JUNE 2023 - SEPTEMBER 2023 ISSUE 4 NEWSLETTER

Dear Readers,

I am pleased to inform you that we have had a very active summer in terms of legislative amendments in Hungary. Our current Newsletter provides you with an overview of these legislative amendments, as well as, of course, giving you information on the changes in one of our areas of expertise specialities, Real Estate Law. Inter alia, you can read about the right of pre-emption, some current regulations regarding real estate registry, the re-introduction of building right (lease hold) in the Hungarian Civil Code and the newly introduced whistleblowing Act.

Should you have any remarks, questions regarding the articles presented in our newsletter or the activity of our Legal Partnership, please do not hesitate to contact us.

Best regards,

Éva SÁNDOR
Marketing Manager

WHAT'S INSIDE THIS ISSUE:

- *Introduction*
- *The Right of Pre-Emption in Real Estate Sales and Purchase Contracts In Hungarian Legal Practice*
- *Easy and at the Same Time Complicated – The New Land Registration Procedure from Point of View of the Foreign Citizens and Foreign Companies*
- *More Effective Protection Against Employer Abuse – The Whistleblowing Act Enters into Force*
- *New-Old Property Right: Re-Introduction of Building Right (Lease Hold) in the Hungarian Civil Code*

THE RIGHT OF PRE-EMPTION IN REAL ESTATE SALES AND PURCHASE CONTRACTS IN HUNGARIAN LEGAL PRACTICE

As one of the priority areas of our Legal Partnership is Real Estate Law and Construction Law, we are often confronted with the issues of exercising the right of pre-emption in practice. Of particular interest, and in some cases difficult, is the fact that, in addition to the legislation on the exercise of the right of pre-emption, there is an extensive literature on the practice of the courts and land registry offices in this area.

With regard to the right of pre-emption, two issues arise with great frequency in practice, namely who is entitled to exercise the right of pre-emption and what and how the parties to the sales and purchase contract must do in order to ensure that the right of pre-emption is made known to the right-holder.

Under Hungarian law, the right of pre-emption is established either by the setting up of the right of pre-emption by the owner and its registration in the Real Estate Register or - and this is the vast majority of cases - by a mandatory provision of law. A typical case of the latter is when the co-owner has the right of pre-emption. It follows from the above that when the owner wishes to sell his property, the purchase offer received from a third party must be communicated in its entirety to the co-owner, giving him sufficient time to make a statement and accept the offer, and if the statement is accepted, the sale and purchase contract is concluded between the seller (owner) and the holder of the right of pre-emption, and not between the third party (candidate buyer). It clearly follows from the proper interpretation of the legislation, although in practice we have encountered several misinterpretations in this respect, that only an offer from a third party, i.e. a third party outside the property, has to be communicated to the holder of the right of pre-emption, but if the applicant is himself a co-owner (for example, in the case of a jointly owned property consisting of 12 garages), the other non-offering co-owners do not have to be invited to exercise their right of pre-emption.

In practice, in our experience, the most common problem is whether the person entitled to exercise the right of pre-emption has been properly notified. According to the provisions of the Civil Code, the offer must be communicated in full to the person entitled to receive it. This means, in relation to the sale and purchase contracts of immovable property, that the parties to the contract send the party entitled to pre-emption the signed sale and purchase contract and invite him to declare whether he wishes to conclude the contract on the terms set out in the contract. The contracting parties must first of all attach to the land registry procedure a declaration by the right of pre-emption holder waiving the exercise of the right of pre-emption. In the absence of such a declaration, they must provide evidence that the holder of the right of pre-emption has been sent the notice, has received the notice but has not submitted a declaration within a reasonable time. In this respect, the relevant court practice accepts the sending of the letter by registered mail, as the date of receipt of the notice can be clearly established. A more complex case is where the notice is not received by the holder and is returned to the sender marked "not collected" or "addressee unknown", where in the event of a subsequent dispute or lawsuit it will be necessary to examine whether the senders did indeed send the notice to the address known to them, but the courts do not expect the seller to undertake an investigation to discover the whereabouts of the right of pre-emption holder. Finally, as an ultima ratio, there is also the possibility that the parties to the sale and purchase contract jointly declare that obtaining a declaration from the holder of the right of pre-emption would have caused them extreme or considerable difficulty. In this respect, there is clearly a wide scope for judicial interpretation in the event of subsequent litigation.

