

NAGY & TRÓCSÁNYI

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2021

HUNGARY



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1. Real estate ownership

1.1. Legal framework

Constitutional protection

The right to property is a fundamental right governed by Article XIII (1) of the *Fundamental Law of Hungary* and it is under the requirement of equality and non-discrimination. Based on the Fundamental Law of Hungary, everyone shall have the right to property. However, the ownership of property shall entail social responsibility.

Requirement of equality and the sub-rights

The rights of real estate owners are equal in Hungary. According to Section 5:13 of *Act V of 2013 on the Civil Code* ownership means the rights of an owner to lawfully exercise the full and exclusive right to control property within the framework of law and without prejudice to the rights of others. The owner shall have the right of possession, right of use, right of beneficial enjoyment, and the right to dispose of property. These are the sub-rights of the right to property. The owner also has the right to avert all forms of unlawful intrusions.

4. Some sub-rights of this full ownership may be limited by various encumbrances (e.g., restraint on alienation and encumbrance, easements, right of use for public purposes), rights of use (usufruct, land use, use rights), and by contractual relationships (usage contracts).

Restrictions allowed by the Fundamental Law

The right to property may be restricted according to the Fundamental Law. The Constitutional Court of Hungary has pointed out that the restriction of a sub-right of the right to property is unconstitutional only if it is unavoidable and if the weight of the restriction is disproportionate to the objective pursued by the restriction. It follows that the constitutional rules allow for a statutory restriction of fundamental rights provided that the restriction does not affect its essential content. However, the essence of a fundamental right may also be restricted in order to fulfill and guarantee another constitutional right.

Statutory restrictions based on the direct authorization of the Fundamental Law

One of the restrictions on property rights regulated by the Fundamental Law is *expropriation*. According to Article XIII (1) of the Fundamental Law, expropriation shall only be permitted in exceptional cases when such action is in the public interest and only in such cases and in the manner stipulated by an act under terms of full, unconditional, and immediate compensation. The detailed rules of expropriation and expropriation purposes are stipulated by *Act CXXIII of 2007 on expropriation*. The expropriation purposes serve the public interest such as national defense, exchange of territories under an interna-

tional agreement, urban development and zoning regulations, placement of educational, health, social, and law enforcement facilities, development of transport infrastructure, energy production, mining, electronic communications services, heritage protection, environmental protection, water management, sustainable forest management, and afforestation, etc.

The Fundamental Law also allows the restriction of the acquisition of property in Article P (2). The *acquisition of agricultural and forestry lands* is subject to such restriction and is regulated by *Act CXXII of 2013 on Transactions in Agricultural and Forestry Land* and *Act CCXII of 2013 on laying down certain provisions and transition rules in connection with Act CXXII of 2013*. According to *Act CXXII of 2013* as a general rule only Hungarian or EU citizens qualifying as a farmer may acquire the ownership of agricultural and forestry lands and the ownership may not be acquired by third-country (non-EU) natural persons, foreign states, and legal persons, except as provided for in that Act.

Other statutory restrictions

In addition to the above several restrictions are provided by law such as the following:

According to Section 1/A of the *Act LXXVIII of 1993 on residential and non-residential leases* the acquisition of real property (which is not agricultural or forestry land) by foreign natural and legal persons is subject to the approval of the competent government agency. The detailed rules of the governmental agency's procedure are stipulated by the *Government Decree 251/2014 (X. 2.) on the acquisition of foreign nationals of real estate other than land used for agricultural or forestry purposes*. Citizens and legal persons of the EU, the members of the Agreement on the European Economic Area and Switzerland are not deemed to be foreign persons and therefore authorization is not required.

