The International Comparative Legal Guide to:

Securitisation 2015

8th Edition

A practical cross-border insight into securitisation work

Published by Global Legal Group, with contributions from:

A&L Goodbody
Accura Advokatpartnerselskab
Ali Budiardjo, Nugroho, Reksodiputro
Ashurst LLP
Association for Financial Markets in Europe
Bofill Mir & Alvarez Jana Abogados
Brodies LLP
Camilleri Preziosi Advocates
Cass Legal
Cervantes Sainz, S.C.
Chiomenti Studio Legale
Drew & Napier LLC
Elvinger, Hoss & Prussen
Estudio Beccar Varela
Fellner Wratzfeld & Partners
Freshfields Bruckhaus Deringer LLP
Frost & Fire Consulting
Gárdos Füredi Mosonyi Tomori Law Office
J. D. Sellier + Co.
Keane Vgenopoulou & Associates LLC
King & Spalding LLP
King & Wood Mallesons
Latham & Watkins LLP
LCS & Partners
Levy & Salomão Advogados
Maples and Calder
Nishimura & Asahi
Nithya Partners
Pestalozzi Attorneys at Law Ltd
PwC Legal
Reff & Associates SCA
Roschier Advokatbyrå AB
Schulte Roth & Zabel LLP
Shearman & Sterling LLP
Spasić & Partners
Torys LLP
Uría Menéndez Abogados, S.L.P.
Vieira de Almeida & Associados – Sociedade de Advogados, R.L.
Wadia Ghandy & Co.
Weil, Gotshal & Manges
## General Chapters:

1. **Documenting Receivables Financings in Leveraged Finance and High Yield Transactions** – James Burnett & Mo Nurmohamed, Latham & Watkins LLP

2. **CLOs and Risk Retention** – Craig Stein & Paul N. Watterson, Jr., Schulte Roth & Zabel LLP


4. **Securitisations in the Shadows of the New Capital Regime** – Bjorn Bjerke & Azad Ali, Shearman & Sterling LLP

5. **Securitisation – A Key Component of Capital Markets Union** – Richard Hopkin, Association for Financial Markets in Europe

## Country Question and Answer Chapters:

6. **Albania** – Frost & Fire Consulting: Franci Nuri

7. **Argentina** – Estudio Beccar Varela: Roberto A. Fortunati & Javier L. Magnasco

8. **Australia** – King & Wood Mallesons: Anne-Marie Neagle & Ian Edmonds-Wilson

9. **Austria** – Fellner Wratzfeld & Partners: Markus Fellner

10. **Brazil** – Levy & Salomão Advogados: Ana Cecilia Giorgi Manente & Fernando de Azevedo Peraçoli

11. **Canada** – Torys LLP: Michael K. Feldman & Jim Hong

12. **Cayman Islands** – Maples and Calder: Alasdair Robertson & Scott Macdonald

13. **Chile** – Bofill Mir & Álvarez Jana Abogados: Octavio Bofill Genzsch & Daniela Buscaglia Llanos

14. **China** – King & Wood Mallesons: Roy Zhang & Zhou Jie

15. **Cyprus** – Keane Vgenopoulos & Associates LLC: Thomas Keane & Christina Vgenopoulos

16. **Denmark** – Accura Advokatpartnerselskab: Kim Toftgaard & Christian Sahlerz


18. **France** – Freshfields Bruckhaus Deringer LLP: Hervé Touraine & Laura Asbati


20. **Hong Kong** – Gárdos Fűredi Mosonyi Tomori Law Office: Erika Tomori & Péter Gárdos

21. **India** – Wadia Ghandy & Co.: Shabnum Kajiji & Nihas Basheer

22. **Indonesia** – Ali Budiardjo, Nugroho, Reksodiputro: Freddy Karyadi & Novario Asca Hutagalung

23. **Ireland** – A&L Goodbody: Peter Walker & Jack Sheehy

24. **Italy** – Chimenti Studio Legale: Francesco Ago & Gregorio Consoli

25. **Japan** – Nishimura & Asah: Hajime Ueno & Koh Ueda

26. **Luxembourg** – Elvinger, Hoss & Partners: Philippe Prussen & Marie Pirard

27. **Malta** – Camilleri Preziosi Advocates: Louis de Gabriele & Nicola Buhagiar


29. **Nigeria** – Cass Legal: Adejajo Odutola

30. **Portugal** – Vieira de Almeida & Associados – Sociedade de Advogados, R.L.: Paula Gomes Freire & Benedita Aires


32. **Russia** – PwC Legal: Ekaterina Pervova & Maxim Kandyba

33. **Scotland** – Brodies LLP: Bruce Stephen & Marion MacInnes

34. **Serbia** – Spasic & Partners: Darko Spasic & Vesna Milosavljevic-Stevanovic

---

**Disclaimer**

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.
Welcome to the eighth edition of *The International Comparative Legal Guide to: Securitisation*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of securitisation.

