

Hungary

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A. General Aspects

1. Asset Deal vs. Share Deal: Essential Considerations

In Hungary, a share transfer is more commonly used than an asset transfer as a form of a transaction.

An asset transfer may be preferable when tax issues are identified during a due diligence investigation and the purchaser does not wish to address such issues after the acquisition. Alternatively, parties may also opt for the asset transfer when the number or nature of the assets to be transferred make it unreasonable to transfer the shares of an entire company.

An asset transfer, however, may involve higher transaction costs, as additional transfer taxes may arise as compared to a share deal (please note that as of January 1, 2010, new transfer tax rules will be introduced regarding share deals). Also, approval from third parties is required in many instances in order to continue certain contracts or otherwise. Also, the parties may face license and/or permit issues as certain licenses and/or permits may require special procedures in order to be transferred or may not be transferred at all.

With respect to merger clearance, there is no difference as to whether a transaction is accomplished via an asset transfer or share transfer, as it is always the business unit acquired that is relevant and not the form of the acquisition.

2. Distinction between Sale and Transfer in Rem

Hungarian law does not distinguish between sale and ‘transfer in rem’. Nevertheless, the Hungarian legal system also acknowledges title transfer by way of mere endorsement of bearer securities or notes in certain cases, but such arrangement would not necessarily equal a ‘transfer in rem.’

In general, in Hungary, for the acquisition of ownership, in addition to the contract for transfer and other legal titles, the item must be handed over. The handover shall be accomplished by the actual transfer of possession of the asset or in any other way to substantiate beyond doubt that control of the asset has been conveyed from the seller to the purchaser.

There are special cases, however, where there are further formalities that need to be followed in order to complete a title transfer.

3. Regional Differences

In Hungary, there are no regional differences as regards the legal requirements in connection with the transfer of assets.

4. Acquisition by Foreigners

In Hungary, in general, there is no distinction with regard to the acquisition of assets by foreign entities, however, in some cases there are restrictions or approval requirements. For example, purchasing real property by foreigners may be excluded or may be subject to authorization.

5. Public Registers, Records and Databases

In Hungary, there is no central institution that maintains all relevant information concerning asset transfers.

The Register of Companies includes relevant company information (e.g., legal form, powers of representation, registered capital, capital increases, etc.). In addition to this, the register includes the financial statements of the companies, if they have been filed. These sources are available to everyone. The applicable laws determine the obligations related to registration as well as the consequences thereto. Also, strict procedural rules are specified by such laws.

The Land Registration Office issues land certificates (*tulajdoni lap*) regarding real property in Hungary, including size, qualification, ownership and charges. The land certificates, which include public information, can be obtained and inspected by everybody, however, the documents in which the registration is based can be inspected only with the approval of the interested parties. The applicable laws determine the obligations related to registration as well as the consequences thereto. Also, strict procedural rules are specified by such laws. Most of the registered information may be relied upon by any third party, however, there is certain information that is available only for information purposes.

The Land Registration Office issues land usage certificates (*földhasználati lap*), as it has a public registration regarding usage rights (*használat*) and usufruct leases (*haszonbérlet*) in Hungary. Again, there are detailed procedural rules regarding registration and to what extent the public can rely on the registered information.

Liens concerning movable assets and floating charges must be recorded in the register maintained by the Hungarian Association of Notaries Public (lien register), which can be inspected by everybody. Again, there are detailed procedural rules established regarding the registered information.

Finally, patents, plant variety protections, utility model protections, trademarks, industrial designs and other IP rights are registered by the Hungarian Patent Office, which is public. However, regarding the copyrights, no such information is available as copyright registration is not required in Hungary.

6. Purchase Price Requirements

There are no restrictions as to currency. There is no minimum price regulated, but price should be fixed with respect to each asset. There are various tax and accounting laws to be taken into account (e.g., fair price at arm's length, etc).