The *Act V of 2013 on the Civil Code* provides for several property restrictions by law such as easements and right of use for public purposes. Easement may be granted to and held by the possessor of a real estate property on another person's real estate property to use such property to a specific extent for right-of-way, or for the installation of water lines or water conduits, basement, poles for aerial lines, building abutment, or for other similar purposes to the benefit of the dominant tenement or to demand the holder of the servient tenement to refrain from otherwise rightful conduct proceeding from his entitlement. Besides, if a piece of land is not connected to a suitable public road, neighbors shall tolerate the holder of a dominant tenement to pass through their land. Public easement may be imposed upon a real estate property by decision of the relevant authority in the public interest, to the benefit of agencies authorized under specific legislation.

Based on the *Act LXXVIII of 1997 on the Formation and Protection of the Built Environment* landed areas may be subject to a prohibition of modification for the length of the period required for drawing up the local building code or building prohibitions with a view to the implementation of activities related to urban development and to the prevention of any harm to nature and to the environment or with a view to the enforcement of legislation on nature preservation and environmental protection. A prohibition shall be limited to the extent and duration absolutely necessary and shall be withdrawn immediately when the reasons based on which it was issued no longer exist.

The most recent trends on the real estate market

According to publicly available real estate market assessments, the nearly four-five-year volume growth has stopped in 2020 due to the pandemic. After last year's weakening, the real estate investment market has gained strength again this year, and the outlook is also good. Although until October 2021 the recorded real estate investment turnover is 5% lower than in the same period of 2020, it is expected that it will be 20% higher than last year, experts say.

The real estate price growth slowed in 2020 due to the pandemic. The price of real estate has not decreased due to the increase of the costs and has even increased sharply in some regions (e.g., Lake Balaton, county seats, agglomeration of Budapest).

A special feature of the year 2021 is the high proportion of office market transactions within the total volume which reached 85% by October 2021, compared to 40% before the pandemic.

1.2. Registration of ownership

In Hungary, the real estate rights are registered in the Land Register. The Land Register is an authentic public register containing separately for each municipality data and information for each and every real estate property in the country, rights in real estate properties, significant facts, and the personal identification data and address of each person registered therein. The sequence of rights registered in the real estate register for real estate properties shall be determined based on the effective dates of such entries.

The keeping of the real estate register and the administration of real estate registration matters shall fall within the jurisdiction of the real estate supervisory authority.

The creation, amendment, and termination of rights (e.g., right to property, mortgage) and entitlements (e.g., pre-emption right granted by an agreement) defined by law shall be considered effective when recorded on the title deed in the Land Register. However, the *Act V of 2013 on the Civil Code* regulates the legal status of persons acquiring non-registered rights. A person

who acquiring some right that is not entered in the Land Register or the beneficiary of a fact that can be recorded in the real estate register may not enforce such right or fact against a party acting in good faith who is registered in the real estate register or who enjoys priority with respect to the application for registration before such person.

1.3. Publicity of real estate register

The Land Register is open to the public. Everyone has unlimited access to title deeds and maps in the Land Register – with the exception of personal data under special protection – they may be inspected, notes may be made, and certified copies and certificates may be requested. The title deed and map of the property can be requested at the land office or online with a separate subscription through the *Takarnet* website. Note that the online downloadable title deed does not contain the archaic data of the property which can only be accessed with personal insight. Issuance of title deeds and maps is subject to a fee.

9. The documents on file in proof of entries and records made in the Land Register as well as applications pending registration may be accessed if the requesting person is able to verify the consent of the parties in respect of whom the document contains any rights or obligations or that it is necessary for the purpose of enforcing his legitimate right or for discharging an obligation conferred by law or administrative decision.

1.4. Protection of ownership

If a right or a fact has been registered or recorded in the Land Register, lack of knowledge of such shall not constitute an excuse under any circumstances. This provision shall also apply in respect of the fact and subject of such pending procedures.

On the basis of rights registered and facts recorded in the real estate register, it is to be presumed that such registered rights and recorded facts pertain, until proven otherwise, to the rightsholder thereof. Unless proven to the contrary, rights or facts deleted from the real estate register shall be presumed not to exist.

An entry or record in the real estate register shall be deleted if the transaction on which the entry or record is based has been abolished or if the entry or record subsequently becomes inappropriate. The rightsholder's entitlement to request cancellation and correction shall not lapse in respect of any person acquiring ownership of the real estate property or a right related to the real estate property.

