



Gide Loyrette Nouel

Real Property Investment Law in Hungary



Gide Loyrette Nouel

Contents

TITLE..... 3

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION 4

THE DEVELOPMENT OF LAND..... 5

LEASES..... 6

COMMERCIAL LEASES 7

TAX..... 9

LEGAL COSTS REGARDING REAL PROPERTY ACQUISITIONS 11

SECURITY USED IN REAL PROPERTY FINANCINGS..... 12

TITLE**Full ownership***General*

Full ownership of real property is recognised under Hungarian law. The Constitution of the Republic of Hungary guarantees the right to real property.¹ Expropriation shall only be permitted in exceptional cases when such action is in the public interest, in the manner stipulated by law and with provision of full, unconditional and immediate compensation.

Acquisition

Full ownership of real property is acquired by the registration of title in the land register based on a written document countersigned by an attorney or prepared in the form of a notarial deed. This registration validates the transfer retroactively as of the date of the registration application and makes the transfer of title binding on third parties. Ownership rights are proved by providing a land registry extract.

Real property may be acquired by:

- sale and purchase of the real property;
- lease of the property with an option to purchase;
- becoming a majority shareholder of a company that actually holds among its assets the real property;
- the contribution in kind of real property to a company, either upon establishment of the company or subsequently by way of an increase in capital where the totality of the new shares are obtained by the person contributing the real property and then subsequently their shares are purchased by a purchaser;
- 15 years of continuous and non doubtful possession. Possession must be evident (through investments, maintenance etc.);
- succession or donation.

Ownership of buildings and land use rights

Generally, all buildings and structures erected on land belong to the owner of the land. However, it is possible in Hungary to acquire the ownership of a building without the underlying land. This may only occur if the owner of the land and the constructor agree in writing before the construction of the building. In this case, the constructor will be the owner of the building and will benefit from a land use right over the land. A land use fee is paid by the owner of the building. The land and the building are registered separately in the land register, where the land use right is mentioned. The owner of the land has a statutory pre-emption right in respect of the building, while the owner of the building has a statutory pre-emption right in respect of the land.

¹ Article 16 of the Constitution of the Republic of Hungary.

Limitations on acquisition

The acquisition of full ownership over real property located in Hungary by foreigners or foreign companies requires a prior permit from the local administration office. Acquisitions made without the requisite permit are null and void. Agricultural land may not be acquired by Hungarian legal entities or foreigners except for farms not exceeding 6,000 sq m with a dwelling house.

European Economic Association companies may acquire non-residential and non-agricultural property without limitation. EU citizens may freely acquire commercial property and residential property if they plan to establish their main residence in Hungary. EU citizens may not acquire secondary residences and agricultural land until 1st May 2011.

Protection of ownership by courts

In Hungary there are no particular difficulties regarding protection of real property ownership. There is no uniform register of re-privatisation in Hungary. It is important to check whether there are any re-privatisation claims in relation to given real property.

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION

The following interests and property-related rights, and the holders of such, may be recorded in real property register: ownership rights (in Hungarian: “tulajdonjog”), and asset management rights in respect of state-owned real estate (in Hungarian: “vagyonkezelői jog”), permanent right of use for members of housing cooperatives (in Hungarian: “állandó használati jog”), land use on the basis of agreement or court decision (in Hungarian: “földhasználati jog”), usufruct and the right of use (in Hungarian: “haszonélvezeti és használati jog”), easement rights (in Hungarian: “szolgalmi jog”), right of use for the placement of power supply equipment (in Hungarian: “villamosberendezések elhelyezését biztosító használati jog”), cable rights (in Hungarian: “vezetékjog”), water line and mining easement rights (in Hungarian: “vízvezetési és bányaszolgalmi jog”), easement rights and utilization rights in the public interest (in Hungarian: “közérdekű szolgalmak és használati jogok”), contractual or statutory right of first refusal (in Hungarian: “törvényen vagy szerződésen alapuló elővásárlási jog”) and right of repurchase (in Hungarian: “visszavásárlási jog”) and option to purchase (in Hungarian: “vételi jog”), right of support and life annuity (in Hungarian: “tartási és életjáradéki jog”), mortgage and independent lien (in Hungarian: “jelzálogjog” and “önálló zálogjog”), and right of legal enforcement (in Hungarian: “végrehajtási jog”).

