Chapter 17

Hungary

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I. IN GENERAL

§ 17:1 Introduction

This chapter is based on the United Nations Commission on International Trade Law (UNCITRAL) Legislative Guide on Secured Transactions (the "Guide"), adopted by the Commission at its fortieth session in 2007. The chapter follows the structure of the Guide, and it addresses the issues contained in the Guide. It leaves aside subjects that would theoretically be covered by the title of the chapter but are not addressed in the Guide.

The chapter focuses on consensual security rights in movables. Hungary was among the first countries in Europe to introduce a centralized filing system for non-possessory security rights, extending to all economic sectors and all types of movable assets in 1996. Non-consensual security rights and security rights in immovable fall outside the scope of the legislative Guide and, thus, of this chapter.

The Hungarian legal system adopted a uniform legislation for both possessory and non-possessory security rights in 1996 as part of Act IV of 1959 (the "old Civil Code"). This system of securities was replaced by rules of Act V of 2013 on the new Civil Code (the "Civil Code"), the rules of which entered into effect on March 15, 2014. The rules on security rights in movable assets are in Book V, under Title VII "Pledge" in sections 5:86-5:145 of the Civil Code (as modified by Act LXXVII of 2016).

The rules contained in the Civil Code are completed by accessory rules contained in different legislative acts, including Act CCXXI of 2013 on the securities filing system (the "Filing Act"), Act LIII of 1994 on the rules of enforcement (the "Enforcement Act"), and Government Decree Number 12 of 2003 on the Sale of Pledged Items Outside of Court Proceedings (the "Rules of Sale Decree"). Insolvency is regulated by Act XLIX of 1991 (the "Insolvency Act").

Hungary has implemented Council Regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings. Here, only those regulations that apply to local Hungarian proceedings are addressed. The terms "security right" or "security agreement" are used below in the understanding that they speak about a pledge right or a pledge agreement. Reference to sections, unless otherwise provided, means sections of the Civil Code.

§ 17:2 Creation of security right; effectiveness between parties

A security right in an asset is created by an agreement concluded between the grantor and the secured creditor. By entering into a pledge agreement by the pledgor and the pledgee the pledge agreement enters into effect between the parties. Without any further step, the parties are entitled to all rights and are obliged by all obligations *vis-à-vis* each other that derive from the pledge agreement.[1]

A pledge can be established on future rights or assets, as well as on assets that are not in the possession or under the control of the pledgor at the time of entering into the pledge agreement. In the case of an asset with respect to which the grantor has rights at the time of the conclusion of the agreement, the security right in that asset is created at the time of the conclusion of the agreement.

In the case of an asset with respect of which the grantor acquires rights or the power to encumber thereafter, the security right in that asset is created when the grantor acquires rights in the asset or the power to encumber the asset.

§ 17:3 Minimum content of security agreement

As a minimum, a security agreement must reflect the intent of the parties to create a security right, identify the secured creditor and the grantor, describe the secured obligation and describe the encumbered assets in a manner that reasonably allows their identification. The security agreement must identify the monetary amount for which the security right may be enforced.[1]

§ 17:4 Form of security agreement

A security agreement must be concluded in writing. In case of a possessory pledge, the written agreement can be replaced by a unilateral negotiable instrument issued by the secured creditor that empow-

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[Section 17:2]

[1]Civil Code, section 5:91.

[Section 17:3]

[1]Civil Code, section 5:89.

ers the holder of the negotiable instrument to take possession of the pledged asset if payment of the amount included in the negotiable instrument was made at a given date.[1] The law also may establish security right, in which case no security agreement must be concluded, the security right is based on the statutory provision.[2]

Securities established on movable assets require the transfer of possession of the asset (possessory pledge) or registration of the pledge in the Filing Register in order to make the security right effective against third parties. Pledge established on intangible assets, rights, receivables and other claims also must be registered in the Filing Registry.[3]

§ 17:5 Obligations secured by security agreement

Security rights may secure one or more, present or future, conditional or unconditional, determined or determinable monetary obligations. If the secured obligation is not monetary, the security right secures the damage amount deriving from the non-fulfillment of the secured obligation. Claims the enforcement of which cannot be pursued at court may not legally be secured by collaterals[1].

The scope of the security right always follows the amount of the secured obligation, plus it covers interest on the secured obligation, as well as the expenses occurred in connection with the maintenance of the pledged asset and the enforcement of the security right. If the parties set the maximum amount up to which the security right can be enforced, it will be decisive with respect of the aggregate amount that can be enforced against the secured asset.[2]

If the secured obligation is transferred, the security rights also must be transferred therewith, and the original secured creditor must transfer to the new security creditor the pledged asset or the declaration necessary for the registration of the new secured creditor[3].

§ 17:6 Assets subject to security right

Any asset, right, or claim may be subject to security right. The subject of a possessory pledge can be tangible assets. Part of an asset cannot be subject of security right, unless the asset is divisible, or

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[Section 17:4]

[1]Civil Code, section 5:89(6).

[2]Civil Code, section 5:92.

[3]Civil Code, section 5:93.

[Section 17:5]

[1]Civil Code, section 5:97.

[2]Civil Code, section 5:98.