2. Real estate acquisition

2.1. Share deal or asset deal?

The two most common types of real estate acquisitions are asset deals and share deals. The main difference between the

two transactions is that while in the first case the properties themselves will be sold and the ownership of the properties will be acquired in the latter case the share of the company owning the property will be sold so the ownership of the property will not change.

The pros and cons of the two transactions should be carefully considered based on the type of property, the aimed goal with the property, and considerations of the tax environment. The main advantage of an asset deal is cherry-picking as the buyer can choose the assets that are favorable to him. It is worth mentioning that operational permits, certificates, similar rights, and contracts that may be linked to the real estate property are not automatically transferred as part of an asset deal. In contrast, in the case of a share deal, one of the most important advantages is the legal continuity of the business which could also be a disadvantage due to hidden liabilities. Finally, the time factor may also be relevant. While a share deal can last from six months to years depending on the complexity of the transaction the asset deal could usually be performed in a relatively short period of time.

Due to the publicly available assessments, in 2020 the proportion of asset deals rose to 74%. The high ratio of asset deals can be explained by the favorable tax environment.

In addition, the above real estate acquisitions may take place in other ways, such as in-kind contribution, business transfer, beneficiary transformation, beneficiary share exchange.

2.2. Share deal

The share deal usually starts with planning and research for the targeted company. The private limited liability company and the private limited company are the main corporate types commonly targeted with share deals in Hungary. Private limited-liability companies (*korlatolt felelossgu tarsasag* or *keft.*) are business associations founded with an initial capital consisting of capital contributions of a predetermined amount, in the case of which the liability of members to the company extends only to the provision of their initial contributions, and to other contributions set out in the memorandum of association. Limited companies (*reszvenytarsasag*) are business associations founded with a share capital consisting of shares of a predetermined number and nominal value, where the obligation of shareholders to the limited company extends to the provision of funds covering the nominal value or the accounting par value of shares. Private limited company's shares are not listed on any stock exchange.

Most of the hidden liabilities and risks arising from legal continuity (see 2.1.) can handle by due diligence procedures and proper insurance. With that in mind, the second part of the share deal is usually the legal, tax, or other specific due diligence. The management of the risks identified by the due

diligence may be defined by the parties as conditions of their agreement.

A share deal is a twofold transaction – on the one hand, it is contractual and, on the other hand, it is a corporate relationship. That is why the two main pieces of documentation required the sale and purchase agreement and corporate documentation.

Share deal agreements usually provide for an extensive list of warranties on *e.g.*, the assets of the company, the liabilities of the company, the status of the employees, contracts, IP rights, permits, and tax matters.

The signing of the sale and purchase agreement and the closing is often separated from each other. The closing of a transaction is the point at which the buyer pays the purchase price and therefore becomes the owner of the company in return. There are several possible reasons for this, *e.g.* the share deal could be subject to the authorization of the Hungarian Competition Authority, Magyar Nemzeti Bank, or the Ministry of Innovation and Technology, *etc.* In other cases, the separation is required for the acquirer's bank to secure financing for the transaction.

The registration of the corporate changes follows the signing of the sale and purchase agreement and the closing.

The main acts regarding share deals are currently the *Hungarian Civil Code* and *Act V of 2006 on public company information, company registration and winding-up proceedings*.

The transaction may incur a corporate tax liability. Share deals are generally exempt from VAT. Transfer duty may arise only if the legal entity in question qualifies as a company with domestic real estate.

Costs are incurred in the process, such as the fees of the contributors (*e.g.* attorney's fees, tax advisory fees), bank charges, and procedural and administrative costs.

2.3. Asset deal

As hidden encumbrances and unregistered rights may also arise in the case of asset deal due diligence is also recommended before the transaction.

Compared to a share deal (see 2.2.) an asset deal has one important documentation which is the asset sale-purchase agreement and related documents. If the continuity of the business is also a goal, it is recommended that the parties agree on the separate transfer of the requested relationships. Exceptions are certain legal relationships for which the law provides the legal succession (such as a lease).

