

COMPANY LAW RELATED ISSUES DURING COVID-19 TIMES FROM A HUNGARIAN LAW PERSPECTIVE

The COVID-19 pandemic severely affects companies worldwide, including Hungary, and the extraordinary circumstances caused by the pandemic require extraordinary measures and regulations in connection with the operation of companies. Most company law hardships attributable to the COVID-19 pandemic can be resolved either by ordinary company related rules, or new provisory rules introduced by Government Decree 102/2020. (IV. 10.) on special provisions regarding partnerships and corporations during the state of emergency.

Personal presence during the decision-making process of a company

One common difficulty caused by the current pandemic during the operation of companies is related to the meeting of the supreme body of a company. According to the previously applicable law, the supreme body of a company was entitled to adopt decisions without the actual physical meeting of the members/shareholders (i.e. through written decision-making process or online meeting) only if the company's deed of foundation/articles of association contained provisions allowing for the above.

According to the newly passed Government Decree, if the supreme body is incapacitated, company resolutions may be passed through written decision-making process or via online meeting irrespective of the content of the underlying deed of foundation/articles of association, i.e. even if such document does not contain provisions enabling the above. Moreover, the personal meeting of the members/shareholders is forbidden according to the Government Decree.

Simplified decision-making process of companies

The Government Decree states that if decisions through written decision-making process or online meeting cannot be passed, the executive officer(s)/board is obliged – if there is no objection raised by a certain percentage of the members – to pass the following resolutions in relation to the company:

- (i) approval of annual report and decision on dividend;
- (ii) decisions falling within the competence of the supreme body of the company which are necessary a) to maintain the lawful operation of the company, b) to handle the emergency

situation, and c) in urgent matters arising in the course of the reasonable and responsible management of the company.

The above decisions passed by the executive officer(s)/board of the company remain in effect for a 90-day period after the end of the state of emergency, unless the members/shareholders approve the decisions passed by the executive officer(s)/board within the above period of time.

Deadline for the approval and submission of the annual report

As a general rule, companies with a January 1 – December 31 financial year shall approve and submit their annual reports until 31 May, which deadline has been extended until 30 September 2020 due to the current crisis.

The mandate of the office-holders of the company

The Government Decree states that if the mandate of the executive officer, board member, permanent auditor or the supervisory board member of the company expires during the state of emergency, the office-holder in question shall remain in office until the 90th day after the end of the state of emergency, unless the members/shareholders decide otherwise.

Personal presence for client identification purposes

When establishing a client relationship, attorneys-at-law shall first identify their clients before starting to work on the actual case. The applicable legal framework allows attorneys-at-law to identify their clients via electronic (audio-visual) communication networks audited by the Hungarian Bar Association, which are – among others – Skype, Microsoft Teams, Google Hangouts (Zoom has recently been deleted from the list); thus, no personal presence is required for identification purposes

The camera used by the client for the above purpose shall display all pages of the personal identification document used by the client, in such a way that the document shall be clearly visible and its data content shall be fully legible.

The process of the identification shall be recorded and shall be kept by the attorney-at-law for a period of time in accordance with the applicable rules on personal data processing.

Personal presence in case of signing of documents to be countersigned

As a general rule, if documents shall be countersigned by an attorney-at-law (which is required in corporate matters, real estate transactions and in certain other cases), the signing of such documents shall take place in the personal presence of the countersigning attorney-at-law or his/her alternate, or the signature shall be acknowledged as the own signature of the signing person in the presence of the attorney-at-law or his/her alternate.

However, the applicable law allows the attorneys-at-law to countersign the document if the above (the signing or the acknowledgment) takes places via audio-visual electronic communications network (Skype, Microsoft Teams, Google Hangouts etc.), thus no personal presence of the client in the law firm is required for signing; however, the hardcopies of the documents to be countersigned shall be sent to the law office.

The process of the identification shall be recorded and shall be kept by the attorney-at-law.

Legalisation of documents signed abroad

As a general rule, documents which shall be countersigned by a Hungarian attorney-at-law shall be notarised and in certain cases Apostilled if signed abroad. This provision may cause serious difficulties, as in several countries, notaries public and other competent authorities ceased to work due to the pandemic, and it has become difficult to obtain legalisation and Apostille certificates.

The Hungarian act on attorneys-at-law states that if a document is signed abroad and is countersigned by an attorney-at-law, no diplomatic certification or Apostille is required, which means that if the document in questions is countersigned in the above manner (via audio-visual electronic communications network), no formalities (notary or Apostille) are required, which method makes the procedure significantly easier.

This communication offers general comments on legal developments of concern to business organisations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.

Should you have questions in connection with the above or a company law issue under Hungarian law, contact your usual point of contact at Forgó, Damjanovic & Partners or write to us at office@fdlaw.hu.