It may be clear from the above very sketchy article that it is worth seeking the opinion of a professional with knowledge and experience in the field if you intend to enter into a sale and purchase contract where there is a right of pre-emption.

Dr. Tamás BALÁZS
Managing Partner
Attorney at law

EASY AND AT THE SAME TIME COMPLICATED – THE NEW LAND REGISTRATION PROCEDURE FROM POINT OF VIEW OF THE FOREIGN CITIZENS AND FOREIGN COMPANIES

For many years, the Hungarian legislator has had an important purpose in Hungary to make legal procedures easier, faster and requiring less paper (online). The first step of this purpose was the electronic registration procedure of the Companies. After that, the electronic civil court procedures and the construction proceedings came. And now, the land registration procedure is its turn.

The New Act on Land Registry (Act No. 100 of 2021), which also regulates the land registration procedures, will enter into force on 01 February 2024 and it has an impact also on all foreign citizens and foreign companies in Hungary who purchase or sell a real property in Hungary or burdens a real estate by a mortgage.

Under the New Act on Land Registry, the land registration procedure can be initiated electronically (online). This way makes the initiation of procedure easier, faster and more comfortable. In addition, the New Act makes possible to use electronic documents instead of the paper-based documents.

In case of use of an electronic document, it shall be signed by either qualified electronic signature, electronic signature provided by the qualified trust service provider or the signature service ensured by the Hungarian Government (Azonosításra Visszavezetett Dokumentumhitelesítés – AVDH in Hungarian).

The qualified electronic signature and the electronic signature of the qualified trust service provider have not been spread widely until now and are subject to fees. The signature service of the Hungarian Government is free of charge but the condition of use of this service is having a so called Client Gate ('Ügyfélkapu' in Hungarian). Client Gate can be requested by anyone at the Hungarian Embassies and Consulates abroad or at the Governmental Service Points ('Kormányablak' in Hungarian) in Hungary. Creating the Client Gate is free of charge and requires few minutes.

If a representative signs the document instead of the Party based on a Power of Attorney, the Power of Attorney shall be recorded in a form created by the Land Registry electronically. This form can also be signed by the Party electronically via one of the ways mentioned in the previous paragraph. If the Power of Attorney has been signed abroad, it has to be recorded by a Hungarian notary public electronically in the form created by the Land Registry. This means that the representative has to make an appointment at the notary public and is obliged to pay additional fees for the recording procedure of the notary public. This prescription of the New Act makes the process of the representative more bureaucratic and expensive but serves strengthening the security of the public and contractual trust.

The initiation of the electronic land registration procedure can make the real property transactions more effective. The New Act include promising regulations (e.g. use of the electronic documents), we hope that the implementation of them will be smooth in the practice.

Dr. Károly BAGÓCSI
Junior Partner, Attorney at law, LLM

MORE EFFECTIVE PROTECTION AGAINST EMPLOYER ABUSE – THE WHISTLEBLOWING ACT ENTERS INTO FORCE

On 24 July 2023, the new law on complaints, whistleblowing and rules on reporting abuse, commonly referred to as the Whistleblowing Act, entered into force. The new law was introduced into the Hungarian legal system to comply with the provisions of the so-called "Whistleblower Directive" of the European Union and aims to investigate and curb unlawful acts, omissions and abuses by both private and public sector organisations and companies.

Under the law, any person may lodge an individual complaint or a public interest report with a state or local government body, which must be dealt with by the body complained against within 30 days. Public interest reports can also be made via a secure electronic platform operated by the Commissioner for Fundamental Rights.

