Hungary

Financial Assistance

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INTRODUCTION

This guide sets out an overview of the concept of financial assistance in Hungary as regulated by Book 3 of Act V of 2013 on the Civil Code (the Civil Code). It sets out the position regarding:

- limited liability companies (*korlátolt felelősségű társaság* or KFT);
- private companies limited by shares (*zártkörűen működő részvénytársaság* or ZRT); and
- public companies limited by shares (*nyilvánosan működő részvénytársaság* or NYRT).

GENERAL OVERVIEW

What are the origins of financial assistance in Hungarian law?

The regulation of financial assistance in Hungarian law has its origins in Article 23.1 of the Second Company Law Directive of 13 December 1976 (77/91/EEC), which was incorporated into Hungarian law in 2004, the year when Hungary joined the European Union.

The provisions of European Parliament and Council Directive of 14 June 2017 (2017/1132/EU) relating to certain aspects of company law were implemented in the Civil Code; financial assistance is therefore currently regulated by Article 3:227 of the Civil Code.

What should be understood as financial assistance under Hungarian law?

The Civil Code does not define 'financial assistance'; consequently, it may include any type of assistance provided by the company to a third party so that this third party can acquire the shares issued by the company.

Is financial assistance accepted under Hungarian law?

The Civil Code states that public companies limited by shares (NYRT) shall be allowed to provide financial assistance to third parties for the acquisition of shares issued by the public limited company:

- only under market conditions;
- from the assets available for the payment of dividends;
- upon recommendation by the board of directors; and
- provided that the general meeting approved such decision by at least a three-quarters majority.

Hungarian law does not prohibit limited liability companies (KFT) and private companies limited by shares (ZRT) from providing financial assistance. In fact, Hungarian law regulates financial assistance only in relation to public companies limited by shares.

Are there any exceptions under Hungarian law as regards the general prohibition of providing financial assistance to third parties?

The Civil Code provides that public companies limited by shares (NYRT) may provide financial assistance if all the conditions below are satisfied:

- the financial assistance is provided at market conditions;
- its source can only be the funds of the company that could be used for the payment of dividends;
- the board of directors puts forward a proposal to the general meeting; and
- the general meeting consents to providing financial assistance with at least a three-quarters majority.

What are the consequences of providing financial assistance?
Contracts not satisfying the restrictions of the Civil Code (listed above) shall be null and void.

LIMITED LIABILITY COMPANIES

The Civil Code does not prohibit limited liability companies (KFT) from providing financial assistance. The Civil Code does not contain financial assistance-related provisions that would be applicable to limited liability companies.

PRIVATE AND PUBLIC COMPANIES LIMITED BY SHARES

General rules

Article 3:227 of the Civil Code contains restrictions only regarding public companies limited by shares (NYRT)

Exceptions to the applicability of the general rule as regards public limited companies

There are two exceptions to the general rule, which have applied since the beginning of 2022:

- acquisitions of shares by employees or employee organisations – ie, transactions intended to assist in the acquisition of shares (whether directly or indirectly) by:
    - employees of the public company limited by shares (including the employees of majority-controlled subsidiaries); or
    - employee organisations set up by such employees for the purposes of acquiring shares; and
- transactions concluded by banks and other credit institutions in their ordinary course of business.

A condition to applying the foregoing exceptions to the general rule is that the respective company’s equity shall not drop below its registered share capital as a result of the financial assistance provided.

CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

Civil penalties

Any agreement concluded in violation of the provisions of Article 3:227 of the Civil Code shall be null and void.

Liability of the directors

According to section 3:117 of the Civil Code, directors of a company limited by shares assume civil law liability towards the company for any damage caused to their company as a result of their breach of their duties or the law, which includes the breach of the prohibition of providing financial assistance.

In addition, in an insolvency context, the directors may be ultimately held liable by the company's creditors.

OTHER RELATED MATTERS

Mergers following acquisition of a company with borrowing by the acquiring company

Hungarian law does not regulate financial assistance in a merger context.

A common acquisition structure involves the acquiring company, which holds the acquisition debt, being merged with the target subsequent to the acquisition. As the ultimate result in these structures is that the acquisition debt is pushed onto the target and, therefore, the target is financing its own acquisition, one may find views raised that such structures are designed to circumvent the restrictions of financial assistance.

However, there is no express provision of Hungarian law or related jurisprudence that would specifically regulate such merger structures from a financial assistance perspective.