The main acts regarding asset deals are currently the Hungarian Civil Code, Act CXLI of 1997 on Real Estate Registration, and the *Decree 109/1990 of the Ministry of Agriculture and Rural Development* implementing *Act CXLI of 1997*.

The transaction may incur corporate tax and VAT liability.

Transfer duty obligation arises in all cases except in the case of exemption from duty.

Costs are incurred in the process, such as the fees of the contributors (e.g. attorney's fees, tax advisory fees), bank charges, and procedural and administrative costs.

2.4. Disposal process

According to the *Hungarian Civil Code*, if the subject of the sales contract is a real estate property, it shall be executed in writing. Besides, contracts for the transfer of ownership of agricultural or forestry land shall be executed in a paper-based document bearing safety features. A contract in Hungary shall only be accepted for real estate registration purposes if the date and location of the issue are clearly indicated.

Any transaction for the creation, modification, or termination of ownership may be registered on the basis of notarial instruments or private documents countersigned by an attorney or bar association legal counsel. The countersigned document shall be equipped with continuous page numbers in the case of documents consisting of several pages. The initials of the parties shall be affixed to each of the pages of the contract and it shall be signed by the parties, and also shall be signed by the countersigning attorney beside indication of his name, bar association identification number, the fact of countersigning, as well as the place and date of countersigning. Real estate registration procedures in Hungary are still paper-based, so electronic signatures cannot be used. It is expected to change as of 2023 due to the digitization of the procedure.

In some cases (e.g., the case of signing abroad or signing with a power of attorney) additional formalities are required by law.

The attorney's fee is the subject of a free agreement in Hungary, usually proportional to the market value of the property. The notarial fees are regulated by law.

Lawyers and notaries are obliged to compensate for the damage caused by them in accordance with the rules of the *Hungarian Civil Code* and specific regulations. Compensation for damage caused by legal/notarial practice and the cover for payment of the damages for pain and suffering payable due to privacy violation shall be provided by liability insurance.

The transfer of real estate may be subject to several consents and approvals. The acquisition of real property (which is not agricultural or forestry land) by foreign natural and legal persons is subject to the approval of the competent government agency (see 1.1.). The acquisition of agricultural and forestry lands is highly regulated, and the acquisition of such land is subject to approval in most cases. In such cases, the contracts shall be approved by the agricultural administration body.

Please note that the proceeding of agricultural and forestry land sales regulation contains a number of additional formalities, content supplies, approvals, and pre-emptive rights.

In other cases, approvals may be required from the guardian

authority, Hungarian Competition Authority, and other authorities.

The real estate transfer contract shall include the number of the energy certificate. In addition, the *Act CXLI of 1997 on Real Estate Registration* and the *Decree 109/1990 of the Ministry of Agriculture and Rural Development* implementing *Act CXLI of 1997* lists a number of mandatory attachments. An exhaustive list of these would go beyond the scope of this guide.

2.5. Registration of change of ownership

Proceedings for the registration and/or recording of legally significant facts concerning a real estate property shall commence upon the request of the client. Registration shall be requested by the party who will become the right-holder in consequence and may also be requested by a party whose registered right is affected thereby.

The application shall be submitted on a standard form decreed by the competent minister. Applications shall be submitted on paper to the competent real estate supervisory authority according to the location of the real estate property in question. The general administrative service fee is currently HUF 6,600/property. There are separate fees for mortgages and the establishment of condominiums.

In proceedings related to the acquisition of ownership legal representation is mandatory.

Applications shall be submitted to the real estate supervisory authority within 30 days of the date of the contract (legal statement) serving as a basis for registration. If third-party consent or regulatory approval, not including land title office permits, is required for the aforementioned contract (legal statement) to take effect, such application shall be submitted to the real estate supervisory authority within 30 days of the effective date of such consent or approval.