B. Tangible/Movable Assets

1. Characteristics as to:

a) Language of Documentation. The transfer documents regarding tangible assets can generally be prepared in any language. However, depending on the specific tangible asset, the document may need to be submitted to various authorities (e.g., real property transfer) in which case an official translation is required. If for technical reasons the official translation would be incapable of registration (due to improper expression etc.), the Hungarian version should be prepared as the controlling version.

b) Form of Documentation. The transfer of tangible assets generally does not require special form and therefore may be concluded either in written or oral form, except, however, in certain cases (e.g., transfer of real property) where the special form and special signature (e.g., countersigning by attorney-at-law) is required. The documents can be executed outside Hungary, except where in certain cases (e.g., transfer of real property) a special verification procedure would be required for the signing abroad (e.g., apostille). Signing in counterparts is not specifically restricted but it is advisable to check this issue in light of the specific transaction since some authorities may not accept signing in counterparts.

c) Specification of Assets. A general description of the assets to be transferred is not sufficient. In order to ensure that anyone can identify the assets to be transferred without any doubt, the transfer requires that each asset be described. In certain cases there are specific requirements (e.g., in case of real property transfer, please see below).

2. Administrative, Corporate and Other Approvals

- (i) The transfer of tangible assets generally does not require special governmental or administrative approvals, however, in some cases, authority approval is needed (i.e. in the case of the transfer of firearms, nuclear weapons, etc.). If such consent is required for the validity of the agreement, the agreement shall not come into existence until this approval has been given. In the absence of consent or approval, the agreement is invalid. For special rules regarding real property please see below.
- (ii) The approval of corporate bodies regarding the seller and/or the purchaser is not required by the law, however, the articles of association or the deed of foundation of the company could stipulate these approvals. If such approval is not granted or is missing, then the so concluded agreement would not automatically become invalid. Instead, the internal limitations, in the event that the document is signed by a duly authorized representative, are ineffective vis-à-vis third parties.

- (iii) In case the assets are encumbered, the approval of the security holder is not required as a general rule.

3. Filing Requirements

Regarding the transfer of tangible assets, there is generally no requirement that a filing be made with public authorities or that registrations be made in public registers or databases; however, in certain cases such filings and registrations are required (e.g., real property, motor vehicle, etc.) and the transfer may not be completed without registration.

4. Automatic Transfer of Encumbrances

If the assets are subject to encumbrances, such encumbrances are fixed on the asset and not linked with the owner of the asset, as a general rule. Therefore, such encumbrances would continue to encumber the assets even after the purchaser acquires title to them.

The seller shall be entitled to retain title of ownership only upon the execution of the agreement, in writing, until the purchase price is paid in full. During the operative period of title retention, the purchaser shall not alienate and/or encumber the asset.

C. Real Property**1. Characteristics as to:**

a) Language of Documentation. The sale and purchase agreement concerning real property could be prepared in any language, however, as per Hungarian laws, the sale and purchase agreement regarding real property shall be countersigned by a Hungarian attorney at law or a notary public and the transfer document shall be filed with the Hungarian Land Registry Office and Hungarian Tax Authority, therefore, the bilingual version of the documents or official translation thereof is necessary.

b) Form of Documentation. The transfer of a real property and any transaction for the creation, modification or termination of ownership, beneficial ownership, right of use, appurtenant easement, purchase right or mortgage (independent lien) may be registered on the basis of a notarial document or a private document countersigned by a Hungarian attorney-at-law. In addition, there are several formal requirements specified by law as to contents of the transfer document.

The documents can be executed outside Hungary, however, the formal requirements of an execution in a foreign country (notarization, apostille, legalization) should be considered.

Signing in counterparts is permissible if all other formal requirements are fulfilled with respect to each version.

c) Specification of Assets. A general description of the real property is not sufficient, the precise description of real property is necessary for the registration and therefore

for the title transfer. The description shall include the city where the property is located and the topographical lot number of the property (*helyrajzi szám*). In practice, parties include other information as well, such as size and number of rooms.

2. Administrative, Corporate and Other Approvals

- (i) Arable land: Under Hungarian law, the transfer of the ownership rights of arable land is subject to restrictions and prohibitions. Hungarian private individuals or legal entities may purchase real property freely; however, in the case of arable land, a Hungarian private individual may acquire ownership rights up to the limit of 300 hectares in terms of size or 6000 Gold Crowns (*Aranykorona*) in terms of quality rating. In addition, Hungarian legal entities or organizations that are not legal entities may not acquire ownership rights of arable land. The provisions pertaining to resident private individuals shall apply to the EU national wishing to settle in Hungary to independently engage in agricultural production, and who has been legitimately residing in Hungary for at least three consecutive years and is pursuing agricultural activities. EU nationals are required to provide proof of eligibility for acquiring title of ownership in the form of official certificates. They are also required to provide guarantees for future commitments fixed in a private document of full probative force or in a public document.

