

The Hungarian financial branch of a foreign financial undertaking seated in an EEA member state, established according to the Act n° CXXXII of 1997 on the Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies (hereinafter: the Act), does not have the capacity to be a party in legal proceedings.

According to Article 48 of the Code of Civil Procedure, the party in legal proceedings must have the necessary legal capacity under national civil law. Natural persons and legal persons, including the state, are accorded legal capacity, consequently they have the capacity to be a party in legal proceedings: they are entitled to sue, to be sued and they can intervene in an action. A legal rule may confer the capacity to be a party in legal proceedings to a legal entity that does not have legal personality.

The Hungarian branch of the foreign undertaking is an organisational unit of a foreign undertaking. It does not have legal personality but enjoys management autonomy and it has been registered in the national company register. According to Article 3, paragraph (1) of the Act the foreign undertaking may engage in business activity through its branch registered in the Hungarian company register, and in connection with the activity of the branch it is the branch that shall act vis-a-vis, for example, an authority – unless otherwise stipulated by law. Pursuant to Article 11, paragraph (1) of the Act the foreign undertaking shall ensure continuously the assets necessary for the operation of the branch and for recovering debts. The foreign undertaking and the branch shall have unlimited, joint and several liability for the debts generated in the course of the operation of the branch. According to Article 10, paragraph (2) of the Act the foreign undertaking shall dispose of the property, rights and obligations acquired under the business name of the branch only if the branch ceases to exist, in the course of insolvency proceedings determined in the Act, or in the course of proceedings initiated abroad in connection with the property, rights and obligations acquired under the business name of the branch. Article 10, paragraph (1) of the Act unambiguously states that the branch shall not represent the foreign undertaking. The rules concerning the branches vary depending on whether the foreign undertaking is registered in an EEA member state or not. According to Article 17, paragraph (1) of the Act, for example, it is only under certain conditions that the branch of a foreign undertaking registered in a non-EEA state is not obliged to have permission for acquiring immovable property.

The financial independence and legal capacity of the general branch, to which Article 24 of the Act does not apply, is ensured primarily by Article 3, paragraph (1) and Article 10 of the Act. The general branch has the capacity to be a party in legal proceedings.

Different rules apply, however, to financial branches. Article 24, paragraph (1) determines the range of financial undertakings. The Hungarian branches of these are financial branches, as well as the Hungarian branches of non-financial undertakings seated abroad that carry out activities enlisted in the paragraph mentioned above. The Hungarian branches of foreign credit institutions and insurance companies are clearly financial branches, to which the provisions of the Act concerning establishment, operation and insolvency proceedings shall apply only if another legal rule as *lex specialis* does not provide otherwise.

With respect to financial branches, the Act makes a distinction between the Hungarian branch of a foreign undertaking registered and seated in an EEA member state and the financial branch of an undertaking registered and seated in a non-EEA state. The Hungarian branch of an undertaking registered in an EEA member state, in contrast to the general rules of company law, comes into being with its establishment and not with its registration into the company register.

The financial branch established by a foreign undertaking seated in an EEA member state – in contrast to the provision of Article 10, paragraph (1) concerning general branches – represents and acts in the name of its founder. This means that such a branch cannot be a party in legal proceedings, it can only represent the founder in legal proceedings. The Curia holds the opinion that the provision of Article 24, paragraph (1) of the Act shall not apply because it does not allow for a separate act to include a provision deviating from the regulation of the Act relating to legal capacity. Concerning the capacity of a financial branch seated in an EEA member state to be a party in legal proceedings there is no provision different from the Act in any related sectoral legal rule.