



# Project Finance

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# Hungary

Zoltán Varga and Imre Nyéky

Nagy és Trócsányi

## 1 Collateral

What types of collateral are available?

The following types of collateral are available:

- real property mortgage;
- mortgage on moveables;
- pledge on moveables;
- charge on quotas;
- charge on rights and receivables;
- floating charge;
- security deposit in the form of cash, securities or bank accounts; and
- independent lien (to be abolished and replaced by 'separated lien', introduced by the new Civil Code effective from 15 March 2014).

## 2 Perfection and priority

How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party?

### Real property mortgage

A real property may be charged as a security only in the form of a mortgage. The mortgaged property remains in the possession of the mortgagor, who is entitled to use the property. The mortgage agreement is valid only if concluded in writing and in the form required for registration in the Land Register. The mortgage goes into effect when it is registered. Registration duty is payable on each mortgage. Priority is determined according to the date of registration; if more than one request is submitted on the same day, the priority is determined according to the date on which the mortgage agreement was concluded.

### Mortgage on moveables

Currently, for the creation of a mortgage on physical objects other than real property, the security agreement must be concluded in writing, in the form of a notarial deed, and it must be registered by the Hungarian Chamber of Public Notaries. A registration fee is payable on each mortgage. The asset serving as security remains in the possession of the mortgagor. Priority is treated by law as detailed in the case of real property mortgage (see above). With the new Civil Code entering into force from 15 March 2014 the form of a notarial deed will not be necessary, and a new internet-based, publicly available 'collateral database' will be set up in which all mortgages and other collaterals created on non-registered moveables shall be registered. The lien register maintained by the Hungarian Chamber of Public Notaries will cease to operate for the future, meaning that it will display only the previously registered liens and no new entries

will be possible. The detailed regulations on the new collateral database are yet to be adopted.

### Pledge on moveables

To create a pledge on moveables, it is necessary to conclude a security agreement and hand over the pledged property to the secured creditor or to the possession of a third person (pledge trustee). A pledge trustee may be any person, including corporate entities. No registration is necessary and no duty or other fees need to be paid.

### Charge on quotas

The quota charge agreement must be concluded in writing and registered with the relevant court of registration. Registration duty and a publication fee must also be paid for the registration. Otherwise the provisions on charge on rights and receivables apply (see below).

### Charge on rights and receivables

The objects of such a charge may also include future rights and receivables that will accrue to the obligor. The rights and receivables charged may be specified through an elaborate description. For the security to be enforceable, the obligor must be notified in respect of the creation of the security. At present, no registration is necessary and no duty or other fees need to be paid in relation to the perfection; however, under the new Civil Code the charge will have to be registered in the collateral database.

### Floating charge

At present, for the creation of a charge on the assets of a legal entity, whether on the whole or on a strategic business unit – without specifying the particular objects, rights and receivables that comprise it – the security agreement must be concluded in writing, in the form of a notarial deed, and registered by the Hungarian Chamber of Public Notaries. Priority is determined as detailed in the case of a mortgage (see above). A registration fee is payable by each charge. This type of security also applies to any and all property that is acquired by the obligor after the contract has entered into effect, commencing on the date on which the obligor acquires the right of disposition over such property; it ceases, however, if and as soon as the property concerned is no longer in the security provider's possession. The new Civil Code will extend the applicability of the floating charge: it will be possible to create such charge not only on the assets of a legal entity but on any kind of subjects that may be circumscribed regardless of whether these are owned by legal or natural persons. The form of a notarial deed will not be necessary but the charge must be registered in the collateral database.

### Security deposit in the form of money, shares or bank accounts

A security deposit, as financial collateral, may be provided under an agreement to secure a claim in the form of money, a claim on a bank account, or securities, and is effective upon the handover of the collateral. According to a recent change, a security deposit can be also

established on credit claims, whereas the necessary documentation needed to the enforcement of the security shall be handed over.

### Independent lien

At present, a lien can also be created so as to encumber the charged property without any secured claim. In this case, the lien holder is entitled to seek satisfaction up to the amount specified in the agreement solely from the property to which the lien pertains. To satisfy the lien holder, the independent lien must be terminated by notice from the obligor or the lien holder. Independent liens are transferable or they can be converted into a secured charge and vice versa if so agreed by the parties. The new Civil Code will abolish the independent lien; a lien may only be created in connection with a secured claim. However, once the lien (mortgage) has been created, it will be possible to separate it from the original claim, meaning that the function of the independent lien will survive.

