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## Country report - 2014

### HUNGARIAN BAR ASSOCIATION

The year 2014 – similar to the year 2013 – proved to be a mixed year for Hungary in terms of its economy and political landscape. While there was an economic growth towards the end of the year, there were also signs that investments, and especially foreign direct investment, were slowing down. As in other countries following the global recession, the government is trying to balance the prescribed maximum budget deficit with the need to establish grounds for a sustained future economic growth.

Hungarian households are slightly reluctant to spend more on consumption due to the sluggish labour market (with unemployment hovering somewhere around 11%) and the problems that some Hungarian households faced while the Hungarian forint dropped in value against the base currency of their foreign currency mortgage loans during the recession years. As for the state budget, its debt stood at around 80% of GDP, which is one of the higher figures when compared to other countries in the region.

Hungary enjoys flat income and corporate tax rates, which were cut some years ago in order to improve competitiveness. However, recent “crisis taxes” have undermined some of the confidence in the overall tax regime. Short-term reforms aimed at reducing deficits have been criticised as not always being structurally thorough and some experts would like to see more emphasis on long-term budget reforms and planning in order to address the deficit effectively and to ensure the sustainability of economic growth.

Efforts to stamp out corruption more effectively have been made, although some concerns remains in the area of public procurement. Launching a business takes just a couple of days in Hungary today, although further reform of labour legislation could help to free up the labour market to a greater extent.

Apart from the short summary offered above, please find below a few comments pertaining to the most important political and legislative events of the year 2014.

## **1. Political situation**

In the spring of 2014 parliamentary elections were held and Hungary's governing party, Fidesz, which won a landslide victory during the 2010 election, held onto power by winning 66.83% of the vote. Crucially, by gaining this percentage of the vote and 133 of the available 199 parliamentary seats, it means that the party maintained its two-third majority in the parliament, which constitutionally enables it to pass into law almost any bill which it introduces. 61 % of the people eligible to vote actually casted a vote in the elections.

Capitalizing on its two-thirds majority Fidesz continued to overhaul the country's institutional framework. The government's increasing control of the media, the weakening of judicial review and new restrictions on access to government information have provoked some protest movements within Hungary and some issues between the Hungarian government and the European Union.

The government's economic policy has been unpredictable and has drawn some criticism for failing to provide a stable environment for inward investment. It has been characterised by the increasing role of the state, an emphasis on the strengthening of national enterprises and a critical stance toward foreign direct investment (FDI), multinational companies and the banking sector.

## **2. New legislation and case law**

There was a significant, more than 50 % decline in 2014, in legislative activity on the part of the lawmaker. As opposed to the record amount of bills, government decrees and other regulations approved in the course of 2012 and 2013, Hungary's parliament passed less than half of the amount of bills it passed the year before. A few elements of this legislative activity will be considered below.

### **2.1 The New Civil Code and New Civil Procedural Code**

On March 15, 2014, the New Civil Code of Hungary became effective. This means that the legal profession (including both the judiciary and lawyers) will have to apply the old Civil Code and the New Civil Code paralelly, since the old Civil Code is still applicable with respect to contracts and transactions concluded before March 15, 2014. The Hungarian Bar Association is doing its best to help the attorneys to get familiar with the new legislation by organizing several conferences and courses.

The New Civil Code also brought about the necessity for a significant update to the Civil Procedure Code as well. A committee has also been set up to prepare a draft for a New Civil Procedure Code and the deadline for the preparation of such a draft is by the end of 2016. It is anticipated that the New Code on Civil Procedure might be adopted some time in 2017. The aim of the Hungarian Government is to create a new, modern and effective Act that meets international requirements.

### **2.2 Recent developments in the criminal procedure also affecting lawyers**

In criminal proceedings, the Hungarian courts and Hungarian penal institutions are taking a step forward by testing the use of Skype in certain legal procedures. During the test the judge and the prosecutor can communicate with an inmate and their lawyer, who are in the building of the penal institution, and question the inmate, via Skype from the room of the Court. The test is currently running in two penal institutions. The importance of this recent development is to mitigate the risk and expenses associated with transporting inmates to the Courts.

### 2.3 Fighting against crimes committed against children

An important modification of the Criminal Code has been adopted by the Hungarian Parliament according to which no statute of limitations applies to sexual offences if such a crime has been committed against a person under 18 years of age.

### 2.4 Special provisions on the sale and purchase of agricultural land

According to the new Decree of the Hungarian Government, lawyers shall use a so-called "security paper" for sale and purchase contracts concerning agricultural land. The district offices of the Hungarian Land Administrations provide the security papers to lawyers and also register each piece of paper. Since the "security papers" will be registered by the Hungarian Land Administration, this is a significant step forward in the fight against backdated sale and purchase agreements.

In addition, the acquisition of agricultural land and other real properties has now become more complicated and more difficult for foreign individuals. Generally, only domestic citizens and citizens of EU Member States, EEA Member States and citizens of other states who enjoy the same rights as EU citizens as a result of an international treaty may acquire agricultural land. If a domestic citizen does not qualify as a farmer, he or she may not acquire more than 0,01 sq km of agricultural land.

