

## Corporate Finance/M&A - Hungary

Rules and restrictions on financial assistance

Contributed by [Nagy és Trócsányi](#)

August 03 2011

Under Hungarian law, financial assistance is not generally prohibited, but is subject to certain restrictions under the Companies Act (IV/2006).

Financial assistance mainly takes the form of acquisition finance or upstream securities that a Hungarian subsidiary provides to a parent company (which is usually a non-Hungarian entity). Upstream securities are granted either as collateral to the parent company's credit facility or as acquisition financing. The restrictions on financial assistance are intended to protect the subsidiary's assets and equity.

Creditor protection is one of the basic principles of corporate law. Since limited liability companies and companies limited by shares are liable to their creditors alone, and as shareholders cannot be held liable for the company's obligations, the law provides for the protection of the company's assets and equity. The act provides that for the period of the company's existence, payments to (or for the benefit of) a shareholder from the company's equity can be made only from the company's post-tax profits (as defined in the Accounting Act.). Furthermore, payments are not permitted if the company's equity is below the level of its registered capital. The same rule applies if payment is made for the shareholder's benefit on the basis of a civil law agreement - rather than on the basis of its shareholding (ie, a corporate relationship) - and if such payment is inconsistent with responsible business operations. 'Payment' in this context may refer to cash or in-kind contributions.

Therefore, if a company provides financial assistance, either in the form of a cash payment for the acquisition of shares or by providing collateral for the parent company's credit facility, this qualifies as a 'payment' for the purpose of the rules and is subject to the accounting requirements.

If financial assistance is provided in contravention of these rules, all payments to the shareholder must be repaid to the company, provided that it can be shown that the shareholder acted in bad faith. According to certain legal interpretations, it may be possible to challenge any form of financial assistance agreement before the courts as null and void, but this view is untested in case law.

Companies limited by shares are subject to further restrictions. The Companies Act expressly provides that such companies may not provide loans or security or fulfil financial obligations before they fall due if the purpose of doing so is to assist in the acquisition of their shares by third parties. Agreements to the contrary are null and void. However, exceptions apply to:

- assistance with the aim of helping company employees (or employees of companies that are under the assisting company's majority control) to acquire company shares - this exception extends to entities established by such employees; and
- deals concluded by banks and other financial institutions in the ordinary course of business.

*For further information on this topic please contact [Viktória Szilágyi](#) at Nagy és Trócsányi by telephone (+36 1 487 8700), fax (+36 1 487 8701) or email ([szilagyi.viktoria@nt.hu](mailto:szilagyi.viktoria@nt.hu)).*

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).

ILO is a premium online legal update service for major companies and law firms worldwide. In-house corporate counsel and other users of legal services, as well as law firm partners, qualify for a free subscription. Register at [www.iloinfo.com](http://www.iloinfo.com).

Author

[Viktória Szilágyi](#)



---

**Online Media Partners**

© Copyright 1997-2010 Globe Business Publishing Ltd