The common law trust or collateral agent concept is not recognised in Hungary. A valid and enforceable security interest can only be created in favour of the creditor of the secured obligation. Similarly, the 'parallel debt concept' is not acknowledged in Hungarian law. Further, according to several final judgments, the enforcement of claims (for example, by a collateral agent) on behalf of somebody not participating in the litigation (for example, the other creditors of the syndicate) is prohibited.

### 3 Existing liens

How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

To ensure security for the creditor, the in rem collateral types specified in questions 1 and 2 are the most appropriate. Only these types of collateral ensure priority to the creditor. However, there are some other legal instruments provided for in Hungarian law that may be applied to protect the creditor's claim, which are as follows.

#### Stipulation of forfeiture of rights

Under the Civil Code, the parties are entitled to agree in writing that the party responsible for any breach of contract will forfeit a right or a benefit to which he or she would otherwise be entitled on the basis of the contract.

#### Stipulation of prompt collection

It is common in contractual relationships to include a clause in the agreement to the effect that in the event of a breach of contract, the creditor will be entitled to collect its money directly from the bank account of the other party.

#### Security assignment

The assignment of claims is another way of providing security in contractual relationships. The obligor's consent is not necessary for the validity of the assignment; however, until he or she receives notice from the assignor of the assignment, the obligor of the claim is entitled to perform not to the assignee but to the assignor.

#### Acknowledgement of debt

A debt can be acknowledged by a written statement addressed to the other party. The statement is generally concluded in a public (notarised) document or in a private document with full probative force. The acknowledgement does not change the legal grounds for the debt; once the acknowledgement has been stated, it lies with the debtor to prove that he or she has no debt, that the debt cannot be judicially enforced or that the contract is invalid.

#### Call option

Call option is also often used as security. A call option must always be concluded in writing, with the object and the purchase price specifically indicated. A call option can be stipulated for a maximum of

five years; any call option stipulated for an indefinite period automatically expires after six months. Other formalities are required only in the case of real properties, where the call option must be registered in the Land Register.

#### Bill of exchange

Bills of exchange are used mostly in *bianco* form, that is, the securing amount is not indicated on the bill – the amount is only specified if and when the person entitled under the bill decides to enforce his or her claim. This method of securing claims is highly advantageous because of the rapid enforceability it ensures (in Hungarian civil proceedings related to bill claims, the claim must be settled within three days).

### 4 Enforcement of collateral

Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

As a general rule, in the case of mortgages, pledge and charges, satisfaction from the property that is subject to the collateral takes place on the basis of a court order or writ of execution. If the mortgage or pledge is registered under the provisions of law, the registration serves as authentic proof of the existence of the security. If no registration is necessary, the security agreement can be concluded in the form of a notarial deed. The notarial deed, as a public document, strengthens the beneficiary's capacity to enforce the collateral because, in accordance with the relevant law on judicial enforcement, the court can affix a writ of execution on a notarial deed, and as a result of this the claim based on the security agreement will be subject to direct enforcement, that is, no court procedure is necessary to declare the beneficiary's claim.

In contrast to judicial enforcement:

- the parties may agree in writing to sell the property that has been pledged as collateral together, while setting a minimum price and a deadline for the sale (lenders may also participate as buyers);
- the parties may agree in writing to permit the security holder to appoint a third party who is engaged, either on a commercial or ex-officio basis, in providing loans against security or in organising auctions for the sale of property (lenders may also participate as buyers);
- the parties may agree in writing that the secured creditor is entitled to sell the assets directly, if either the asset has an officially listed price or an acknowledged market price, or the secured creditor is involved in granting mortgage-backed loans in Hungary. The parties must also agree on a deadline and a minimum market price for the sale (lenders may also participate as buyers); and
- after default, and after a right to enforcement has arisen, the debtor and the secured creditor may agree that the secured creditor will acquire title of ownership to the asset. Such agreement prior to the due date of the claim, however, is expressly forbidden by law.

In the case of a floating charge, if the secured claim is due but is not paid, the secured party is entitled to convert (crystallise) the charge into a charge on specific items of property through a written statement to this effect, and to seek satisfaction through foreclosure in respect of the specified items of property.

