

# Project Finance

in 45 jurisdictions worldwide

# 2015

Contributing editor: Phillip Fletcher



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**Project Finance 2015**

**Contributing editor:**  
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*Getting the Deal Through* is delighted to publish the the fully revised and updated eighth edition of *Project Finance*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 45 jurisdictions featured. New jurisdictions this year include include Canada, China, the Dominican Republic, Greece and India. This year the publication again includes quick reference tables, focusing on public-private partnerships in US states.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editor Phillip Fletcher of Milbank, Tweed, Hadley & McCloy LLP for his continued assistance with this volume.

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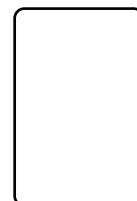
Overview	3	Dominican Republic	63
<b>Phillip Fletcher and Aled Davies</b> Milbank, Tweed, Hadley & McCloy LLP		<b>Fabio J Guzmán-Saladín,</b> <b>Alfredo A Guzmán-Saladín and</b> <b>Alberto Reyes Báez</b> Guzmán Ariza	
Angola	7	England & Wales	69
<b>Alberto Galhardo Simões</b> Miranda Correia Amendoeira & Associados		<b>Andrew Petry, Adam Cooper and</b> <b>Helen Forsey</b> Simmons & Simmons LLP	
Brazil	16	France	78
<b>Fabrizio de Oliveira Sasdelli and</b> <b>Felipe Eluf Creazzo</b> Lobo & de Rizzo Advogados		<b>Jean-François Adelle</b> Jeantet Associés AARPI	
Cambodia	24	Georgia	86
<b>Martin Desautels, David Doran and</b> <b>Sambo Ly</b> DFDL		<b>Revaz Javelidze and Nino Begalishvili</b> Colibri Law Firm	
Canada	29	Germany	94
<b>Alison R Manzer and Charles Newman</b> Cassels Brock & Blackwell LLP		<b>Claus H Lenz and Rouven F Bodenheimer</b> LLS Lungerich Lenz Schuhmacher	
China	35	Greece	100
<b>Andrew Ruff and Claude Jiang</b> Shearman & Sterling LLP		<b>Dimitris Assimakis and</b> <b>Alexandros Pavlopoulos</b> Norton Rose Fulbright	
Colombia	41	Hungary	107
<b>Bernardo P Cárdenas Martínez and</b> <b>Daniela Mejía Mariño</b> Cárdenas & Cárdenas Abogados		<b>Zoltán Varga and Viktor Jéger</b> Nagy és Trócsányi	
Croatia	48	India	115
<b>Dinka Kovačević and</b> <b>Dino Simonoski Bukovski</b> Žurić i Partneri Law Firm		<b>Jatin Aneja</b> Amarchand & Mangaldas & Suresh A Shroff & Co	
Democratic Republic of the Congo	56	Indonesia	121
<b>Emery Mukendi Wafwana, Nady Mayifuila,</b> <b>Jonathan van Kempen and</b> <b>Arnaud Tshibangu Mukendi</b> Emery Mukendi Wafwana & Associates		<b>Rahmat Soemadipradja, Robert Reid and</b> <b>Rachel Situmorang</b> Soemadipradja & Taher	