The *Act of CXLI of 1997 on Real Estate Registration* and *Decree 109/1990 of the Ministry of Agriculture and Rural Development* implementing *Act CXLI of 1997* sets out the mandatory annexes to the application.

The administrative time is 60 days. Where an application involves more than 30 independent properties or more than 30 parties, a decision on the merits of the application shall be adopted within 90 days.

The client may request to process his application with priority. The fee for this procedure is currently HUF 10,000. In the case of priority processing, the administrative time limit shall be half of the administrative time limit set according to the general rules.

On June 15, 2021, the Hungarian Parliament adopted the new real estate registration act (under no. C of 2021) which will en-

ter into force on February 1, 2023. Please note that the above summary is based on the current regulation.

2.6. Risks to be considered

There could be statutory pre-emptive rights on the property that are not required to be registered in the Land Register. Such pre-emption right may exist on the following legal title: in the case of state or municipally owned real estates, agricultural and forestry lands, monumental properties, archaeological, natural, or other protected properties.

If the owner enters into a contract in breach of his obligations stemming from a right of preemption, such contract shall be inoperative in respect of the holder of the right of preemption. The holder of the right of preemption shall be able to enforce his claims arising from such nullity within 30 days after gaining knowledge thereof, on condition that he makes a statement of acceptance at the same time, and verifies his ability to perform. The holder of the right of preemption shall not be able to enforce his claims arising from nullity after three years following the date of conclusion of the contract. If the holder of the right of preemption exercises their right, the buyer may claim the paid purchase price and his damage from the seller.

Unregistered rights and facts may also arise (see 1.2.).

8. Besides the above, it is worth mentioning that the seller could encumber the property or sell it to another buyer between the signing of the contract and its submission to the land office. In such a case it is decisive who is the first that submits the first application for registration. If another buyer (or the holder of the burden) is the first, the buyer may withdraw from the contract and claim damages.

3. Real estate financing

3.1. Key sources of financing

In Hungary, for-profit lending can only be performed with a financial permit. Credit institutions grant credits and loans in HUF, EUR, or in CHF in general. The determination of a debtor's creditworthiness consists of three components in general: the status of the debtor, the scope of collaterals, and the purpose of the credit. The debtor is ranked on the basis of scoring, which shows the probability that the debtor will repay on time, based in each case on the business's past financial results. If the debtor's operations are found to be reliable and continuous the bank may classify the business as lower risk, making it more likely to obtain credit. Unless the debtor's creditworthiness is limited by an exclusionary factor, collateral may be assessed. If the collateral is also adequate, the purpose of the credit shall be examined.

10. The main act regarding real estate financing is currently *Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises* which stipulates the legal framework of crediting. However, the detailed rules of the credit relationship will be regulated by

the credit agreement, collateral agreements, standard service agreements, and notices.

3.2. Protection of creditors

The most common type of collateral is a non-possessory charge which shall be registered in the Land Registry. According to the publicly available banking practice the encumbered property shall be free of litigation, encumbrances, and claims and is located in Hungary. In addition to a non-possessory charge, a guarantee, movable (inventory) pledge, security or cash collateral, security deposit, and parent company guarantee may also arise. In the event that a debtor is unable to provide real estate or other collateral, it can only obtain a credit based on its financial performance, which typically incurs higher interest rates, as the credit institution assumes greater risk in the absence of adequate collateral.

4. Real estate taxes

4.1. Transfer taxes

Transfer duty

Acquisition of real estate property is normally subject to real estate transfer duty (in Hungarian: *vagyonszerzési illeték*). The obligation to pay the duty also applies to certain transactions involving rights such as the acquisition of shares in a company with holdings in real estate properties located in Hungary. The duty shall be paid by the buyer based on the order for payment issued by the competent tax authority.

The general rate of duty is 4% of the market value of each real estate property acquired up to HUF 1 billion, plus 2% of the portion of the market value above HUF 1 billion, not to exceed HUF 200 million per property.

There are exceptions under the general rate. Please find some examples in the following.