In the case of a charge on receivables, if the claim becomes due before the charge is to be satisfied from the property, the obligor of the claim must perform directly to the security holder and the claimant together. If the claim becomes due after the charge to be satisfied from the charged property, the obligor of the claim must perform directly to the security holder.

As regards security deposits, on the due date for performance of the relevant financial obligations the secured creditor is able to

enforce the claim directly, without a court order, from the financial collateral, if it is cash, money in a bank account, shares or other financial instrument whose market price is listed publicly or can be determined at the time independently of the parties. In addition, in the case of security provided using other forms of collateral or financial instrument, no court order is required for enforcement if the parties have so agreed in the arrangement and have stipulated the method of valuation of the collateral. In the case of a credit claim, direct enforcement against the debtor of the claim is possible only if the debtor of the claim was informed in advance in accordance with the rules of security assignment.

Payment in foreign currency is permitted in all cases of non-judicial sale.

The detailed rules of non-judicial sale of collateral are provided by a special legal instrument, by the Governmental Decree No. 12/2003 (I.30) on the provisions on the non-judicial enforcement of collateral.

The new Civil Code will make the non-judicial enforcement of collaterals equally optional for creditors, as well as elevate its rules to a statutory level. Furthermore, creditors may freely decide whether to sell the subject of the collateral on their own. These changes create a significant advantage for the creditors but also raised concerns about the protection of rights of the obligors, as even though these provisions may be excluded in the lien contract, the creditor is almost always in a dominant position while negotiating the terms.

## 5 Bankruptcy proceeding

How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights (eg, tax debts, employees' claims) with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

During a bankruptcy proceeding the debtor is allowed a stay of payment (moratorium) of 120 days from the time when the court order opening the bankruptcy proceedings was published. Under the duration of the moratorium no satisfaction may be provided in connection with any collateral existing on the debtor's asset.

In a liquidation procedure the liquidator shall dispose exclusively of the assets of the company, including its collaterals. In the order in which the company's debts shall be satisfied, claims secured by mortgage are favoured against any other claims (for example, tax debts or employees' claims). In the case of enforcing a floating charge, 50 per cent of the proceeds from the sale of the charged asset shall be used to satisfy claims for which the asset was charged.

If the debtor provides a security deposit to secure a claim, the security deposit taker is entitled to enforce the security deposit within three months following the publication of the opening of liquidation proceedings.

The creditor may file a legal action to contest contracts concluded by the debtor within five years preceding the date when the court received the petition for opening liquidation proceedings or thereafter, if intended to conceal the debtor's assets or to defraud any one creditor or creditors. Similarly, within two years preceding the date when the court received the petition for opening liquidation proceedings or thereafter, the creditor may claim against contracts concluded by the debtor if intended to transfer the debtor's assets without any compensation or to undertake any commitment for the encumbrance of any part of the debtor's assets.

The provisions of the Act on Bankruptcy Proceedings apply only to economic entities as defined therein. There are also special provisions applicable to credit institutions, financial service providers (including investment companies and insurance companies) or

Hungarian branch offices and commercial representative offices of foreign companies.

Only local municipalities are expressly excluded from bankruptcy proceedings; however, the act clearly does not apply to entities in the public sphere. As far as municipalities are concerned, the relevant law regarding the debt settlement of local municipalities applies.

Under Hungarian law, the claims of foreign creditors are treated in the same manner as the claims of local creditors.

In Hungarian law there are no processes available to seize the assets of a business outside of court proceedings, it is only possible in liquidation proceedings before the court.

## 6 Foreign exchange

What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

There are no restrictions or controls, but the newly introduced transactional tax is to be applied on foreign currency exchange at the rate of 0.2 per cent (maximum 6,000 forints per transaction).

## 7 Remittances

What are the restrictions, controls, fees and taxes on remittances of investment returns or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?

There are no restrictions, controls or taxes on remittances of investment returns or loan payments to parties in other jurisdictions under Hungarian law. In general, any remittances or loan payments payable to foreign parties are subject to taxation in the foreign party's country. The tax payable in such country – pursuant to the treaties on double taxation – must be deducted from the tax levied in Hungary.

## 8 Repatriation

Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

There are no repatriation provisions under Hungarian law.