Non-arable land: Non-resident legal entities or private individuals may acquire title of ownership to real property not qualifying as arable land by authorization from the administrative authority of competence. EU nationals and legal persons and entities without legal personality established in any Member State of the European Union, in a Member State that is a party to the Agreement on the European Economic Area, or in other similar States, may acquire title of ownership of non-agricultural land under the same conditions applicable to resident persons (without special permission) with the exception of properties serving as a secondary place of residence, which may be acquired subject to permission by the administrative authority until December 31, 2011. From this time on, the restrictions will be deleted. EU nationals shall be entitled to acquire only one property under the title of principal place of residence during this transitional period.

Any agreements on the transfer of real property breaching the restrictions detailed above (for example, an agreement on the transfer of arable land to a non-resident legal entity) are null and void. In case of transfer of non-arable land to a non-resident legal entity or private, the agreement qualifies as non-existing without the approval of the administrative authority.

- (ii) The approval of corporate bodies regarding the seller and/or the purchaser is not required by the laws, however, the articles of association or the deed of foundation of the company could stipulate these approvals. If such approval is not granted or missing, then the concluded agreement would not automatically become invalid. The internal limitations, in case the document is signed by duly authorized representative, are ineffective vis-à-vis third parties.

- (iii) In case the real property is encumbered, the approval of the security holder is not needed for the transfer.

3. Filing Requirements

In case of transfer of real property, an application must be filed with the Land Registration Office within 30 days as of the date of the document (or statement) that is the basis of registration or, if an authority approval is needed for registration, within 30 days as of the authority approval. The document that is the basis of registration and other documents must be also filed along with the application. The Land Registration Office notifies the Tax Authority regarding the application and the Tax Authority deals with transfer tax issues accordingly. If the application and the filed documents are capable of being registered, the Land Registration Office registers the transfer.

In fact, registration by the Land Registration Office shall create the ownership right for the purchaser based on the transfer document. Without registration, the purchaser does not acquire proper title effective vis-à-vis all third parties. Nevertheless, it is possible to acquire title outside the scope of land registration, but such title is ineffective vis-à-vis bona fide third parties that rely on the land registration.

4. Automatic Transfer of Encumbrances

In case the real property is subject to encumbrances, the transfer of the title to the property would not effect the existence and registration of such encumbrances.

The waiver of encumbrances shall be made in such special form as the creation of such encumbrance requires. In certain cases formalities are not that strict; for example, banks may issue their waiver of mortgages by the mere execution of their duly authorized representatives.

5. Automatic Transfer of Lease Agreements

If the real property is subject to a lease agreement, such lease agreement is automatically transferred to the purchaser. There is no automatic right for the purchaser or the tenant to terminate the lease agreement upon acquisition.

A lease agreement concluded for an indefinite period of time may be terminated by either party by a notice specified in the agreement or the law. A lease agreement concluded for a definite period of time cannot be terminated by the purchaser unless the tenant has misled the purchaser regarding the existence of the lease or material lease conditions.

D. Contracts

1. Characteristics as to:

a) Language of Documentation. According to Hungarian legal rules, transfer of contracts is not possible, and ‘novation’ does not exist in Hungary. However, parties may transfer contracts de facto by way of simultaneous assignment of claims and assumption of debts, which requires the consent of third parties. The document regarding the de facto transfer of contracts can be prepared in any language. Bilingual documents are permissible.

There are some exceptions to the general rule. For example, employment contracts are automatically transferred to the new owner in an asset transfer and certain contract portfolio transfers may be possible pursuant to specific laws. In these cases, no consent is required from third parties but specific laws require a licensing procedure to effect the closing of the transfer (e.g., Insurance Act, Act on Investment Firms, Banking Act, etc).

b) Form of Documentation. As a general rule, the documentation does not have to adhere to a special form, therefore, the agreement may be concluded either in written or oral form, however, the written form is strongly recommended for evidentiary purposes. There are some cases (e.g., specified by the Labor Code, Insurance Act, Act on Investment Firms, Banking Act, etc). when special formalities must be complied with in order to complete the transfer.

Documents can be executed outside of Hungary, in which case the authentication of the signature may be required. Signing in counterparts is permissible as general rule.

c) Specification of Contracts. The general description of contracts would not be sufficient unless each contract could be identified without any doubt based on such general description. The list of contracts (claims and debts) may be attached to the agreement, but this is not compulsory.