These interests can be granted either by an agreement concluded by the parties or by an administrative or court decision. Some of these interests may be granted for a definite period (ex. option right may be granted up to 5 years) or indefinite period (ex. usufruct remains valid until the death of the beneficiary). An interest, as a right which affects the property of land, is transferable with the land. The purchaser acting in good faith which acquires the land encumbered with a recorded interest has the same obligations towards the beneficiary of the interest as the initial owner. Therefore, the acquisition of land or buildings requires a careful examination for the existence of interests.

THE DEVELOPMENT OF LAND

Rezoning of agricultural land

Agricultural land can be used for purposes other than agriculture after obtaining the authorisation of the local land registry office.² These plots may be incorporated in urbanized areas or rezoned for development only in compliance with the progress of the local master plans. An authorisation issued shall become void if the alternative use is not commenced within five years.

The master plan and local plan

The Construction Act 1997³ determines that the local government shall adopt, in respect of each settlement a structural plan, a zoning map and a local building code. In the case of Budapest each local municipality decides planning matters with regard to the master plan of Budapest, the local structural plan and local building code.

Building permitting process

Preliminary building construction permit

A person interested in ascertaining the requirements to construct a building may apply to the local municipality to issue a final and enforceable preliminary permit (in Hungarian "*elvi építési engedély*" or "*elvi telekalakítási engedély*").⁴ Such permit is valid for one year. Its validity may be extended on once occasion by no more than one additional year provided that the relevant legislation has not changed.

Building construction permit

Under the provisions of the Construction Act 1997, a building authority permit (in Hungarian "*építési engedély*") shall be obtained from the local municipality for the construction, remodelling, expansion, renovation, rehabilitation, improvement, demolition, relocation or modification of the original function of a structure or a section thereof or group of buildings. A building authority permit may be conditional.

In order to obtain a permit, an application must be made to the local municipality by submitting the title deeds, the architectural drawings, the structural drawings, and the electrical and mechanical installation drawings. The plans shall comply with the applicable zoning requirements. The building authority will conduct an on-site inspection as part of the permit application evaluation procedure. If the application is complete, the authorities shall grant the permit within 60 days at the most. If the application is incomplete or irregular in any way, the permit will be issued only after the deficiencies or errors are remedied. A fee is charged for the construction permit.

The specialized authorities and other organs specified in separate legal regulations and the registered technical experts participate in the permitting procedure and give their approval prior to the issuing of the building authority permit.

The construction must start within two years from the issuance date of the construction permit. If construction does not commence within two years, a renewal of the permit shall be requested.

² Article 44 of the Agricultural Land Act 1994.

³ Act LXXVIII of 1997 on the Formation and Protection of the Built Environment (in Hungarian "*az épített környezet alakításáról és védelméről*").

⁴ Article 35 of the Construction Act 1997.

Occupancy permit (use of the construction)

The developer shall be required to obtain an occupancy permit (in Hungarian “*használatbavételi engedély*”) from the local municipality for all structures and sections thereof for which a building permit was required. Without the occupancy permit the structure may not be used.

The application for an occupancy permit must attach declarations from the appropriate specialized authorities, the relevant public utility companies, the chimney sweeper (building engineer) and the construction superintendent. These declarations must state that the structure and the work completed conforms to building permit, the approved permitting plans and is suitable for proper and safe occupancy. If the application or declarations are in some way deficient a conditional occupancy permit may be granted.

LEASES

Hungarian law distinguishes between two types of leases: commercial leases and leasehold. Leasehold is typically used for agricultural land.

Commercial leases

Commercial leases are regulated by the Hungarian Civil Code and the Lease Act 1993.⁵

Leasehold

Under a leasehold agreement⁶, the tenant is entitled to use and collect the proceeds of a designated parcel of agricultural land or other profitable property for a specific time. The tenant is obliged to pay appropriate rent for this privilege. A written contract is required to lease agricultural land and administrative approval may be required by law. Leasehold payments may be made in cash or in kind. Leasehold payments are made in arrears.

The tenant shall be entitled to use and collect the proceeds of the leased land only in accordance with the principle of proper management. Unless otherwise prescribed by law, any sublease of agricultural land shall be null and void.

Leasing with an option to purchase

Leasing with an option to purchase is a *sui generis* contract not regulated in the Hungarian Civil Code. The applicable rules stem from civil law, banking law, tax law and case law. This type of contract combines the rules on lease agreements⁷ and some of the rules on payments in instalments.⁸ There are two primary forms of leasing with an option to purchase: simple leasing with an option to purchase (in Hungarian “*lízing*”) and financial leasing (in Hungarian “*pénzügyi lízing*”).