[3]Civil Code, section 5:99.

otherwise, if the asset is held in joint ownership. Assets held in joint ownership can be subject of a security right only to the extent the grantor is entitled to his own share of the jointly held asset.[1]

The security right may encumber assets that, at the time the security agreement is concluded, do not yet exist or that the grantor does not yet own or have the power to encumber.[2] A security right covers all parts of the assets, including spare parts, and, unless otherwise agreed, attachments to the assets. The security right also attaches to the profits and other proceeds of the assets.

§ 17:7 Continuation of security right in proceeds; continuation in mass or product

A security right covers the profits and proceeds of the secured assets. Insurance proceeds collected, compensation paid for damages to the secured assets, and the purchase price received in the event of the sale of the secured asset also are covered by the security right.[1]

A security right also continues in the new asset (mass or product) if the secured asset is manufactured, processed, unified or commingled with or transformed into other assets (mass or product).[2]

§ 17:8 Assignment of claims and/or receivables

Claims and rights, including claims for receivables, can be used as collateral by concluding an assignment or a pledge agreement that encumbers the claim, right or receivable with a pledge to the benefit of the security creditor. Such pledge agreement must be registered in the Filing Registry.

The Civil Code, in section 6:99, establishes that in order to secure a consumer's obligation, no assignment of claims or receivables can legally be concluded with the goal of securing an obligation. It is equally illegal to conclude a transfer of title, right, or claim agreement or option agreement with the goal of securing consumers' obligations.

II. EFFECTIVENESS OF SECURITY RIGHT AGAINST THIRD PARTIES

§ 17:9 Achieving third-party effectiveness

Securities established on movable assets require the transfer of pos-

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[Section 17:6]

[1]Civil Code, section 5:101.

[2]Civil Code, sections 5:89 and 5:93(4).

[Section 17:7]

[1]Civil Code, sections 5:103 and 5:104.

[2]Civil Code, section 5:104.

session of the asset (possessory pledge) or registration of the pledge in the Filing Registry in order to make the security right effective against third parties. Pledge established on immovable assets, rights, receivables and other claims also must be registered in the Filing Registry in order to make it effective against third parties[1].

Effectiveness against Grantor of Security Right That Is Not Effective against Third Parties

A security right that has been created is effective between the grantor and the secured creditor, even if it is not effective against third parties.[2]

Continued Third-Party Effectiveness after Transfer of Encumbered Asset

After transfer of a right other than a security right in an encumbered asset, a security right in the encumbered asset that is effective against third parties at the time of the transfer continues to encumber the asset and remains effective against third parties, except when the asset is sold in a commercial transaction, or for consideration to a third party who acts in good faith.[3]

§ 17:10 Achieving third-party effectiveness—General method

Third-party effectiveness may be achieved through various methods; nevertheless, the most common method is notification in a registration system. The pledge agreement must be registered in the Filing Registry in order to make the pledge effective against third parties in case of all non-possessory pledge agreements. Consequently, notice to the Filing Registry is necessary if the possession of the movable assets is not transferred to the secured creditor or to a third party trustee, as well as in the case of pledges over intangible assets, rights and claims.[1]

§ 17:11 Third-party effectiveness of security right in tangible asset by possession

Tangible assets may be given into possessory pledge, in which case the grantor transfers the possession of the security asset to the secured creditor or to a third party trustee.

[Section 17:9]

[1]Civil Code, section 5:93.

[2]Civil Code, section 5:91.

[3]Civil Code, section 5:102.

[Section 17:10]

[1]Civil Code, section 5:93.

§ 17:12 Third-party effectiveness of security right in movable asset, right, or claim subject to special registration

Pledges over a business quota in a limited-liability company must be registered at the Company Registry, while pledges over trade marks and patents must be registered in the Trade Mark Registry and the Patent Registry, respectively.

§ 17:13 Automatic third-party effectiveness of security right in proceeds

If a security right in an encumbered asset is effective against third parties, a security right in any proceeds of the encumbered asset is effective against third parties automatically when proceeds arise.

III. REGISTRY SYSTEM

§ 17:14 In general

Registration of non-possessory pledges on tangible assets has been possible in Hungary since 1996 in an electronic system operated by the Chamber of Notars. This system is replaced with a new electronic registration system, as a result of the new rules on collaterals introduced by the Civil Code, effective as of 15 March 2014. The new system of the Filing Registry is regulated in the Filing Act.

Under the new system, non-possessory pledges over tangible assets, pledges over rights and claims, retention of title, factoring, and leasing arrangements also must be registered in the Filing Registry. This section discusses the general Filing Registry system for the registration of security rights in non-possessory tangible assets, rights, and claims, including receivables. The section does not address the registration system of title and security rights in immovable property or the Company Registry, the Trade Mark Registry, and the Patent Registry.

§ 17:15 Purpose of filing registry

The purpose of the Filing Registry is to establish a general security right registry and to provide a method by which an existing or future security right in the grantor's assets may be made effective against third parties. Notice to the Filing Registry serves as an efficient point of reference for priority rules based on the time of registration of a notice with respect to a security right, as well as an objective source of information for third parties dealing with the grantor's assets as to whether the assets may be encumbered by a security right.

§ 17:16 Operational framework of registration and search processes

The Filing Registry is an electronic filing system established and

maintained by the Chamber of Notars. Notars, as well as persons who register themselves with a notar for the purpose of being a registered user, may have access to the system for registering data through the filing website.