## 9 Offshore and foreign currency accounts

May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Project companies may establish and maintain foreign currency accounts in Hungary as well as in other jurisdictions. However, they must establish at least one domestic bank account, either in Hungarian forints or in foreign currency as according to the applicable rules on the registration of Hungarian companies it is mandatory to hold a Hungarian bank account in order to be registered by the competent company court.

## 10 Foreign investment and ownership restrictions

What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

Hungarian law provides that investments and business establishments of foreigners in Hungary enjoy full protection and security under the law. The fair and equal treatment of foreign investors in general is secured, and therefore, as a basic rule, there are no

restrictions, or special fees or taxes in respect of foreign investments in, or ownership of, project and related companies. This general rule also means that the activities of foreign investors need only be registered with the relevant authorities if this is prescribed by law for all legal entities performing that activity. The general rule is also supported by the legal instruments most closely related to foreign direct investment.

Nevertheless, for the purposes of protecting property, the acquisition of real estate, and especially arable land by foreigners, is restricted under the law. The relevant act on arable land contains quantitative restrictions on the ownership of arable land by foreigners, and it also provides that non-resident legal entities or private individuals – with the exception of EU nationals – may acquire ownership to real property not classed as arable land only with the authorisation of the competent administrative authority.

There are no bilateral or international treaties in effect that afford relief from the above restrictions.

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### 11 Documentation formalities

Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

#### Government authorities

It depends on the given project whether financing or other project documents shall be filed with certain government authorities. For example, in the case of building projects the building documentation is subject to mandatory authorisation on behalf of the building authorities, but other government authorities may also be relevant depending on the nature of the project. In such cases legal formalities for the application and the content of the building documentation is defined by the relevant legal regulations (see question 18).

Furthermore, if for the purpose of the project a Hungarian project company is to be established the company must be registered with the Hungarian Company Court; the mandatory content and formalities for the company documentation – including the mandatory participation of an attorney-at-law – is also determined by the relevant laws (see question 26).

Many of the projects are realised in the scope of public procurement. In such cases the governmental authority competent in respect of public procurements has certain rights to control and approve project documentation, including financing documents in order to fulfil the legal requirements set forth in the act on public procurement (see question 28).

#### Other legal formalities

Other legal formalities depend on the nature of the project. Notaries in general are not prescribed by law, only in the case of certain security agreements as detailed in question 2. In the case of financing agreements, however, it is common to conclude the financing agreement in the form of a notarial deed as enforcement is much easier with respect to those judicial procedures that can be bypassed. The presence of notaries is also prescribed in the case of certain acts of the parties during public procurement procedures.

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### 12 Government approvals

What government approvals are required for typical project finance transactions? What fees and other charges apply?

In general, project finance transactions – whether of non-resident or domestic entities – do not require any government approval. However, if the project is directly related to public procurement, the manner of financing the project may be subject to approval or may be stipulated in advance.

Until the end of 2014 new commercial buildings larger than 300 square metres may not be constructed, and existing commercial buildings may not be enlarged to exceed that size limit. The minister in charge of trade and commerce may grant an exemption from the prohibition following a consultation with the committee comprising the minister in charge of trade and commerce, the minister in charge of environmental protection and the minister in charge of rural development.

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### 13 Foreign insurance

What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

Any insurance activity in Hungary may be performed only by insurance companies and only if they are in possession of permission from the relevant authority. An insurance company established in a member state of the European Union may perform cross-border services in Hungary or through its Hungarian branch if so authorised in the member state in which it is established. Third-country insurance companies may only provide services in Hungary through branch offices registered in Hungary; however, under international agreements, they may perform certain insurance activities, such as reinsurance services, without having to set up a branch office.

Local insurance is required in Hungary – unless insurance is provided in the context of cross-border services – and any insurance service procured in contempt of the above is unlawful. In addition, policies over project assets provided by foreign insurance companies may only be payable to foreign creditors lawfully if the insurance services are provided in Hungary by the foreign company in the context of cross-border services or through branch offices.

Based on the relevant act, reinsurance is effective, but is usually not required by foreign investors and creditors.

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### 14 Foreign employee restrictions

What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

With a one-sided act, Hungary recently opened its labour market for all citizens of all EU member states. In terms of employment this means that no permits are required; the employer of an EU citizen has to only notify the competent labour inspectorate in accordance with the law.