Simple leasing with an option to purchase is a lease contract for a determined duration at the end of which the landlord grants the tenant an option to purchase the real property.

⁵ Act LXXVIII of 1993 on the lease of dwelling apartments and other premises.

⁶ Articles 452-460 of the Hungarian Civil Code.

⁷ Article s 423 and 434 of the Hungarian Civil Code.

⁸ Article 376 of the Hungarian Civil Code.

Financial leasing is a lease under the terms of which a leasing company (credit institution) acquires pursuant to the request of a client, a real property in order to lease that real property to that client for a certain duration. The leased property is registered in the financial accounts of the beneficiary during the performance of the contract. The client pays for all the expenses incurred in the acquisition and lease transaction in exchange for the use and quiet enjoyment of the real property. At the end of the lease, the client has the option to acquire the real property or surrender the lease to the leasing company.⁹ Only institutions authorized by the Hungarian Financial Supervisory Authority may grant financial leases. The instalments paid by the tenant to the landlord during the lease period may not entirely be taken into account - subject to the applicable tax regime - as costs against income from accounting and tax purposes.

Operative leasing without option to purchase

Operative leasing (in Hungarian "*operatív lízing*") without an option to purchase is a *sui generis* contract, not regulated in the Hungarian Civil Code. The applicable rules stem from civil law, banking law, tax law and case law. Operative leasing agreements combine the rules on lease agreements¹⁰ and some of the rules on payments in instalments¹¹. The commercial and bookkeeping treatment of operative leasing is similar to the financial leasing. The main difference is a tenant of an operative leasing agreement may not purchase the real property at the end of the lease period. The real property needs to be physically handed back to the landlord who owns the real property during the entire lease period. The tenant may consider the paid instalments as operational costs, and may deduct them - subject to the applicable tax regime - from the realised income of the company.

COMMERCIAL LEASES

A specific statute

The Hungarian Civil Code and the Lease Act 1993 regulate the leasing of commercial premises.¹² Freedom of contract characterizes the Hungarian regulation of lease agreements.

Form

Commercial leases are usually concluded in writing. There are no other legal requirements regarding the form of the lease agreement.

Duration

Hungarian law does not specify the duration of commercial leases. Therefore, definite or indefinite terms are possible.

Termination

Any lease agreement may be terminated by the mutual agreement of the parties. Unless otherwise agreed, subject to a notice period any party may at any time unilaterally terminate an indefinite period commercial lease. Unless agreed otherwise, the notice period is at least one year in case of termination by the landlord and at least 15 days in case of termination by the tenant.

⁹ Establishment of Credit Institutions and Financial Enterprises Act 1996 (Act CXII of 1996).

¹⁰ Article s 423 and 434 of the Hungarian Civil Code.

¹¹ Article 376 of the Hungarian Civil Code.

¹² Act LXXVIII of 1993 *on the lease of dwelling apartments and other premises*.

Right of renewal

The tenant has no statutory right of renewal.

Pre-emption right of tenant

Hungarian law does not grant a tenant pre-emption rights over commercial premises.

Rent and rent cap

It is mandatory to indicate the rent in HUF or in another currency at the moment of conclusion of the lease agreement, otherwise the lease is considered null and void. Hungarian law does not provide for any rent caps for commercial leases.

Rent review

Hungarian law does not stipulate any rent indexation provisions for commercial leases. Therefore, rent is adjusted in accordance with contractual provisions agreed by the parties. European Consumer Price Indexes, US Consumer Price Indexes or the Consumer Goods and Services Price Index published by the Hungarian Statistics Office are often used.

Costs rechargeable to tenants

Generally, all costs may be recharged to a commercial tenant.

Improvements

Unless otherwise agreed, after termination the tenant must return the leased premises in their initial condition; subject to usual depreciation. If a tenant has carried out improvements, the landlord is entitled, at the end of the lease, either to keep the improvements in consideration for a payment equal to their value at the time the leased premises reverts to the landlord or may require the tenant, at his expense, to restore the leased premises to their original condition.

Transfer of lease by tenant

Transfer of the lease by the tenant without the prior consent of the landlord is not permitted.

Sublease

Subletting without the prior consent of the landlord is not permitted.