In case of an acquisition by a licensed real estate fund the rate of duty is 2% of the market value of the real estate property without any deduction of encumbrances.

If a business entity acquiring a real estate property and provides a statement undertaking to resell the property to a person other than its affiliated company the rate of duty is 3% of the market value without any deduction of encumbrances, or 2% if the business entity agrees that the contract concluded for the onward sale of the real estate property will be considered executed upon the acquisition of ownership by the buyer (or in case of leasing agreement: the lessee). (A "business entity" means an economic operator that is licensed to engage in the selling of real estate properties and whose net sales revenue for the previous tax year originate from such activities up to at least 50% or more, as well as any authorized provider

of financial leasing services. Resale means the sale of the real estate property within two years or to transfer the real estate property by way of transfer of title under lease contract at the end of the term.)

In the case of a regulated real estate investment company, the rate of duty is 2% if the buyer provides a statement to declare his commitment to comply with the requirement of registration in the register of regulated real estate investment companies by the last day of the tax year when the duty is payable.

The rate of duty can be extremely high as 90% in case of the transfer of real estate property that has been rezoned as incorporated land after January 31, 2020, and the transfer of a share of a company with holdings in real estate that has been rezoned as incorporated land. In this case, the duty shall be paid by the seller.

A number of tax reductions and exemptions are provided by law. Such exemption is the acquisition of ownership of a landed property suitable for the construction of a residential building if the party acquiring the property builds a residential building on such real estate property within four years and the net floor space of the residential suites contained in the building is at least 10% of the permissible building space fixed in the general zoning plan.

VAT

In the case of the sale and purchase of real estate, the examination of the VAT liability is inevitable. In some cases, the transaction is subject to VAT with direct taxation. In other cases, the acquisition is exempted from property tax. However, in the case of a VAT-free transaction, the seller may turn the transaction taxable with reverse taxation.

Other taxes

Real estate investing requires conscious tax planning. In addition to the above, other tax liabilities, such as corporate tax, or personal income tax could be incurred.

4.2. Specific real estate taxes

The representative body of a local government may introduce local taxes within the local government's area of jurisdiction. Such local taxes are building tax and property tax.

The subjects of the building tax are the structures located in the area of jurisdiction of a local government, dwelling places, buildings, and building sections not used for housing purposes. The basis for tax depending upon the decision of the local government could be the net floor space of the building expressed in square meters or the adjusted market value of the building. The maximum rate of the building tax per annum is currently 1,100 HUF/square meter if the tax base is the net floor space of the building and 3.6% of the adjusted market price if the tax base is the adjusted market value of the build-

ing.

Lands situated in the jurisdiction of a municipal government may be subject to property tax. The basis for property tax depending upon the decision of the local government could be the actual area of the land parcel expressed in square meters or the adjusted market value of the parcel. The maximum rate of tax per annum is currently HUF 200/square meter if the tax base is the actual area of the land parcel or 3% of the adjusted market value, if the tax base is the adjusted market value.

5. Condominiums

5.1. Legal framework for condominiums

According to the *Hungarian Civil Code*, a condominium may be established when in a building at least two independent units for residential or non-residential purposes or at least one independent unit for residential and one for non-residential purposes defined in the by-laws and technically separated pass into the private ownership of condominium owners, whereas the building sections, building equipment, areas, and dwelling units, which are not owned individually, shall pass into the joint ownership of condominium owners.

The main advantage of establishing a condominium is that the co-owners have private ownership (*e.g.*, flats) in addition to the joint ownership, and the use of the jointly owned parts and the related costs are regulated in the by-laws, the Organizational-Operational Regulations, and the House Rules of the condominium. The supreme decision-making body of the association of condominium owners is the general meeting by which the co-owners could issue the material decisions regarding the operation. The condominium owners association may acquire rights and undertake commitments under the common name it bears in respect of the maintenance and renovation of the building and attending to matters related to common property. The association may sue and be sued and shall exercise ownership rights related to common property and bear the burdens associated with such. The managing agent shall be vested with powers to appear before court. Based on the above condominiums could operate as a more organized form of simple joint ownership.

The rules for establishing a condominium, the basic rules for its operation, and the rights and obligations of the co-owner are regulated by the *Act CXXXIII of 2003 on Condominiums*.

The registration procedure is regulated by the *Act of CXLI of 1997 on Real Estate Registration* and *Decree 109/1990 of the Ministry of Agriculture and Rural Development* implementing *Act CXLI of 1997*.

A condominium may be established for a building to be constructed in such a manner that the owner or owners of the land proclaim their intention to establish a condominium

executed in by-laws, and such establishment is noted on the title deed of the land in the Land Register. Once the building is constructed, an application may be submitted for having the condominium entered into the Land Register. Areas of common ownership of a condominium building shall be recorded on the primary title page, while the units of private ownership shall be recorded on the auxiliary title page(s) of the condominium building.

5.2. Rights and duties of co-owners

Owners of individual units have the right of possession, right of use, right to yields, and the right to dispose over their individual unit and they are entitled to possess and use the common property on condition that it does not injure the related rights and lawful interests of the other owners.

All owners may participate and vote in the general meetings.

Owners of an individual unit have the right to carry out construction work in their unit without the consent of the general meeting, if the work does not entail any amendment of the by-laws and if the joint property is not affected.

Each of the co-owners may freely dispose of his private ownership. The ownership share in the common elements and the related private may not be transferred separately. In case of sale and purchase of private ownership the other co-owners have the right of preemption or the right of first refusal for lease or tenancy before third persons.

5.3. Liability of co-owners

Owners of individual units may not exercise their rights in such a manner as to injure the rights and lawful interests of the other co-owners.

The owners of individual units shall (i) properly maintain their unit under their individual ownership, (ii) admit and allow for representatives of the association to enter his individual unit for the purposes of inspecting, maintaining, and renovating building sections or equipment under common ownership, and to carry out emergency repairs, (iii) take the necessary measures so that any person authorized to use the unit observe the obligations stipulated by law, and (iv) inform the managing agent or the head of the governing body of any construction work planned in his unit.

The costs associated with the maintenance and renovation of building sections which are common property, as well as the expenses which exceed the scope of normal operations usually shall be borne by the owners of individual units in accordance with their ownership share.

5.4. Rights and duties of condominium associations

Condominium associations are not known under Hungarian law.

6. Commercial leases

6.1. Form and contents of a lease agreement

The legal framework of lease agreements in Hungary currently consists of the *Hungarian Civil Code* and *Act LXXVIII of 1993 on residential and non-residential leases*.

According to *Act LXXVIII of 1993*, lease agreements shall be concluded in writing, however, it is not obligatory for the contract to be countersigned or notarized.

In case of the lease of a non-newly built building, an energy certificate shall be prepared by the seller. When a building or stand-alone unit is offered for rent the advertisement shall indicate the energy quality rating of the building if a certificate is available. The lease agreement shall include the code of the certificate and a statement from the lessee that he has received that certificate.

The key clauses of a standard lease agreement usually are the following: (i) the subject of the lease, especially if not the entire property is leased, (ii) the handover of the leased property, (iii) the amount of the rental fee, the terms of payment, (iv) the rights and obligations of the parties, especially the use, renovation and sub-lease of the leased property, and (v) the cases and conditions for terminating the relationship.

According to publicly available real estate market assessments in 2020, the tenant demand of the Budapest office market decreased by 45% on an annual basis. The growth of the rental fees slowed in 2020 but did not stop due to the further rise of the construction costs. Assessments show encouraging signs for the second quarter of 2021.

6.2. Regulation of leases

Hungarian regulation differs according to the type of the properties as there are residential lease agreements and non-residential (commercial) lease agreements. There are special rules for lease agreements if the lessor is a local government or the Hungarian State.

Regarding lease agreements, parties enjoy contractual freedom as the parties may deviate from the statutory rules and may supplement them. Note that if certain conditions are not regulated by the parties the general rules of the *Hungarian Civil Code* and *Act LXXVIII of 1993* shall be applicable.

6.3. Registration of leases

Commercial leases are not registered by any public register.

6.4. Termination of leases and renewals

In the following, we summarize the statutory legal reasons for termination and their main conditions stipulated by the *Hun-*

garian Civil Code and Act LXXVIII of 1993. Please note that as we mentioned above (see 6.2.) the parties may deviate from the statutory rules of the lease and may supplement them. This is also applicable for the reasons and conditions of termination.

Without cause

Leases can be concluded for a definite or an indefinite period of time.

In the case of a non-residential lease, either party is entitled to terminate an indefinite agreement without cause in the case of a monthly lease, at the latest by the 15th day of the month to take effect at the end of that month and in the case of longer lease terms, at the latest by the thirtieth day preceding the end of the lease term. In the case of a residential lease, either party is entitled to terminate an indefinite agreement at the latest by the 15th day of the month, to take effect at the end of the next month.

A definite-term lease may be terminated by either party by giving notice at the latest by the 15th day of the month, to take effect at the end of the month if termination can be exercised within the statutory period of notice.

With cause

In the event of failure to make lease payments charged to the lessee, the lessor is entitled to terminate the lease, provided that the lessor has issued a written demand for remittance of overdue payments within a reasonable period of time and notified the lessee of the consequences, and the lessee fails to remit payment within this period. In the case of a residential lease, there are specific rules of that notice.

If the lessee fails to terminate inappropriate or non-contractual use of the leased property despite being asked to do so by the lessor, the lessor is entitled to terminate the agreement.

In the case of residential leases, the lessor has the right to terminate the lease agreement, upon prior warning sent to the lessee, if the lessee or any other occupant of the premises is engaged in any flagrant misconduct against the neighbors or if he uses the leased property contrary to its purpose. Prior warning is not required if the impugned conduct is grave enough.

In the scope of the contractual freedom, the parties may agree that their definite-term contract will be extended or become indefinite in the absence of a notice of termination by the parties. The parties may also specify a termination clause, upon the occurrence of which the contract is terminated.

6.5. Rent regulations and rent reviews

The lessee shall be entitled to use the thing for its intended purpose and in accordance with the contract and shall be entitled to sub-lease or assign the use of the leased thing to a third party subject to the lessor's permission.

6.6. Services to be provided together with the lease

The law does not require mandatory services, however, in many cases the lessor operates the leased property and the lessee pays an operating fee in addition to the rental fee. As part of the operation, the parties often agree on regular maintenance, safe-keeping and cleaning tasks, *etc.*

6.7. Fit-out works and their regulation

As we mentioned above (see 6.2.) the parties may deviate from the statutory rules of the lease and may supplement them. *Act LXXVIII of 1993* expressly entrusts the regulation of the renovation of the leased property to the agreement of the parties.

Unless otherwise agreed by the parties minor expenses required for the maintenance of the thing shall be borne by the lessee. other expenses, as well as public duties in connection with the thing, shall be borne by the lessor.

The lessee is entitled to renovate the leased property with the permission of the lessor. If the lessee renovated the property without permission the lessee shall be obliged to restore the original state at the lessor's request.

6.8. Transfer of leases and leased assets

If the lessor transfers ownership of the leased thing following the conclusion of the lease agreement, the rights and obligations of the owner arising out of or in connection with the lease agreement shall accrue to the new owner. The lessor and the new owner shall be jointly and severally liable toward the lessee for the lessor's obligations arising out of or in connection with the lease agreement. The new owner of the leased thing shall be entitled to terminate the fixed-term lease if he was misled by the lessee regarding the existence of a lease or material lease conditions.

Either party has the right to transfer its rights and obligations to a party entering into the contract according to the general rules of the *Hungarian Civil Code*. Besides based on *Act LXXVIII of 1993* the acquisition of real property the lessee may transfer its rights and obligations, exchange or sub-lease the leased property with the consent of the lessor.



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