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## CONTENTS

<u>Japan</u>	<u>131</u>	<u>Oman</u>	<u>199</u>	<u>Thailand</u>	<u>273</u>
<b>Naoaki Eguchi, Gavin Raftery and Yasuhisa Takatori</b> Baker & McKenzie (Gaikokuho Joint Enterprise)		<b>Graham Mouat and Ravinder Singh</b> Al Busaidy Mansoor Jamal & Co (Barristers and Legal Consultants)		<b>Roy Lee, David Doran and Duangkamol Ingkapattanakul</b> DFDL	
<u>Jordan</u>	<u>138</u>	<u>Panama</u>	<u>207</u>	<u>Turkey</u>	<u>280</u>
<b>Khaled Asfour, Leena Nusseir and Dima Khuffash</b> Ali Sharif Zu'bi Advocates & Legal Consultants CPSC		<b>Erika Villarreal Zorita</b> Anzola Robles & Associates		<b>Orçun Çetinkaya and Alişya Bengi Danışman</b> Mehmet Gün & Partners	
<u>Laos</u>	<u>145</u>	<u>Peru</u>	<u>215</u>	<u>Ukraine</u>	<u>287</u>
<b>Walter Heiser, David Doran and Duangkamol Ingkapattanakul</b> DFDL		<b>César Arbe and Jessica Valdivia</b> Arbe Abogados Corporativos Financieros		<b>Oleksander Plotnikov and Oleksander Zadorozhnyy</b> Arzinger	
<u>Luxembourg</u>	<u>151</u>	<u>Republic of Congo</u>	<u>221</u>	<u>United States</u>	<u>296</u>
<b>Denis Van den Bulke and Laurence Jacques</b> Vandenbulke		<b>Emery Mukendi Wafwana, Sancy Lenoble Matschinga, Antoine Luntadila, Nady Mayifuila, Jonathan van Kempen and Kekeli J Kodjo</b> Emery Mukendi Wafwana & Associates		<b>David P Armstrong and Natascha G Kiernan</b> Skadden, Arps, Slate, Meagher & Flom	
<u>Mexico</u>	<u>159</u>	<u>Romania</u>	<u>228</u>	<u>Uzbekistan</u>	<u>302</u>
<b>Rogelio López-Velarde and Amanda Valdez</b> López Velarde, Heftye y Soria SC		<b>Alina Stancu Bîrsan and Oana Bădărău</b> PeliFilip		<b>Sofia Shaykhrazieva</b> Colibri Law Firm	
<u>Morocco</u>	<u>167</u>	<u>Saudi Arabia</u>	<u>237</u>	<u>Venezuela</u>	<u>311</u>
<b>Zineb Idrissia Hamzi</b> Hamzi Law Firm		<b>Babul Parikh, Sumit Soni and Keith Bullen</b> Baker Botts LLP		<b>Reinaldo Hellmund, Carlos Martinez and Miguel Velutini</b> Rodríguez & Mendoza	
<u>Mozambique</u>	<u>173</u>	<u>Slovenia</u>	<u>244</u>	<u>Vietnam</u>	<u>318</u>
<b>Fernanda Lopes</b> Fernanda Lopes & Associados		<b>Miha Mušič and Dušan Jeraj</b> Taxgroup pravno svetovanje d.o.o.		<b>Martin Desautels and Hoang Phong Anh</b> DFDL	
<u>Myanmar</u>	<u>178</u>	<u>South Africa</u>	<u>250</u>	<u>Zambia</u>	<u>324</u>
<b>Jaime Casanova, James Finch and Bernard Cobarrubias</b> DFDL		<b>Eric le Grange, Noma Sibanda, Kim Eichorn and Innes Du Preez</b> ENSAfrica		<b>Eustace Ng'oma</b> Chibesakunda & Co Advocates	
<u>Netherlands</u>	<u>185</u>	<u>Switzerland</u>	<u>259</u>	<u>Quick Reference Tables – US State PPP</u>	<u>329</u>
<b>Rutger de Witt Wijnen, Luc Cohen and Viviana Luján Gallegos</b> Simmons & Simmons LLP		<b>Mark-Oliver Baumgarten and Thiemo Sturny</b> Staiger, Schwald & Partner			
<u>Nigeria</u>	<u>193</u>	<u>Tanzania</u>	<u>265</u>		
<b>Fred Onuobia, Oluwatoyin Nathaniel and Okechukwu Okoro</b> G Elias & Co		<b>Angela Thorns, Kamanga Wilbert Kapinga and Jacqueline Tarimo</b> Mkono & Co Advocates			

# Hungary

**Zoltán Varga and Viktor Jéger**

Nagy és Trócsányi

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## Creating collateral security packages

### 1 What types of collateral are available?

The following types of collateral are available:

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

- 
- ### 2 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

Since the new Civil Code came into effect, a new internet-based, publicly available 'collateral register' has been set up for mortgages and other collaterals created on such moveables in which ownership is not attested by a public register. In the case of moveables attested by a public register, the mortgage shall be considered established if registered in the relevant registry. A registration fee is payable on each mortgage. The lien register maintained by the Hungarian Chamber of Public Notaries ceased to operate pro futuro, meaning that it currently displays only the previous registrations and no new entry is possible.