Maintenance

During the term, the landlord must maintain the building and essential equipment (central heating, gas and water pipes, elevator etc.). The tenant is responsible for minor maintenance and renovation. The parties should clearly specify maintenance obligations because the provisions of the Hungarian Civil Code concerning maintenance obligations are open to interpretation.

Permitted use

The parties are not obliged to indicate the nature of the business to be exercised in the premises. Some uses require the prior approval of local authorities. The tenant is responsible for obtaining this approval.

TAX**Transaction costs***Sale of land and buildings***VAT**

Value added tax (in Hungarian "*általános forgalmi adó*" or "*ÁFA*") is governed by the VAT Act 1992¹³ and the 6th VAT Directive.

In principle, the sale of building sites and property other than residential property are subject to VAT, while the transfer of other real property (i.e. residential and agricultural land) are tax exempt. The applicable VAT rate is 20%. As an exception, the sale of residential property under construction and the first sale thereafter are subject to VAT.

No VAT is due upon the sale of participation in a real property company.

Stamp duty

The transfer of real property for consideration is subject to transfer tax (in Hungarian "*visszterhes vagyónátruházási illeték*") payable by the purchaser, calculated on the market value of the property transferred.

The duty on transfer is usually 10% of the market value, while the duty on the transfer of residential property is 2% for the first HUF 4 million (approximately EUR 16,300) and 6% above that amount.

The acquisition of a building site may be exempt from stamp duty provided that the purchaser builds a residential building on the real property within four years.

The acquisition of real property by a property investment fund or by an entrepreneur engaged in trading property or financial lease may qualify for a special regime, in which the purchase is only subject to a duty of 2% transfer tax.

Contributions in kind of real property to a company are subject to the same transfer tax as other acquisitions. However, the assets acquired by the legal successor through transformation are exempt from stamp duty.

If real property is sold by selling the shares of a real property company no transfer tax liability would arise.

Taxation of capital gains*Capital gains realised by a private individual*

Personal income tax (in Hungarian "*személyi jövedelemadó*") is regulated by the Personal Income Tax Act 1995.¹⁴ All gains arising from the sale of property are subject to tax as of the date of filing of the sale and purchase contract with the land registry or, if there is no such obligation, as of the date of signature of the sale and purchase contract. The tax rate applicable to income arising from the transfer of the property is 25%.

¹³ Act LXXIV of 1992.

¹⁴ Act CXVII of 1995.

Taxable income is the income received for the property reduced by the following charges:

- the original acquisition price of the property and related costs;
- the investments increasing the value of the property; and
- other expenses incurred in the course of the sales transaction.

The sale of residential property is exempt from tax if the income received is used to acquire another residential property within the 12 months preceding or within the 60 months following the sale.

The profits of contribution in kind of property or of attached rights are taxed in the same way as profits made through the sale. In such a case, the profit is calculated based on the value of the property as indicated in the articles of association of the company receiving the contribution.

Capital gains realised by a corporate entity

Hungarian corporate income tax (in Hungarian "*társasági adó*") is governed by Corporate Income Tax Act 1996.¹⁵

Corporate profits including income from lease or sale of property are subject to 16% corporate income tax and a 4% "solidarity" surtax.

Under the corporate income tax rules, accounting depreciation is a tax base addition while tax depreciation is reducing the tax base. The Corporate Income Tax Act 1996 sets out the tax depreciation rates between an annual 2% to 6%, depending on the structure of buildings.

Local business tax at a maximum of 2% of the annual adjusted turnover (i.e. the net sales revenue minus acquisition cost of goods sold, mediated services and cost of materials) may also apply on the sales income. This tax is levied by the local municipality, and as such the rates may differ in each local jurisdiction. 200% of the local business tax is deductible for corporate income tax purposes. The Municipality of Budapest levies a 2% local business tax.

Leases

VAT

The lease of any property is exempt from VAT. However, taxpayers may opt for the application of the general VAT regime when letting non residential property. The choice for the latter should be filed with the tax authority by 31st December of the year preceding the VAT-able lease. If this is not filed in time, there is no possibility to charge VAT on the rent, and input VAT incurred on goods and services received in relation to the letting activity will not be deductible.

Personal income tax

The proceeds of lease or rental of property is considered as income, subject to tax at a 25% rate.

Corporate income tax

Income resulting from the lease of property is taxed as part of the corporate profits at 16% CIT and 4% "solidarity" surtax, both taxes being levied on the modified accounting profits.

