The Hungarian Trust Law
Written by Ákos Menyhei and István Sándor

Twenty-five years after the collapse of the socialist system in Hungary and the subsequent rejoining of the market economy system, both the legislative power and experts agreed that Hungary must provide a legal solution in helping long-term family wealth preservation and estate planning in Hungary. Earlier, during the soviet occupation, the importance of private wealth was marginal, but from 1989, privatization created a dramatic change in private wealth. Nevertheless, neither the legislative power, nor professionals realized in time that the lack of local estate planning solutions would create a massive capital outward flow from Hungary. This tendency resulted in the ‘90’s offshore spree and created an unhealthy environment, where the focus was on the agressive tax planning.⁵⁵⁷

1. The concept of the trust in the new Hungarian Civil Code

The Civil Code regulates the trust (in Hungarian: ‘bizalmi vagyonyezelési szerződés’) among the mandate-type contracts.⁵⁵⁸ The concept of this new type of legal instrument was drawn up on the basis of the English trust model.⁵⁵⁹ Although the Hungarian

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⁵⁵⁸ The first unofficial English translation of the new Civil Code uses a mirror translation of the Hungarian name of the trust (bizalmi vagyonyezelés), therefore several times it was reported as fiduciary asset management contract. Nevertheless, this translation is misleading and does not express the real content of the legal framework; moreover it is meaningless for those non-Hungarians who know and understand the trust. In this paper the authors consequently use the terminology of trust instead of the earlier mirror translation.

law is influenced by the German law, this legal framework is far from the rules of the German Treuhand, but rather is still very English.\textsuperscript{360} Strong, current demand in the economy was postulated with the introduction of the trust on a legislative level.\textsuperscript{361} Since the transition, Hungarian investors have chosen legal regimes of other countries, because the institution of the trust provided them with a better legal and economic solution. The Chief Codification Committee of the Civil Code implemented the trust into the contract law chapter; however, the decisive element of the instrument is the transfer of ownership, which is based on the trust-like model. Under the rules of the Civil Code, the trust is an in personam legal instrument that implicitly carries substantial in rem effects. The framework’s general concept is that the trust is a contractual arrangement between the settlor and the trustee, and its validity is bound to a written contract or statement. It derives from this concept that the central figures of the trust are the settlor and the trustee, and this conceptual emphasis goes through the supplementary rules as well. The supplementary rules including several details of the licensed trustee activity are regulated in two separate pieces of legislation. Such details are regulated in Act XV of 2014 on trustees and the regulation of their activity,\textsuperscript{362} and in Government Decree No 87/2014 (III. 20.) on certain rules concerning the financial security of trustees’ undertakings.

2. General rules of the trust

Pursuant to Section 6:310 (1) of the Civil Code, under the trust, the trustee must manage the assets transferred into the trustee’s ownership by the settlor for the benefit of the beneficiary, for which the settlor is obliged to pay a fee. The trust assets may be tangible or intangible assets, rights and claims as well.\textsuperscript{363} From this general definition derives three determinative elements of the trust: for the creation of the trust, it is necessary to transfer the ownership of the asset from the settlor to the trustee; the


\textsuperscript{361} A. Menyei, \textit{Estate planning} (op.cit.) 650 ff.

\textsuperscript{362} We call this act ‘Trustees Act’.

\textsuperscript{363} In connection with the regulation, see details in I. Sándor, \textit{The fiduciary property management} (op. cit.). 384 ff.
trustee acts for the benefit of the beneficiary; therefore, the framework requires at least one beneficiary; nevertheless, the settlor remains the contracting party, consequently, the rights to modify or terminate the relationship remains for the settlor.

Initially, it must be noted that the Trust Section's rules are mainly dispositive; therefore, the settlor may differ from the rules with the exception of a few obligatory rules (any deviation is null and void). The obligatory rules are:

a) The trust arrangement must be in writing;
b) The trustee can’t be the sole beneficiary;
c) The trust assets must be separated from the trustee's own assets and other trust assets;
d) The settlor and the beneficiary can’t instruct the trustee;
e) The trust period cannot last longer than 50 years.

The above mentioned rules also mean that the settlor has a large amount of freedom to specify the content of the trust relationship and apply protector or other advisors, like investment board.

It is allowed to create several types of trust including testamentary or inter vivos, discretionary or non-discretionary. The purpose trust is not regulated as a typical legal arrangement, but through the use of appropriate schemes, a legal arrangement that resembles the English private or charity trust may also be achieved. The general concept of the trust framework is the revocable trust. It is contested whether it is possible to create an irrevocable trust, as the settlor may terminate the trust arrangement and this right may be limited, but not excluded.

