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SECURITIZATION - HUNGARIAN PROSPECTS

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While the securitization market in Europe continues to flourish, its usefulness in Hungary has yet to be fully appreciated. At first glance, the foundation and legal framework appears to be in place, however for a number of reasons, the market is still in its pre-infancy. From a Hungarian law approach it is useful to first look at the issues which are relevant in all markets and then to focus on the specific market-driven obstacles.

LEGAL FRAMEWORK

As opposed to certain other jurisdictions such as France, Hungary has not enacted any specific legislation covering securitization transactions. While such legislation could serve as a catalyst in the growth of securitization, the main legal issues to be addressed are already dealt with in various laws and regulations.

(1) Bankruptcy Remoteness

One of the main objectives in a securitization is to ensure that the creditors of the originator that has sold its assets (i.e. a loan portfolio) to the special purpose vehicle (SPV) will not have any claims against the SPV in the event of the originator's bankruptcy. Achieving 'bankruptcy remoteness' typically causes the most difficulties and requires a carefully balanced structure. Specifically, a structure must be designed where it is ensured that the transfer of assets will survive the bankruptcy of the originator and that a liquidator will not be able to step in and have recourse to the assets.

The Bankruptcy Act (XLIX of 1991) addresses claw-back issues, providing a wide possibility of contesting transactions (by creditors or the liquidator within 90 days of its occurrence or at the latest within 180 days after the commencement of liquidation proceedings) such as agreements concluded:

- (i) in the five years prior to the commencement of liquidation proceedings (or thereafter) which reduce the assets of the debtor, provided that the debtor's intention was to evade creditors and the counterparty was or should have been aware of such intention;
- (ii) within two years prior to the commencement of liquidation proceedings (or thereafter), the subject of which was the alienation of the debtor's assets or an

obligation undertaken without consideration, or a transaction concluded in favor of a third party for consideration but conferring an unreasonable advantage;

- (iii) within ninety days prior to the commencement of liquidation proceedings (or thereafter), the subject of which was the preferential treatment of a creditor, in particular, the amendment of an existing agreement or the provision of collateral.

(2) *Assignment*

Assignment (the most commonly used method of transfer) is covered by the Civil Code (Act IV of 1959), which states that an obligee is entitled to transfer its claims to another person by contract. The assignee shall subrogate the original obligee through the assignment, and the rights arising from the lien and suretyship that secure the claim will also pass to him.

It should be noted that the obligor will only be obliged to perform to the assignee, if the assignee notified the obligor of the assignment. This will not however prevent the assignor from collecting from the obligors on behalf of the assignee until such notification. It should also be noted that according to Hungarian legal practice, the assignment will extend to certain future proceeds as well, such as interest in case of the assignment of a loan.

(3) *Regulatory concerns*

Pursuant to the Bank Act (CXII of 1996), assignment of customers' accounts and/or repayable funds between credit institutions may only take place with approval of the State Supervision of Financial Institutions (PSZAF). The approval of the customers is not necessary to affect such transfer. If a credit institution takes over customer contracts, it must notify all contracting parties concerned of the transfer in writing within thirty days of receiving the authorization. In exceptional cases, the transfer may also be deemed as a transfer of a business unit, where, under certain circumstances (if thresholds and change of control criteria are met), the merger control consent of the Competition Office may also be required.

Other issues which may be relevant are confidentiality, data, bank and business secrets and consumer protection which are dealt with in laws largely harmonized with those of the EU or international principles (e.g. OECD).

(4) *Issuance - Financing the Assignment*

In case of an SVP registered in Hungary, the Capital Markets Act (CXX of 2001) will regulate the issuance of bonds. If bonds are intended to be issued via a public offering, an SPV may only be a company which (or its predecessor) has been operational for one year prior to the issuance. The Capital Markets Act however makes an exception for rated asset-backed notes, provided that the ratings are annually repeated and published. PSZAF will accept the ratings of registered Hungarian agencies and agencies registered elsewhere in the EU.

PROSPECTS IN THE HUNGARIAN MARKET

Although there has been significant talk over recent months of a securitization transaction being structured in Hungary, to-date no such transaction has been launched, however Hungarian assets have already been included in international securitizations. The obstacles

relate to the ability of banks to obtain cheap funding and investor demand. Obtaining satisfactory ratings and the availability of an adequate pool of assets, however, seem to be less problematic. Despite these obstacles, it is widely anticipated that in the next 12 months the first securitization transaction will likely surface in Hungary.

The contents of this article are intended to provide only a general overview of the subject matter. Specialist advice should be sought for specific matters. Queries relating to this article should be addressed to the authors at:

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