¹⁵ Act LXXXI of 1996.

In general, real property used for retail, logistics or offices may be depreciated at a rate of 2% - 6% (the actual rate depends on the expected lifespan of the material of the superstructure). If the real property is leased, the landlord may apply an annual depreciation rate of 5%. Rights connected to real property may be depreciated at a rate as defined by the accounting policy of the company.

Property tax

Building tax

Property tax on buildings (in Hungarian "*épitményadó*") may be imposed by local municipalities. It is an annual levy on the persons registered as the owners as of 1st January of the given year. The tax may either be calculated based on the area of the building or on its adjusted market value. The adjusted market value of the property is 50% of the market value for transfer tax purposes.

The annual rate is determined by the local municipality and therefore varies from region to region. The upper limit of the rate is fixed at HUF 900/sq. m. (approximately EUR 3.6/sq. m.) or at 3 per cent. of the adjusted market value of the building.

The following real properties are not subject to building tax:

- premises of social organizations, religious organizations, foundations, public service, organizations, public corporations, non-profit companies, if in the previous year they incurred no corporate tax liabilities as the result of business activities;
- buildings used by social, health, educational and child welfare institutions, or for administration, and buildings used for the purpose of animal husbandry.

Land tax

The owner of undeveloped land situated in the territory of an urban area may be taxed (in Hungarian "*telekadó*") by the relevant local municipalities. The tax is payable by the person being the registered owner on the 1st January of the given year.

The method of calculation is the same as for the tax on developed land. According to the decision of the local authority it may be calculated on the basis of area of the land or its adjusted market value.

Land used for public transport, land subject to building prohibitions and land subject to building tax are not subject to land tax.

The upper limit of the tax is fixed at HUF 200/sq. m. (approximately EUR 0.77/sq. m.) or at 3% of the adjusted market value of the land.

LEGAL COSTS REGARDING REAL PROPERTY ACQUISITIONS

Notary fees

Notarial deeds are not required for real property transactions.

Lawyers

All documents related to real property transactions which are filed with a land registry for registration must be executed in writing and countersigned by a Hungarian attorney. Lawyers and their clients are free to determine the fees charged for the due diligence, the drafting of the contract and the land registry procedure.

Land registry

Entries into the land register (in Hungarian "*ingatlannyilvántartás*") are subject to fees of an insignificant amount.

Publication

There is no specific obligation of publication.

SECURITY USED IN REAL PROPERTY FINANCINGS**Mortgage**

Hungarian law recognises the mortgage as the only type of lien pertaining to land and buildings. The parties may also create a limited security lien to secure claims originating from a legal relationship or a legal title stipulated in the lien agreement. A floating charge may also encumber all assets of a person, including real property.

Only real property that is individually registered in the land registry can be subject to a mortgage. An agreement establishing a mortgage over property must be concluded in writing and the mortgage must be entered in the land registry.

Mortgages generally terminate when obligations arising from the main agreement between the parties are wholly performed. A mortgage may also terminate if the property is sold by common agreement of the parties. In such a case, the creditor has a pledge on the purchase price of the sold real property.

The mortgage ends if the mortgaged property is sold to the mortgagee. However, the mortgage subsists towards the creditors with a lower ranking. Mortgage agreements are usually providing that the mortgagor must not without the prior consent of the mortgagee (unless expressly permitted):

- create or permit to subsist any security on the real property (other than the security created by the security agreements with the financing bank);
- sell, transfer, license, lease or lend or otherwise dispose of the real property; or
- take any measures or make any declarations which infringe or limit the mortgagee's rights under the mortgage agreement in any material respect.

Unless otherwise provided by law, satisfaction from the mortgaged property may only occur on the basis of a court order by a writ of execution.

The security holder may also require the registration of a restriction of transferring and encumbering the real property in the land register.

Formalities

The mortgage can be registered based upon a notary public document or an agreement countersigned by a Hungarian attorney. Usually notary public documents are preferred, because the execution of a notary public document is easier.

Costs

The costs in connection with the registration of a mortgage are the costs of the preparation of the notary public documentation (based upon the fee tariff for notaries which depends on the amount of the mortgage) and the registration fee at the land registry (not a significant amount).