2. Administrative, Corporate and Other Approvals

(i) As a general rule, the transfer of contracts (assignment of claims and assumption of debts) does not require special governmental or administrative approvals.

However, there may be certain cases when an authority approval is required for the validity of the agreement, in which case the agreement shall not come into existence until this approval has been given (e.g., in the case of transfer of portfolio as regulated in the Banking Act, Act on Investment Firms, Insurance Act, etc.). In the absence of approval, the agreement is invalid.

(ii) The approval of corporate bodies regarding the seller and/or the purchaser is not required by law, however, the articles of association or the deed of foundation of the company could stipulate these approvals. If such approval is not granted or is missing, then the so concluded agreement would not automatically become invalid. The internal limitations, in case the document is signed by duly authorized representative, are ineffective vis-à-vis third parties.

- (iii) Under Hungarian law, claims that are bound to the person of the claimant and claims whose assignment is not permitted by legal regulation shall not be assigned. The debtor must be notified of the assignment, otherwise the debtor is entitled to perform services to the seller of the receivable notification.

In the case of assumption of debts, the approval of the claimant is required. If the claimant does not give such consent, the purchaser shall make arrangements to enable the seller as obligor to perform at maturity, however, the agreement between the seller and the purchaser is valid. If the claimant approves the assumption of debts, the person assuming the debt shall subrogate the seller.

For certain types of contracts (e.g., employment agreements, lease agreements, etc.) exceptions apply. Failure to comply will invalidate the transfer.

3. Automatic Transfer of Contracts (Other than Lease and Employment Agreements)

Security contracts creating encumbrances transfer automatically as they have in rem effect.

4. Filing Requirements

As a general rule, the transfer of contracts (assignment of claims and assumption of debts) does not require filings with public authorities or registration in registers or (online) databases, except in the special cases mentioned above relating to transfer of portfolio as defined in the Banking Act, Insurance Act, Act on Investment Firms, etc.

5. Treatment of Existing Contractual Claims and Obligations

In the case of assignment of claims, the assignee shall be entitled to enforce the objections and offset the counterclaims against the assignee that arise with regard to the assignee on the legal grounds prevailing at the time of notifications. The assignor shall, as a suretyship, be liable for the obligor's services to the assignee, up to the value of the consideration received in return for the assignment unless (i) he has assigned the claim to the assignee expressly as an indefinite claim, or (ii) he has otherwise excluded his liability.

In the case of assumption of debts, if the claimant approves the assumption of debts, the person assuming the debt shall subrogate the seller as obligor. Such person shall be entitled to all rights to which the seller was entitled in respect of the claimant, however the purchaser shall not be entitled to offset the seller's existing claims against the claimant. The suretyship and liens securing a claim shall cease to exist upon the assumption of debt in the absence of statements of approval from the surety and the obligor of the lien. Please see also D, 2 above.

6. Warranty Claims Resulting from Events prior to Transfer

As a general rule, in the case of assumption of debt the purchaser assuming the debt shall subrogate the seller. Therefore, the purchaser liable for warranty claims resulting from events prior to the transfer of the assets affected. In case of consumer contract, the purchaser as the obligor of the consumer contract shall be entitled to demand compensation from the previous obligor, i.e. from the seller. Special provisions concerning indemnifications are recommended, but not mandatory.

E. IP Rights

1. Characteristics of Intellectual Property Rights (e.g., Trademarks, Patents, Utility Models, Domain Names) (“*IP Rights*”) as to:

a) Language of Documentation. The sale and purchase documents regarding intellectual property rights may be concluded in any language. With respect to registered IP Rights (trademarks, patents, domain names, etc.) the documents to be submitted in some cases shall be in Hungarian also, therefore, the preparation of bilingual documents is strongly recommended. In addition to this, a Hungarian representative (patent attorney or attorney at law) shall be appointed in the case of a non-Hungarian applicant appearing before the authorities, except if the registered seat or the address of the applicant is in the territory of the European Economic Area.

Please note that according to the Hungarian law, in the case of copyrights, the author cannot assign or waive its moral rights, and economic rights can be assigned and transferred in the cases and under the conditions specified in law.

b) Form of Documentation. In some cases, the sale and transfer documents concerning IP Rights require written form (e.g., assignment of economic rights, transfer of collective trademarks, licensing agreements, etc.). In addition to this, the transfer documents generally shall be filed with the relevant authorities in order to register the purchaser as the new owner of the IP Rights, therefore, the documents shall be in written form. The documents can be executed outside Hungary, and signing in counterparts is permissible.

Please note that in case of a sale of a business or a business unit, the legal successor of a legal entity also obtains the trademark unless the parties specify to the contrary, or the circumstances clearly dictate otherwise.

c) Specification of IP Rights. The principle of identification shall be applied to the transfer of IP Rights; therefore, the IP Rights to be transferred shall be specified identifiably. To that end, the appending of a list of IP Rights to the documents is recommended.

2. Administrative, Corporate and Other Approvals

The transfer of IP Rights does not require special governmental or administrative approvals. The law does not require the approval of corporate bodies regarding the seller and/or the purchaser.

In case the IP Rights are encumbered, the approval of security holder is not needed for the transfer. For further details, please see B, 2 above.

3. Filing Requirements

Except for copyright, the IP Rights require special filings with public authorities or registrations in registers or databases. If the IP Rights are transferred, the change of the ownership rights shall be registered, as well. However, such registration is merely of a declaratory nature and does not affect the validity of the transfer.

In opposition to any third parties who have obtained rights in good faith in exchange for consideration, any rights pertaining to trademark protection may only be referred to if they have been recorded in the Trademark Register.

4. Applicable International (Multilateral) Agreements or Treaties

Hungary participates in the following agreements and conventions:

- TRIPS Agreement,
- Paris Convention for the Protection of Industrial Property,
- Universal Copyright Convention,
- Bern Convention,
- WIPO Copyright Treaty,
- WIPO Performances and Phonogram Treaty, and
- Patent Cooperation Treaty.

In addition to this, Hungary signed the Trademark Law Treaty, Madrid Agreement and the Madrid Protocol regarding trademarks and the Nice Agreement.

F. Receivables

1. Characteristics as to:

a) Language of Documentation. The transfer documentation can be prepared in any language, including English. The documents can be executed bilingually.

b) Form of Documentation. The transfer of receivables is basically an assignment of debts (*engedményezés*) in Hungary. The assignment may be made with a contract in any form, and the written form is not mandatory. However, to avoid any disputes, the written form is recommended.

Upon assignment, the debtor must be notified regarding the assignment, otherwise the debtor may continue to perform with respect to the seller until such notice.

The transfer documents can be executed outside Hungary and signing in counterparts is permissible.

c) Specification of Receivables. The description of the receivables must be detailed, and a general description is not sufficient. There are no requirements that schedules or lists of receivables be attached to the agreement, however, this is recommended.

2. Administrative, Corporate and Other Approvals

- (i) As a general rule, the transfer of receivables does not require special governmental or administrative approvals. If the consent of an official or third party is required for the validity of the agreement, the agreement shall not come into existence until this approval has been given. In the absence of approval, the agreement is invalid.
- (ii) The approval of corporate bodies regarding the seller and/or the purchaser is not required by the law, however, the articles of association or deed of foundation of the company could stipulate these approvals. If such approval is not granted or missing, then the so concluded agreement would not automatically become invalid. Instead, the internal limitations, in case the document is signed by a duly authorized representative, are ineffective vis-à-vis third parties.
- (iii) The assignment of a debt does not require the consent of the debtor.

3. Filing Requirements

The transfer of receivables does not require special filings with public authorities or registration in registers or (online) databases. Upon assignment the debtor must be notified regarding the assignment, otherwise the debtor may continue to perform with respect to the seller of the receivable until such notice.

G. Liabilities

1. Characteristics as to:

a) Language of Documentation. The transfer documentation can be prepared in any language, including English. The documents can be executed bilingually.

b) Form of Documentation. The transfer of liabilities is a transfer of debts (*tartozás átvállalása*) in Hungary. The transfer may be made with a contract in any form, and the written form is not obligatory. However, to avoid any disputes, the written form is recommended.

The transfer is effective with respect to the creditor only once the creditor has approved the transfer.

The transfer documents can be executed outside Hungary and signing in counterparts is permissible.

c) Specification of Liabilities. The description of the receivables must be detailed, and a general description is not sufficient. There are no requirements for attaching schedules or lists of receivables to the agreement, however, this is recommended.

2. Administrative, Corporate and Other Approvals

- (i) As a general rule, the transfer of liabilities generally does not require special governmental or administrative approvals. If the consent of official approval or third party is required for the validity of the agreement, the agreement shall not come into existence until this approval has been given. In the absence of approval, the agreement is invalid.
- (ii) The approval of corporate bodies regarding the seller and/or the purchaser is not required by the laws, however, the articles of association or deed of foundation of the company could stipulate these approvals. If such approval is not granted or missing, then the so concluded agreement would not automatically become invalid. Instead, the internal limitations, in case the document is signed by a duly authorized representative, are ineffective vis-à-vis third parties.
- (iii) Approval from the creditor is necessary. The transfer is effective with respect to the creditor only once the creditor approved the transfer.

3. Filing Requirements

- (i) As a general rule, the transfer of liabilities does not require special filings with public authorities or registrations into registers or (online) databases. However, there are certain liabilities that require an authority filing and approval (e.g., transfer of an environmental liability).
- (ii) No notification is required to the creditor, but the creditor should approve the transfer; please see above.

4. Purchaser's Liability for:

a) Tax Obligations. The purchaser is not liable for tax obligations unless tax liabilities are attached to the asset (e.g., tax on real property etc.).

b) Environmental Contamination. Liability for environmental damage or for any risk to the environment shall be joint and several – pending proof to the contrary – upon the person who is registered as the owner or possessor (user) of the property after environmental damage or threat to the environment has occurred on which the activity resulting in damage to the environment or posing imminent threat to the environment was carried out. The owner shall be exempt from joint and several liability if it is able to identify the actual user of the real property and to provide proof beyond reasonable doubt that liability does not lie with the owner. These provisions shall apply to the owners and the possessors (users) of non-stationary (mobile) contaminating sources.

Damage caused to other parties by virtue of activities or negligence entailing the utilization of the environment shall qualify as damage caused by an activity endangering the environment. If the person or the entity performing an unlawful activity changes, the rules of the liability of the legal successor shall be applied to the person or entity performing the activity, unless the parties have agreed otherwise in an agreement.

c) Products Sold or Services Rendered by the Seller to Third Parties. As a general rule, in case of assumption of debt, the purchaser assuming the debt shall subrogate the obligor (seller). Therefore, the purchaser liable for warranty claims resulting from events prior to the transfer of the assets affected. In case of a consumer contract, the purchaser, as the obligor of the consumer contract, shall be entitled to demand compensation from the previous obligor, i.e. from the seller.

5. Automatic Transfer of Other Liabilities

No liabilities of the seller automatically transfer to the purchaser except as described under G, 4 above.

6. Contractual Protection as to 4 and 5 above

It is customary to include special provisions such as indemnifications clauses regarding those issues.

H. Employees

1. Transfer of Employees

The employees of the seller automatically transfer to the purchaser due to the asset transfer. (Pursuant to the Hungarian Labor Code, an asset transfer occurs when an independent unit (such as a strategic business unit, plant, division, workplace or any section of these) or the material and non-material assets of the employer are transferred by an agreement to an organization or person, if such transfer takes place within the framework of a sale and purchase agreement).

In connection with legal succession, the rights and obligations of the predecessor (seller) concerning the employment relations existing at the time of succession shall be transferred to the successor (purchaser) at the time of succession. This means that the terms of employment (such job profile, remuneration, benefits, hours, location, etc.), not including the work order, as prescribed in the collective agreement applicable to the predecessor at the time of succession, if any, shall be honored by the successor employer, in respect to the employees affected by the succession (In case of an existing collective agreement, there are special rules regarding its cancellation).

The asset transfer does not require the modification of the employment agreements of the employees concerned by the transfer, but it does not exclude the modification of the existing employment contracts nor the termination thereof, both with the mutual consent of those employee that are transferred to the purchaser.

Judicial practice and commentary establish that the mere fact of asset transfer shall not give rise to grounds to serve ordinary notice to employees transferred to the purchaser; however, should the operation of the affected activity require fewer employees as a result of the asset transfer, the purchaser may serve ordinary notice to those employees whose work is not required any more. (If an employment relationship is terminated by ordinary notice, the employee shall be entitled to a notice period and severance payment, the amount of which depends on the length of his/her employment with the employer.)

The predecessor (seller) and the successor (purchaser) employer shall be subject to joint and several liability for liabilities incurred prior to legal succession if such claims are enforced within one year of the legal succession.

If an employee is terminated by the legal successor employer within one year of the date of legal succession (i) by ordinary dismissal for reasons in connection with the employer's operations or (ii) by termination of the employment relationship concluded for a definite period of time, the legal predecessor employer shall, as a surety, be liable for the employee's compensation due upon termination of the employment. The surety liability shall apply if (i) the predecessor employer, (ii) the company controlled by the predecessor employer, (iii) the majority owner of the predecessor employer, or (iv) the company in which the majority owner is an organization referred to above (iii) holds more than fifty percent of the votes in the supreme body of the successor employer.

2. Approval of Works Council, Trade Union or Other Institutions

Employers (both seller and purchaser) shall consult the trade union or workers' council, if any, prior to adopting a decision in connection with the plans for actions affecting a large group of employees, in particular those related to proposals for the employer's re-organization, transformation, the conversion, privatization and modernization of a strategic business unit into an independent organization.

During the consultations, the predecessor and the successor employer shall, within 15 days prior to the date of successions, inform the local trade union branch, or, if there is no trade union, the workers' council, or, if there is no workers' council, the committee formed from the representatives of non-union employees, concerning (i) the schedule or proposed date of legal succession, (ii) the reasons, (iii) the legal, economic, and social consequences affecting the employees, and shall initiate talks aiming to reach an agreement concerning other proposed actions that affect the employees.

If an employer violates the rights of the workers' council or the trade union detailed above, the workers' council or the trade union affected may seek remedy in court.

3. Contractual Protection as to Labor Issues

Depending on the circumstances of the given transaction it may be customary to include special provisions as the employees in the asset sale and/or transfer agreement.

I. Tax Implications

1. Value Added Tax

On June 1, 2009, the general rate of 20% applies, with some minor exceptions. As from July 1, 2009 the general rate shall increase to 25%.

2. Real Property Transfer Tax

In Hungary, the purchaser of real property shall pay a so-called duty on the transfer of real property to the tax authority. In case of an onerous transfer, the rate of the duty is 10% of the market value of the respective piece of real property, that is, in most cases 10% of the purchase price established in the sale and purchase agreement. The rate of the duty is different in apartment purchases, since it is 2% of the market value up to 4 million HUF and 6% of the part above 4 million. Companies dealing in the sale and purchase of real property as their primary business, shall pay 2% duty (please note that as of January 1, 2010 new rules will be introduced).

The duty on transfer is already due upon the conclusion of the sale and purchase agreement and not only after the transfer of the piece of real property is completed and registered in the land register.

Gifts of real property or gifts of movable property (non onerous transactions) shall be subject to duty payment on gifts. The rate and base of the duty depends on the subject of the gift and its market value as well as the status of the parties to the transaction.

3. Other Tax Issues

There are no other noteworthy tax issues.

J. Bankruptcy Law

1. Challenge of Asset Transfer in Case of Insolvency

According to the Hungarian law, all assets held by the “economic operator” under bankruptcy or liquidation proceeding at the time of the opening of proceedings, as well as all assets acquired during the proceeding, shall be the subject of the bankruptcy or liquidation proceedings. The assets of an economic operator shall comprise all assets it owns or controls. Assets or subsidiary companies shall also be considered assets of the economic operator.

Any creditor or the liquidator (receiver) may bring action during the liquidation proceeding for the court to establish that the former executives of the economic operator failed to properly represent the preferential rights of creditors in the span of the three years prior to the opening of liquidation proceedings in the wake of any situation carrying potential danger of insolvency (including the clearing up of environmental damages), in consequence of which the company’s assets diminished to the extent specified.

In addition to this, the creditor, and the receiver, on behalf of the debtor, may file for legal action before the court within 90 days from the time of gaining knowledge or within one year from the date of publication of the notice of liquidation to contest concerning (i) contracts concluded by the debtor within five years preceding the date of when the court received the petition for opening liquidation proceedings or thereafter, or his other commitments, if intended to conceal the debtor's assets or to defraud any one creditor or the creditors, and the other party had or should have had knowledge of such intent, (ii) contracts concluded by the debtor within two years preceding the date of when the court received the petition for opening liquidation proceedings or thereafter, or its other commitments, if intended to transfer the debtor's assets, or if the stipulated consideration constitutes unreasonable and extensive benefits to a third party, (iii) contracts concluded by the debtor within 90 days preceding the date on which the court received the petition for opening liquidation proceedings or thereafter, or its other commitments, if intended to give preference and privileges to any one creditor, such as the amendment of an existing contract to the benefit of a creditor, or to provide financial collateral to a creditor that does not have any.

