

# Foreign assets in the matrimonial property contract

**Zsuzsanna Kövesné Kósa**  
Judge, Hungarian Curia

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# Property contracts containing a foreign element

Contracts of spouses :

- ▷ Matrimonial property contract (According to Art. 4:34 of the Civil Code 4:63(1), (2) of the Civil Code)
- ▷ Contracts for sale, exchange, gifting, loan, acknowledgement of debt during the matrimonial community of life (Art. 4:41 of the Civil Code civil law contract)
- ▷ Contract of division of matrimonial common property (Art. 4:57(2) of the Civil Code)

Since Hungary did **not** join the EU Regulation on the property relations of the spouses, the national law is applicable.

Because of that:

➤ For contracts between the spouses containing a foreign element Book Four of the Hungarian Civil Code of 2013., as background rule the Act XXVIII of 2017 on private international law (PIL) is applicable.

The parties can choose the applicable law by the contracts [Art. 28 (1), (2) of the PIL], provided that:

- a) one of the spouses is a national of the given state, or
- b) it is the law of the state in which one of the spouses has his habitual residence, or
- c) it is the law of the state of the proceeding court.

The contract shall be in correspondence with the law of the state where it is made:

➤ In Hungary it shall comply with the Hungarian rules of formal validity (Art. 4:65 (1) of the Civil Code):

- Notarial deed
- Private deed countersigned by an attorney-at-law

# Determination of jurisdiction [Art. 99 (1) of the PIL]

null:

- ▷ Determining the jurisdiction of a foreign court for a case in which Hungarian courts has exclusive jurisdiction
- ▷ Determination of a Hungarian court for a case in which a foreign court has exclusive jurisdiction

## Property elements:

▷ Immovables: if it is registered in a foreign property register, the law of the state where the thing is located (ownership right, lien, possession) (Art. 39 (1) of the PIL)



It can be regulated in the contract, for example:

- Recognition of its separate property
- Constitution of usufruct
- Regulation of the ownership right (recognition of an ownership portion)



But: this part of the contract shall comply with the state's law where the immovable is located and: the jurisdiction of Hungarian court is excluded, the compliance of the contract can not be claimed (it is not executable)

→ Obligation to provide information

It is considered as a statement which is in connection with property right:

- ▷ Change of the property portion
- ▷ Recognition of separate property obtained during the community of life, for example on the grounds of sale, exchange
- ▷ Establishment of lien
- ▷ Establishment of a usufruct

It does not affect the right of property:

- ▷ When distributing the common property:
  - Financial settlement upon the rental fee
  - Financial settlement upon the costs in connection with the immovable

Movables: for transfer of property right the state's law where the thing is located, or the state's law of contractual destination

▷ Registered movables:

- Vehicle: Art. 39 of the PIL

Vehicle with a foreign number-plate: they can dispose over it but it can not be executed in Hungary

- Registered vessel or aircraft (ship, plane) Art. 42 of the PIL - by the law of the state, under the flag or insignia of which the vehicle travels
- Company: according to the law of a given state the transfer of property right is possible

## Securities (Art. 52 of the PIL):

- ▷ The state's law which is applicable according to the right settled on the security
- ▷ The state which is entitled for national supervision of the operation of the security account  
In absence of this, where it is operated
- ▷ For membership rights the personal law of the issuer
- ▷ For rights *in rem* the law of the issuing state

Claim: the state where it is registered (right of execution)

Another movable subjects: where it is physically located



**Thank you for the attention!**