Other common security

Cash and securities deposits

Financial collateral may be provided under a financial collateral arrangement to secure cash, money on account, debt or equity securities and other financial instruments. In each case the collateral is effective upon delivery of the relevant financial collateral.¹⁶ If the financial collateral given as security comprises of any other asset, such as movable property, for example, the laws and regulations on mortgages and pledges shall apply. Delivery means any procedure upon which the financial collateral is transferred from the possession of the depositor to the possession of the beneficiary. Therefore delivery will occur when a beneficiary's bank account, securities account or securities deposit account is credited.

Security assignment of rights or receivables

An obligor may assign its commercial, trade or other financial receivables as security interests via a security assignment agreement. The assigned receivables are collected in a receivables account maintained with the assignee (in case it is a bank). The assignor may use the balance of the collection account until the occurrence of an event of default. The security assignment agreement does not need to be notarised or registered in any public record in order to be valid. Though the assignment of accounts or accounts receivable is not part of the rules relating to security interests under the Hungarian Civil Code, it is very often used in Hungary in various corporate and finance activities.

Pledge over contractual rights/claims and bank accounts

A pledge can be taken over a contractual right and/or claim. A pledge must take the form of a written agreement. No additional requirements are necessary. It may include future rights and claims that are created in favour of the pledgor. If the right or claim is evidenced in an official record (e.g. the land register) and the formal registration is a legal prerequisite, the pledge over rights and/or claims shall be effective only from the date of registration.

A pledge over bank accounts takes the form of a notarised document. In this manner the document can be registered in the pledge register. Typically, in a pledge of bank accounts agreement the pledgor (the borrower) pledges all of its rights in respect of all of the security assets (all of the pledgor's rights in respect of any amount standing to the credit of any security account and/or payable under any security account) to the pledgee (the bank) to secure all present and future obligations and liabilities of the borrower (secured obligations). The notary's fees will depend on the value of the security given.

Pledge over shares and/or quotas

Another common form of security is a pledge over the shares or quotas (in Hungarian "üzletrész") of the project company (borrower). The pledgors (shareholders of the borrower) will pledge the whole of the borrower's registered capital (shares or quotas) owned by them or held by any nominee on their behalf by way of the shares or quota pledges.

¹⁶ Article 270 of the Hungarian Civil Code.

Pledges over shares or quotas take the form of a notarised document. In this manner the document can be registered in the chattel register kept by public notaries. The notary's fees will depend on the value of the security given.

Fixed charge

No specific legislation exist under Hungarian law concerning fixed charges. Therefore, a fixed charge can be any of the following:

- (i) a mortgage over real property; or
- (ii) a mortgage over specific movable properties, whether created directly pursuant to a contract, or through conversion of a floating charge which is registered in the chattel register; or
- (iii) a possessory lien; or
- (iv) a pledge over rights and claims.

Floating charge

A floating charge security interest can be created over all or part of the changing assets of a company. It is created by a security document which is notarised and then registered in the chattel register kept by public notaries. The floating charge catches (subject to its precise terms) any and all present and future property owned by the obligor. It is effective against third parties from the date of registration in the chattel register. Other security interests may rank prior to the floating charge if (x) registered first in time or (y) a fixed charge (except for mortgage over specific chattel properties) at anytime.

On the occurrence of certain specified crystallisation events (e.g. insolvency or an event of default) the floating charge "crystallises" on all of the assets of the obligor *or the beneficiary may, alternatively, specify the assets on which the floating charge "crystallises"*. As a result, the assets (or specified assets) of the obligor will be charged with specific, crystallised fixed charge security interests. The (fixed charge) security interest(s) created by the crystallisation must be registered into the chattel register or the land register (as appropriate) in order to be valid.

Corporate guarantees and suretyship

It is common practice for a beneficiary to request corporate guarantees from creditworthy business associations, parent companies, international trade organisations or insurance companies. There are no rules on such guarantees in the Civil Code. Therefore, the rules relating to bank guarantees are applied, which require that they be (i) up to a specific amount (ii) for a predetermined time (iii) enforceable under certain conditions; (iv) expressly stated to be irrevocable and unconditional. Often these guarantees will themselves be secured.

In Hungary suretyship must take the form of a written agreement. The obligation of a surety shall always depend on the secured obligation. However, it shall include any accessory services (such as eventual cost and/or payment obligations) that fall due after the suretyship is undertaken. The surety may invoke the same objections as those available to the obligor against the beneficiary. A surety is entitled to request that the beneficiary first seek satisfaction from the debtor and/or from other sureties who assumed suretyship before it (*simple suretyship*). This shall not be the case if (i) the parties have agreed otherwise, (ii) a suretyship was assumed for indemnification, or (iii) suretyship was assumed by a bank (*absolute suretyship*).