It is divided into two main sections:

Five general chapters. These are designed to provide readers with a comprehensive overview of key securitisation issues, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in securitisation laws and regulations in 38 jurisdictions.

All chapters are written by leading securitisation lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor, Mark Nicolaides of Latham & Watkins LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.co.uk](http://www.iclg.co.uk).

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk
Chapter 21

Hungary

Gárdos Füredi Mosonyi Tomori Law Office

1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a receivable “contract” be deemed to exist as a result of the behaviour of the parties?

(a) There are two requirements for the creation of an enforceable debt obligation: a contract; and the provision of the service undertaken in the contract. It is not necessary that the sale of goods or services is evidenced by formal receivable contracts; the parties are usually free to choose the form of their agreement. A contract may be concluded either in writing, orally or by conduct that implies their consensus. In general, the provision of service does not have to be documented either. In certain cases, however, the law expressly requires specific formalities (e.g. written form is required for the validity of a consumer loan contract; and payment may not be required until an invoice is issued). Also, the contracting parties may agree that specific formalities have to be respected for the contract to be valid. Even if there is no such requirement, a written document may facilitate the evidencing of the existence of such contract or the performance of the service in an eventual dispute.

(b) As mentioned above, there are no formal requirements either for the creation of a contract or for the performance of the required service. An invoice, however, may be useful as it indicates both the existence of the agreement and also the provision of the services to which the invoice refers. However, in a dispute, the invoice alone may not be sufficient for evidencing an enforceable debt. The position may substantially be improved by obtaining a confirmation as to the content of the invoice from the obligor, but even in that case the obligor may prove that the service turned out to be defective or that for any other reason he does not owe the amount of the invoice.

(c) As mentioned above, the parties’ conduct may create a valid contract. Thus, historic relationships and the behaviour of the parties may serve as the basis of establishing the existence of a contract regarding the sale of goods and services.

1.2 Consumer Protections. Do Hungary’s laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

(a) Since 2011 an interest rate cap exists in case of consumer mortgage loans. In case of consumer loans, the interest rate cap is base rate plus a 24 percentage-point. However, the cap is not applicable to high-risk, high-cost consumer loans and credit card loans: the annual interest rates for such loans are capped at 39 percentage points over the Hungarian National Bank base rate.

(b) The Civil Code provides that a debtor, who does not pay his debt when it is due, shall pay late payment interest in addition to the contractual interest, and even in cases where the debt originally is interest free. In addition, Hungary transposed European Directive 2011/7 on Combating Late Payment in Commercial Transactions.

(c) Hungarian law grants the consumer the right to cancel a receivable where the various EU consumer directives so provide. In particular, the obligor of a consumer loan entitled to pay its debt prior to its due date, and the creditor is obliged to accept such payment and reduce the costs of the loan accordingly.

(d) In consumer loans, the creditor may not require the obligor to issue a possessory note or check for securing the receivable.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

There are no special requirements with respect to the sale agreement in case the obligor under a receivables contract is the state or a government agency.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in Hungary that will determine the governing law of the contract?

Choice of law is regulated by Regulation (EC) No 593/2008 of the
Yes, the Convention entered into force on 1 January 1988.

2.2 Base Case. If the seller and the obligor are both resident in Hungary, and the transactions giving rise to the receivables and the payment of the receivables take place in Hungary, and the seller and the obligor choose the law of Hungary to govern the receivables contract, is there any reason why a court in Hungary would not give effect to their choice of law?

There is no reason why a Hungarian court would not give effect to such choice of law, even if the receivable is sold to a foreign party. We note, however, that in case of contracts not falling under the scope of the Rome I Regulation, choice of law is permitted only when the transaction has a foreign element. If both the seller and the obligor are resident in Hungary, and the contract has no other foreign element either, the receivables contract will be governed by Hungarian law irrespective of the choice made by the parties.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in Hungary but the obligor is not, or if the obligor is resident in Hungary but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in Hungary give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

Under Rome I, the parties are free to choose the law applicable to their contract, whereas in case of contracts not falling under the scope of Rome I, choice of law is permitted only when the transaction has a foreign element. Such choice is disregarded if it conflicts with Hungarian public order. We are not aware of any limitation to the recognition of foreign law that would typically apply in commercial transactions, in particular if the chosen law is one of the EU Member countries. Under Rome I, the choice of law may not have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable under Rome I. Hungarian law and Hungarian language shall apply to contracts relating to the national assets as defined by Act 196/2011. Such contracts shall, with certain exceptions, belong to the exclusive jurisdiction of Hungarian courts and arbitral tribunals. Such contracts shall further be governed by Hungarian law and be in the Hungarian language.


