

# TRUST QUARTERLY *REVIEW*

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*INHERITANCE ACT CLAIMS:  
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# THE HUNGARIAN TRUST

An examination of its features

*BY DR KRISTÓF ULMANN*

## ABSTRACT

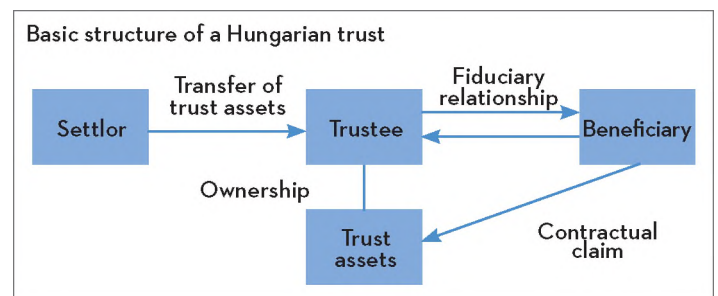
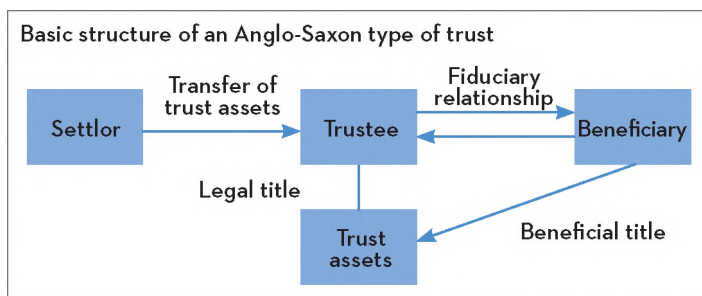
- *The Hungarian trust is an excellent tool for asset-protection purposes. This article first provides a detailed account of the characteristics of the Hungarian trust, demonstrating that, although the law provides wide-ranging protection and a tax-optimised environment, there is also a great amount of flexibility, allowing the settlor to retain control over the trust assets and recover them at the appropriate time.*
- *Second, the position of claimants is described under Hungarian law, detailing the very limited circumstances under which a claimant can enforce any claim against the trust assets of a Hungarian trust.*
- *Third, an account of the enforceability of foreign judgments in Hungary is provided, with the notable observation that claimants from countries with no bilateral legal assistance agreement with Hungary – for example, the US – are essentially barred from enforcing their claims against the trust assets of a Hungarian trust.*

A trust is a legal instrument whereby the settlor transfers trust assets to the trustee, who is then bound to manage the trust assets for the benefit of the beneficiaries.

Under an Anglo-Saxon type of trust, including a trust established under the jurisdiction of one of the states of the US, the trustee holds the legal title (legal ownership) over the trust assets, appearing as the owner to the outside world, while the beneficiary named in the trust deed holds the beneficial title (equitable ownership) over the trust assets. Beneficial ownership entails limited rights for the beneficiary, and compels the trustee to hold the trust assets exclusively for the benefit of the beneficiary.

Under a Hungarian type of trust, only the trustee obtains ownership over the trust assets. Although the trustee is the sole owner, the beneficiary named in the trust deed also holds rights over the trust assets. A Hungarian trust deed is a form of mandate contract, which compels the trustee to hold the trust assets exclusively for the benefit of the beneficiary named in the trust deed. This means the beneficiary has a contractual right against the trustee in relation to the trust assets. The difference in approach can

‘Under Hungarian law, just like in other civil-law jurisdictions, ownership is absolute and cannot be split; hence, there is no distinction made between legal and beneficial title’



be attributed to the fact that, under Hungarian law, just like in other civil-law jurisdictions, ownership is absolute and cannot be split; hence, there is no distinction made between legal and beneficial title.<sup>1</sup>

As shown above, the basic structure of the Anglo-Saxon and Hungarian type of trusts is the same. The only difference is the type of right the beneficiary holds in relation to the trust assets.

From a practical viewpoint, however, the Hungarian trust does stand out in one aspect: that of asset protection. The main goal of asset protection is to structure the ownership of the interested party’s assets in such a way as to protect them from any prospective claims.<sup>2</sup> This can be best achieved by turning the assets the interested party owns into assets that they do not own, while at the same time ensuring that the party still has control over the assets; the assets are protected; and the party retains the ability to transfer the assets back to themselves. Ideally, the structure is also optimised for tax purposes.<sup>3</sup>

## THE HUNGARIAN TRUST

The concept of trust was introduced in Hungary in 2013, with the entering into force of the new *Hungarian Civil Code* (the Code).<sup>4</sup> Trusts are dealt

with in Book Six of the Code, under the *Law of Obligations*. They are treated as a form of mandate contract, regulated by ss6:310 to 6:330 of the Code. In addition, trusts are regulated by the *Act on Trustees*,<sup>5</sup> which details the specific regulations applicable for trustees of Hungarian trusts.

For the purposes of providing a detailed description, a Hungarian trust can be divided into the following segments:

- the settlor;
- the transfer of trust assets;
- the trustee;
- the trust assets;
- the beneficiary;
- the distribution of the trust assets and their yield; and
- the protector.

Each of the above is considered in detail below.

