

The Legislation of Trust in Hungary

The legal institution of fiduciary asset management (*bizalmi vagyonkezelés* or *trust*) is a relatively new area of Hungarian legislation.

The legislation of the abovementioned institution is considerably fragmented:

- the general rules can be found in the Civil Code (Section 6:310-6:330.§ of Act V of 2013) (hereinafter also as Ptk.);
- the rules on the commercial fiduciary asset management are determined by the Act XV of 2014 on the Trustees and the Rules of Their Activity (hereinafter also as Bvktv.);
- furthermore the special rules are determined among others in the Government Decree n. 87/2014. (III. 20.) on certain rules on the financial security of trust businesses, Decree of the Governor of the National Bank of Hungary n. 14/2015. (V. 13.) on the administrative service fee charged by the National Bank of Hungary (MNB - – Magyar Nemzeti Bank).

In our case, the two most relevant laws are the Civil Code (Act V. of 2013.) and the Act XV of 2014 on the Trustees and the Rules of Their Activity.

While the Civil Code regulates the fiduciary asset management contracts in general, the Bvktv defines the corporate and operating conditions of the fiduciary asset management (trust) companies.

1) **General provision of the fiduciary asset management contract**

The general regulation of the fiduciary asset management is provided in the Civil Code. According to the Hungarian legislation the contract shall be concluded in a written form, and implies a *settlor*, who gives assets to a fiduciary person (*trustee*) in order to be managed on the beneficiary's interests. The third part, the so-called *Beneficiary* shall be determined in the contract according to the settlor's will.

The main feature of the Hungarian regulation is that after the conclusion of the aforementioned contract, the ownership shall be transferred to the trustee, and hereby, he appears as the owner and not the settlor anymore. However, this ownership is limited because, on the one hand, such assets cannot be anyhow mixed with the trustee's personal ones, and on the other hand, the way the asset is managed is fixed by the contract.

The direct consequence of the above points is that no claim can be held by the settlor's personal creditors on the managed assets to the extent that the figured as trapped and hidden in the trust. Also the trustee's personal creditors cannot attach any managed asset as they are separated from his/her personal assets.

2) Trust types under the Hungarian provisions

The Bvktv defines two types of fiduciary asset management activities: 1) *ad hoc* trust / fiduciary asset management and 2) *business-like* or *licensed* fiduciary asset management.

In the case of *ad hoc* trust management, there is no specific restriction on the person of the trustee, that can be provided by anyone with legal capacity, it can either be legal or natural person.

The fiduciary management asset contract shall be drafted in a public record / authentic instrument or in a private document countersigned by lawyer, and shall be submitted to the National Bank of Hungary within thirty days of the conclusion.

For a *business-like* / *licensed fiduciary* asset management activity, at least *two trust legal relationship shall be performed* (i.e. at least two contracts shall be concluded), therefore in the case the conclusion of a single contract, then the figure has to be classified as an *ad hoc* fiduciary asset management.

This distinction is very important, because in the case of business-like activities the regulation is much stricter and it is more expensive to constitute it.

The licensed fiduciary asset management activity can only be carried out in a specific company form:

- a) limited liability company (Kft.) or private company limited by shares (Zrt.) having their seat in Hungary,
- b) the branch registered in Hungary of an undertaking having its seat in another State that is a party to the Agreement on the European Economic Area, or
- c) law office.

This provision shall be applied only for licensed fiduciary asset management, which means that e.g. a foreign company or person can carry out his *ad hoc* asset management activity without the abovementioned restrictions.

Furthermore, in case of licensed fiduciary asset management, the Bvktv. adds additional requirements regarding transparency, conflict of interest and business reputation.

A *business-like fiduciary management* company shall have a financial guarantee of at least 20% of the managed asset and maximum 70.000.000 of HUF.

3) Costs

Costs related to trust management consist of the following categories:

a) *Costs associated with establishing a company:*

- aa) Amount of share capital: 5.000.000 -HUF
 - ab) fee of registration: 100.000 or 50.000 HUF in case of fee of registration
 - ac) payment of publication charges: 3000 HUF
- In total: 5.053.000 – 5.103.000 HUF

b) *Costs related to the submission to the National Bank of Hungary:* 30.000 HUF

Total cost: 5.083.000-5.133.000 HUF

i. Yearly expenses

In Hungary, the average net/take-home wages of an executive are between 800.000 and 1.500.000 HUF. In order to reduce costs, it is advisable to employ executives under a personal service contract, because in the case of a work contract the costs may be one and a half times higher than the take-home / net wage.

4) To whom do we recommend trust management?

To anyone (e.g. entrepreneurs, doctors, accountants) who has a desire to do investment, whether connected with their activities or not.

For instance, it can be a considerable tool for a generational change in the management of a family business/company which can balance the (economical) relationships within the framework of the family.

In this case the legal institution of Trust enables to have instructions on how to manage the assets in favor of a child, involving the family and accompanying the growth of that child right away

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