Yes, the Convention entered into force on 1 January 1988.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does Hungary’s law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., Hungary’s laws or foreign laws)?

Hungarian law does not require that the sale of the receivables be governed by the same law as the law governing the receivables themselves. If the parties to an assignment of receivables choose a law which is different from the law which governs the receivables, this choice is applicable to their internal relations, but does not extend to external issues, such as the rights and obligations of obligors, the obligors’ creditors and other third parties.

3.2 Example 1: If (a) the seller and the obligor are located in Hungary, (b) the receivable is governed by the law of Hungary, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of Hungary to govern the receivables purchase agreement, and (e) the sale complies with the requirements of Hungary, will a court in Hungary recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

There is no reason why a Hungarian court would not give effect to such choice of law.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside Hungary, will a court in Hungary recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor’s country or the purchaser’s country (or both) be taken into account?

There is no reason why a Hungarian court would not give effect to such choice of law.

3.4 Example 3: If (a) the seller is located in Hungary but the obligor is located in another country, (b) the receivable is governed by the law of the obligor’s country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor’s country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor’s country, will a court in Hungary recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign laws of the obligor’s country be taken into account?

If the parties have the right to choose a foreign law, the parties are not restricted in their choice; the chosen law does not have to be the law of the country which represent the foreign element in the contract. Therefore, there is no reason why a Hungarian court would not give effect to such choice of law. For the exceptions, see the answer to question 2.3.
3.5 Example 4: If (a) the obligor is located in Hungary but the seller is located in another country, (b) the receivable is governed by the law of the seller’s country, (c) the seller and the purchaser choose the law of the seller’s country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller’s country, will a court in Hungary recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with Hungary’s own sale requirements?

If the parties have the right to choose a foreign law, the parties are not restricted in their choice; the chosen law does not have to be the law of the country which represents the foreign element in the contract. Therefore, there is no reason why a Hungarian court would not give effect to such choice of law. For the exceptions, see the answer to question 2.3.

3.6 Example 5: If (a) the seller is located in Hungary (irrespective of the obligor’s location), (b) the receivable is governed by the law of Hungary, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser’s country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser’s country, will a court in Hungary recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in Hungary and any third party creditor or insolvency administrator of any such obligor)?

If the parties have the right to choose a foreign law, the parties are not restricted in their choice; the chosen law does not have to be the law of the country which represents the foreign element in the contract. Therefore, there is no reason why a Hungarian court would not give effect to such choice of law. For the exceptions, see the answer to question 2.3.

4 Asset Sales

4.1 Sale Methods Generally. In Hungary what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

The customary method to sell accounts receivables is by way of sale and purchase agreement, from which the obligation to transfer the receivables arise. The obligation is performed by way of assignment, whereby the rights stemming from the receivables pass from the seller to the purchaser, and the purchaser steps into the shoes of the seller as creditor with respect to the sold receivables. The two transactions (sale purchase agreement plus assignment) can take place in the same document, or they can be separated in time (e.g. the sale purchase agreement signed at the first stage of the transaction, and the assignment signed at closing).

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

Perfection requires a contract of sale and purchase and the assignment of the receivables. No specific formalities are required for creating a valid assignment (neither registration, notarisation, nor transfer of related documents is necessary unless the transfer qualifies as factoring in which case it has to be registered in the charges registry held by the Hungarian Chamber of Civil Law Notaries). Notice is not required for perfection, an assignment, however, is not effective against the obligor without notice. Prior to notification, the obligor may discharge his obligation by paying the assignor, or even a subsequent assignee who has given notice about the assignment. As the transfer becomes effective against the seller by concluding the assignment contract, in principle no subsequent purchaser may acquire any right with respect to the sold receivables. However, the obligor may discharge his obligation by paying to the subsequent purchaser in case he is not informed about the first sale but receives proper notice about the sale to the subsequent purchaser.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

Promissory notes are not widely used in Hungary; they qualify as negotiable documents which may be transferred by endorsement plus transfer of possession of the document (subsequent to a blank endorsement, only delivery is needed).