If the settlor and the trustee are the same person, the trust must be established by an irrevocable unilateral declaration of the settlor in a public instrument. A legal relationship of the trust settled by the last will and testament is valid if the trustee accepts his appointment to such a position under the terms set out in the testament. In the case of creating a trust by unilateral legal statement, which must be done in a public instrument, the same rules must be applied as mentioned above.

2.1. Rights of the settlor

The rights of the settlor extend to the appointment of the trustee, the determination of the transferred assets, the designation of the beneficiary, and the condition or time to become beneficiary. These rules are very similar to the three certainties principle in the Anglo-Saxon law.\(^{364}\) This, however, is a bilateral legal act, as it also requires the

\(^{364}\) In English law, three factors need to be defined with reasonable certainty for the creation of a trust: the trust property, the beneficiary and the subject of the trust. A. Hudson, *Equity and Trusts*, London, New York, 2013, 91 ff.
acceptance of the appointed trustee. Although the settlor defines the trust's character, in practice, the creation of the trust requires the involvement of the appointed trustee and its consent. Without clear determination of the asset management rules in the trust deed, the Civil Code's general rule applies, meaning the trustee must act for the utmost benefit of the beneficiary. This rule is the governing element of the whole relationship. Every condition of the trust deed must be examined and has to fulfil for the utmost benefit of the beneficiary. The settlor may determine other conditions of the trust as well, such as its duration, which is maximum 50 years, terms, the right of unilateral termination, remuneration of the trustee, appointment of additional trustees, regulation of the delegation of other contributors (for example a protector) and the beneficiary's right for distribution. The settlor may reserve the right to remove the trustee, appoint a new trustee, replace the beneficiary, modify given parts of the settlor's declaration and to determine or modify the duration of the trust. At the same time, the settlor has no rights to instruct the trustee, the settlor may only specify the asset management guidelines in the trust deed. These guidelines provide the legal framework of the asset management.

The settlor may monitor the activity of the trustee, but the expenses of such monitoring shall be borne by the settlor. It derives from the concept of asset separation that it is not allowed to the settlor to instruct the trustee. This rule provides independence for the trustee and higher responsibility as well. The final legal instrument of the settlor to control the trustee's activity is that the settlor may remove the trustee at any time and may simultaneously appoint another trustee. This rule may seem simple; nevertheless, it carries an extra transfer of ownership, as the current trustee holds the legal title of asset ownership; therefore, appointment of a new trustee must be in that legal form which fulfils the legal requirements of the transfer and registration of ownership.

The settlor must determine the identity of the beneficiary and the conditions of the commencements and termination of entitlement of beneficiary. The beneficiary may be described by the reference to the scope of the beneficiaries, providing power to the trustee to define the proportion of the beneficiaries, creating a possibility to set up discretionary trust as well. The validity test of this rule is that the trustee must always be able to identify a beneficiary. Although the settlor transfers the right to select the beneficiary to the trustee using this opportunity, nevertheless, this does not mean that the trustee has unlimited rights to determine anyone as a beneficiary. Firstly, the settlor must determine the possible scope of beneficiaries and must provide guidelines on how to select the beneficiary among available options. Secondly, the settlor may delegate this power to its representative as well, appointing a protector, who is the settlor's representative in the trust relationship; therefore, he may practice the settlor's rights.

The settlor may appoint the beneficiary or the scope of beneficiaries and dispose of the conditions of the managed assets' distribution. The settlor may dispose that
the managed assets must be transferred back to the settlor or to the settlor’s heirs or to a third person, wholly or partially by the occurrence of any specified conditions or after a specified period of time. The appointment of the trustee as sole beneficiary is null and void. However, the settlor and the trustee may be the same person; but in this case, the trust must be created in a public document by irrevocable statement of the settlor.

2.2. Rights, obligations and liability of the trustee

The trust framework of the Civil Code is very liberal and does not limit the scope of persons who may act as a trustee. The general rule is that every person – legal or natural – having its ability to act may be a trustee. Nevertheless, the Trustees Act provides further rules in this area and distinguishes the licenced and non-licensed trustee activity.\textsuperscript{365} The Trustees Act completes the Civil Code’s relatively short list of the trustee’s rights and obligations; nevertheless, the Code itself contains the most important one, an ancient Roman law rule – bonus et diligens pater familias. This rule has been implemented to the framework extending the trustee’s obligation, as the trustee is obliged to protect the trust assets from the predictable immediate risks in compliance with commercial rationality. Moreover, in accordance with the fiduciary requirements of the trust, the trustee must act primary for the benefit of the beneficiary’s interests.