### THE SETTLOR

The settlor of a Hungarian trust is the dominant party in the trust relationship. After all, it is the settlor’s intent that brings about the existence of the trust by entering into the trust deed with the trustee, and consequently transferring ownership of the trust assets to the trustee.

The trust reflects the intentions of the settlor, and the trustee is made responsible for safeguarding

<sup>1</sup> Just like most other civil-law jurisdictions, Hungary is also not a signatory of the *Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition*

<sup>2</sup> Jacob Stein, *Asset Protection for California Residents* (2nd edition), p12

<sup>3</sup> Stein, pp12-13

<sup>4</sup> Act V of 2013 on the Civil Code

<sup>5</sup> Act XV of 2014 on Trustees and on the Regulations Governing their Activities

those intentions. Hungarian law recognises this by giving the power to the settlor to replace the existing trustee with a new one at any time.<sup>6</sup>

The settlor is also given the power to decide what type of trust it wants to create. The settlor may elect to create a revocable trust, and thereby maintain significant control; alternatively, it may decide to enter into an irrevocable trust, which would result in severing the relationship with the trustee.

As for who a settlor may be, there are no restrictions found in law. Therefore, the settlor may be any natural or legal person. The only restriction in terms of natural persons is that the settlor must be legally competent, given that Hungarian law prescribes that persons entering into a contract must have competency to do so.<sup>7</sup> As for legal persons, their representative, acting on their behalf, may enter into the trust deed.

A great amount of flexibility can be found in regulating the settlor taking on other roles in connection with a Hungarian trust. The settlor may also be the trustee of the trust. In such an instance, however, two restrictions apply. First, this type of trust, also known as a ‘self-declaration trust’,<sup>8</sup> must be created by a unilateral statement made by the settlor that must be incorporated in a notarial deed.<sup>9</sup> Second, the self-declaration trust will be irrevocable.

The settlor, while also taking up the role of trustee, may also become one of the beneficiaries of the trust. The settlor, however, acting in its capacity as trustee, may not be the sole beneficiary, or the trust will be rendered invalid.<sup>10</sup>

The legislation provides the settlor with numerous rights. First, according to the Code, the settlor has the right to supervise the activities of the trustee carried out in connection with the trust at the settlor’s cost.<sup>11</sup> This is taken further in the *Trustee Act*, which specifies that, in order to facilitate supervision, professional trustees<sup>12</sup> must keep a register of all the trusts administered,<sup>13</sup> of which the settlor must be allowed to view the information regarding their assets only.<sup>14</sup>

‘Hungarian law recognises this by giving the power to the settlor to replace the existing trustee with a new one at any time’

Second, the settlor also has the right to receive certain information and to demand to settle accounts with the trustee. On the settlor’s request, addressed to the trustee, the latter must provide information on the trust assets, including details on the actual and foreseeable growth of the trust assets; a specification of the items belonging to the trust assets and their value; and a description of any obligations taken up on behalf of the trust assets.<sup>15</sup> If asked to do so, the trustee must also detail the asset management of the trust assets and settle accounts with the settlor.<sup>16</sup> This right is also specifically available for the settlor against the trustee on the termination of the trust.<sup>17</sup> However, such actions are undertaken at the settlor’s expense.<sup>18</sup>

Third, the settlor is also entitled to a right of compensation against the trustee in the case of breach of trust committed by the latter. Where the trustee performs its services for a fee, the trustee is liable to the settlor for the breach, in accordance with the general rules on liability for non-performance of an obligation.<sup>19</sup> This means the trustee will be liable for breach of trust, unless the trustee can prove that the breach occurred in consequence of unforeseen circumstances beyond the trustee’s control, and that there had been no reasonable cause to take action to prevent or mitigate the damage.<sup>20</sup>

Where the trustee performs its activities free of charge, the trustee is liable to the settlor in the case of breach only if the trustee’s conduct is considered

<sup>6</sup> The Code, s6:325, para 1

<sup>7</sup> *Id.*, s2:8, para 2

<sup>8</sup> B Szabó, Gábor; Illés, István; Kolozs, Borbála; Menyhei, Ákos; Sándor, István: *A bizalmi vagyonkezelés* (HVG-ORAC, 2014), p90

<sup>9</sup> The Code, s6:329, para 1

<sup>10</sup> *Id.*, s6:311, para 4

<sup>11</sup> *Id.*, s6:315

<sup>12</sup> Under Hungarian law, two types of trustee are distinguished: professional and ad hoc trustees. These will be described in more detail later in this article

<sup>13</sup> *Trustee Act*, s40, para 1

<sup>14</sup> *Id.*, s41, para 1

<sup>15</sup> The Code, s6:320, para 1

<sup>16</sup> *Id.*, s6:320, para 2

<sup>17</sup> *Id.*, s6:327, para 1

<sup>18</sup> *Id.*, s6:320, para 3

<sup>19</sup> *Id.*, s6:321, para 1

<sup>20</sup> *Id.*, s6:142

**‘It is important that the trust assets are officially transferred to the trustee, as otherwise the trust deed will be considered only as a mandate contract’**

to be actionable; that is, where the breach was committed on purpose.<sup>21</sup> Further, the settlor has a right to claim any financial advantage the trustee has acquired through the breach of trust, and to add such financial advantage to the trust assets.<sup>22</sup>