The most commonly used marketable debt securities are bonds which may be paper-based (physical) or electronic (dematerialised); physical securities may be either bearer or registered. Bearer securities do not indicate the name of the holder and may be transferred by mere transfer of possession; whoever holds the security is considered to be entitled to the rights incorporated in the security. Registered physical securities may be transferred by means of special or blank endorsements plus transfer of possession of the security. Dematerialised securities may be transferred by debiting the securities account of the seller and crediting the account of the purchaser.

Consumer loans and loans secured by a mortgage may be sold in the same way as any other receivables, no additional requirements apply, however it is advisable that the transferee gets registered as the new mortgagor.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors’ consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

Although notification of the debtor is not a requirement for perfection, it is still crucial for the transaction. The Civil Code
differentiates between notification and payment instruction. The purpose of notification is to inform the debtor that the assignment has taken place, but it does not contain information about the assignee. The effect of notification is that it prevents the obligor and the seller from modifying the receivables agreement, and it further prevents the obligor from set off of claims which arise after notification. Notification, however, does not change the debtor’s obligation to perform in accordance with the original agreement, until it receives a payment instruction, which contains the name of the assignee and the data relevant for payment. Consent of the obligor is not necessary.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings against the obligor or the seller have commenced? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

There are no requirements in relation to the form of the notice. It does not even have to be in writing. A written document, however, may facilitate the evidencing of the existence of such notification in an eventual dispute. The notice may relate to one specific receivable, or a group of receivables, or all existing and future receivables. The only requirement is that the receivables to which the notice relates have to be identifiable. The notice can be delivered any time after the assignment of the receivable, there is no time limit after which the notice would become ineffective.

4.6 Restrictions on Assignment – General Interpretation.
Will a restriction in a receivables contract to the effect that “None of the [seller’s] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]” be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says “This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]” (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says “The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]” (i.e., the restriction does not refer to rights)?

Before the new Civil Code entered into force on 15 March 2014, courts tended to accept contractual prohibition of assignment as effective against third parties, i.e. such a prohibition renders the transfer ineffective. In addition, where the receivables contract prohibits assignment, the seller may be found liable for breach of contract. There are, however, some new unpublished judgments where the courts found that the assignment is valid irrespective of the non-assignment clause, and the assignor will only be liable for breach of contract vis-à-vis the obligor. The new Civil Code provides that non assignment clauses are ineffective against third parties, thus the assignment will be effective, and the receivables will transfer to the assignee. Such an assignment would be a breach of contract between the debtor and the assignor, but the breach would not give rise to termination or to liquidated damages.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or “seller’s rights” under the receivables contract, are such restrictions generally enforceable in Hungary? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If Hungary recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

See our answer to question 4.6.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells all of its receivables to the purchaser, is the sufficient identification of receivables? Finally, if the seller sells all of its receivables other than receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

The sale document must designate the receivables sold in a way that the receivables which are the subject of the sale can be identified unambiguously. The receivables sold may be identified in the sale purchase agreement and the assignment individually, by naming the obligor, by describing the specific business from which the receivables arise, or by other forms of general description, even by stating that the sale affects all of the seller’s existing receivables (unless this renders the identification impossible).

4.9 Respect for Intent of Parties; Economic Effects on Sale. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or will a court enquire into the economic characteristics of the transaction? If the latter, what economic characteristics of a sale, if any, might prevent the sale from being perfected? Among other things, to what extent may the seller retain: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; or (d) a right of repurchase/ redemption without jeopardising perfection?

It is not primarily the denomination given by the parties, but the economic characteristics of the transaction that will determine whether a court will treat the transaction as a true sale or an assignment by way of security.

(a) The sale in most cases will not be perfected if the seller retains credit risk of the obligor; however, purely being liable, in case of a bad faith sale, for the insolvency of the obligor at the time of the sale probably would not render the sale ineffective.

(b) There is no practice regarding the effect of retaining interest rate risk on the effectiveness of the sale; the conservative view is that the seller may not retain any such risk.

(c) Normally, using the services of the seller to manage the sold debt, and maintain contact with the obligors, would not in itself re-characterise the sale. If, however, as a result of this arrangement, the obligor is not informed about the sale, and the purchaser is deprived of the right to directly contact the
obligor and enforce the receivables, there is a risk that the sale shall be re-characterised as a financing transaction. 

(d) There is no practice regarding the effect of a right of repurchase/redemption on the effectiveness of the sale. Such a right creates a pending, uncertain situation, which could be an argument against the true sale nature of the transaction, but the risks relating to the receivable are still transferred to the purchaser, which could support the argument that the transaction is indeed a true sale.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller’s insolvency?