Another important aspect of the Whistleblowing Act is the so-called internal whistleblowing system, which must be set up and operated by all organisations employing at least 50 people. Irrespective of the number of employees, an internal whistleblowing system must be set up by any employer subject to the Money Laundering Act, such as an accountant firm, consultant firm, law firm or financial institution, as well as, inter alia, by a municipality with a population of more than 10,000.

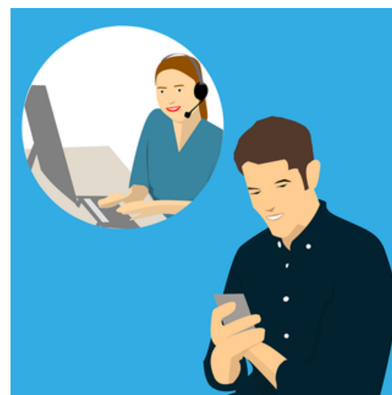
An important deadline is 17 December, as companies employing between 50 and 249 people must start operating the whistleblowing system by then, while companies employing more than this number and those subject to the Money Laundering Act had to start operating the system by 24 July.

Complaints can be lodged not only by the employee in the strict sense of the word, but also, for example, by a partner (e.g. a subcontractor or supplier) who has a contractual relationship with the company, or by a person who has an ownership stake in the employer.

The law also contains provisions on the protection of the reporter, the essence of which is that the reporter must not suffer any adverse legal consequences for having made the report. However, a somewhat controversial aspect of the whistleblowing system relates to anonymous reporting, as without contact details an anonymous report is not subject to investigation, which raises questions about the effectiveness of the legal protection aimed at by the law.

The whistleblowing system may be operated by a designated impartial person or department within the organisation or, if mandated, by a whistleblower protection lawyer.
Our Legal Partnership is available to assist our clients with the detailed provisions of the Whistleblowing Act.

Zita BALOGH
Legal Assistant



NEW-OLD PROPERTY RIGHT: RE-INTRODUCTION OF BUILDING RIGHT (LEASE HOLD) IN THE HUNGARIAN CIVIL CODE

Act XXXIX of 2023, published on 21 June 2023 amends several important regulations of the Hungarian legal system in the fields of private law, business law and financial law. Among the laws affected by the modifications are the Duties Act, the Enforcement Act, Investment and Capital Market Acts and, last but not least, the Civil Code. Within this, we briefly summarize the most important change coming into force in the field of property law, the revival of the building right (lease-hold).

By virtue of the building right (lease-hold), the right holder may establish or use a building on or under the surface of the property. The right extends to the construction or establishment of a building and the use of the property for that purpose, and to the possession, use and occupancy of the building constructed or existing on the property. Although the building right (lease-hold) has not yet been recognised in the property right system of the Civil Code, it is not far from the developments in domestic law: the Private Law Bill of 1928, for example, defined the building right (lease-hold) in a manner almost identical to the concept that is now being introduced.

The building right (lease-hold) can be established free of charge or for a fee by contract, for only a limited period of time, and registration in the Land Register is required. The absolute time limit regulated in the Civil Code is fifty years, a building right (lease-hold) established for a longer period also expires after fifty years. A special case of termination is if the right holder does not exercise his building right (lease-hold) for fifteen years. Although the legal institution is similar to the limitation of actions, the legislator logically remained within the regulations of property right by intending to apply the rules on dispossession to the termination.

The building established under a building right (lease-hold) will be owned by the holder of the building right (lease-hold). This creates a situation similar to that of land use in that the ownership of the building and the land is separated as to the identity of the owner. In the case of a clash between building right (lease-hold) and land tenure (use) right, the Civil Code provides that a building right (lease-hold) can be established on the part of the immovable property subject to the land tenure (use) right only in favour of the holder of the land tenure (use) right and at the same time as the land tenure (use) right is terminated.

Should you have any questions or comments regarding the newly introduced regulations of building right (lease-hold), the members of our Legal Partnership with significant experience and expertise in the field of construction law are at your disposal to assist you.

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