Fourth, with the termination of the position of the trustee, in the event that no person takes up the position of trustee, the settlor is entitled to the trust assets.<sup>23</sup>

Fifth, the settlor is entitled to nominate a person who is entitled to exercise the rights and obligations of the settlor stemming from the trust deed in the case of death or termination without legal succession of the settlor. The settlor can restrict precisely whichever rights and obligations this person is entitled to exercise.<sup>24</sup>

There are also some obligations by which the settlor is bound. First, where the trustee is exercising its role for a fee, the settlor is bound to pay it.<sup>25</sup> Second, the settlor must transfer the ownership of the trust assets to the trustee. Third, the settlor must cooperate with the trustee and ensure they are in possession of all the information that is required in connection with the trust. Fourth, after the trust deed is entered into, the settlor is not allowed to give any instructions to the trustee.<sup>26</sup> This last obligation, however, does not, provided that the trust deed is drafted appropriately, preclude the settlor from giving the trustee a letter of wishes expressing their later intentions.

## THE TRANSFER OF TRUST ASSETS

When a trust deed is entered into by the settlor and the trustee, the trustee undertakes to manage the trust assets for the benefit of the beneficiaries.<sup>27</sup> With the conclusion of the trust deed, the trust is created. However, for the trustee to fulfil its role, the settlor must transfer ownership of the trust assets to the trustee.

To enable such transfer, the assets need to be in existence and capable of being identified. That being said, the transferred assets may be virtually anything that may be transferred according to law: both tangible and intangible assets.<sup>28</sup> The specific rules relating to the transfer of such assets must be obeyed.<sup>29</sup> It is important that the trust assets are officially transferred to the trustee, as otherwise the trust deed will be considered only as a mandate contract.

With the transfer of the trust assets, the tax and stamp duty consequences should be considered. The transfer of the ownership of the trust assets by the settlor to the trustee is a tax-neutral process for both parties: there is no hidden charge. The transfer of the ownership of the trust assets from the settlor to the trustee is also not subject to stamp duty.<sup>30</sup>

## THE TRUSTEE

After the trust has been established and the assets transferred, the trustee manages the assets for the benefit of the beneficiaries and distributes them, and their yield, to the beneficiaries in accordance with the provisions of the trust deed.

There is no restriction as to who may take up the position of trustee. A trustee may be any natural or legal person, as long as the person has legal capacity to enter into the trust deed with the settlor.

Two types of trustee must, however, be distinguished. First, a trustee may be an ad hoc trustee, provided they act for only one trust. For ad hoc trustees, more lenient rules apply.

Second, where a trustee acts for more than one trust, they are considered to be a professional trustee.<sup>31</sup> For professional trustees, more rigorous rules apply. The supervising authority for both

<sup>21</sup> *Id.*, s6:147

<sup>22</sup> *Id.*, s6:321, para 3

<sup>23</sup> *Id.*, s6:328, para 1

<sup>24</sup> *Id.*, s6:325, para 4

<sup>25</sup> *Id.*, s6:310, para 1

<sup>26</sup> *Id.*, s6:316

<sup>27</sup> *Id.*, s6:310, para 1

<sup>28</sup> B Szabó et al, p114

<sup>29</sup> For instance, the transfer of ownership of real estate to the trustee must be recorded in the land registry. The transfer of ownership of business participation to the trustee must be recorded in the company register

<sup>30</sup> Act XCIII of 1990 on Stamp Duties, s17(D), para 1

<sup>31</sup> Trustee Act, s3, para 1

ad hoc and professional trustees is the National Bank of Hungary.

Where a trustee is an ad hoc trustee, they need only notify the National Bank of Hungary within 30 days about the trust deed and the creation of the trust.<sup>32</sup> Where the National Bank of Hungary confirms the ad hoc status of the trustee, it registers the trust deed into the non-public<sup>33</sup> trust database.<sup>34</sup> At the same time, it provides the trustee with a certificate of registration.<sup>35</sup> This certificate can then be used to register the transfer of ownership of the trust assets to the trustee. Any modifications, or the termination of the trust deed, must be reported within eight days to the National Bank of Hungary.<sup>36</sup>

In cases where a trustee is a professional trustee, it may operate only as a professional trustee entity. A professional trustee entity may be:

- a limited liability company<sup>37</sup> or a private limited company<sup>38</sup> incorporated in Hungary;
- a branch incorporated in Hungary of a company established in a state within the European Economic Area; or
- a Hungarian law firm.<sup>39</sup>

Further, the professional trustee entity must be a transparent entity; must not engage in any activity other than being a trustee of trusts; must have a licence from the National Bank of Hungary; and must comply with numerous personnel, operational and structural requirements.<sup>40</sup>

As regards personnel requirements, the professional trustee entity must employ, full-time, at least one economist with a master's degree in economics and one bar-accredited lawyer qualified in Hungary, and have one independent auditor as a mandatee.<sup>41</sup> The owners and executives of the professional trust entity must have no criminal record, and must have a good business reputation that is beyond reproach.<sup>42</sup>

