



SZEC SKAY
Ügyvédi Iroda · Attorneys at Law

NEWSLETTER JANUARY - FEBRUARY 2007

Szecskay Attorneys at Law is a progressive firm, recognized as one of the top legal advisers in Hungary. The Firm was founded in 1992 by Dr. András Szecskay who had a well established practice with over twenty years of experience in the legal profession at that time.

The Firm is comprised of 20 attorneys, including local counsel and foreign attorneys admitted to practice in Austria, Canada, England, France, Germany and the US.

Main practice areas:

- M&A, Privatization
- Project Finance
- Corporate Restructuring, Merger and Demerger
- General Corporate Practice
- Securities Transactions - Private Placements, IPOs, and Public Offerings
- Competition/Antitrust Law
- Labor
- Real Estate
- Intellectual Property Law and Media Law
- Telecommunications, Information Technology and E-Commerce
- Environment
- Energy
- Litigation
Dispute Resolution / Arbitration

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***In Focus* - Subject of the Month: Amendment of the Mortgage Bank Act**

Act XXX of 1997 on Mortgage Banks and Mortgage Bonds (the "Mortgage Banks Act") specifies the specific rules concerning mortgage banks and mortgage lending. The Mortgage Banks Act was significantly amended effective as of January 1st, 2007.

According to the new rules, Hungarian mortgage banks may provide loans secured by mortgages on real property located in Hungary or within the territory of the European Economic Area (the "EEA"). In addition, Hungarian mortgage banks may also purchase mortgage loans or portions of loans secured by a mortgage on real property located in Hungary or within the territory of the EEA.

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The main condition of providing or purchasing loans secured by a mortgage on real property located within the territory of the EEA is that the mortgage must provide the same security for the mortgage banks as a mortgage established under Hungarian law. In addition, the Mortgage Banks Act delineates the other conditions of lending or purchasing loans secured by a mortgage on real property located within the EEA.

The portion of the mortgage loans secured by a mortgage on real property located within the territory of the EEA may not exceed 15% of the entire mortgage loan portfolio of the mortgage bank.

Mortgage banks may purchase claims originating from mortgage loan agreements or related loan agreements, from a financial institution or insurance corporation, which

(i) have been secured by a mortgage on real property located in Hungary or within the EEA, provided that there is a prohibition of sale and encumbrance registered on the real property concerned to the benefit of the lender or the agreement establishing the mortgage right contains notification that in the event the mortgage bank assumes the place of the original lender, there will be a prohibition of sale and encumbrance in place to the benefit of the mortgage bank and in the case of a related loan, it was concluded according to the rules set out by the Mortgage Banks Act,

(ii) which has been qualified as non-problematic by the auditor of the vendor financial institution or the insurance corporation,

(iii) for which the collateral value of property mortgaged has been determined by the mortgage bank according to applicable rules, and the principal portion of the loan secured by the mortgage does not exceed the collateral value of

properties mortgaged, and the principal portion of the related loan amount including interest does not exceed the amount secured by the suretyship of the state, and

(iv) which loan and mortgage agreements have been concluded in the form prescribed by the Mortgage Banks Act (generally it shall be incorporated in a notarial deed with the exceptions expressly defined by the Mortgage Banks Act).

The amendments of the Mortgage Banks Act also affect mortgage bonds and the liquidation proceedings of mortgage banks.

Real Estate Law: Amendment of the provisions concerning construction fines

The provisions of Act LXXVIII of 1997 on the on the Formation and Protection of the Built Environment (the "**Construction Act**") were amended effective as of January 1st, 2007.

Subsection 49 (1) of the Construction Act was modified from the earlier version to only provide for the obligation to impose a fine but does not define the rate of the fine.

The modified provisions of the Construction Act also set forth that the construction fine does not exempt from liability for obligations prescribed by criminal law, the law of offences, the liability for payment of compensation, or under the fulfillment of the obligations with respect to the limitation, suspension, the restriction of activities or the creation of the proper protection and restitution of the natural or former environment.

In addition, the Construction Act declares that fines may not be imposed in connection with building activities carried out on the basis of a legally binding and enforceable building or



demolition permit if the underlying orders were withdrawn by the construction authority in its competence or because of the objection of the public prosecutor, or which were changed or canceled by the supervisory authority on the basis of a decision of the Constitutional Court provided that the developer did not proceed in bad faith with respect to the cause forming the basis of the withdrawal (or change, cancellation).

The rate of the construction fine is set out in the Government Decree no. 245/2006 (XII.5.) on the Detailed Rules of Determination of Construction Fine, effective as of January 19th, 2007, which overrules KTM Decree no. 43/1997 (XII.29.) on Construction Fine.

Employment Law: Changes concerning the Uniform Hungarian Employment Database (EMMA)

Section 101 of Act LXI of 2006 on the Amendment of Certain Finance-related Acts modified section 16 of Act XCII of 2003 on the Rules of Taxation (the "**Taxation Act**") effective as of January 1st, 2007 so that employers must fulfill their notification obligation by notifying the Hungarian Tax Authority instead of the Uniform Hungarian Employment Database (EMMA).

According to the Taxation Act, employers and payers shall supply to the competent tax authority - by way of electronic means or using the standard form prescribed for this purpose and indicating their tax identification number, name and seat - the personal data of insured persons in their employment (name, maiden name, mother's maiden name, date and place of birth), as well as their nationality, tax identification code, the date of commencement, termination and the code of the

insurance relationship, the length of any period of suspension of insurance, the weekly work time, FEOR codes, and the name and identification code of private pension funds where applicable. Employers and payers operating social security payment offices shall also indicate in their notification if any sick-pay, pregnancy-maternity benefits, child-care allowances or child-care benefits are paid following the termination of insurance. The notification shall be sent:

a) in respect of the commencement of insurance, before the first day of the insurance relationship but at the latest on the first day of the insurance relationship before the start of employment, in the case of job search support within ten days of the decision granting support becoming legally binding, or if the decision regarding insurance is made subsequently, at the latest on the day following the decision regarding the obligation to provide insurance,

b) within eight days following the date of termination of a relationship, the commencement and termination of suspension, and the opening and closing date for benefits provided after the termination of the insurance relationship.

The purpose of this Newsletter is to provide general information regarding the issues set out above. This Newsletter is a publication of Szecskay Attorneys at Law and cannot be regarded as legal advice or legal opinion under any circumstances. Szecskay Attorneys at Law do not warrant or guarantee the accuracy, completeness or adequacy of the information set out in this Newsletter. With respect to any specific legal queries and more information, please seek legal assistance.

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