On the other hand, to fulfill this obligation, the trustee has the right to claim the registration of ownership and the possession of the trust asset after the conclusion of the trust deed. The trustee may force this right against anyone, including the settlor as well.

2.2.1. Requirements towards and duties of the trustee

The framework provides broad rights to the trustee disposing the trust assets, as the trustee has the rights to exercise the trust assets’ ownership to a large extent; however, the trustee is obliged to dispose of the trust assets according to the conditions and restrictions of the trust deed. Balancing between the trustee’s rights and the settlor and beneficiary’s interest, there are rules to protect the former two’s interest against the trustee’s breach of obligations.

The Trustees Act provides further obligations for the activities of the licensed trustees. This act distinguishes licensed (professional) and non-licensed (ad hoc) trustees. If a trustee concludes at least two trust contracts annually, or if the trustee’s fee exceeds one per cent of the value of the trust asset, the service is classified business-like, and

\textsuperscript{365} See the details below.
such an activity may be carried out only with a licence issued by the National Bank of Hungary prior to the start of such activity. A licensed trustee may only be a limited liability company or limited company by shares registered in Hungary or the branch – registered in Hungary – of an undertaking based in another contracting state of the Agreement on the European Economic Area.

The trust company may not carry out any other activity other than trust asset management and its related services, and its name must make reference to trust asset management. The trust company must fulfil strict human resource and infrastructure requirements to receive and maintain the licence of the National Bank of Hungary. The human resource conditions are the followings: the company must employ at least one person having a master degree legal qualification and bar exam, one person having a master degree economic qualification; moreover it must hire a statutory auditor as well. The infrastructure requirements of a trust company are the followings: at least HUF 70 million registered capital, financial security which is equal to 20 per cent of the trust assets, but minimum HUF 70 million and maximum 1500 million, an office, website, internal Rules for the accounting policy and accounting software which fulfils the requirements of the separated trust asset accounting.

The trust company must duly perform its trust contracts in accordance with statutory requirements for the utmost benefit of the beneficiary in particular. The trust company is obliged to inform the settlor about the risks of the contract defined by law prior to the conclusion of the trust contract. In addition, the trust company must provide information in writing on a monthly basis. If no changes are made to the original information, it is sufficient to make reference to such fact in subsequent information. The trust company is required to maintain records of the trust relationships to support the traceability of trust, administrative controls and administrative assessments of assets.

The trust relationship and the activity are essentially built on trust, particularly in relation to the selection of the trustee, that is, beyond their business relationship. The trust relationship between the settlor and the trustee is governed predominantly by aspects of the trust contract, and underlining rules of the mandate contract and less by the general contracting rules of the Civil Code.

An important obligation of the trustee is that he or she must avoid conflict of interest; therefore it is not allowed to conclude a contract for his or her own benefit. Moreover, one of the trustee’s main obligations is to manage the trust assets separately from his or her own and other trust assets.

If the trustee is authorised to designate the beneficiary under the trust deed, the trustee may have the right to determine the share of the beneficiary as well.

Due to the high degree of professional requirements arising from the fiduciary nature of the trust relationship, the trustee must act for the utmost benefit of the beneficiary. The trustee must protect the trust property against foreseeable risks in a commercially reasonable manner.
The management of the trust asset includes exercising the rights arising from ownership, other rights and claims transferred to the trustee and the fulfilment of obligations arising therefrom. The trustee may dispose of the assets belonging to the trust assets under the conditions and within the limits set out in the trust deed. If the trustee breaches his obligations and illicitly alienates the trust asset to a third party, the settlor and beneficiary have the right to reclaim the alienated asset for the benefit of the trust assets, if the third party did not purchase the asset in good faith or for consideration. This rule is applicable as well in the case of illicit encumbrance of the trust asset.

The trustee must keep confidential all facts, information and other data he or she becomes aware of during his or her office as a trustee or in relation thereto. Such obligation is without prejudice to the establishment of the trusteeship and remains in effect after the termination of the trust. The settlor and his or her successors may grant exemption from the confidentiality obligation.