As regards operational requirements, the professional trustee entity must have, on top of its registered capital (which must be at least

HUF70 million, or approximately USD270,000),<sup>43</sup> sufficient financial guarantee to cover any damages caused in the realm of its activities in the amount commensurate with the total value of the trust assets it manages.<sup>44</sup> Currently, this must be at least 20 per cent of the total amount of all trust assets managed by the trustee, specifically a minimum of HUF70 million (approximately USD270,000) or a maximum of HUF1.5 billion (approximately USD5.8 million).<sup>45</sup> Financial guarantee may take the form of insurance, bank guarantee or cash deposited into a bank account.<sup>46</sup>

The National Bank of Hungary will withdraw the licence of the professional trustee entity if the professional trustee entity no longer satisfies the requirements described above.<sup>47</sup>

The trustee has various rights and obligations. As the owner, the trustee has the right to exercise ownership rights, exercising all rights and obligations stemming from the ownership of the trust assets.<sup>48</sup> The trustee, however, must exercise such ownership rights within the constraints of the provisions of the trust deed.<sup>49</sup> While exercising such ownership rights, the trustee must also act in the 'best interests' of the beneficiaries.<sup>50</sup>

Unless the trust deed specifies otherwise, the trustee is also entitled to a fee for acting as trustee of the trust assets,<sup>51</sup> and reimbursement of costs incurred either from the trust assets directly<sup>52</sup> or from the settlor.

Where the trust deed so provides, the trustee may also be entitled to determine the identity of the beneficiaries, their respective share from the trust assets, their yield and the timing of the distributions to them.<sup>53</sup> In other words, a discretionary trust<sup>54</sup> may be created by the settlor.

The trustee may, in appropriate cases, consult with professionals in case it does not have the requisite expertise in managing the trust assets in question.<sup>55</sup>

As for obligations, as mentioned, the trustee must comply with the provisions of the trust deed. It

32 *Id.*, s19

33 *Id.*, s29

34 *Id.*, s22

35 *Id.*, s28

36 *Id.*, s24

37 'Korlátolt Felelősségű Társaság' or 'Kft' in Hungarian

38 'Zártkörűen Működő Részvénytársaság' or 'Zrt' in Hungarian

39 *Trustee Act*, s3, para 2

40 *Id.*, s3

41 *Id.*, s4, para 5

42 *Id.*, s4, para 1

43 *Id.*, s7, para 2

44 *Id.*, s7, para 1

45 *Government Decree No 87/2014 (III.20.) on the financial guarantee requirements for professional trustee entities*, s2, para 1

46 *Id.*, s1, para 1

47 *Trustee Act*, s12, para 1

48 *The Code*, s6:318, para 1

49 *Id.*, s6:318, para 2

50 *Id.*, s6:317, para 1

51 *Id.*, s6:310, para 1

52 *Id.*, s6:322, para 2

53 *Id.*, s6:311, para 3

54 B Szabó et al, p198

55 *Trustee Act*, s45, para 1, point d)

## ‘Any received dividend is tax-free, as is any capital gain from the alienation of qualified participation’

must also act in the best interests of the beneficiaries and use commercial rationale in protecting the trust assets from foreseeable risk.<sup>56</sup>

The trustee must also ensure that the trust assets managed are not mixed in any way with its own personal assets or with other managed trust assets, and must keep separate records of the trust assets.<sup>57</sup> This means that, in case of the personal insolvency of the trustee, the trust assets are not at risk.

The trustee must keep confidential all facts, data and information it becomes aware of in the course of, or in connection with, carrying out its responsibilities as trustee. This obligation remains in force even after the termination of the trust deed.<sup>58</sup>

Further, as mentioned previously,<sup>59</sup> the trustee must, on the request of the settlor, provide certain information to the settlor and settle accounts.

In terms of liability for breach of trust, the trustee can be held accountable by the settlor and the beneficiary. The rules relating to this have been covered above.<sup>60</sup>

### THE TRUST ASSETS

Trust assets managed by the trustee are kept separate from the trustee’s personal assets. The trust assets are not a separate legal entity, but the trustee must prepare separate accounts for the trust assets, independent from its own assets.<sup>61</sup>

Although the trust assets are not a legal person, they are considered a Hungarian tax-resident business entity, and are subject to corporate income tax.<sup>62</sup> Given this status, the trust assets are entitled

to all the tax benefits of the corporate income tax system, making the trust assets suitable for tax planning purposes. Most notably, any received dividend is tax-free, as is any capital gain from the alienation of qualified participation; and 50 per cent of the profit from any royalty received can be deducted from the pre-tax profits of the trust assets.

For corporate income tax, the annual tax rate for the trust assets is a flat 9 per cent,<sup>63</sup> which is the lowest corporate income tax rate applied among the EU Member States and the second lowest among the OECD countries.<sup>64</sup>

Apart from corporate income tax, the trust assets are also subject to local taxes,<sup>65</sup> which are imposed by local governments discretionally. The rate of the local tax varies between zero and 2 per cent. Tax liability will be dependent on the registered seat or registered address of the trustee, if determined to be in Hungary. If, at the registered seat or registered address, the local government imposes local taxes, the trust assets will be liable to pay that tax. Additionally, if real estate in Hungary forms part of the trust assets, the local government for that real estate may charge local tax.