Hungarian law differentiates between the sale and purchase agreement, from which the obligation to assign certain receivables arise, and the assignment itself, which transfers the receivables from the assignor to the assignee. It is possible to conclude a contract for the continuous sale of receivables. This contract, however, will not transfer the receivables; the transfer requires that the receivables are assigned from time to time to the assignee. A contract for the continuous sale of receivables would survive the insolvency of the seller, but the insolvency administrator will have the right to terminate the contract.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., “future flow” securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to or after the seller’s insolvency?

Before the new Civil Code entered into force, there was uncertainty about the assignability of future receivables. The Supreme Court stated that future receivables cannot be assigned, however newer decisions seemed to overrule this decision, but it was uncertain to what extent future receivables were assignable. According to the court practice, sale of future receivables was not effective with respect to receivables which arise after the seller’s insolvency. The new Civil Code provides a more clear answer to the question of assignability of future receivables. The sale and purchase contract can describe specifically the receivables, which will be assigned, or it can provide a more general description. It is also enough if the contract provides that it covers all existing and future receivables. Thus, the seller may undertake in an enforceable manner the transfer of future receivables. The answer to the question is different with respect to assignment, as only those receivables can be assigned, where the legal basis, from which the receivables will arise, exists already at the time of assignment, e.g. it is possible to assign future fees arising from lease agreements if the lease agreement is already concluded at the time of assignment. It is, however, not possible to assign future receivables arising from contracts, which do not exist at the time of assignment.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

In principle, the purchaser automatically, by operation of law, becomes the beneficiary of any mortgage, pledge and surety securing the sold receivables. In practice, however, in order to avoid future disputes, it is useful to re-register mortgages and other charges to the name of the purchaser in the relevant registries (collateral registry, land registry, registry for ships and aircrafts). With respect to personal security, it is important to find out whether a guarantee is given in general to secure a certain debt or specifically for the benefit of the seller, and to give notice to the guarantor about the sale.

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor’s set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor’s set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

With respect to set-off, the relevant time is the time of notification of the obligor. The obligor is entitled to set-off counterclaims against the assignee that arise with regard to the assignor on legal grounds that existed at the time of notification.

5 Security Issues

5.1 Back-up Security. Is it customary in Hungary to take a “back-up” security interest over the seller’s ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected?

Before the new Civil Code entered into force, a charge over receivables required only a simple agreement between the pledgor and the pledgee. This agreement had to be in writing, but there were no other formal requirements. Because of this simplicity, there was no risk that in case the transfer is re-characterised as a secured finance transaction, the security will fail for lack of the required formalities. For this reason it was not customary to take back-up security in connection with the sale of receivables. The new Civil Code requires that the pledge is registered in an online register; without such registration a pledge may not be created. Therefore, in the future, back-up security interest over the assigned receivables could provide additional security.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of Hungary, and for such security interest to be perfected?

A charge over receivables requires a written agreement and registration in the collateral register. Notification is not required for creating the security interest; it is only required to make the charge effective against the debtor.
5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in Hungary to grant and perfect a security interest in purchased receivables governed by the laws of Hungary and the related security?

The formalities of creating a security interest over the assets of the purchaser depends on the type of security interest the purchaser intends to create. If the security interest is a non-possessory charge, a contract in simple written form is required and the security interest has to be registered in an online register.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of Hungary, and that security interest is valid and perfected under the laws of the purchaser’s country, will it be treated as valid and perfected in Hungary or must additional steps be taken in Hungary?

According to Hungarian private international law, the governing law of a security interest is the law of the country where the collateral is located. In case the collateral is a receivable, this rule might be interpreted in two ways; the governing law with respect to the security shall be either: (i) the law of the country where the residence/central administration or usual place of business of the obligor is; or (ii) the law of the receivable itself. Thus, the security interest perfected under the laws of the purchaser’s country will be treated as valid and perfected in Hungary, if the obligor is located in that other country or if the governing law of the receivable is that of the other country.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

The most common form of security interest that can be established on financial instruments is security deposit (in Hungarian: ḱovadék). Hungary implemented the EU’s Financial Collateral Directive (2002/47/EC). Security deposit may only be created over cash, payment account balances or financial instruments. Exceptionally, based on explicit provision of law, any other asset may also serve as security deposit (e.g. client account balances and financial instruments held by investment firms). The scope of assets that may serve as security deposit are basically the same as the scope of financial collaterals as defined in the Financial Collateral Directive. A security deposit agreement shall be concluded in writing and the possession of the security shall be transferred to the secured creditor. In case the security is in dematerialised form, a security interest can be created by transferring the security to the account of the secured creditor. A security interest on consumer loans and loans secured by a mortgage can be created in the same way as on any other receivable.

