

Finance for your clients: Harmonisation of Capital Markets

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National Report of Hungary

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1. Briefly describe the level of integration of the capital markets at the infra-national, national and supra-national levels.

Local capital markets are weak and have been in continuous decline since the mid 00s. The legislative framework is fully integrated with international markets in the sense that EU laws apply or fully implemented. Yet very few market players use the capital markets as a financing means and very few commits to a listing.

The bulk of the capital markets activity in Hungary is done by foreign investors concluding cross-border deals or passporting funds to Hungary.

2. Which measures have been adopted (or are foreseen) in your jurisdiction to support access to finance by small and medium sized enterprises (“SMEs”)? Measures might include (i) supporting venture capital and equity financing; (ii) lowering information barriers; (iii) enhancing access to public markets; (iv) supporting equity financing; (v) facilitating infrastructure investment; and/or (vi) promoting innovative forms of corporate financing.

None of the above seems to be realized or to be realized in the near future in Hungary, unless the introduction of such laws facilitating the use of capital markets by SMEs are or will be driven by EU laws. The Hungarian Central Bank has recently taken over the hares in the Budapest Stock Exchange (from the Vienna exchange) with the expressed aim of developing infrastructure and promote access to markets by SMEs. However, so far nothing has happened to achieve those aims.

3. Has your jurisdiction adopted (or are there any trends indicating that may do so in the future) any measures to remove barriers to cross-border investment? Measures could include (i) improving market infrastructure; (ii) fostering convergence of insolvency proceedings; (iii) removing cross-border tax barriers; (iv) strengthening supervisory convergence.

Hungary is typically considered as a country having no substantial barriers to foreign and cross-border investment (at least regarding capital markets). Hungary has the highest number of bilateral double taxation treaties with other countries in the region and investors usually appreciate that taxation from this perspective is rather straightforward.

In terms of insolvency legislation the picture is not as bright as on the sphere of taxation. The insolvency act was adopted in 1991 and although it has been

amended on a number of occasions, its structure, the types of insolvency procedures regulated still remain somewhat old-fashioned and lacks the reflection of developments in financings occurred since the early '90s.

At the beginning of 2015 the Hungarian Central Bank and EBRD started a project of revising the Hungarian insolvency legislation with a purpose of developing a new insolvency regime which meets today's requirements and challenge. A report has been prepared which identified several shortcomings of the current legislation, including procedural matters, creditor rights, challenge risks and the possibilities of corruption. Unfortunately so far there is no sign that the legislator intends to implement any changes addressing these issues.

4. Have specific measures been adopted (or are foreseen) to increase choice and competition in cross-border retail financial services and/or insurance?

Unfortunately not. To the contrary, Hungarian laws are very rigid in terms of licencing requirements which makes it difficult for a lender in a syndicated loan or an underwriter in note issuance to directly finance a Hungarian borrower or issuer. Security agents face with the same problems since in many cases they are unregulated trusts or similar entities having no licence in their home jurisdiction which may be passported to Hungary.

5. Capital markets harmonisation aims to facilitate companies' access to finance, particularly for SMEs by promoting more diversified funding channels that are complementary to bank financing. Is non-bank financing significant in your country? Please consider the role of private equity, venture capital, alternative finance, loan-originating funds, etc.

Non-bank financing is marginal in Hungary.

6. While loans traditionally represent the bulk of the banking assets, most financial entities also invest in capital markets. Do financial institutions in your jurisdiction invest highly in the capital markets? Are bonds and equity investments a significant proportion of the assets of financial institutions in your jurisdiction?

Hungarian banks do invest in capital markets, but the volume of those investments is marginal.

7. **Harmonisation requires standardisation, particularly in terms of credit information. Is SME credit information easily available in your jurisdiction? Is your jurisdiction adopting any measures to boost availability and standardisation of SME credit information at the national and supra-national levels?**

Credit information is available. An electronic system is available for banks to see “bad debtors” and certain data related to them. No other measures are on the table at the moment.

8. **Is there any recent or proposed legislation in your jurisdiction aimed to establish a framework for simple, transparent and standardised securitisation? Examples might include measures (i) to simplify prospectus requirements; (ii) to increase/decrease the information required to be provided to investors before making an investment decision; or (iii) to reduce barriers for smaller firms to access capital markets. If there have been no recent developments, please describe the current situation of securitisation in your jurisdiction.**

In the mid 00’s there were significant appetite for regulating securitization and a draft law has also been prepared. However, such law has never been adopted and since then the detailed regulation of securitization is off the agenda. Nevertheless, securitizations do occur in Hungary, albeit mainly on the part of large multi-jurisdictional companies which happen to have a Hungarian originator.

Accordingly, securitization per se is not regulated in detail, but is feasible under the traditional provisions of law (assignment/factoring etc.). The two problematic areas investors face is that purchasing receivables is a licensable activity (and thus a licensed intermediary is usually imposed in the structure to purchase the receivables first from the Hungarian originator) and servicing underlying debts may be also licensable. In addition, Hungarian laws do not regulate SPVs as special types of entities and therefore bankruptcy-remoteness and ring-fencing is always a complex structural and contractual issue.

9. **In your experience as a banking/capital markets lawyer, have you detected in your jurisdiction any unnecessary regulatory burdens, interactions, inconsistencies and/or rules that have unintended consequences which threaten the ability of the companies to finance themselves?**

The most significant unnecessary rule relates to licencing which makes cross-border transaction very difficult. The problem is not with the requirement that a lender needs a licence, but the scope of the definition of “lending” which includes the arrangement of a loan and also the debt collection/taking security even if the security agent is not a lender of record.

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