

New Civil Code – Substantial Changes In Regulation of Shareholding Companies

Upon the Civil Code taking effect, a shareholding company may only be established as a private limited company, limitation on the acquisition of treasury shares will be re-introduced and new types of shares may be created, the expert of Kovács Réti Szegheő outlined the major changes impacting shareholding companies to origo. As dr. Mónika Kapetz pointed out, among further changes, new deadline will be introduced for mandatory capital decrease and the rules on disbursement of interim dividend will also be amended.

With the Act V of 2013 (Civil Code) taking effect as of 15 March, 2014, the business associations will no longer be regulated in a distinct act: the relevant provisions have been included in Book Three regulating legal persons, the expert of Kovács Réti Szegheő Attorneys at Law preludes.

The permissive nature of the Civil Code is deemed an innovation compared with the cogency of the Act on Business Associations, as the latter regulated the companies in a manner not permitting any divergence while the provisions of the Civil Code are permissive in nature which means, the parties may diverge from these in their contracts. Wherever the Civil Code permits no divergence, it explicitly rules that any provision to the contrary shall be null and void, underlined dr. Mónika Kapetz.

The Civil Code no longer regulates the private company limited by shares (“Zrt.”) and the public limited company (“Nyrt.”) in a distinct chapter: wherever there is a difference in respect of the “Nyrt.” the Civil Code stipulates it under a distinct section.

Quantitative Limitation In Case of Acquisition of Treasury Shares

In respect of the acquisition of treasury shares, quantitative limit is to be re-introduced, therefore the company may not acquire shares issued by it in the value exceeding 25 per cent of its capital equity.

Pursuant to the new regulation of the Civil Code, in the event of acquisition of treasury shares in a manner violating the law, no alienation thereof shall be permitted. According to the new provisions, the treasury shares acquired through violation of law shall be withdrawn by capital decrease moreover, if the number of treasury shares acquired is not ascertainable, all treasury shares shall be withdrawn.

Can New Shares Be Created?

A new phenomenon is that although the Civil Code sets out share types according to the rights exercisable thereby, for reason of the aforementioned permissive nature, the companies may enable the issuance of shares granting varied rights in their memorandum and articles of association.



The condition thereof shall be that the memorandum and articles of association determine the substance and extent of rights incorporated in the shares to be issued, reveals the expert of Kovács Réti Szegheő Attorneys at Law.

Formation Mandatory In Private Company Form

From the Civil Code taking effect, shareholding companies may only be established in private form: according to the legislative intent, the investors' interests will be better served which means, public collection of shareholders and capital equity will no longer be permitted.

Interim Dividend Payment

The new regulation determines the mandatory elements of the memorandum and articles of association and provides for those that are not mandatory. However, in case the founders wish to provide for such issues, it may only be done validly in the memorandum and articles of association. Such are for instance limitation of certain rights pertaining to the shares, the rules of transformation of shares into other type, class or series of shares from convertible or subscription shares.

The rules on disbursement of interim payment are to be changed too. On the one hand, prior authorisation by the memorandum and articles of association will no longer be required for the shareholders' meeting to be able to pass a resolution thereupon. On the other hand, it may be decided on the basis of the board of directors' proposal and at such companies where a supervisory board operates, the approval thereof will also be required.

In case, following the disbursement of interim dividend, it is ascertainable from the annual report that there is no possibility for payment of dividend, the shareholders, upon the instruction of the company are bound to repay the interim dividend. Pursuant to the new regulation, it will no longer be required for the shareholders to preliminarily assume the risk of repayment, dr. Kapetz Mónika emphasised.

Management and Capital Equity

The New Civil Code upholds the earlier regulation on management however, the maximum number of board members will not be determined.

In case of mandatory capital decrease, the Civil Code introduces a new deadline: the shareholders' meeting will be bound to pass a resolution within 60 days following the emergence of the event giving rise to the obligation.

In case of capital decrease, the range of exceptions out of securities that may be required by the creditors will be broadened. Moreover creditors may not require security in the event of statutory capital decrease. The revision of a resolution on refusing security or deeming it insufficient – that the company will have to provide with reasoning – may be required by the affected creditor within 8 days from receipt thereof from the court of registry; a significant amendment of the Civil Code is that this deadline shall be preclusive.



New Regulations Are Advisable To Consult

Apparently from the aforementioned, the legislator has relied on the contemporaneous and effective legislation and instituted modifications only to such an extent as the altered economic and social conditions have deemed necessary.

It is important though that after the new Civil Code has become effective, in the course of company law application, the usual routine not be automatically followed but the new rules be consulted, the expert of Kovács Réti Szegheő advised.