As for stamp duty liability, the normal rules apply for the acquisition of property or for an administrative procedure.<sup>66</sup>

### THE BENEFICIARY

In a trust deed, it is essential to determine the beneficiaries of the trust. The settlor has the right to determine the identity, the respective shares and the timing of the distribution for the beneficiaries. The settlor may also determine the beneficiaries with reference to a range of beneficiaries.<sup>67</sup>

However, as mentioned above, it is not only the settlor who may determine the beneficiaries. A discretionary trust may also be created with the trustee determining the beneficiaries instead of the settlor.<sup>68</sup>

A beneficiary may be any legal or natural person, so long as this person has legal capacity. This means that the beneficiary may also be the settlor or the trustee, as long as the trustee is not the sole beneficiary of the trust.<sup>69</sup>

<sup>56</sup> The Code, s6:317, para 2

<sup>57</sup> *Id.*, s6:312, para 1

<sup>58</sup> *Id.*, s6:319, para 1

<sup>59</sup> See section headed ‘The settlor’

<sup>60</sup> See section headed ‘The settlor’

<sup>61</sup> The Code, s6:312, para 1

<sup>62</sup> Act LXXXI of 1996 on Corporate Income Tax and Dividend Tax, s2, para 6

<sup>63</sup> *Id.*, s19

<sup>64</sup> See [bit.ly/2hTBQtR](http://bit.ly/2hTBQtR)

<sup>65</sup> Act C of 1990 on Local Taxes, s35, para 2

<sup>66</sup> See Act XCIII of 1990 on Stamp Duties

<sup>67</sup> The Code, s6:311, para 1

<sup>68</sup> *Id.*, s6:311, para 3

<sup>69</sup> *Id.*, s6:311, para 4



The beneficiary is not a contracting party to the trust deed, which is entered into by the trustee and the settlor. However, as above, the trustee must act in the best interests of the beneficiary.<sup>70</sup> The beneficiary also obtains rights and obligations in connection with the trust.

The beneficiary is entitled to claim the distribution of the trust assets and their yield according to the provisions of the trust deed.<sup>71</sup> The beneficiary, just like the settlor, is entitled to supervise the activities of the trustee carried out in connection with the trust at its own cost.<sup>72</sup> Again, as with the settlor,<sup>73</sup> the beneficiary is entitled to receive information and demand a settling of accounts with the trustee at own cost.<sup>74</sup> Finally, the beneficiary is also entitled to a right of compensation against the trustee in the case of the trustee's breach of trust.<sup>75</sup>

At the same time, the beneficiary is forbidden from providing any instructions to the trustee.<sup>76</sup>

#### The distribution of the trust assets and their yield

The trustee must distribute the trust assets and their yield to the beneficiaries according to the provisions of the trust deed. The beneficiary must have legal capacity: in the case of natural persons, the person must be alive; in the case of legal persons, the person must be existing.<sup>77</sup>

There are, however, special circumstances where the settlor will be entitled to the trust assets. The trustee, on the termination of its position or on its termination without legal succession, must transfer the trust assets to the new trustee. Where there is no new trustee, the retiring trustee must distribute the trust assets to the settlor.<sup>78</sup>

The timing and place of the distribution of the trust assets and their yield must be determined in the trust deed, and the trustee must adhere to these rules when making the distributions. Where the trustee fails to distribute according to the provisions of the trust deed, the beneficiary is able to claim the trust assets based on breach of contract.

It is also important to consider the tax and stamp duty consequences of the distribution of the trust assets.

#### Tax consequences for the trustee

There is no tax liability under personal income tax, corporate income tax or local taxes for both distributions of the trust assets and distributions from the yield of the trust assets. However, the nationality and location of the beneficiary, as well as the type of transfer of the trust assets, and from where the trustee has transferred them, must be considered, as this may give rise to value-added tax liabilities.

#### Tax consequences for the beneficiary

As shown in the table on page 18, a relatively generous tax treatment applies to the distribution of the trust assets and their yield to the beneficiary by the trustee.

However, the distribution of the trust assets and their yield is also subject to stamp duty, given that the transfer amounts to a gift by the trustee to the beneficiary. The stamp duty must be paid by the beneficiary.<sup>79</sup>

The general rate of stamp duty is 18 per cent of the market value of the relevant item.<sup>80</sup> For real estate and any intangible asset connected to real estate, the rate of stamp duty is 9 per cent.<sup>81</sup> Both tangible assets and intangible assets are subject to stamp duty.<sup>82</sup>

The tax residence of the beneficiary is irrelevant, and it does not matter whether the beneficiary is a natural or a legal person, given that uniform rules apply. On the other hand, where the beneficiary is a direct descendant (including where the relationship is based on adoption) or a spouse of the settlor, the beneficiary is exempt from stamp duty obligations.<sup>83</sup>

Moreover, stamp duty will be charged only if the acquisition and transfer of the tangible or intangible property takes place in Hungary.<sup>84</sup> If in Hungary, stamp duty will be charged where the transfer is documented, or in the case of a tangible asset, where the market value of the movable asset exceeds HUF150,000 (approximately USD600).<sup>85</sup>