One of the basic obligations of the trustee is that the trustee must inform the settlor or the beneficiary about the actual situation of the trust assets upon their request. This obligation is independent of whether the trustee is a licensed professional or a non-licensed trustee; nevertheless in the case of licensed trustee, the information providing obligation is more regulated. Such information must cover in particular the actual and foreseeable increase in the trust assets, the particular assets of the trust, their value and commitments charged to the trust assets. Upon request, the trustee must account for the trust assets and settle accounts with the settlor and beneficiary. Expenses incurred in connection with the provision of information and the payments of invoices are borne by the settlor and beneficiary.

The rights of the trustee are governed by the Civil Code and rules specified in the trust deed. The rights of use and disposition are also conferred on the trustee in the case of trust, that is, the trustee has the right to:

a) use and operate the trust asset,
b) possess the managed asset, resort to protection of possession under the appropriate title,
c) enjoy, that is, utilise the trust asset either by himself, or with the collaboration of a subcontractor or agent, if he is authorised to employ such third parties under the trust deed. This right in practice is limited in the trust deed,
d) right of alienation (e.g. in the case of portfolio-type trust asset),
e) right of encumbrance (establishment of e.g. lien on assets belonging to the asset),
f) right of destruction, or rather, right of processing and use (e.g. an entire plant is entrusted, together with its raw materials, and these are processed in the regular manufacturing process),
g) right to exercise membership or shareholder rights.
The due care and diligence trust management is generally applicable to the trust relationship. If during the process of utilising the trust relationship the parties do not specify a yield rate, but only the due care and diligence fulfilment of the trustee, the trustee is required to manage the trust asset with due care to ensure the satisfactory performance of the trust. If however, the trust deed specifies annual yield rate and profit, the trustee must fulfil them; therefore it is a higher risk for the trustee. In both cases, the trustee's remuneration may be linked to the annual yield performance of the trust. Due to the general prohibition of the instruction, the trustee may not be instructed how to fulfil its obligations. Nevertheless, the trust deed may provide a guideline for the asset management or general prohibition of alienation of the trust assets or certain trust asset. In this case it is difficult to determine how the trustee can fulfil its obligation to ensure that the trust asset preserves its value in the case of changing circumstances. The authors believe that the general rule of the due care and diligence trust management is applicable in changing circumstances as well, even though there is a prohibition of alienation in the trust deed. In this case, the trustee must measure the different consequences and make a decision keeping in mind the utmost benefit of the beneficiary. In complex cases, an investment advisory board, having its part in the beneficiary or some of them, may help this decision making process.

Last but not least, there are rules securing the trustees' remuneration, providing that first of all the settlor must pay the contracted remuneration to the trustee; nevertheless, the trustee is entitled to satisfy the claims for remuneration or justified costs directly from the trust assets if neither the settlor nor the beneficiary settle the trustee's remuneration. The trustee may claim reasonable remuneration and costs as well, if the trustee carries out its activity free of charge. The remuneration of the trustee may be implemented under a different scheme; therefore, the contracting parties are free to determine the remuneration for the service.

2.2.2. Liability of the trustee

The trustee is liable toward the settlor and beneficiary for the breach of his obligations in accordance with general rules of liability for damages. If the trustee carries out his duties without consideration, rules of liability for damages are applicable to his breach of gratuitous contracts. The settlor and beneficiary may claim the management of any financial gain as part of the trust asset, which was realised through the trustee's breach of his obligations arising from the trust.

The trustee is also liable for the damages occurring in the trust assets caused by breaching the obligations towards the settlor or the beneficiary, according to the general rules of liability for damages. The framework provides rules for the liability of the trustee towards third persons as well. First of all, the trustee is liable with the
trust assets for the fulfillment of the obligations. Second, the trustee has unlimited liability with its personal assets for the fulfillment of the claims obligating the trust assets, if they are not satisfied from the trust assets and the third party could not and did not need to know the commitment of the trustee spread beyond the trust assets.

If the settlor appoints more than one trustee, the actions and decisions of the trustees are taken jointly. If the trustees are also liable with their own property for their commitments, they assume joint and several liabilities for joint decisions toward third parties. The co-trustees assume joint and several liabilities toward the settlor and beneficiary for the breach of obligations arising from the trust.

2.3. Legal status of the trust asset

The trust asset may be anything which is allowed to be lawfully owned; cash, securities, intangible or tangible assets, rights or claims. Mutatis mutandis, goods for which the ownership of or possession of is prohibited and cannot be a part of the trust assets.