5.6 Trusts. Does Hungary recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller’s own assets until turned over to the purchaser?

Since the new Civil Code entered into force, Hungarian law also recognises the trust concept, therefore theoretically securitisation by way of trust is also possible. Due to various problems with trust rules, which enable the settlor’s creditors to seek enforcement against the trust, only two trust companies have been established. The Act on Trustees (Act XV of 2014) requires in certain cases that the trustee obtains a licence from the Hungarian National Bank and registers its activity.

5.7 Bank Accounts. Does Hungary recognise escrow accounts? Can security be taken over a bank account located in Hungary? If so, what is the typical method?

Yes, escrow is recognised in Hungarian law; amounts kept on escrow account will not form part of the account holder’s estate. Amounts in a bank account are considered as debt of the bank towards the account holder. The account holder may create charge over his rights against the bank similarly to creating security over receivables or other claims. It is further possible to create a security deposit over the escrow account. Contrary to a non-possessory charge over receivables, in case of security deposit, the charge is only perfected once the owner of the account loses control over the account. Security over a bank account located in Hungary may be created in accordance with the laws of Hungary.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

Two types of charge may be established over bank accounts: security deposit and non-possessory charge. In case of security deposit, the agreement shall be concluded in writing and the possession of the security shall be transferred to the secured creditor, or the owner of the account shall lose control of the bank account. The secured party may satisfy its claim directly from the security deposit. The right to seek direct satisfaction means that the secured creditor is entitled to acquire ownership of the asset serving as security deposit. In case of non-possessory charge, registration of the charge is necessary for perfection of the security interest. The secured party in case of a non-possessory charge over receivables, may enforce the receivable by judicial enforcement.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

The owner’s right of access is determined by the type of charge. In case of security deposit, the charge is only perfected once the owner of the account loses control over the account. In case of non-possessory charge over bank account receivables, the owner’s right of control over the bank account is not affected.
6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will Hungary’s insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a “stay of action”)? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

The primary effect of the commencement of a bankruptcy or liquidation procedure is that the creditors are prohibited from taking enforcement actions against the debtor outside of the given insolvency procedure. This automatic stay however, does not apply to the collection of receivables purchased from the seller, if the sale of receivables is perfected before the commencement of the procedure. In this case, the receivables sold will be the property of the purchaser, thus the seller’s insolvency will not affect the purchaser’s ability to enforce the receivables, and the purchaser shall be entitled to continue to exercise its rights over the receivables. The general length of stay of action is 120 days, but this can be extended. However, the maximum length cannot exceed 365 days.

In the case when the purchaser is deemed to only be a secured party, the court practice is that the receivables, which have not been collected from the obligor before insolvency, will belong to the estate of the seller, and the purchaser can receive money as a creditor in the course of the insolvency procedure.

6.2 Insolvency Official’s Powers. If there is no stay of action under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser’s exercise of rights (by means of injunction, stay order or other action)?

The insolvency official, if it is believed that the purchaser is not the owner of the receivables, but only a secured creditor, may turn to the court to prohibit the purchaser from enforcing the receivable or, alternatively to prohibit the obligor from paying to the purchaser. In such case, the insolvency officer also may ask the court to take a temporary measure to stop the purchaser collecting the receivable (injunction or stay order).

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a “suspect” or “preference” period before the commencement of the insolvency proceeding? What are the lengths of the “suspect” or “preference” periods in Hungary for (a) transactions between unrelated parties, and (b) transactions between related parties?

The insolvency official is entitled within 1 (one) year of the commencement of the insolvency proceedings to challenge fraudulent, undervalued or preferential transactions which were concluded within the suspicion period (five years for fraudulent transactions, two years for undervalued transactions, and ninety days for preferential transactions), irrespective of whether the parties are related or not. If, however, the parties are related, the bad faith and the gratuitous nature of the transfer shall be presumed by laws.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding?

The insolvency official does not have right to substantive consolidation; the initiation of an insolvency procedure against the seller shall not give rise to the commencement of such proceedings against the purchaser.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in Hungary, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) on sales of receivables that only come into existence after the commencement of such proceedings?

Insolvency procedure does not have automatic effect on the sales of receivables. However, the insolvency administrator has the right to terminate any contract concluded by the insolvent company. Thus, the administrator may terminate the sale and purchase contract, which would mean that no further assignments may be required from the seller. The administrator may also enter into sale of receivable contracts which will be enforceable irrespective of the insolvency proceedings.