The information registered in the system is open for the public for review; anyone may have access to review the content of the registered data, free of charge and without providing identification. The search may be made without the need for the searcher to justify the reasons for the search. Notices are indexed and can be retrieved by searchers according to the identification of the grantor.

With respect of pledges, the grantors and the secured creditors both are eligible to file the registration of a pledge in the Filing Registry (via a person who is a registered user). If the filing is done by the grantor, the data becomes registered in the system. If the filing notice is made by the secured creditor, the filing becomes registered upon the approval of the grantor, made in an electronic form on the Internet website of the Filing Registry. Filing of original documents or copies thereof is not necessary.

§ 17:17 Security and integrity of registry

It is the responsibility of the Chamber of Notars to operate and maintain the Filing Registry in a manner that is in compliance with all legal regulations. Only persons who are authorized by law and registered for using the system are entitled to register notices containing new data, rights, obligations, and their modifications.

The identity of the registrant is requested and maintained by the registry. The registrant is obliged to forward a copy of the notice to the grantor named in the notice filed by the secured creditor. The registry is obliged to send promptly a copy of any changes to a registered notice to the person identified as the secured creditor or grantor, as the case may be, in the notice.

§ 17:18 Required content of registration notice

For the registration of pledge, the following information must be part of the registration notice:

1. In the case of natural persons, the name, mother's maiden name, date of birth, and address of the grantor, as well as that of the secured creditor;
2. In the case of legal entities, the name, seat, registration number, and tax number;
3. In the case of a person acting based on a power of attorney, the name, mother's maiden name, date of birth, and address of the grantor, as well as that of the secured creditor;
4. The identification of the pledged asset(s); and
5. If the grantor desires, the amount of the secured obligation that is secured by the pledge.

§ 17:19 Duration and extension of registration of notice

A notice filed by the grantor on establishing a pledge will be effective in the system without further action of the secured creditor. A registration request filed by the secured creditor must remain on record for three months. It will be deleted unless the grantor files a confirmation declaration, in which case the registration will be effective. The registered pledge must remain in force until:[1]

1. The grantor files a de-registration notice, and the secured creditor either confirms the de-registration or does not file a continuation notice within 30 days of receipt of the de-registration request notice; or
2. Twenty years pass from the registration of the pledge without any modification or de-registration of the registered pledge.

§ 17:20 Authority for registration

The registration request for a pledge may be initiated either by the grantor, or by the secured creditor. In the latter case the registration shall be effective only upon receipt of the confirmation notice of the grantor. Without confirmation, the registration request filed by the secured creditor will be deleted from the system after three months from the filing date.

§ 17:21 Cancellation or amendment of notice

De-registration of a pledge can be done by the secured creditor in the system, or it can be initiated by the grantor, in which latter case, de-registration will become effective upon the approval of the secured creditor or upon the lapse of 30 days without the objection of the secured creditor. The secured creditor has a statutory obligation to approve the de-registration if it has no further security interest in the pledged asset.

If the secured creditor or the grantor dies or terminates, and there is a legal successor to be registered, the notar will put into effect a modification in the Filing Registry. If there is a change in the person of the secured creditor for any other reason, the registration of such change can be initiated by either the previous or the new secured creditor. In the latter case, the registration will be effective only upon the confirmation of the previous secured creditor. If there is a change in the person of the grantor, the new grantor may be registered only upon the approval of the new grantor and the secured creditor. A change in the priority of a security right can be registered only upon the approval of the secured creditor affected.

[Section 17:19]

[1]In this case, the person registering the pledge must receive a notification 30 days before the lapse of the 20-year period, in which case it may file a continuation request notice with the Filing Registry.

§ 17:22 Priority of security right

Between security rights that were established over the same asset, the security right established earlier prevails over the security right(s) established later. Between a caution and a pledge over the same asset, the caution right has priority over the pledge.

The priority of the original security right is not affected if an asset is given as replacement or in addition to a previously provided pledged asset, i.e., the original priority will prevail in the newly given security asset. The priority order of different security rights may be modified upon the approval of all interested party and the registration of the new order in the Filing Registry. The modification of the priority order may not deprive any third person from its rights existing at the time of the registration of the modification.

The grantor may reserve a priority in advance in a given security asset. The grantor may register in advance in the Filing Registry that it intends to establish a security right to the benefit of a defined or undefined person. The notification must include the maximum amount up to which the secured right will be established. When the actual security right is registered, it will receive the original priority that was reserved at the time of the reservation notification.

It is possible to register security right in the Filing Registry over an asset which is not yet under the control of the grantor. The security right will be established only if and when the grantor takes control over the asset. If the previous owner of the asset establishes a security right over the same asset prior to transferring control to the asset to the grantor, this security right will prevail over the security right registered by the grantor in the Filing Registry prior to taking control or possession by the grantor over the asset.

The non-possessory security right of the seller or the creditor of the purchaser with respect of the purchase price of a tangible asset will prevail over a previously established security right over the same asset, provided that the security right of the seller or the creditor is registered in the Filing Registry and the other secured creditors receive written notification about the establishment of the security right of the seller or the creditor.

IV. RIGHTS AND OBLIGATIONS OF PARTIES TO SECURITY AGREEMENT

§ 17:23 Possessory pledge

The secured creditor is entitled to keep the pledged asset in its possession and must take reasonable steps to preserve the asset and its value. The secured creditor may not use the encumbered asset but must collect its fruits and proceeds and account with and transfer such fruits and proceeds to the grantor, except that the secured creditor may deduct its expenses occurred in connection with the mainte-

nance of the pledged asset. The secured creditor may not transfer the asset to third persons. The grantor is entitled to inspect the condition and the use of the encumbered asset.

If the value of the encumbered asset diminishes to the extent that it endangers the satisfaction of the secured obligation from the encumbered asset, the secured creditor may demand refurbishment or replacement of the pledged asset or provision of additional security. If the grantor does not comply with such demand, the secured creditor may sell the pledged asset in order to avoid further diminution of its value. If the grantor provides for a replacement of the pledged asset, the secured creditor must return the originally pledged asset to the grantor.

The grantor is entitled to use the insurance proceeds or damages received for a diminished asset for the reparation of the asset, provided that such action does not endanger the satisfaction of the secured obligation from the encumbered asset.

§ 17:24 Non-possessory pledge

In the case of non-possessory pledge, the grantor may keep the pledged asset in its possession and may use and utilize it in compliance with its purpose, but must preserve the pledged asset and its value. In the case of registered floating charge, the grantor is entitled to, in the course of its ordinary business, to use for production, transform, process, co-mingle, and sell the pledged asset. The secured creditor is entitled to inspect the condition of and the use of the asset.

If the value of the encumbered asset diminishes to the extent that it endangers the satisfaction of the secured obligation from the encumbered asset, the secured creditor may demand refurbishment or replacement of the pledged asset or provision of additional security. If the grantor does not comply with such demand, the secured creditor may sell the pledged asset in order to avoid further diminution of its value. The grantor is entitled to use the insurance proceeds or damages received for a diminished asset for the reparation of the asset, provided that such action does not endanger the satisfaction of the secured obligation from the encumbered asset.

§ 17:25 Pledge over claims against third-party obligors (including receivables)

An obligor of a claim (including receivables) must perform its payment obligation to the grantor until it receives notification from the grantor about the pledge established on the claim, including information on the secured creditor, its name, address or seat and account number. Following such notification, an obligor must perform its payment obligation in compliance with the payment instructions of the secured creditor. The secured creditor may give payment instruction to the third party obligor only when an event of default of the secured obligation occurs.

The grantor is obliged to transfer, for the request of the secured creditor, all documents necessary to the collection of the third-party obligation. If the due date of the payment obligation depends on the decision of the grantor, the secured creditor may, following the notification of the third-party obligor about the pledge, exercise such notice right.

§ 17:26 Rights and obligations of third-party obligors

If the pledge is established over a claim against a third-party obligor, the debtor may perform to the grantor until it receives information satisfactory about the establishment of the pledge over the obligation. The notification either must derive from the grantor, including information on the name, address or seat, and account number of the secured creditor, or the secured creditor may notify the third-party obligor, provided that it provides the third-party obligor with the pledge agreement or other credible document evidencing the existence of the pledge.

Following notification, the third-party obligor must follow the payment instruction of the secured creditor. The secured creditor may give payment instruction to a third-party obligor only when an event of default of the secured obligation occurs.

V. ENFORCEMENT OF SECURITY RIGHT

§ 17:27 General standard of conduct in context of enforcement

It is a general principle of the Civil Code[1] that all parties must act in good faith and fairly when enforcing their rights and performing their obligations. This general requirement applies to the secured creditor as well. Furthermore, section 5:133 of the Civil Code requires that the secured creditor act in a commercially reasonable manner when selling the encumbered assets and must take into account the interest of the debtor, as well as that of the grantor.

Judicial or Other Relief for Non-Compliance

A debtor, the grantor, or any other interested person is entitled at any time to apply to a court for relief if the secured creditor fails to comply with its obligations under the provision of enforcement. The relief request may target the suspension of exercising the enforcement or obliging the secured creditor to exercise its enforcement right under certain conditions.[2]

[Section 17:27]

[1]Civil Code, section 1:3.

[2]Civil Code, section 5:130.

§ 17:28 Post-default rights of grantor

After default, the grantor is entitled to:

1. Pay in full the secured obligation and obtain a release from the security right of all encumbered assets;
2. Apply to a court for relief if the secured creditor is not complying with its obligations under the provisions of enforcement;
3. Propose to the creditor, or reject the proposal of the secured creditor, that the secured creditor acquire an encumbered asset in total or partial satisfaction of the secured obligation; and
4. Exercise any other right provided in the security agreement or any law.

Extinction of Security Right after Full Satisfaction of Secured Obligation

Full satisfaction of the secured obligation extinguishes the security right in all encumbered assets, provided that all undertakings to extend further credits have terminated. The termination of the security rights is subject to any subrogation rights in favor of the person satisfying the secured obligation.

§ 17:29 Post-default rights of secured creditor

After default, the secured creditor is entitled to:

1. Obtain possession of a tangible encumbered asset;
2. Sell or otherwise dispose of an encumbered asset;
3. Propose that the secured creditor acquire an encumbered asset in total or partial satisfaction of the secured obligation; and
4. Enforce its security right in accordance with law and the provisions of the security agreement.

Judicial and Extra-Judicial Methods of Exercising Post-Default Rights

After default, a security right may be exercised by the secured creditor by:

1. Applying to a court for judicial enforcement of the security right;
2. Selling the encumbered asset;
3. Taking title over the secured asset as satisfaction; and
4. Collecting the secured claim or enforcing the secured right.[1]

Cumulative Post-Default Rights

The exercise of one default right does not prevent the secured creditor to change the process and move to another default right.

[Section 17:29]

[1]Civil Code, section 5:127.

Right of Higher Ranking Secured Creditor to Take Over Enforcement

If the secured creditor has commenced enforcement, the secured creditor whose security right has priority against that of the enforcing secured creditor is entitled to take over the enforcement process at any time, provided that it reimburses the secured creditor's expenses occurred in connection with the enforcement procedure.

Secured Creditor's Right to Possession of Encumbered Asset

After default, the secured creditor is entitled to the possession of a tangible encumbered asset. The grantor, for the notification request of the secured creditor, must transfer possession of the secured tangible asset within the deadline provided in the notification request; nevertheless, this term may not be less than 10 days.[2]

Extrajudicial Disposition of Encumbered Asset

The secured creditor, after default, is entitled, without applying to a court or other authority, to sell or otherwise dispose of an encumbered asset. Subject to legal regulations (including the Rules of Sale Decree) and the general standard of good faith and conduct, the secured creditor may select the method, place and time of the disposition, but it must comply with its notification obligation.

The secured creditor may sell the secured asset and transfer its title, acting on behalf of the owner of the asset. The sale may be organized as a public auction or as a private sale. The encumbered asset may be sold in its original state, or after having transformed or processed. If there are more encumbered assets securing the obligation, the assets may be disposed off together or individually.[3]

Advance Notice of Extrajudicial Disposition of Encumbered Asset

The secured creditor must give advance notice in writing about his intention to sell the encumbered asset to:

1. The grantor, the debtor, the persons who provided guarantee for the debtor's performance;
2. Other secured creditors having rights over the encumbered asset;
3. In the case of registered encumbered assets, all those persons who have a registered right in the same asset; and
4. Those persons who notified the secured creditor about their rights over the secured asset at least 10 days prior to the notification to be given by the secured creditor.

The notification must be sent at least 10 days prior to the planned disposition. The advance notice must include, at a minimum:

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[2]Civil Code, section 5:132.

[3]Civil Code, section 5:134.

1. The secured creditor and the grantor;
2. The encumbered asset;
3. The amount of the secured obligation, its interest and related costs;
4. The time of and the actual event of default;
5. The planned method of the disposition; and
6. If a public sale, the time and the place thereof or, if another type of sale, the date after which it will be organized.

The secured creditor is entitled to dispose of the encumbered asset without an advance notification if the encumbered asset is traded on a stock exchange, if it is perishable, or if the delay of the sale would cause a diminution in the value of the asset.[4]

§ 17:30 Distribution of proceeds of disposition of encumbered asset

Following the disposition, the secured creditor must, without delay, prepare a written accounting that includes:

1. The disposed encumbered asset;
2. The purchase price collected;
3. The proceeds of the encumbered asset collected by the secured creditor;
4. The expenses occurred in connection with the safeguarding, maintenance, transformation, processing and disposition of the encumbered asset; and
5. The order of priority of the security rights affecting the encumbered asset and the amounts of the secured obligations, respectively.

The secured creditor must send the accounting to the grantor and all persons who are entitled by law to receive a written notification on the disposition. The secured creditor is obliged to distribute the collected purchase price (increased by the proceeds of the asset and decreased by the expenses listed above) without delay among the secured creditors in accordance with their priority right over the encumbered asset and the amounts of their secured claims. Any amount remaining after such distribution must be transferred to the grantor.

§ 17:31 Acquisition of encumbered asset in satisfaction of secured obligation

An agreement, according to which the secured creditor acquires title over the encumbered asset in satisfaction of its claim, is null and void. After default, the secured creditor may propose in writing to the

[4]Civil Code, section 5:131.

grantor to acquire one or more of the encumbered assets in total or partial satisfaction of the secured obligation. The offer must include, as a minimum:

1. The secured creditor and the grantor;
2. The encumbered asset in question;
3. The outstanding amount of the secured obligation;
4. The date of and the actual event of default; and
5. The amount up to which acquisition of the asset would provide satisfaction for the outstanding claim and, if applicable, the additional amount that the secured creditor is willing to pay for the acquisition of the secured asset.

The secured creditor must provide notice as to the offer to the following persons:

1. The grantor, the debtor, and the persons who provided guarantee for the performance of the debtor;
2. The other secured creditors having a security right over the same asset;
3. In the case of a registered security right, all other persons who have a registered right over the same asset; and
4. Those persons who notified the secured creditor about their rights over the secured asset at least 10 days prior to the notification to be given by the secured creditor.

Any of the notified persons may object to the acquisition offer made by the secured creditor if such acquisition would endanger the satisfaction of its secured claim. If none of the notified persons object to the offer in writing within 20 days of receipt notification, and the grantor accepts the offer in writing within 20 days from receipt, the sale and purchase agreement will enter into effect between the secured creditor and the grantor, according to which the grantor must transfer possession over the encumbered asset to the secured creditor and, if necessary, provide its consent for registration of title of the secured creditor over the asset. With the transfer of ownership over the asset, the secured obligation terminates in full or in part, in accordance with the terms of the offer.

Rights Acquired through Judicial Disposition

The secured creditor may initiate a court proceeding for the enforcement of its security right. Such proceeding is governed by the general rules of execution at court.

§ 17:32 Asset-specific issues

Enforcement of Security Right in Receivable

Receivables may be subject of security right in the form of an assignment (except in case of securing consumers' obligations) or in the

form of a pledge. The secured creditor may notify the original obligor of the receivable about the security right in the claim.

Following default, the secured creditor may instruct an obligor to make payment directly to the hands of the secured creditor or enforce the receivable otherwise, provided that payment is due under the original obligation. The same rule applies in the case the subject of the security right is a right.

Enforcement of Security Right in Negotiable Instrument

If the subject of the security right is a negotiable instrument traded on a stock exchange or otherwise having a publicly listed purchase price, the secured creditor may acquire with a unilateral declaration ownership right over the negotiable instrument, up to the amount of the secured obligation, and then may collect or enforce otherwise the negotiable instrument directly against the person obliged on that instrument.

Distribution of Proceeds of Disposition Where Encumbered Asset Is Receivable, Negotiable Instrument, or Other Claim

Following collection or other enforcement of a receivable or negotiable instrument, or enforcement of a claim or right, the enforcing secured creditor must apply the net proceeds of its enforcement to the secured obligation. The enforcing secured creditor must pay any surplus remaining to the grantor.

Enforcement of Security Right in Right to Payment of Funds Credited to Bank Account

In the case of a security right over funds credited to a bank account, the secured creditor may acquire with a unilateral declaration ownership right over the funds up to the amount of the secured obligation and then may collect or enforce otherwise the negotiable instrument directly against the bank.

VI. ACQUISITION FINANCING

§ 17:33 In general

Hungarian law does not allow those security instruments under which the secured creditor may acquire title in the encumbered asset as a direct result of an agreement concluded prior to default. At the same time establishment of an option right in allowed, with the exception of consumers. In the case of consumers' obligations conclusion of an option right as a security instrument is null and void. Retention of title by the seller is also widely used as a security for payment of the purchase price of the goods purchased by the buyer.

§ 17:34 Method of retention of title as acquisition financing

The seller may, in a written agreement concluded with the

purchaser, retain title over the goods that are the subject of a sale transaction until it receives full payment of the purchase price. The retention of title over tangible assets must be registered by the seller in the Filing Registry or if the tangible assets are subject to another registration system, in that registry. Registration must include the name of the purchaser and the identification of the asset.

§ 17:35 Third-party effectiveness of retention of title right

Retention of title over tangible assets must be registered by the seller in the Filing Registry or, if the tangible assets are subject to another registration system, in that registry. Registration must include the name of the purchaser and the description of the asset. Without registration, the registration of title has no effect against third persons, i.e., a third person purchasing the asset in good faith and for consideration will acquire title over the asset and a security right established over the asset by the purchaser will be legal and effective.

VII. CONFLICT OF LAWS

§ 17:36 In general

Hungarian private international law is regulated by Law-Decree Number 13/1979 (the "Conflicts Code"). To the extent Regulation (EC) 593/2008 of the European Parliament and of the Council (the "Regulation") applies, the rules of the Regulation have priority over the rules of the Conflicts Code.

§ 17:37 Law applicable to security right

The ownership rules of the Conflicts Code apply to security rights to the extent the issue is related to proprietary questions. According to this, "the law applicable at the place of the location of the thing will apply to proprietary rights and other real rights, as well as to lien and possession".[1]

In other than proprietary issues, the law governing the contract containing the secured obligation will apply. Contractual obligations covered by the Regulation will be governed by the law specified by the Regulation. Any contractual obligations to which the Regulation does not apply, the conflict rules of the Conflicts Code will apply.

Under these rules, the law of the contract primarily is the law that the parties have chosen for their relationship at the time of the conclusion of the contract or any time thereafter.[2] In the absence of choice of the parties, the contract will be governed by the law of the country

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[Section 17:37]

[1]Conflicts Code, section 21(1).

[2]Conflicts Code, section 25.

with which it is most closely connected based on the key elements of the contract. According to section 29 of the Conflicts Code:

> The law of the contract shall apply to all elements of the contractual relationship, in particular, to the conclusion of the contract, material and formal validity, contractual effects, and, unless the parties agreed otherwise or unless otherwise implied by the provision of this Law-Decree, to the agreements guaranteeing the contract . . . .

According to this rule, unless the parties made a separate choice of law clause in the security agreement, the security agreement will be governed by the law of the contact that is applicable to the security agreement.

§ 17:38 Relevant time for determining location

The law applicable at the place of the location of the thing is the law of the state in which the thing is located at the date of the emergence of the fact resulting in a legal effect.[1] Accordingly, the governing law of a security agreement will not change if the location of the secured asset or the parties changes following the conclusion of the security agreement.

§ 17:39 Law applicable to enforcement of security right

The law of enforcement is subject to the *lex fori* or law of the forum. Hungarian law applies to the proceedings of a Hungarian court or other authority, including notarial proceedings.[1]

§ 17:40 Effective date of new Civil Code

The new Civil Code, which includes some modifications with respect of security rights and the related registration system on securities on tangible assets, entered into effect on 15 March 2014. Security rights established under the previous Civil Code will remain governed by the prior rules. The new Civil Code will apply to agreements on collateral concluded following 15 March 2014.

VIII. EFFECT OF INSOLVENCY ON SECURITY RIGHTS

§ 17:41 In general

Insolvency is regulated by the Insolvency Act. Separate chapters relate to reorganization and liquidation. The sphere of application of the law is limited to business organizations. Private persons are

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[Section 17:38]

[1]Conflicts Code, section 21(2).

[Section 17:39]

[1]Conflicts Code, section 63.

excluded from the scope of the Insolvency Act, insolvency of private persons in regulated by another act, that we do not discuss here.

§ 17:42 Law applicable to validity and effectiveness of right and claims

The law applicable to the validity and effectiveness of rights and claims existing at the time of the commencement of insolvency proceedings is determined by the private international law rules of Hungary if the insolvency proceedings commenced at a Hungarian court. These rules are summarized in the Conflicts Code, the relevant rules of which are discussed above.

§ 17:43 Insolvency act as applicable law

The Insolvency Act applies in insolvency proceedings commenced at Hungarian courts.[1] The rules apply to all aspects of the commencement, conduct, administration, and conclusion of the insolvency proceedings, including the treatment of the creditors and the ranking of the claims.

§ 17:44 Assets constituting insolvency estate

All assets owned by the company under insolvency at the time of the commencement of the insolvency proceedings, or acquired thereafter belong to the insolvency estate, including those assets that are encumbered by a security right[1]. Assets whose titles are retained by seller creditors are not part of the insolvency estate.

§ 17:45 Provisional measures

If the creditor initiates the liquidation proceedings, it may request simultaneously or later, but prior to the commencement of the liquidation proceedings, that the court appoint a temporary administrator to control and manage the estate of the debtor. The court may hear the creditor in connection with its motion.

The court appoints a temporary administrator if the creditor renders probable that the satisfaction of its claim is endangered and proves reliably the existence, amount and due date of its claim, and advances the expenses of the temporary administrator. Following the appointment of the temporary administrator, the officers of the debtor may enter into contracts beyond ordinary course of business or make legal

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[Section 17:43]

[1]Conflicts Code, section 63.

[Section 17:44]

[1]Insolvency Act, section 4.

statements or perform obligations only upon the approval of the temporary administrator.[1]

§ 17:46 Provisional measures—Balance of rights between debtor and insolvency representative

Between the time that an application for commencement of insolvency proceedings is made and the commencement of those proceedings, the debtor is entitled to continue to operate its business and to use and dispose of assets in the ordinary course of business, except to the extent restricted by the court.

§ 17:47 Provisional measures—Notice to interested parties of provisional measures

The court provides notice to all interested parties on the appointment of a temporary administrator or any other temporary orders.

§ 17:48 Provisional measures—Termination of provisional measures

The mandate of the temporary administrator terminates:

1. At the time of the commencement of the liquidation proceedings;
2. When the appointment of the temporary administrator is successfully challenged; or
3. If the application for commencement of the liquidation proceedings is denied.

§ 17:49 Measures applicable upon commencement of insolvency proceedings

Upon commencement of insolvency proceedings, execution or other enforcement against the assets of the estate is stayed. The Insolvency Act denies creditors, including secured creditors, the right to pursue any individual enforcement remedies against the debtor after an insolvency proceedings is commenced.

In reorganization, a moratorium exists and lasts until the end of the reorganization period. Secured creditors, together with other creditors, are invited to agree to the reorganization plan. They vote in two separate groups on the approval of the settlement proposal. Secured creditors do not have a privileged standing in the voting process.

In liquidation, all rights of the shareholders, as well as the rights of the management of the company under liquidation, terminate. A legal action or statement can be made on behalf of the company only by the liquidator. Upon commencement all obligations of the company become due.

[Section 17:45]

[1]Insolvency Act, section 24/A.

Creditors, including secured creditors, are invited to have their claims registered within 40 days with the insolvency administrator.[1] Registration is conditional on the payment of one per cent of the claim (but maximum of HUF 200,000) to the court, repayable in the class of non-privileged claims.[2] Non-registered claims or claims filed beyond 180 days are not enforceable in the liquidation process[3]. If the secured creditor registers its claim following the laps of the 40-day period, it will lose its priority right, and its claim will be satisfied only if there is remaining coverage after the satisfaction of all other creditors.

§ 17:50 Duration of measures

In the case of reorganization, the moratorium lasts for a minimum of 120 to a maximum of 365 days, if so approved by the creditors. Secured and non-secured creditors vote on the extension of the moratorium in separate classes.[1] The court issues a decision on the commencement or the denial of a liquidation proceeding within 60 days from the date of receipt of the application.[2] A liquidation proceeding may last up to two years[3] or, in practice, longer.

§ 17:51 Ability to sell assets of estate free and clear of encumbrances and other interests

In liquidation proceedings, all assets of the estate, including the encumbered assets, are sold by the liquidator in the course of the liquidation on the highest price. The sale should be commenced within 100 days following the commencement of the liquidation proceedings. The liquidator must notify about the sale all persons who have a registered right in any public registry, including registered security right holders in various public registries.

The liquidator must sell the assets on a public sale, in the frame of a public tender or an auction. The liquidator may avoid these forms of public sale only if the creditors' council approves it, or if the expectable costs are likely to exceed the amount of the expected proceeds. Upon the approval of the creditors, the liquidator may, in order to achieve a more favorable utilization of the assets, transfer the estate

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[Section 17:49]

[1]Insolvency Act, section 28(2)f).

[2]Insolvency Act, section 46(7).

[3]Insolvency Act, section 37.

[Section 17:50]

[1]Insolvency Act, sections 10(4) and 18(7) and (9).

[2]Insolvency Act, section 27.

[3]Insolvency Act, section 52(2).

as an asset contribution to a limited liability company, shareholding company, or cooperative.[1]

If two rounds of public sale prove to be unsuccessful, at the request of the secured creditor and upon approval of the creditors' council (absent that, the other creditors), the asset may be sold on appraisal value to the secured creditor. The secured creditor must pay the difference between the purchase price and the amount of its claim and the costs of the liquidator within 15 days of the transaction.[2]

§ 17:52 Avoidable transactions

In liquidation, within 90 days from taking knowledge, but not later than one year following the commencement of the liquidation, the creditor or the liquidator of the company may request the court to declare null and void a contract concluded within:

1. Two years preceding the filing with the court of the request for liquidation, or thereafter, under which the company concluded a contract or undertook an obligation without receiving due consideration;
2. Five years preceding the filing with the court of the request for liquidation, or thereafter, if the contract without due consideration was made in order to abuse the rights of other creditors and the preferred creditor was in bad faith; or
3. Ninety days prior to the commencement of the liquidation proceedings, or thereafter, if it provided a more favorable treatment for the creditor, especially those which modify an existing contract to benefit the creditor and those that provide collateral for a non-secured creditor.

If the contract is declared null and void, the legal consequences of the Civil Code will apply. The creditor or the liquidator may request *in integrum restitutio*, as well as the deletion of any registered right established on the asset following the illegal transfer of the asset. Payment made to the creditor prior to its due date or any other performance that constitutes a more favorable treatment of the creditor, if within 60 days prior to the commencement of the liquidation proceedings, or thereafter, can be demanded by the administrator.

The lack of consideration and the bad faith element are presumed if the contract is made or the collateral is provided among or to the benefit of companies belonging to the same company group (controlling and being under control or having joint control or being under joint control), or is concluded with the officer of the company or his

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[Section 17:51]

[1]Insolvency Act, sections 48 and 49.

[2]Insolvency Act, section 49/A(5) and B(7).

relatives.[1] The rules may deprive the holder of a security from its priority in a liquidation proceedings if the pledge was provided without due consideration, for example when the pledgor provides the collateral without receiving due benefit from the loan, e.g. the security is provided as collateral to the debt of a third person, or the collateral is provided to the benefit of the parent company holding controlling interest.

§ 17:53 Participation by creditors

In reorganization, secured creditors are invited to agree to the reorganization plan, wherein they have the same rights as any other creditor. In liquidation, secured creditors must have their claims registered within a time limit set by law. Non-compliance with the time limit leads to loss of the priority standing of the secured claim. Secured creditors also may vote to agree to a reorganization plan to avoid winding up of the debtor.

§ 17:54 Approval by classes

Creditors vote in classes and secured creditors form a separate class. The reorganization plan in a reorganization proceeding must be agreed to by at least half of the creditors in each class.[1]

In liquidation proceedings, the creditors giving consent to a settlement have to represent two-thirds of the debts owed by the insolvent debtor including at least 50 per cent of the secured creditors. The accepted agreement, with few exceptions, binds all creditors.[2]

§ 17:55 Secured claims

In reorganization, secured claims do not enjoy any privilege. Enforcement of all claims, including secured claims, is stayed for the time of the moratorium.

In liquidation, secured creditors have a privileged standing. Creditors, including secured creditors, are invited to have their claims registered within 40 days with the insolvency administrator.[1] Registration is conditional on the payment of one per cent of the claim (but maximum of HUF 200,000) to the court, repayable in the class of

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[Section 17:52]

[1]Insolvency Act, section 40.

[Section 17:54]

[1]Insolvency Act, section 20.

[2]Insolvency Act, section 44(1).

[Section 17:55]

[1]Insolvency Act, section 28(2)f).

non-privileged claims.[2] Non-registered claims or claims filed beyond 180 days are not enforceable in the liquidation process.[3] If the secured creditor registers its claim following the laps of the 40-day period, it will lose its priority right and its claim will be satisfied only if there is remaining coverage after the satisfaction of all other creditors.

The relative priority of a security right is recognized in the Insolvency Act in two ways. With respect of securities created prior to the commencement of the liquidation proceedings, the proceeds from the sale of the secured assets (in an all-asset security up to 50 per cent of the collected purchase price) are transferred to the secured creditor, except that the costs of the preservation and sale of the secured asset and the fee of the liquidator (up to five per cent of the net sales revenue) must be first settled from the sales proceeds of the secured asset. In respect of any unpaid amount of the secured claim, the costs of the liquidation are the only claims that precede the secured claim.[4]

The realized income of the sold encumbered asset is due at the time of the disposal of the asset, by contrast to most other claims payable either at the end of liquidation or when an intermediary balance is made one year after commencement of the proceedings.

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[2]Insolvency Act, section 46(7).

[3]Insolvency Act, section 37.

[4]Insolvency Act, sections 49/D and 57(1).