Generally speaking, for those employees who are citizens of a third country a work permit is required. Individual permits, automatically issued permits, agrarian seasonal permits, permits based on family reunion, frame permits and individual permits based on the frame permit can be obtained. It is always the potential employer's duty to obtain the permit. It has to be done prior to entering into the employment agreement.

Key persons (who are not executives of an organisation, but based on their knowledge or experience are key employees) shall apply for automatically issued permits.

Executives of an organisation (for example, managing directors, board members, members of the supervisory board) are not subject to work permit requirements.

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### 15 Equipment import restrictions

What restrictions exist on the importation of project equipment?

In general, as Hungary is a member of the European Union, goods, including project equipment, may be freely moved within the internal market in accordance with the relevant provisions of EU legislation.

Hungarian regulations related to exports and imports to and from third countries as well as customs have also been fully harmonised with EU norms. Accordingly, the importing of goods to the territory of Hungary from third countries is subject to supervision and to certain payment obligations imposed by the customs authority.

Besides this, the importing of certain goods from third countries is forbidden under law, or is subject to authorisation by the relevant authority, and in certain circumstances, the importing business entity must be registered by the above authority. The goods that are forbidden to be imported or that are subject to authorisation are specified in bilateral and multilateral treaties, as well as in certain legal instruments of the European Commission. The range of such goods is broad, and includes certain kinds of weapons, certain kinds of raw materials and agricultural goods, as well as certain industrial goods such as iron and textiles.

#### 16 Nationalisation and expropriation

What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Hungarian law does not provide any special regulations regarding nationalisation or expropriation of project companies and assets.

Under the Fundamental Law of Hungary (Constitution), all entities and assets are fully protected against nationalisation and expropriation. Nationalisation is possible only in cases where vital national interests are at stake, in the manner provided for under the law. Expropriation, on the other hand, must be carried out in accordance with the related act on expropriation, for the public purposes described in the act, and on a non-discriminatory basis. The owner of the assets subject to expropriation is entitled to prompt, adequate and effective compensation.

In addition – as special and express legal protection in respect of the interests of foreigners – the relevant law provides that loss or damage resulting from nationalisation, expropriation or other similar legal measures affecting the ownership rights of foreign investors is subject to immediate compensation at fair market value. The amount of compensation to the entitled party must be paid in the currency in which the investment was made.

Beyond the above general legal implications, there are several bilateral investment treaties (BITs) in effect between Hungary and other countries that contain provisions regarding the expropriation of the assets of foreigners. Furthermore, various sector-specific legal instruments provide certain specific rules regarding expropriation and protection against expropriation, such as rules regarding arable land, railways, power lines and protected natural areas.

#### 17 Fiscal treatment of foreign investment

What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

In general, incentives are available to all business associations registered in Hungary, regardless of the nationality of the quota or shareholders or the location of incorporation. There are several types of tax and other incentives applicable, such as corporate tax allowances if the value of the investment is above a certain amount; in relation to research and development, and if the investment is realised in disadvantaged regions, and there are also certain types of state subventions. The relevant legal instruments of the European Union are also applicable.

No specific types of tax apply with respect to foreign investments and loans. In addition, for taxes and fees related to mortgages and other security documents, see question 2.

#### 18 Government authorities

What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

The following government agencies and departments have authority over projects in the typical project sectors:

- the government of Hungary and the various sector ministries issue the specific legal instruments on the basis of the acts of Parliament and supervise the related government authorities and departments in the relevant sectors;
- the National Inspectorate for Environment, Nature and Water and its regional inspectorates issue permits as well as authorise the related activities, and give expert authority opinions and impose fines and penalties;
- the Hungarian Office for Mining and Geology and its district inspectorates issue authorisations for prospecting, exploration, extraction and production of natural resources and geothermic energy. They also supervise the mining activity of extractors;
- the National Transport Authority and its regional directorates are responsible for the administration issues (authorisation, supervision and the imposition of penalties) related to road, air, water and railway transport;
- the National Media and Infocommunications Authority authorises the provisions of electronic communication services, registers service providers, protects competition on the relevant market and supervises the conduct of organisations and persons engaged in the provision of electronic communications services;
- the Hungarian Energy Office issues the permits required by the relevant legal instruments, approves by-laws, establishes and supervises the application of prices in the energy sector, and supervises compliance with the relevant statutory provisions;
- regional and local construction authorities issue construction permits and supervise the enforcement of the statutory provisions related to construction activities; and
- municipalities and their notaries have (mostly authorisation and supervision) competence in matters related to projects carried out in their territory.

For state ownership of minerals and water, see question 22.

Most of the relevant sectors are completely in private hands, except for the electricity sector and transport, which are only partially privatised.

#### 19 International arbitration

How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

In procedures starting after 13 June 2012, only a Hungarian seated court of arbitration can proceed pursuant to its own rules of proceedings if the legal dispute arises from a contractual relationship between exclusively Hungarian seated parties in connection with property law, rental or lease contract, concerning an internally located real estate if the applicable law is Hungarian law. In this case the language of the procedure is also Hungarian. There is no place for arbitration where the subject matter of the dispute is a

national asset located on Hungarian territory, nor is there any right, claim or demand attached to such a national asset that additionally falls under the scope of Act CXCVI of 2011 on National Assets. The decision of an arbitration tribunal has the same effect as that of a binding court decision. As Hungary is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, an arbitral award made in accordance with the New York Convention outside Hungary has the same effect as that of a binding court decision and can be enforced in accordance with the provisions of judicial enforcement.

The court, however, must refuse to execute the arbitral award – made by either a Hungarian or a foreign arbitral tribunal – if in its judgment the subject matter of the dispute is not subject to arbitration under Hungarian law or the award runs counter to the interests of public order in Hungary.

Hungary is a party, in addition to the New York Convention, to the ICSID Convention and to the 1961 European Convention on International Commercial Arbitration.

Disputes may be settled by way of arbitration if at least one of the parties is professionally engaged in business activities and the legal dispute arises out of or in connection with this activity, the parties may dispose freely of the subject matter of the proceedings, and arbitration was stipulated in an arbitration agreement. There are also some types of disputes – mostly family law disputes – where arbitration is excluded.

Under Hungarian law there are no types of disputes that are subject to automatic domestic arbitration.

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## 20 Applicable law

Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

The law of the jurisdiction that is chosen by the parties when concluding the agreement or at a later date applies to the agreement. In the absence of any such specified law, the law applicable to each agreement is determined according to the relevant legal instrument on international private law. For example, in the case of an agreement related to real property, the law of the place of location of the real property applies to the contract, or in the case of an agreement for work, labour or materials, the law that applies is the law governing the territory in which the entrepreneurial activity is to be carried out as per the agreement, or where the outcome specified in the contract is to be attained.

Project agreements related to projects implemented in Hungary are typically governed by Hungarian law. The majority of financing agreements are governed by English law, although, if the investment is financed locally, the financing agreements are governed by Hungarian law. It is common to use notarised documents when concluding the above agreements.

Hungarian law provides that certain types of agreements – most importantly perhaps, concession agreements and security agreements – should always be governed by domestic law, regardless of any contractual provisions to the contrary. In addition, the laws of another jurisdiction are to be disregarded and domestic law is to apply if the law chosen to apply conflicts in any way with public order in Hungary.

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## 21 Jurisdiction and waiver of immunity

Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

According to a general principle of Hungarian law, no special procedure is necessary for foreign legal decisions to be recognised. The decisions of foreign courts and other foreign authorities are recognised in Hungary if:

- the jurisdiction of the court or authority is deemed legitimate under the rules of jurisdiction of Hungarian law;
- the decision is construed as definitive by the law of the state in which it was made; or
- there is a treaty or reciprocity agreement in effect between Hungary and the state in which the court or authority resides. The minister of justice of Hungary issues a statement regarding the above reciprocity, and such statement is binding on the Hungarian courts and other authorities.

The relevant law also defines the circumstances under which the decisions of foreign courts and authorities cannot be recognised, such as if a Hungarian court or other Hungarian authority has exclusive jurisdiction over the matter to which the decision pertains.

If the conditions required for recognition of an adverse foreign decision in Hungary prevail, such decision is executed in accordance with the corresponding Hungarian laws.

The Hungarian state qualifies as a legal entity in business relations, and is represented by the minister looking after the state property. In such relations the state is subject to the same rights and obligations as other entities and natural persons: it is entitled to sue, or it may be sued, and claims may be enforced against it.