<sup>70</sup> *Id.*, s6:317, para 1

<sup>71</sup> *Id.*, s6:314, para 1

<sup>72</sup> *Id.*, s6:315

<sup>73</sup> See section headed 'The settlor'

<sup>74</sup> The Code, s6:320

<sup>75</sup> See section headed 'The settlor'

<sup>76</sup> The Code, s6:316

<sup>77</sup> B Szabó et al, p270

<sup>78</sup> The Code, s6:328, paras 1-2

<sup>79</sup> Act XCIII of 1990 on Stamp Duties, s27, para 1

<sup>80</sup> *Id.*, s12, para 1

<sup>81</sup> *Id.*, s12, para 2

<sup>82</sup> *Id.*, s11, para 1

<sup>83</sup> *Id.*, s17, para 1, point p)

<sup>84</sup> *Id.*, s2, para 3

<sup>85</sup> *Id.*, s11, para 2

	<b>Hungarian natural person beneficiary</b>	<b>Non-Hungarian natural person beneficiary</b>	<b>Hungarian legal person beneficiary</b>	<b>Non-Hungarian legal person beneficiary</b>
<b>Personal income tax</b>	<p>Distribution of the trust assets: no tax liability</p> <p>Distribution of the yield of the trust assets: distribution of the yield is treated as dividend distribution, which is taxed at 15 per cent personal income tax and 14 per cent healthcare contribution levy capped at HUF450,000 (approximately USD1,800)</p>	<p>Distribution of the trust assets: no liability in Hungary. Liability may arise abroad depending on the tax residence of the natural person</p> <p>Distribution of the yield of the trust assets: distribution of the yield is treated as dividend distribution, which is taxed with 15 per cent personal income tax and 14 per cent healthcare contribution levy capped at HUF450,000 (approximately USD1,800) in Hungary. Additional liability or relief may arise depending on the tax residence of the natural person</p>	Not applicable	Not applicable
<b>Value-added tax</b>	Nationality, taxability of the natural person and the location, as well as the type of transfer of the trust assets and from where they will be transferred by the trustee, must be considered	Nationality, taxability of the natural person and the location, as well as the type of transfer of the trust assets and from where they will be transferred by the trustee, must be considered	Nationality, taxability of the legal person and the location, as well as the type of transfer of the trust assets and from where they will be transferred by the trustee, must be considered	Nationality, taxability of the legal person and the location, as well as the type of transfer of the trust assets and from where they will be transferred by the trustee, must be considered
<b>Corporate income tax</b>	Not applicable	Not applicable	<p>Distribution of the trust assets: trust assets amount to extraordinary income, which increases the pre-tax profits of the legal person. The corporate income tax rate is 9 per cent flat. However, if the settlor and the beneficiary are the same person, no tax liability is generated</p> <p>Distribution of the yield of the trust assets: yield amounts to dividend, which is tax free</p>	<p>Distribution of the trust assets: no tax liability in Hungary. Liability abroad may arise depending on the tax residence of the legal person</p> <p>Distribution of the yield of the trust assets: yield amounts to dividend; in Hungary, there is no withholding tax levied, so there is no tax liability in Hungary. Liability abroad may arise depending on the tax residence of the legal person</p>
<b>Local taxes</b>	Not applicable	Not applicable	No tax liability	Not applicable

## ‘For the management of certain trust assets that require expertise that the trustee may not possess, the appointment of an expert protector may also be a good solution’

### THE PROTECTOR

Under Hungarian law, the positions of the settlor, trustee and beneficiary are regulated by law. However, the law does not cover the role of a protector in a trust.<sup>86</sup> The appointment of a protector is by no means necessary for a valid trust deed to be concluded, but can be determined without restriction by the settlor in the trust deed.<sup>87</sup>

The trustee has significant powers, given that it is the owner of the trust assets assigned by the settlor. As such, it may therefore be sensible for a settlor to appoint a protector of a trust to create an additional layer of defence over the safeguards provided by law.

A protector is a person appointed by the settlor who is responsible for the enforcement of the trust by using the relevant rights and obligations specified by the settlor in the trust deed. By doing so, the protector provides safety and peace of mind for both the settlor and the beneficiary of the trust.<sup>88</sup>

The appointment of a protector may be useful for all parties to the trust deed. Where the settlor appoints a protector who is a personal acquaintance, the settlor is able to ensure that, through the guidelines provided by the protector, the trustee executes the settlor’s will even in situations for which the trust deed does not give instructions. This holds especially true given that the settlor may entrust the protector with the right to initiate legal proceedings against the trustee. The existence of a protector also makes sure that the settlor’s will is enforced by the trustee even after the settlor’s death or incapacity. Finally, for

the management of certain trust assets that require expertise that the trustee may not possess, the appointment of an expert protector may also be a good solution.<sup>89</sup>

### SUMMARY

The main characteristic of the Hungarian trust is that the trustee is the owner of the trust assets for the benefit of the beneficiaries. The trust is regulated as a contract and, as such, is a very flexible legal solution. The trust rules are mainly dispositive, and may be deviated from freely. The tax treatments of the transfer of the trust assets and of the distribution of the trust assets and their yield are also quite generous: they are generally tax neutral. Mandatory legal requirements ensure adequate protection for the settlor, the trustee, the trust assets and the beneficiary. All of the above make the Hungarian trust an ideal tool for asset-protection purposes.