Priority is treated by law as detailed under real property mortgages (see above); however, there is a special rule; registration shall not be prevented even if the property to be registered does not exist, or the mortgagor has no authority over the moveable at the time of registration. This means that the creation of the mortgage will be effective retrospectively when the additional conditions will be

fulfilled. The moveable serving as security remains in the possession of the mortgagor.

#### Pledge on moveables

To create a pledge on moveables, it is necessary to conclude a written pledge agreement and transfer the possession of, or control over, the pledged property to the secured creditor. The pledge agreement may be replaced by a security issued by the creditor, authorising the holder of such a document to collect the pledged property in exchange for the sum shown in the security, within the time limit specified in the security. No registration is necessary and no duty or other fees need to be paid.

#### Charge on rights and receivables

In order to establish a charge on a receivable, the obligor of the receivable shall be notified in writing on the existence of the charge, or a statement thereof shall be made out and delivered to the creditor, whichever is chosen by the creditor. Charges on rights and receivables shall be registered in the collateral register or the relevant public register. 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.

#### Floating charge

The new Civil Code extended the applicability of the floating charge: it is possible to create such a 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. However, a floating charge may not be established on real properties. Now, the form of a notarial deed is not necessary but the charge must be registered in the collateral database.

#### Security deposit in the form of money, securities 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, a security or another asset as determined in a legal regulation. This kind of lien may be established by:

- the handover of the money or the security;
- in the case of dematerialised securities and bank accounts, by the way of a written agreement between the creditor, the debtor and the payment service provider, under which the payment service provider shall execute the orders of the debtor with the consent of the creditor, and shall execute the orders of the creditor without the consent of the debtor; or by way of a lien agreement between the debtor and the payment service provider to the benefit of the payment service provider;

- in the case of other assets defined by law, by the transfer from the possession of the debtor to the possession or control of the creditor; or
- by removing it from the unrestricted control of the debtor.

#### Seceded lien

The new Civil Code abolished the independent lien. Now, a lien may only be created in connection with a secured claim. However, by introducing the legal institution of 'seceded lien', the new Civil Code has made possible that once a lien (mortgage) has been created, it may be separated from the original claim: the creditor may transfer it without its secured claim, by a written agreement as a security, to its own creditor.

The concept of collateral agent became recognised in Hungary by the new Civil Code. The creditors are entitled to appoint a 'lien holder agent' in writing. The lien holder agent registered in the collateral register or the relevant public register is subject to the rights and obligations of the creditor (the lien holder), and, in this regard, the lien holder agent acts in his or her name and on the behalf of the lien holder. While the lien holder agent is registered, the lien holder may not exercise the rights arising from the lien, however, it bears full liability for the actions of the agent.

- 3 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 the laws of Hungary that may be applied to protect the claim of the creditor. The list of these legal instruments was shortened by the new Civil Code as it sets forth the nullity of fiduciary collaterals: transfer of ownership, other right or claim, or establishment of right to purchase for the purpose of securing a pecuniary claim (with the exception of the collaterals provided for in the directive on financial collateral arrangements). The relevant remaining legal instruments are described below.

#### 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.

#### Acknowledgement of debt

The acknowledgement of a debt does not change the legal grounds of such debt. However, the debtor bears the burden of proof thereon that there was no debt at the time of the statement of acknowledgement, the debt was in a lower amount or it was based on a claim that may not be judicially enforced or on an invalid contract. The statement is generally made in the form of a document executed by a notary public or in a private document fulfilling the formal requirements of having full evidentiary effect. The former has the advantage of being directly enforceable.