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## 22 Title to natural resources

Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

The 'treasures of the earth' (which include oil, gas and other minerals) and mining rights; underground waters, the natural basins of underground waters, rivers and natural lakes, and the beds thereof, game, and useful aquatic life are under the exclusive ownership of the state.

The Fundamental Law of Hungary states that the properties of the state (and the local government) are national assets.

Pursuant to Act CXCVI of 2011 on National Assets, the objects owned exclusively by the state may not be commercially traded, encumbered, pledged, nor any divided estate be established on them, except trusteeship over the asset or beneficial use for the benefit of certain organisations set by a different act, cable right or servitude for the benefit of the local government. The ownership of the exploited 'treasures of the earth' can be obtained pursuant to the regulations of sectoral laws.

One of the possible ways of operating exclusively state-owned assets effectively is to offer them to concession (still within the framework of the Act on National Assets). The state (or the local government) is obliged to call for a tender before entering into a concession contract. Unless defence or national security requires a closed tender, the tenders should be public. In the case of a state-owned business entity that carries out activities subject to concession being sold for a private owner, the procedure for calling for tender shall be initiated when the selling procedure starts. The rights and obligations of the private parties who have acquired concession in connection with objects owned exclusively by the state are governed by the given concession agreement. For carrying out an activity subject to concession – unless stated otherwise in sectoral laws – within 90 days of the signature of the concession contract, a Hungarian-seated business entity shall be established.

Another way to acquire rights in respect of objects owned exclusively by the state is when the trustee state authority transfers the trusteeship of state property items to those enlisted in the Act on National Assets. In such a case, a government resolution may set further rules on trusteeship.



**23 Royalties on the extraction of natural resources**

What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

In accordance with the Mining Act, the extraction of minerals and geothermic energy is subject to a mining royalty payment obligation. A mining royalty is to be paid to the Hungarian state for any raw minerals and geothermic energy extracted by an authorised mining enterprise or extractor of geothermic energy without distinction between domestic and foreign extractors.

The amount of the royalty payable is based on the percentage of the value of the quantity of the material extracted, according to formulas set out in the Mining Act and to the detailed provisions of other specific legal instruments. Since 2010, in the case of oil the price of Brent is also taken into account.

**24 Export of natural resources**

What restrictions, fees or taxes exist on the export of natural resources?

There are no restrictions, fees or taxes on the export of natural resources.

**25 Environmental, health and safety laws**

What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

The most important legal instruments are the following:

- The Fundamental Law of Hungary (Constitution);
- Act LXXVIII of 1997 on the Formation and Protection of the Built Environment;
- Act LV of 1994 on Arable Land;
- Act XCIII of 1993 on Labour Protection;
- Act XXV of 2000 on Chemical Safety;
- Act LIII of 1995 on General Rules of Environmental Protection;
- Act LIII of 1996 on Nature Protection;
- Act LVII of 1995 on Water Management;
- Act CLXXXV of 2012 on Waste;
- Act XLII of 2000 on Water Transport;
- Act CLXXXIII of 2005 on Rail Transport;
- Act I of 1988 on Vehicular Transport;
- Act C of 2003 on Electronic Communications;
- Act XLVIII of 1993 on Mining Activities;
- Act XL of 2008 on Natural Gas Supply;
- Act CXCVI of 2011 on National Assets; and
- Government Decree 343/2010 (XII.28) on sustainable biofuel production.

The most important regulatory bodies administering the above legal instruments are the following:

- the National Inspectorate for Environment, Nature and Water;
- the Hungarian Labour Inspectorate;
- the National Public Health and Medical Officer Service;
- the Hungarian Office for Mining and Geology;
- the National Transport Authority;
- the National Media and Infocommunications Authority; and
- the Hungarian Energy and Public Utility Regulatory Authority.

**26 Project companies**

What are the principal business structures of project companies?

What are the principal sources of financing available to project companies?

Companies with limited liability, especially limited liability companies and private limited companies, are the main business structures for project companies. These two structures are the most common

in Hungary because they obviously limit the liability of their members or shareholders; they can be established relatively quickly (the Court of Registration has been obliged to register new companies within one working hour if the company has been founded through a standard contract form); and they are cheap to set up (registration duty of either 100,000 forints or 15,000 forints needs to be paid, depending on the method of foundation). However, owing to the flexibility of its regulation, the limited liability company is the most popular business structure.

