Hungary – Home Protection Program

EFMLG-Meeting Lisboa 29 May 2011

Frank Tillian, Managing Director / Legal Markets
## Hungarian – Home Protection Plan

<table>
<thead>
<tr>
<th>FX Repayment Law</th>
<th>Act on National Assets</th>
<th>Special Insolvency Regime for “strategic“ assets</th>
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</table>
Early repayment of FX-loans with fixed FX Rate for

- HUF 180/CHF: market price 30.12.2011: 262 (vast majority 97%)

“Losses“

- ~ 200,000 debtors to participate (Source: HBA)
- ~ EUR 965mn (incl. reduction by 30% writedown against banking tax) Source: HBA
- ~ EUR 1.6bn (additional loss of business due to: repayment of “good“ loans; 80% of sources used for repayment were personal savings, no new HUF loan) Source: HFSA

Conditions

- Consumer
- FX-loan
- Collateralised with mortgage on residential property located in Hungary
- Borrowers apply for repayment by 30.12.2011 latest
- Borrower to repay full outstanding loan amount within 60 days upon his application
Dec. 2011, Letter of Prime Minister Mr. Orban to all public employees (15% of FX debtors) “the government wishes to help in the final repayment of your FX loan by way of providing you with a HUF loan with beneficial interest rates“

Initiatives

Local Initiatives:
- Various letters to members of Hungarian parliament and representative bodies by the Hungarian Banking Association
  - 30% writedown against special bank tax
  - However does not repeal or remedy the damage caused
- Renewal of Constitutional Complaint by Jan 2012
  - No decision yet
Contd.

- **Intl. Initiatives**
  - Issue with the ExCo of the EBF 16.09.2011 and subsequent letter of protest to the Hungarian Prime Minister
  - Submission to the EC of additional information by Feb. 2012

- **Further Options under review:**
  - Submission of Proposed Wording in relation to conditions for EU-IMF Funding for Hungary
  - Non-Compliance procedure initiated by EC whether legislation is in breach of EU law
    - Restriction of free movement of capital Article (63 TFEU)
    - Restriction of freedom of establishment Article (49 TFEU)
    - Discrimination on grounds of nationality (Article 18 TFEU)
    - Violation of rights of property (Article 17 Charter of Fundamental Rights of the EU)
    - Violation of State Aid Rules (Article 107 TFEU)
    - Violation of the Obligation under the Consultation Decision to consult the ECB (Consultation Decision 98/415/EC)
  - Separate procedure at the European Court of Justice under the Lisbon Treaty’s Charter of Fundamental Rights for violation of property
  - Strasbourg
  - Arbitrational Tribunals because of violation of bilateral investment protection agreements between Hungary and certain States
Restrictions on transactions with “National Assets“

National Assets
- Financial assets and shares owned by Hungarian State and Hungarian Municipalities
  - Full and beneficial ownership
- National assets located in Hungary
  - Physical assets located in Hungary
  - Dematerialised assets: PRIMA Rule, however risk that place of Hungarian issuer may be considered relevant by court
- Excluded: cash and contractual claims

Transactions
- Each transaction with National Assets
- Between each kind of party where one of the parties is authorised to deal with national assets, hence most probably with state debt agencies, national bank, custodians, etc.
- Transactions entered into after 01.01.2012
Contd.

- **Restrictions**
  - Hungarian language to be used in contracts
  - Hungarian law to govern contracts
  - Hungarian Jurisdiction to be concluded

- **Violation Consequences**
  - Contracts/Transactions null and void
  - Contracts unenforceable
  - Hungarian courts do not recognise foreign or arbitrational judgment of contracts which do not fulfill one of the requirements – though Brussels I and Art. V of NY Convention

- **Recommendations in case of “National Assets”**
  - Adoption of agreements (even new transactions under master agreements concluded before 01.01.2012, such as ISDA)
  - Cash settlement
  - Relevant Assets to be located outside Hungary (e.g. collateral posted under CSA)
Hungary – Special Insolvency Reg. for “Strategic Assets“

- **Extraordinary Moratorium**
  - New automatic possibility of moratorium before commencement of liquidation (in addition to bankruptcy proceedings) to ensure “Strategic Entities“ remains temporarily operational
  - No Termination or appeal of agreements

- **Conditions**
  - Scope of “Strategic“ companies broadened with catch-all clause: “…is of key importance to the national economy“
  - Application with Court for liquidation proceedings and court order
  - If one party is instl. Counterparty – close-out netting possible during “Extraordinary Moratorium“ (non-tested opinion based on Collateral Directive and its doctrin that close-out netting arrangements shall be enforceable notwithstanding commencement of insolvency proceedings)
  - ISDA LO update outstanding
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UniCredit Bank Austria AG, Vienna
as of 25 May 2012
EMA – Legal Opinion Status

EFMLG-Meeting Lisboa 29 May 2011

Frank Tillian, Managing Director / Legal Markets
EMA – Status Legal Opinion

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Legal Base
- Annex 4 of Basle II Subsection 14:
  “The bank undertakes to update legal opinions as necessary to ensure continuing enforceability of the Cross-Product Netting Arrangement in light of possible changes in relevant law“
- Country’s regulation might sometimes even require yearly mandatory updates

Current EBF Procedure
- EBF maintains archive for agreements and LO
- Access via membership and access codes
- Currently EBF requires national association to provide Updates
- National association do not provide properly – nevertheless Banks are dependent on updates

Initiatives
- EBF ExCo and Legal Committee
- Recent EBF ExCo, all members declared their willingness to need and support the LO-Updates. Decision to centralise update procedure with law firm (probably Linklaters).
- Recommendation to offer Agreements and Updates to other European Banking Associations (ESBG, EACB, EAPB). Advantage: cost sharing and spreading of EMA
- However who takes care on EMA and its updates?
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