgamating the assets or liabilities, and the activities of two or more companies.

According to the Companies Act, there are two kinds of mergers, whereby:

- A company ceases to exist and all of its property is transferred to another existing company which is deemed the legal successor of the fused company in all respects.
- Two or more existing companies cease to exist and all of their property is transferred to a new company established through a merger, which is deemed the legal successor of the fused companies in all respects.

A de-merger is a way of splitting the assets or liabilities and business lines of one company. The Companies Act contains two methods of de-merger whereby:

- The original company ceases to exist and two or more separate and new independent companies come into existence with the assets of the original company. The new companies become the legal successors of the terminated original company (division de-merger).
- The original company remains in existence and continues to operate in its previous corporate form. One or more new companies are created by the members de-merging from the original company with certain parts of the assets of the original company. The new companies will be the legal successors of the original company based on the provisions of the de-merger agreement, unless the Companies Act states otherwise (separation de-merger).

Further details can be found in the Mergers and Acquisitions section under Corporate Taxation.

Acquisitions

In the case of acquisitions, the aim to concentrate capital and/or business lines and/or strengthen the business position can be achieved by:

- having shares/quotas
- holding voting or other rights (e.g. the right to elect persons having key roles in the management of the target company)
- using the assets
- having other forms of influence

The Companies Act contains obligations imposed not only on Kfts or private Rts, but directly on the party acquiring the quotas/shares in them, for reporting a take-over if it exceeds a certain threshold (at least 75% of the direct or indirect votes, the latter of which is defined in the Hungarian Civil Code). Furthermore, provided that the articles of association do not exclude this, any minority quotaholders/shareholders of the controlled company may request (within 60 days from the publication of the take-over) that the dominant member purchase their shares.

The Companies Act introduced a new legal concept as of July 1, 2006; namely, a recognized group of companies. Any company which is required to draw up consolidated annual reports according to the Accounting Act (dominant member) and any public or private Rt, or Kft, over which the dominant member effectively exercises a dominant influence according to the Accounting Act (controlled company) may decide to enter into a control contract to join forces in pursuing their common business interests and continue operating in the form of a recognized group of companies. Having a recognized group of companies registered in the Companies Register will not result in creating a separate legal entity from the companies belonging to the recognized group. The dominant member must notify the creditors of any of the companies in the recognized group by an announcement to be published twice in the official Companies' Gazette (Cégekülönlöny). The members of a controlled Kft or shareholders of a private Rt which participate in setting up the recognized group may request that their quotas/shares be purchased by the dominant member. The Companies Act contains further stipulations that are applicable to recognized groups of companies.

The Capital Markets Act contains special rules (for example, reporting and publishing obligations) that are applicable for the take-over of public Rts, i.e. an Rt operates as a public company if partial or total subscription of its shares is open to the public.

According to the Capital Markets Act, before acquisitions related to a public Rt (which has a registered seat in the Republic of Hungary or whose shares are admitted to trading on a Hungarian-regulated market) exceeding 33% (or 25% if there is no shareholder in the public Rt other than the bidder holding more than 10% of the voting rights, whether directly or indirectly) can begin, a public take-over bid must be made for all shareholders who have voting rights and all shares with voting rights. The bid must be approved by the Supervisory Authority in advance. A special procedure must also be conducted under the supervision of the State Supervisory Authority. If the

bidder has acquired ninety percent or more of the voting rights and provided that further conditions of the Capital Markets Act are met, then he may exercise his option to Rt. If the bidder's holding in the public Rt exceeds ninety percent of the voting rights purchase the remaining shares of the public when closing out the take-over bid, the bidder must purchase the remaining shares if so requested in writing by the owners of these shares. The Capital Markets Act also contains an obligation to report and publish acquisitions related to public Rts. Since Hungary's accession to the European Union, certain acquisitions must be published in all Member States of the European Union where the Rt's shares are officially listed on a regulated market.

The acquisition of listed shares may be rendered conditional upon additional requirements stipulated in the bylaws of the Budapest Stock Exchange approved by the State Supervisory Authority.

In the course of planning the acquisition, details of the relevant legal rules, such as for example the Companies Act and the Capital Markets Act, should also be considered. However, the prohibition of a one-member company from establishing or acquiring a Hungarian one-member company, which was contained in the previous corporate legislation, was removed by the Companies Act. In other words, Hungarian law now allows a chain of one-member companies.