6.6 Effect of Limited Recourse Provisions. If a debtor’s contract contains a limited recourse provision (see question 7.3 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

Limited recourse is possible under Hungarian law (see our answer to question 7.3), but it does not have an effect on the insolvency of the debtor. The Insolvency Act provides that the court declares the debtor insolvent if the debtor fails to pay a previously uncontested, acknowledged debt within twenty days of maturity, and fails to pay such debt upon receipt of the creditor’s written payment notice. In case of limited recourse, the recourse of the creditor would be limited to available assets and in case of any shortfall, the debt of the relevant debtor is extinguished. The debtor, therefore, would not have unpaid debts, thus the precondition of the Insolvency Act would not be met, thus the debtor could not be declared insolvent.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in Hungary establishing a legal framework for securitisation transactions? If so, what are the basics?

There is no regulation in force specifically providing for securitisation transactions. Assignment is regulated in the Civil Code. There was a government proposal some years ago, but the bill was never presented to Parliament. The Ministry of National Economy, in co-operation with the HNB, is currently working on a draft bill for securitisation, which is planned to be submitted to the government for consideration. The Hungarian National Bank conducted interviews in the market to understand the needs of market participants.
Hungarian law does not provide for any aspects of special purpose entities for securitisation, so the general rules of the Civil Code apply. If the SPV intends to issue bonds or similar securities, it must be an organisation with legal personality, typically a limited liability company or company limited by shares. The initial capital of a limited liability company must be at least HUF3 million. In companies limited by shares, the initial capital must be at least HUF5 million in a private company and HUF20 million in a public company. Purchasing receivables can be regarded as factoring or another type of financial service, and providing financial services requires a licence from the HNB. To obtain this licence, the initial capital of the SPV must be at least HUF50 million.

Yes, in a sale of receivables, the parties are free to exclude or limit the right of recourse of the purchaser. It is also possible to agree that certain debts are to be paid only from certain funds and only to the extent that fund is available. If the governing law is the law of another country, Hungarian courts shall give effect to such contractual provision.

There is no established court practice in this regard. Probably, the court would not give effect to a non-petition clause. If the contract’s governing law is the law of another country, and the prohibition is valid under the governing law, a Hungarian court will give effect to that provision.

The parties are free to agree in a contract in what order payment shall be distributed between multiple parties. Such agreement will, however, not be followed in case of the debtor’s insolvency, as the Insolvency Act determines the order of payment, and the parties may not deviate from such order.

Hungarian company law explicitly recognises independent directors only in the context of public companies. We believe, however, that the organisational documents of a Hungarian company may require that one or more of the directors have to be independent and that the affirmative vote of the independent directors is necessary for certain decisions. Such a restriction, however, will not have any effect vis-à-vis third parties, and will not affect the validity of any transaction concluded in breach of this provision.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in Hungary, will its purchase and ownership or its collection and enforcement of receivables result in its being required to quality to do business or to obtain any licence or its being subject to regulation as a financial institution in Hungary? Does the answer to the preceding question change if the purchaser does business with other sellers in Hungary?

Purchasing receivables falls into the category of a lending operation, which is construed as a type of financial services, which, if carried on as a business, is subject to authorisation from the Hungarian National Bank. The same applies to the transfer of a single portfolio of receivables. No Hungarian authorisation is required if the purchaser is a regulated financial institution in another EU country.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

Servicing receivables is also subject to authorisation from the Hungarian National Bank.

8.3 Data Protection. Does Hungary have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

Yes, Hungary has laws restricting the use or dissemination of data about, or provided by, obligors. The Act on the Freedom of Information applies to the data of natural persons whether consumers or not, the Civil Code provides protection of the inherent rights of any legal and natural persons, and special confidentiality rules apply to all financial institutions with respect to their customers.
### 8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of Hungary? Briefly, what is required?

Consumer protection laws primarily apply to the formation of contracts with consumers. As a result of the sale of receivables, the position of the consumers as obligors may not change, in particular not to the detriment of the consumer. Therefore, the purchaser will not be required to comply with any additional requirements. It may be worth noting that, in case of consumer loans (with the exception of mortgage loans), the obligor is entitled to prepayment of the debt.

### 8.5 Currency Restrictions. Does Hungary have laws restricting the exchange of Hungary’s currency for other currencies or the making of payments in Hungary’s currency to persons outside the country?

In Hungary, there is no restriction either on making payments outside of the country or on the exchange of the Hungarian currency (HUF).

### 9 Taxation

#### 9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in Hungary? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest?