Lender's right of purchase

This is a specific type of quasi-security arrangement which is particular to Hungary. The obligor may grant a right of purchase (a call option) to a beneficiary (almost always a bank lender) in respect of any of its property (real property, stock, cars, other assets etc.) exercisable from the date of occurrence of an event of default. If the right of purchase is given in respect of real property then it must be registered with the land register in order to be valid against third parties. The security document needs to carefully stipulate the events of default under which the beneficiary may exercise the right and the purchase price of the relevant property. Right of purchase, being a call option, can be established for a maximum period of 5 years.¹⁷ Should the parties wish to extend the right, they should consider concluding a separate contract that would enter into force at the time prior to the initial contract expiry for a further term of 5 years. Upon exercise of the right of purchase, the beneficiary becomes the owner of the asset. The obligor must grant possession of the real (or other) property to the beneficiary within a time period specified in a call notice set out in the right of purchase. The beneficiary will have to sell the “purchased” property in order to recover the (cash) amount owed to it.



¹⁷ Articles 375(4) and 374(2) of the Hungarian Civil Code.

About the Law Firm

Gide Loyrette Nouel is an international law firm that has been advising real estate investors since 1920. Gide Loyrette Nouel has been present in Central and Eastern Europe since 1991.

About the Authors

Jacques de Servigny is partner in charge of the Budapest office of Gide Loyrette Nouel. He was admitted to the Paris Bar in 1990. He has a DESS (Master's degree) in international tax law, University of Paris XII (1989). He graduated from HEC, Paris (1989). He has a DEA (Master's degree) in intellectual property (1987) and a *Maîtrise* in private law, University of Paris (1986).

Dr. Orsolya Bárdosi, senior associate leading the tax practice of our Budapest office, is a member of the Budapest Bar and is a registered Tax Advisor (certified by the Ministry of Finance). After being a member of Arthur Andersen's and Ernst & Young's tax team, she joined to lead the tax practice of Gide Budapest in the summer of 2004. She specialises in tax law matters including tax optimization, international financing planning, tax litigations, tax due diligences, health checks and general tax consultancy for more than seven years now and has extensive experience especially in the field of tax structuring and tax authority disputes.

Dr. Judit Decsov is a senior associate in the Budapest office of Gide Loyrette Nouel. Dr. Judit Decsov is head of Real Estate Department and the German Desk at Gide Loyrette Nouel in Budapest since 2005. She is a senior Hungarian lawyer with over 10 years experience of real estate transactions. She has advised investors (both buyers and sellers), developers, banks, contractors, landlords and tenants on various real estate projects. She graduated at Eötvös Lóránd University Law Faculty in 1995. She is member of the Budapest Bar Association since 1998.

Charles Cruden is a senior associate in the Budapest office of Gide Loyrette Nouel and a member of the International Real Estate Practice Group. He has been practising real property investment law in Central and Eastern Europe for over 5 years. He qualified as a solicitor in 2001. He has a diploma in legal practice, Exeter University (1999), a diploma in law, Exeter University (1998), a M.A in history, Cambridge University (2001) and a B.A. in history, Cambridge University (1996).

Zsuzsanna Szigeti is an associate in the Budapest office of Gide Loyrette Nouel and a member of the International Real Estate Practice Group. She will pass the Hungarian Bar exam in 2007. She graduated in law, Eötvös Loránd University of Sciences, Budapest (2003). She studied French and European law at the University of Aix-en-Provence and a French law course organised by the University Panthéon-Assass.

**Gide Loyrette Nouel
Molnár & Ferenczy**

EMKE Building
Rákóczi út 42 - BP 409
1072 Budapest
Hungary

Tel. +36 1 411 74 00

Fax +36 1 411 74 40

E-mail: gln.budapest@gide.com

www.gide.com

Contacts

Jacques de Servigny

E-mail: servigny@gide.com

Orsolya Bárdosi

E-mail: bardosi@gide.com

Judit Decsov

E-mail: decsov@gide.com

Charles Cruden

E-mail: cruden@gide.com

Zsuzsanna Szigeti

E-mail: szigeti@gide.com



Gide Loyrette Nouel