### POSITION OF CLAIMANTS

It is crucial to consider what claims parties may have for the trust assets against the parties involved with a trust – namely the settlor, the trustee and the beneficiary.

### CLAIMS AGAINST THE SETTLOR FOR THE TRUST ASSETS

The transfer of ownership of the trust assets from the settlor to the trustee severely limits the circumstances whereby a claimant of the settlor may lay claim on the trust assets.

For a claimant of the settlor to successfully submit a claim for the trust assets, the claimant must prove that the trust deed is a fraudulent contract: in other words, that it deprived, wholly

<sup>86</sup> However, see an indirect referral in the section headed ‘The protector’, which notes that the settlor is entitled to nominate a person to exercise the rights and obligations of the settlor in case of death or termination without legal succession of the settlor as specified in s6:325, para 4 of the Code

<sup>87</sup> Ulmann, Kristóf, *A protektor jogintézménye (Ügyvédek Lapja, July-August 2017)*, p22

<sup>88</sup> *Id.*, p20

<sup>89</sup> B Szabó et al, pp293-297

or in part, the claimant of the basis for satisfying a prior claim against the settlor. In such a case, the contract will have no legal force in respect to such a claimant.<sup>90</sup>

This is not easily established, however, as there are several requirements. First, the action may only be launched in Hungary. Second, it must be established that the claimant already had a valid claim against the settlor at the time of entering into the trust relationship. Third, it must be proven that other assets of the settlor are insufficient to satisfy that claim.<sup>91</sup> Fourth, the claimant must show that the settlor acted in bad faith or had a gratuitous advantage originating from the contract.<sup>92</sup> The burden of proof is on the claimant, and the standard is beyond reasonable doubt.

If the court is satisfied that those four requirements are met, the trust deed will be considered to be ineffective against the claimant. However, even if this is the case, the trust deed will not be invalid; instead, the claimant will simply have an enforceable claim against the trust assets, if there are any.<sup>93</sup>

The only other instance whereby a claimant of the settlor may claim the trust assets is where the settlor is also a beneficiary of the trust and the settlor receives distribution from the trust assets or the yield of the trust assets. This is discussed in the following section.

#### CLAIMS AGAINST THE TRUSTEE FOR THE TRUST ASSETS

The trustee as owner exercises the rights and obligations of the trust assets in accordance with the provisions of the trust deed.<sup>94</sup> The trust assets are separated from the personal assets of the trustee, and may not be mixed with other trust assets managed by it.<sup>95</sup> Neither the trustee's spouse/domestic partner nor personal creditors, nor creditors of other trust assets managed by the trustee, are entitled to lay claim to any part of the trust assets. The trust assets are also not included in the trustee's estate.<sup>96</sup> The beneficiary and the trustee both have the right to bring action against the trustee's spouse/domestic partner and personal

creditors, and creditors of other trust assets managed by the trustee, requesting the separation of the trust assets.<sup>97</sup>

Given that the trust assets are not part of the personal assets of the trustee, the trustee will be liable towards third parties only in respect of those assets.<sup>98</sup> However, the trustee will be made liable for the liabilities of the trust assets if they exceed its value and the other party to whom the liabilities are owed did not know or should not have known, at any time, that the liabilities exceed the value of the trust assets.<sup>99</sup>

#### CLAIMS AGAINST THE BENEFICIARY FOR THE TRUST ASSETS

The rule for claims for the trust assets against the beneficiary is very clear: claimants of the beneficiary may submit a claim for the trust assets and the yield of the trust assets only from the point in time when the assets must be released to the beneficiary according to the provisions of the trust deed.<sup>100</sup>

The settlor can precisely specify the timing of asset distribution in the original trust deed, and modify those provisions at a later date.

The trustee may also have an influence in the case of a discretionary trust, where the timing of the distributions will be determined by the trustee at its sole discretion.

#### SUMMARY

It is very difficult for a claimant to lay claim on the trust assets with the present regulation of the Hungarian trust. The trust assets are highly secured against all sorts of claims against the settlor, trustee and beneficiary. This further strengthens the appeal of the Hungarian trust as an asset-protection device.

#### ENFORCEABILITY OF FOREIGN JUDGMENTS IN HUNGARY

For an asset-protection tool to work successfully, the protection provided by law must extend not only to domestic affairs, but also to any interference that may come from abroad. As such, it is important to examine under what circumstances foreign judgments may

<sup>90</sup> The Code, s6:120, para 1

<sup>91</sup> B Szabó et al, p124

<sup>92</sup> The Code, s6:120, para 1

<sup>93</sup> B Szabó et al, p124

<sup>94</sup> The Code, s6:318, paras 1 and 2

<sup>95</sup> *Id.*, s6:312, para 1

<sup>96</sup> *Id.*, s6:313, para 1

<sup>97</sup> *Id.*, s6:313, para 2

<sup>98</sup> *Id.*, s6:323, para 1

<sup>99</sup> *Id.*, s6:323, para 2

<sup>100</sup> *Id.*, s6:314, para 2

‘It is important to examine under what circumstances foreign judgments may be enforced in Hungary, which may challenge the effectiveness of a Hungarian trust’

be enforced in Hungary, which may challenge the effectiveness of a Hungarian trust set up for asset-protection purposes.

*Act XXVIII of 2017 on Private International Law*, which came into force on 1 January 2018, governs the recognition and enforcement of foreign court judgments in civil matters in Hungary.<sup>101</sup>

Generally, parties in a contract, including a trust deed, may freely determine the governing law and may stipulate the jurisdiction of a specific court, which will then have exclusive jurisdiction.<sup>102</sup>

However, there are certain instances where a Hungarian court has exclusive jurisdiction:

- proceedings pertaining to any right in real estate property situated in Hungary, including the rent or lease of such property;
- probate proceedings where the estate is located in Hungary and the testator is a Hungarian citizen;
- actions filed for the destruction of official instruments issued in Hungary;
- proceedings concerning the registration of rights, facts and data into a public register in Hungary; and
- actions concerning enforcement procedures in Hungary.<sup>103</sup>

Any decision of a foreign court relating to one of the proceedings or actions listed above will not be recognised or enforced by Hungarian courts in Hungary.

Conversely, a Hungarian court is precluded from having jurisdiction in the following matters:

- proceedings pertaining to any right in real estate property situated abroad, including the rent or lease of such property;
- probate proceedings where the estate is located abroad and the testator is not a Hungarian citizen;
- actions filed for the destruction of official instruments or securities issued abroad;
- proceedings in connection with the granting and termination of industrial property rights abroad, including the contents thereof;
- proceedings concerning the foundation and termination of a foreign-registered legal person in proceedings concerning the validity of the contract or instrument of constitution underlying the registration of the legal person, and in proceedings concerning the review of the resolutions passed by the organs of legal persons;
- proceedings concerning the registration of rights, facts and data into a public register abroad; and
- actions concerning enforcement procedures abroad.<sup>104</sup>

Generally, a judgment by a foreign court is recognised and enforced by Hungary if:

- the jurisdiction of the foreign court is considered legitimate (that is, if the underlying grounds of jurisdiction would justify the jurisdiction of a Hungarian court);
- the judgment is construed as final by the law of the country in which it was adopted; and
- none of the following grounds for denial apply:
  - o the recognition of the foreign judgment would be contrary to Hungarian public policy;
  - o the party against whom the decision was made did not attend the proceeding either in person or by proxy because the subpoena, statement of claim or other document on the basis of which the proceeding was initiated was not served at its place of residence or habitual residence properly or in a timely fashion in order to allow adequate time to prepare its defence;
  - o proceedings involving the same cause of action and between the same parties have been brought in Hungarian courts before the opening of foreign proceedings;

<sup>101</sup> The currently applicable regulation, namely *Decree No 13 of 1979 on Private International Law*, identically regulates the recognition and enforcement procedures in Hungary

<sup>102</sup> *Act XXVIII of 2017 on Private International Law*, s99, para 1

<sup>103</sup> *Id.*, s88

<sup>104</sup> *Id.*, s89

- o a Hungarian court has already adopted a definitive, substantive decision in an action involving the same cause of action and between the same parties; or
- o the court of a foreign country, other than the country of the court that has already adopted a judgment in an action involving the same cause of action and between the same parties, has adopted a definitive substantive decision that is in compliance with the requirements for recognition in Hungary.<sup>105</sup>

However, if a foreign court seeks the recognition and enforcement of its decision in Hungary, an additional important hurdle applies. In such an instance, the foreign court must apply for legal assistance from Hungary. On the request of a foreign court, a Hungarian court will only provide legal assistance for the recognition and enforcement of the foreign judgment based on a directly applicable legal instrument of the EU, an international treaty in force between Hungary and the relevant foreign country, or in the case of reciprocity.<sup>106</sup>

Currently, as regards legal assistance between the US and Hungary, the only international treaties in force and statements on the existence of reciprocity that have been issued are in relation to family law

matters, authentication of documents, recognition of delivery of documents abroad, taking of evidence abroad and recognition of decisions of foreign arbitration courts.<sup>107</sup>

In effect, a judgment of a US court relating to a claim on the trust assets of a Hungarian trust will simply not be recognised, and therefore will not be enforceable in Hungary. A claimant will need to attempt to enforce its claim before a Hungarian court, which is a long, complicated and costly procedure. Even if a claimant turns to a Hungarian court, the claim is unlikely to be successful, because of the protection provided for the trust assets, as detailed in this paper.

## CONCLUSION

This paper evidences that the Hungarian trust is an ideal device for parties wishing to protect their assets from all sorts of potential claims. Metaphorically speaking, the Hungarian trust should thus be considered a shining star on the asset-protection horizon.

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<sup>105</sup> *Id.*, s109, paras 1 and 4  
<sup>106</sup> *Id.*, s72, para

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<sup>107</sup> See the full list on p8 of [bit.ly/2GIA7Gj](http://bit.ly/2GIA7Gj)