Under Hungarian law, the only withholding tax is the personal income tax applicable to private persons only. That is, if private persons receive payments on receivables qualifying as income (basically interest), this could be subject to withholding tax. Since, in the context of a securitisation, neither the seller nor the purchaser would be private persons, in such a context payments on receivables are not subject to withholding tax.

#### 9.2 Seller Tax Accounting. Does Hungary require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

No special accounting rules apply to securitisation for tax purposes.

#### 9.3 Stamp Duty, etc. Does Hungary impose stamp duty or other documentary taxes on sales of receivables?

Hungary does not impose stamp duty or other documentary taxes on sales of receivables. However, stamp duty is imposed on deregistration of mortgages which may be desirable in connection with the sale of certain receivables.

### 9.4 Value Added Taxes. Does Hungary impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

Value added tax is imposed on sales of goods or services. In most cases, the sale of receivables is not subject to value added tax on the basis that not the sale, but the purchase of receivables, is treated as a financial service, which is exempted from value added tax. As a main rule, the provision of agency services is not exempt from VAT, unless it qualifies as a financial service or its intermediation. Although a recent position paper of the Hungarian Financial Supervisory Authority is of the opinion that the activity of a collection agent in general qualifies as financial intermediation, we think that the collection agent services in the context of a securitisation would not qualify as financial intermediation and, therefore, such service is likely to be subject to VAT.

#### 9.5 Purchaser Liability. If the seller is required to pay value added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

The tax authority is not entitled to make claims against the purchaser or on the receivables or collections if the seller fails to pay VAT or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables).

However, if the obligor of the receivable qualifies as a taxable person for VAT purposes, then the tax authority can make claims against him for the tax not paid by the seller. Consequently, if the receivable contains VAT as well, then there is some risk that the obligor would pay the amount only net of VAT if the tax authority has previously made a claim against him for paying the VAT.

#### 9.6 Doing Business. Assuming that the purchaser conducts no other business in Hungary, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in Hungary?

A non-resident purchaser of receivables shall pay company tax only on the profit obtained from business activities conducted by their Hungarian permanent establishments. Whether the regular purchase and enforcement of receivables (directly or through an agent) qualifies as having a permanent establishment in Hungary, requires more specific tax analysis.
Hungary

Péter Gárdos graduated from the Faculty of Law and Political Sciences of Eötvös Loránd University in 2003, where he earned his PhD in 2008. In the same year he also received his post graduate degree in Commercial Law. He started his career at Freshfields Bruckhaus Deringer. Between 2004 and 2008 he worked at the Department for the Codification of Civil Law at the Ministry of Justice. He joined Gárdos Füredi Mosonyi Tomori in 2008, where he became a partner in 2014. Between 2003 and 2010 he participated in the preparation of the new Hungarian Civil Code. He is editor/author of the commentary to the new Civil Code published by Wolters Kluwer. He regularly publishes articles primarily in the field of contract law. He is the author of a book on the law of assignment and the editor of a book on fiduciary securities. He frequently holds lectures and seminars on the new Civil Code. He teaches at the Civil Law Faculty of ELTE, at István Bibó College, and at the post-graduate institute of ELTE and Pázmány Péter Catholic University.

Erika Tomori started her career in 1987 at a major Hungarian commercial bank. She received a diploma in Securities Trading in 1990, she continued her studies at the Academy of American and International Law in 1991, and received a certificate in Banking Law in 1995. Since 1992, she has been a partner of the Law Office of Gárdos Füredi Mosonyi Tomori. Her primary practice areas are banking law, securities law and corporate law. Her professional experience includes the representation of financial institutions in establishment and licensing, litigation, legal counselling and the representation of companies involved in the issuance of securities. She gives lectures in various universities; she is honorary professor at Eötvös Loránd University and Corvinus University. Erika Tomori is the author of various publications relating to the law of securities and a standard textbook on securities law.

Gárdos Füredi Mosonyi Tomori Law Office, established in 1992, is an independent Hungarian law firm that provides its clients with high quality, personalised legal services. The firm’s prime areas of specialisation are banking, capital markets, securities and insurance. Gárdos Füredi Mosonyi Tomori Law Office is member of Advoc, an international network of independent law firms, sharing international expertise in jurisdictions across the globe and Employment Law Alliance (ELA). As recognition of the expertise of the firm, Gárdos Füredi Mosonyi Tomori participated in several major codifications in their fields of practice areas (Banking Act [1996], Capital Market Act [2002], Insurance Act [2003], insolvency law reform [2004], investment fund reform [2010], new Civil Code [2004–2013]).
Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Environment & Climate Change Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks