

# Hungary – Home Protection Program

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EFMLG-Meeting Lisboa 29 May 2011

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Hungarian – Home Protection Plan		
<b>FX Repayment Law</b>	<b>Act on National Assets</b>	<b>Special Insolvency Regime for “strategic” assets</b>
Amendment of Act CXII 1996 on Credit Institutions and Financial Enterprises: Section 200/B	Act No.: <i>Act CXCVI of 2011</i>	Act No.: <i>Act CXCVII of 2011, modifying Act XLIX of 1991 on bankruptcy proceedings and liquidation proceedings</i>

# FX – Mortgage – Early Repayment Act



## ■ Early repayment of FX-loans with fixed FX Rate for

- HUF 180/CHF market price 30.12.2011: 262 (vast majority 97%)
- HUF 250/EUR market price 30.12.2011: 316
- HUF 200/JPJ 100 market price 30.12.2011: 318

## ■ “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

## Contd.



- 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
- “Understanding“ between HBA and Hungarian Government 15.Dec.2011
  - 30% writedown against special bank tax
  - However does not repeal or remedy the damage caused
- Constitutional Complaint by 6. Oct. 2011 – rejected
- Renewal of Constitutional Complaint by Jan 2012
  - No decision yet

## ■ 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
  - Reporting Banks: AXA Bank Europe, Raiffeisen Bank Intl., KBC, Intesa Sanpaolo, UniCredit, Erste Group Bank, Bayerische Landesbank, Österr. Volksbanken AG
- *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*

# Hungary – New Act on National Assets



## ■ 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 arbitral 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 doctrine that close-out netting arrangements shall be enforceable notwithstanding commencement of insolvency proceedings)
- ISDA LO update outstanding

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# EMA – Legal Opinion Status

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EFMLG-Meeting Lisboa 29 May 2011

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Frank Tillian, Managing Director / Legal Markets

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# EMA – Status Legal Opinion



<b>Jurisdiction:</b>	<b>opinion mandated by:</b>	<b>Date of Opinion / Update</b>	<b>Update older than 3 Years</b>
Austria	EBF	27.12.2007	x
Belgium	EBF	29.01.2004	x
Cyprus	EBF	15.09.2008	x
Denmark	EBF	06.12.2010	
Finland	EBF	29.01.2004	x
France	EBF	04.11.2008	x
Germany	EBF	28.10.2011	
Greece	EBF	24.04.2008	x
Ireland	EBF	29.01.2004	x
Italy	EBF	20.06.2008	x
Luxembourg	EBF	29.01.2004	x
Malta	EBF	22.12.2009	
Netherlands	EBF	22.04.2008	x
Portugal	EBF	09.03.2005	x
Slovenia	EBF	07.10.2008	x
Spain	EBF	17.09.2008	x
Sweden	EBF	28.10.2005	x
Switzerland	EBF	19.08.2011	
United Kingdom	EBF	12.03.2008	x

15

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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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