Furthermore, domestic legal persons may not acquire any agricultural land in Hungary. The State and local governments are fully exempt from this limitation and churches and mortgage banks enjoy a specific partial exemption too.

Foreign citizens and foreign legal persons of third countries may currently not acquire any agricultural land in Hungary. This restriction will probably be lifted within a few years.

Citizens of EU Member States and legal persons registered in such states may acquire ownership of a non-agricultural real property under the same rules as domestic citizens, i.e. without any authorization. If the foreign entity is a citizen or legal person from a state that is not a Member of the EU or the EEA, or a state, whose citizens or entities receive the same treatment as EU citizens, the acquisition must be authorized by the competent administrative office. The authority decides on the basis of whether the acquisition would violate public interest or a local government's interest. This does not apply to foreign individual entrepreneurs if the real property is necessary for their business activity.

## 2.5 Special provisions on the security stickers to be used in connection with the conclusion of certain agreements

In the future, in order to fight successfully against the fraudulent conclusion of sale and purchase agreements, lawyers will need to use a so-called security sticker in connection with all agreements that they countersign. The Hungarian Bar Association has supported the regional bar associations in being able to provide the lawyers with such security stickers by creating the so-called "Central Security Sticker Agency".

It must be emphasised that currently it is not known when the above legislation will enter into force.

## 2.6 Hard currency denominated housing and other loans

In the last two years FX-based consumer loan contracts became the subject of increased attention from the sides of both the legislator and the courts in Hungary. In particular, the following measures were adopted to clear up the legal situation regarding these contracts:

(a) Opinion of the Supreme Court's Civil Department no. 2/2012. (XII. 10.) laid down the criteria for determining whether those general terms which enable the bank to unilaterally modify its loan contracts are unfair (and thus null and void).

(b) Civil Unifying Decision of the Supreme Court no. 6/2013 mainly investigated whether FX-based credit, loan and financial lease contracts can be considered as invalid as such.

(c) Civil Unifying Decision of the Supreme Court no. 2/2014 investigated whether certain general terms of FX-based loan contracts (exchange rate fluctuation, use of buy and sell rates, unilateral modification clauses) are unfair (and thus null and void).

(d) The Parliament adopted Act no. XXXVIII of 2014, which affects the unilateral amendment clauses in the general terms of FX-based credit, loan and financial lease contracts between financial institutions and consumers. Based on the Act banks have to start a litigation against the Hungarian State to prove that the unilateral amendment clauses in their general terms were not unfair.

(e) The Parliament adopted Act. no. LXXVII of 2014 on the conversion of foreign currency loans into forints. Based on the act FX loans converted into forints are now linked to the BUBOR, which means that they are not going to have a fixed rate anymore. The change rate applicable in the course of the conversion between the foreign currency and the forint was determined based on the average exchange rate of the Hungarian National Bank between June and November or the official exchange rate of the Hungarian National Bank subscribed on November 7. The financial institutions can decide on which one to choose. Practically speaking, this means that Hungarian people with foreign currency mortgages now have lower mortgage repayments.

### **3. Legal Profession**

#### **3.1 General Elections of the Bar Associations**

There were general elections in 2014 at the local bar associations (the 19 county associations, plus Budapest), which also resulted in the partial renewal of the leadership of the Hungarian Bar Association, the highest lawyers' forum. Dr. János Bánáti was re-elected as the President of the Hungarian Bar Association and, amongst others, Dr. András Szecskay, Head of the CCBE Delegation to the CCBE, was re-elected as Vice-President.

#### **3.2 Elections of the Budapest Bar Association**

The Budapest Bar Association held the elections of its officers on February 21, 2014. With an unexpectedly high participation, 44% of the members of the Budapest Bar Association cast their votes and Dr. László Réti was voted in as the President of the Association again. Vice-Presidents including Dr. Péter Köves, former president of the CCBE, and Dr. András Szecskay, Head of the CCBE Delegation to the CCBE, were re-elected to their positions. However, the result of the election was challenged by a group of members before the Metropolitan Court, on the basis that the proper election processes were not followed. According to the first instance decision of the Metropolitan Court, only minor procedural violations occurred that did not effect the result of the elections. Both parties filed an appeal against the first instance decision and the second instance court will hold its hearing in September, 2015.

#### **3.3 European Lawyers' Day**

The topic of the first European Lawyers' Day, which was successfully held by the Hungarian Bar Association in Hungary with the high attendance of Hungarian lawyers, was professional secrecy, lawyer-client privilege and mass governmental surveillance. The Hungarian Bar Association is very concerned with such issues and with confidentiality in such criminal cases where the search and seizure affects lawyers' offices. Furthermore, the Hungarian Bar Association also intervenes in such cases where the seizing by authorities of confidential information held by lawyers and law firms goes beyond any necessity and reason.

#### **3.4 Publication of financial report's of lawfirms**

As a result of the amendment to the Act XI of 1998 on Attorneys at Law, law firms now need to submit their financial report to the regional bar associations for publication. The bar associations shall publish and make available free of charge the final reports on their website. The final reports will also be accessible through the website of the bar associations by way of a public search engine or browser upon using the name of the law firm. This obligation of law firms regarding the submission and publication of their financial report needs to be satisfied for the first time in relation to their financial reports for 2014.