- 4 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, pledges, charges and security deposits (together, lien), 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 may 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 creditor may choose to:

- sell the property designated as collateral;
- acquire the ownership of such property; or
- enforce the right or receivable designated as collateral.

The creditor has a right to choose between the judicial enforcement and another way of enforcement (as listed above), and is also entitled to switch to a different way of enforcement (as listed above). A lien on payment account balances may only be enforced by way of judicial enforcement.

As a main rule, the right of the creditor to satisfaction shall open when the secured claim is due and the debtor is in default. In the case of seceded lien, the right to satisfaction opens when the right to satisfaction opens in respect of the claim secured originally. When this happens, the obligee of the seceded lien has an obligation to exercise the right to satisfaction or transfer the lien back to the creditor.

In the case of a lien agreement with a consumer, the creditor:

- is only allowed to sell publicly the property designated as collateral, unless the parties agreed on an alternative sales method after the effective date of the right to satisfaction; and
- may not acquire ownership of the property designated as collateral as a way of satisfaction, with the exception of security deposits.

#### Sale of the property

The creditor must send notice in writing to the persons with interest (eg, debtor, beneficiaries of other liens secured by the same property and persons holding a right registered in the public register of the property) with the prescribed content about the intent of selling the property designated as collateral. The prior notification must be sent at least 10 days before the sale, and in the case of a lien agreement with a consumer, at least 30 days before the sale. The creditor is entitled to sell the property without prior notification if the property is perishable, if its value is likely to diminish considerably upon delay or it is an item or a right traded on the stock exchange.

#### Acquisition of ownership

Any agreement for transferring ownership of the property designated as collateral to the creditor at the time of opening of the right to satisfaction is null and void. Following the effective date of the right to satisfaction, the creditor may offer to the debtor the acceptance of ownership of the property in satisfaction of the secured claim in whole or in part. In this case, the creditor is obliged to send notice about such an offer, by attaching a copy of the actual offer to the persons with interest (eg, beneficiaries of other liens secured by the same property or persons holding a right registered in the public register of the property). If the debtor accepts in writing the offer of the creditor within 20 days of the receipt thereof, and the notified persons with interest do not object in writing to the offer of the creditor within 20 days of the receipt thereof, the creditor and the debtor enter into a sales contract. In the case of a security deposit, the creditor may acquire directly the right of the property, with a statement addressed to the debtor.

**Enforcement of the right or receivable designated as collateral**

In the case of a charge on a receivable, the creditor may give performance instructions to the obligor of the receivable and is allowed, after the receivable is due, to enforce the claim for the receivable in place of the debtor against the obligor. This provision is applicable *mutatis mutandis* on a charge on a right.

- 5 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 lien are favoured against any other claims (eg, 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 has provided a security deposit to secure a claim until the first date of the liquidation proceedings, 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 file a statement of 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), Hungarian branch offices and commercial representative offices of foreign companies and civil society organisations.

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 before the court: in respect of every asset of the business entity, namely, liquidation proceedings (universal enforcement) or in respect of certain assets of a business entity in the value of the claim (singular enforcement).

**Foreign exchange issues**

- 6 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 0.3 per cent (maximum 6,000 forints per transaction).

- 7 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 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 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.

**Foreign investment issues**

- 10 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 foreign nationals 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 is restricted under the law. Real estate, in general, may only be acquired, with the exception of inheritance, by foreign individuals and legal entities from non-EU states by the permission of the competent authority. Stricter restrictions apply on the acquisition of agricultural lands and forests (lands). Non-EU individuals and foreign states (and government agencies) may not acquire the ownership of lands, as well as legal entities with certain exceptions (eg, in certain cases the state of Hungary and churches). As a main rule, the ownership of lands may only be acquired by domestic individuals as well as individuals from member states of the European Union.

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

- 11** 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.

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

With a one-sided act, Hungary 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 and agrarian seasonal permits may 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. There is also the possibility of applying for a single permit instead of a residence and a work permit, if the applicant has a residence permit for the purpose of family reunification, gainful employment, a residence permit on humanitarian grounds or an EU Blue Card.

