

CHANGES IN INTERNATIONAL PRIVATE LAW

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BACKGROUND

Act CX of 2000 (the “Act”) established new rules on the jurisdiction of the Hungarian Courts and the recognition of foreign judgements by amending Law-Decree No. 13 of 1979 on International Private Law (the “Decree”) and the Code of Civil Procedure. According to the legislative intent, the Act stipulates formerly widely defined rules of jurisdiction of Hungarian Courts more in detail, largely in conformity with the Convention of Lugano (of 1988) to which Hungary looks forward to joining.

Pursuant to Section 6 of the Act, the Act shall come into force as of May 1, 2001.

GENERAL JURISDICTION OF THE HUNGARIAN COURTS

Whereas according to the previous provisions Hungarian Courts had non-specified general jurisdiction, except for a very limited number of excluded jurisdiction cases specified in the Decree, the Act precises that Hungarian Courts have general jurisdiction in matters where the domicile, permanent residence or registered seat of the defendant is in the territory of Hungary.

According to the amended rules of the Decree a Hungarian Court shall have jurisdiction in case of more defendants of whom only one has his domicile, permanent residence or registered seat in Hungary, if the subject of the dispute is a jointly owned right or obligation where a uniform decision is required. Similarly, if the primary debtor has his domicile, permanent residence or registered seat in Hungary, the Hungarian Court shall have jurisdiction with respect to the subsidiary debtor (e.g., the surety) as well, regardless of his domicile or seat.

SPECIAL JURISDICTION

According to the amended rules Hungarian Courts shall in specific have jurisdiction in matters when disputes arising from contracts, provided that the parties deem the place of performance to be in Hungary. In lack of such a stipulation Hungarian Courts shall have a special jurisdiction regarding (i) sale and purchase agreements, if the place of handing-over is in Hungary; (ii) agreements concerning any activity if the place of fulfillment of this activity is in Hungary; and (iii) any other contract if the place of performance according to Hungarian Law is deemed to be in Hungary.

Furthermore, according to the amended rules Hungarian Court shall have special jurisdiction in matters where a foreign company is sued with respect to a matter concerning its branch or representative office having its registered seat in Hungary. A foreign citizen may be sued before a Hungarian Court regarding his entrepreneurial business activity in Hungary.

Additionally Hungarian Courts may have special jurisdiction also, if the defendant does not have a domicile, permanent residence or registered seat in Hungary, but property which is enforceable in Hungary, including any claim the debtor of which has his domicile, permanent residence or registered seat in Hungary and provided that such claim is secured by any asset situated in Hungary.

Hungarian Court shall also have jurisdiction regarding legal actions brought by a consumer having its domicile or permanent residence in Hungary against the contractual party acting within the scope of its business activity either in Hungary or via a branch or representative office in Hungary.

Furthermore, an employee may file a suit concerning the employment contract against the employer, if the usual employment place is situated in Hungary or if the employee is working at a Hungarian branch.

EXCLUSIVE AND EXCLUDED JURISDICTION

Provisions of the Decree for the specification of when (i) only Hungarian Courts have or (ii) when Hungarian Courts do not have jurisdiction have been widened. Pursuant to the Act Hungarian Court shall have exclusive jurisdiction (i) regarding the enforcement of a property claim with respect to any real estate situated in Hungary, including disputes arising from respective rental or lease agreements; (ii) regarding the establishment, insolvency or liquidation of a domestic company; (iii) regarding facts, rights and data registered in a Hungarian public or notary register; and (iv) regarding enforcement procedure in Hungary. When the asset or the company is not situated or registered in Hungary, jurisdiction of Hungarian Courts is excluded. Further provisions specify when Hungarian Courts do not have exclusive jurisdiction in personal matters of Hungarian citizens. The Act - substantially in line with the cases specified in the European Council's Treaty on State Immunity (1972) - precises relative immunity rules, i.e. when Hungarian Courts may have jurisdiction in the case of civil law suits involving a foreign state.

AGREEMENT ON JURISDICTION

Whereas according to the previous provision an agreement on jurisdiction was only possible with regard to international business contracts, the Act sets forth that the forum of any state may be chosen with respect to pecuniary issues concerning disputes which already arose or which may arise in the future from a determined legal relationship.

The choice of forum agreement may be concluded (i) in writing, (ii) orally with a written confirmation, (iii) in a form complying with the usual form used between the parties, or (iv) in international trade in conformity with trade practice known or ought to have known by the parties.

RECOGNITION OF FOREIGN JUDGEMENTS AND DECREES

The recognition of foreign judgements or decisions is excluded in Hungary in case of the exclusive jurisdiction of a Hungarian Court, except for the recognition of a divorce decree if the Hungarian citizen concerned by this decree would request so.

A foreign judgement or decree shall be recognized, if (i) the jurisdiction of the foreign court or authority issuing the decision may be deemed to be justified according any Hungarian act; (ii) a court decision is final according to the law of the state of issue; and (iii) the Hungarian Minister of Justice has declared reciprocity regarding the state of the issuing court or authority. The reciprocity shall not be required, if the jurisdiction of the issuing court was established by the contracting parties in compliance with the Act.

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