In respect of the liquidation of a company under control by a qualified majority or a single member company, the controlling party or the sole member (shareholder) shall be responsible without limitation for those of the company's liabilities that are not covered by the debtor's assets during the liquidation proceedings, if the court has established the unlimited and full responsibility of such member (shareholder) for the company's liabilities pursuant to a claim filed by the creditor during the liquidation proceedings or within a 90-day forfeit deadline following the final conclusion of liquidation proceedings, on account of such member (shareholder) having had a history of making unfavorable business decisions from the standpoint of the debtor company.

Where the court of registry has launched dissolution proceedings against a debtor before the opening of liquidation proceedings, and the debtor has accumulated debts in excess of 50% of its equity capital at the time of the opening of liquidation proceedings, upon the request lodged by the liquidator or a creditor the court shall establish that a former member (shareholder) with majority control, who transferred his share within three years before the opening date of the liquidation procedure, is subject to unlimited liability for the debtor's outstanding liabilities, unless it is able to prove that the debtor was solvent at the time of said transfer, and that the loss of assets took place after that time, or that it acted in good faith in transferring its shares even though the debtor was insolvent.

2. Acquisition of Assets that are Subject to Insolvency Proceedings

The receiver shall collect the claims of the debtor when due, enforce its claims and sell its assets. If consented by the creditors, the receiver may invest the debtor's property in private limited-liability companies, public limited liability companies or cooperatives as non-pecuniary assets (contribution) if it promises to obtain a better price this way.

The receiver shall dispose of the debtor's assets through public sales at the highest price that can be obtained on the market. The receiver shall effect the sale by way of

tender or auction, and may forego the application of these procedures only upon the prior consent of the select committee, or if the estimated proceeds are insufficient to cover the costs of sale or in the difference between the prospective proceeds and the estimated cost is less than HUF 100,000 (approx. USD 500). In this case, the receiver may apply other public forms of sale for the purpose of achieving a more favorable result.

The party acquiring ownership or any other rights of value may not apply a setoff at the public sale with the debtor. If the liquidator fails to comply with the obligation to observe one's right of first refusal concerning the debtor's assets, the person holding such right shall be entitled to bring the case to court.

K. Timing and Costs

1. Timeframe of Asset Transfer

The timeframes applicable to the sale/acquisition of a business by way of an asset deal depend on the asset deal in question (movable assets or real property, liens/mortgages, IP Rights, etc.). However, the timeframe of the deal could be two or three months.

2. Costs of Asset Transfer

The notarization costs, the registration costs and the stamp duties depend on the given situation (e.g., the costs of the notarization generally depend on the value of the project).

L. Miscellaneous

1. Choice of Foreign Law

As per the Hungarian legal rules, the sale and/or transfer agreement could be subject to foreign law other than Hungarian law, if the parties selected the applicable law and if the asset transfer contains non-Hungarian part. In the absence of selection, the law relating to the agreement shall be the law of the state in which the seller has its central office at the date of the conclusion sale and purchase agreement.

2. (International) Arbitration, Choice of Venue

In case of asset transfer, arbitration and international arbitration is permissible without any restriction.

3. Other Distinctions, Characteristics

There are no other noteworthy distinctions or characteristics as to the transfer of assets under Hungarian law.

M. Literature

András Kisfaludi, *Az adásvételi szerződés* (The sale and purchase agreement), 2nd Edition, 2007

György Gellért (Editor), *A Polgári Törvénykönyv Magyarázata 1–2.* (Commentary on the Civil Code of Hungary 1–2.), 1st Edition, 2007

Gábor Hidas, *Gyula Horváth*, *András Urbán* and *Gábor Kőszegi*, *Az ingatlanjog nagy kézikönyve* (Grand manual to real property law), 1st Edition, 2007

Tamás Sárközy (Editor), *Csődjog* (Bankruptcy law), 2nd Edition, 2007

László Leszkoven, *Az engedményezés új szabályai a kötelmi javaslat szövegtervezetében* (New provisions regarding assignment in the draft text of the proposal for contract law), *Kötelmi jogi kodifikációs tanulmányok* (Contract law codification studies), 2005, 311–323

László Leszkoven, *A fiduciárius engedményezés jogi természetéről* (On the legal nature of fiduciary assignment), *Gazdaság és jog* (Economics and law) 3/2002, 13–17