All forms of financing familiar in other countries are available in Hungary, including the use of the investor's own funds combined with bank lending in the form of credit and loans secured on the company's assets.

In the past few years cross-border and syndicated lending have emerged as the favoured form of financing in the case of larger investment projects, while mortgage-backed lending is predominant in the financing of small and medium-sized projects.

**27 Public-private partnership legislation**

Has PPP enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

PPP has never been governed by a separate legal instrument in Hungary. The majority of PPP projects used to be realised in the scope of public procurement. The most important law applicable to PPPs used to be the Act CXXIX of 2003 on Public Procurement and Act XXXVIII of 1992 on Public Finance.

From the end of 2010, the current government systematically reviewed the running PPP projects (approximately 100) and found that they were 'expensive and risky'. Poor quality at implementation, the state undertaking all the risks or ineffective operation were the most typically identified problems that led to the government decision to end several inefficient PPP projects and save billions for the budget.

From the new Act on Public Procurement (Act CVIII of 2011) and from the new Act on Public Finance (Act CXCV of 2011) referencing to PPP projects were left out. Currently, it is the Ministry of National Development's responsibility to oversee, analyse and control those contracts that were already entered into or to be entered into and that concerns privatised assets, concession, PPP and other state assets.

**28 PPP – limitations**

What, if any, are the practical and legal limitations on PPP transactions?

The estimated yearly operation cost of the PPP projects is around 120 billion forints. From the end of 2010 these constructions were systematically reviewed and found very disadvantageous for the government, which is the reason why the competent ministry is looking into abrogating the ineffective contracts (the vast majority of PPP projects).

**29 PPP – transactions**

What have been the most significant PPP transactions completed to date in your jurisdiction?

The biggest transactions in recent years were:

- the building of different parts of the M5 and M6 motorways with a value of 55 billion forints in 2009 and 78.6 billion forints in 2010;
- the construction of new prisons in Tiszalök and Szombathely commissioned by the National Commandership of Punishment Execution with a value of 4.7 billion forints in 2009 and 4.9 billion forints in 2010;

**Update and trends**

The new Civil Code (Act V of 2013) was announced in February 2013 and will enter into force on 15 March 2014. The aims of the new Code are to cover the most important parts of civil law, to deal with the economic needs of the past decade as well as to solve dogmatic problems. The most significant changes regarding collaterals are the replacement of 'independent lien' with the concept of 'separated lien', the setting up of a new internet-based, publicly available 'collateral database' and the possibility to create a lien with circumscribed (variable) subjects, extending floating charges to any possible subject. It will also make the non-judicial enforcement of collaterals equally optional for creditors. Another notable change is the possibility to own the land and the building on it by separate owners.

The duty on financial transactions introduced in 2012 (that is to be applied to the most basic financial operations such as money transfer, money collection, paying in cash to a bank account, cash

withdrawal, cash transfer, accreditation, etc) has recently been increased by the government, resulting in significantly higher banking charges as all banks tend to shift the duty to the consumers.

The extra tax of financial institutions introduced in 2010 as a temporary tax is still effective. Recently, the government levied another extra tax at the rate of 7 per cent on the full takeover of the local governments' debts by the state. This consolidation affected nearly 2,000 municipalities and the total value of the debts was around 400 billion forints.

The recently adopted Act on Arable Land (effective from 2014) will establish the right for EU nationals to acquire arable land under the same conditions as Hungarians. As a general rule, legal persons will still not be allowed to own arable land. Nevertheless, banks will be allowed to do so with restrictions, meaning that arable land will still be able to be used as a security.

- the infrastructure of education with a value of 8.7 billion forints in 2009 and 9.2 billion forints in 2010; and
- the Sport XXI Programme with a value of 1.8 billion forints in 2009 and 1.9 billion forints in 2010.

At the beginning of August 2011 approximately 100 Hungarian PPP projects were running, and the government spent approximately 120 billion forints throughout 2011 to operate them. In the 2012

budget the same amount is allocated for operating PPP constructions. From the autumn of 2012, the government started to mass abrogate the ineffective PPP contracts concerning swimming pools and gyms mainly operating within educational institutions. In 2013, 27 billion forints was appropriated for the compensation of private partners.

The number of PPPs is expected to keep decreasing in the upcoming period.

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