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.

- 13** 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.

- 14** 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. At present, nationalisation is not even possible under the laws of Hungary. Expropriation, on the other hand, is possible, but it is only permitted in exceptional cases, when such action is in the public interest, and only in such cases and in the manner determined by the relevant act, under the terms of full, unconditional and immediate compensation.

In addition – as special and express legal protection in respect of the interests of foreign nationals – 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 foreign nationals. Further, various sector-specific legal instruments provide certain specific rules regarding expropriation and protection against expropriation, such as rules regarding land, railways, power lines and protected natural areas.

#### Fiscal treatment of foreign investment

- 15** 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.

#### Government authorities

- 16** 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 and Public Utility Regulatory Authority 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 clerks 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 17.

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

#### Regulation of natural resources

- 17** 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 sectorial 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 in respect of the concession 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 sectorial laws – within 90 days of the signature of the concession contract, a Hungarian-seated business entity shall be established.

- 18** 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.

- 19** 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.

#### Legal issues of general application

- 20** 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.

- 21** 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 16).

Further, 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. The involvement of a notary public, in general, is not prescribed by law. 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.

**22** 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 a property right, 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 within the borders of Hungary and falling under the scope of Act CXCVI of 2011 on National Assets, nor is there in connection with any right, claim or demand attached to such a national asset. 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 may 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 it considers that 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.

**23** 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 or labour, the applicable law 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.

The Act on National Assets lays down that those who have authority over a national asset located within the borders of Hungary may only agree to the application of the laws of Hungary in a civil law agreement. (Stipulations contrary to a legal regulation are considered null and void.) In addition, the laws of another jurisdiction must be disregarded and domestic law is to apply if the law chosen to apply conflicts in any way with public order in Hungary.

**24** 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 a 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 may not 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 the Hungarian recognition of a foreign decision determining an obligation 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.

#### Environmental, health and safety laws

**25** 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 CXXXII of 2013 on the Traffic of Agricultural and Forest Lands;
- 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.

### Project companies

- 26** 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 (if the company is founded through a standard contract form, the Court of Registration is obliged to register new companies within one working day after the tax number is established) and they are cheap to set up (registration duty of either 50,000 forints or 100,000 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 provided 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 assets of the company.

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.

### Public-private partnership legislation

- 27** 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 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.

### Update and trends

Since the new Civil Code entered into force only recently (15 March 2014), it is important to emphasise that judicial practice – the interpretation of the courts on the application of the law – is not available yet. While this is a transitional period, many legal institutions have remained basically the same and many amendments were founded on the established judicial practice, so the legislator only recognised the actual application of the law. The reception and the practical significance of the new concepts (eg, the newly introduced trust and the lien holder agent) are not yet clear.

In connection with the new Civil Code, the transitional rules have great significance. As a main rule, the new Civil Code is applicable on legal relations established after 15 March 2014, but the transitional rules also provide for the opportunity of the parties to set their existing legal relationship under the new Civil Code with their mutual consent.

The Act on the Traffic of Agricultural and Forest Lands did not only repeal the Act on Arable Lands and introduce stricter rules on the sale and use of lands, but also intervened in existing legal relations. The new Act and its transitional rules set forth that usufruct and right to use created by contracts in effect on 30 April 2014 shall terminate by the force of law on 1 May 2014 if the contract is not concluded by close relatives. Beneficiary land loan contracts may not be prolonged and will terminate on 31 December 2014. Lease usage agreements shall not terminate automatically, but in the case of certain amendments they must be brought into conformity with the new law.

From the new Act on Public Procurement (Act CVIII of 2011) and from the new Act on Public Finance (Act CXCV of 2011) a reference to PPP projects were left out. At present, 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.

After the revision of the PPP concept, the government is additionally considering involving private funds in the Museum District project planned to be carried out in Városliget (Budapest).

### PPP – limitations

- 28** 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).

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**PPP – transactions**

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**29** 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;
- 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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