Section 6:312 of the Civil Code provides rules on the separation of the trust asset from the trustee’s own and other trust assets. The trust asset constitutes separated property from the trustee’s own assets and other trust assets managed by the same trustee. The trustee is obliged to record the trust asset separately from his own and other trust assets. The parties’ derogation from this rule is null and void. The recorded trust asset is deemed to fall within the scope of trust asset until proven otherwise. Any asset substituting the trust assets, insurance indemnities, damages or other value and profits thereon, constitutes part of the trust asset, whether recorded or not. Assets not recorded by the trustee as comprising part of the trust asset are deemed to be the private property of the trustee until proven otherwise.

The Trustees Act contains further detailed rules regarding the separation and administration. The most important among these rules that the trust is a separate and independent entity from the accounting perspective, but it is not a legal person. Therefore, the trust asset must be separately accounted in HUF or EUR, but these records, contrary to the corporate loss and profit statements, are not publicly accessible.

The transfer of assets from the settlor to the trust is tax-free; there is no hidden taxation or transfer duty. The trust’s income is taxed independently from the trustee’s other income. The trust is a Hungarian corporate taxpayer, whose registered seat must be maintained in Hungary. The trustee is obliged to file an annual return on behalf of the trust to the Inland Revenue Service. The trust’s annual income is taxed as corporation income with corporate income tax. Capital distribution is tax-free for Hungarian tax resident, private individuals. In the case of a foreign tax resident individual beneficiary, the tax rules of a beneficiary’s residence are applicable. The trust income distribution to private individuals is treated as dividend, and it is taxed with 15% personal income tax in the case of a Hungarian tax resident individual.
If the beneficiary is a foreign tax resident individual, withholding tax may be applicable, but the Hungarian double tax treaty network may reduce it to zero. Hungarian tax resident companies may pay corporate income tax on capital distribution. In the case of a foreign entity, there is no withholding tax on capital distribution in Hungary. Hungarian tax resident companies receive the income distribution as tax-free dividend. If the beneficiary is a foreign corporation, there is no applicable withholding tax in Hungary.

The spouse, life partner, personal creditors of the trustee, and creditors of other trust assets managed by the trustee cannot lay claim to the assets of the trust asset. The trust asset does not constitute part of the trustee’s inheritance. The beneficiary and the settlor may take action against the spouse, life partner, personal creditors of the trustee, and creditors of other trust assets managed by the trustee to secure the separation of the trust assets.

2.4. Rights and legal status of the beneficiary

Any person – legal or natural, minor or legal age, local or foreign – may be a beneficiary. The beneficiary is not a contracting party in the trust relationship; nevertheless he or she has certain rights based on the trust framework. Under an important rule regulating the rights of the beneficiary, the beneficiary may claim the distribution of the trust asset and its profits from the trustee under the trust deed. The beneficiary may also monitor the activity of the trustee falling within the scope of asset management; thereof, the costs incurred by the beneficiary. The beneficiary does not have the right to instruct the trustee either. As it was mentioned in the previous part of this chapter, the settlor and the trustee may claim back the trust asset if the trustee alienated it with breach of the trust deed. The beneficiary’s right to trace the trust asset is independent from the settlor’s right to do so; therefore the beneficiary may act without the consent of the settlor.

The creditors of the beneficiary may assert claims for the trust assets only when the distribution of such asset is due to the beneficiary. This rule provides asset protection opportunity if the right for the trust asset distribution is not automatic, but based on the trustee’s discretionary right. In the latter case, the trustee may consider the right time and amount of the asset distribution for the beneficiary. Until the implementation of the trust framework, there was not any legal solution in Hungary to prevent the heirs squandering their legacy. The trust framework created an opportunity for the testators to prevent the undesirable consequences of the unplanned generational change in wealth. Using the trust, the settlor may freely dispose its fortune and determine the time, condition, extent of the distribution and the conditions to become beneficiary.

If the settlor dies or ceases without a successor and there are no other setters of the trust, the court may recall the trustee from his office upon request of the ben-
ficiary and simultaneously appoint another trustee if the trustee seriously breached
the trust deed. Several beneficiaries may exercise such right jointly, provided any of
them may request the court to terminate the appointment of the trustee and to ap-
point a new trustee. The court may not appoint a person as trustee, against whom
all beneficiaries protest.

2.5. Legal relationships between the parties

The relationship between the settlor and trustee creates basis of other legal relation-
ships as well. This is where the trustee’s responsibilities and fiduciary obligations, his
level of diligence and loyalty are defined. Under the Hungarian trust framework,
the essence of the trust is not the contractual relationship between the settlor and
the trustee or dependent relationship between them, but the trustee’s loyalty to the
trust asset abstractly and independently from the settlor.\footnote{366} This principle arises from
that rule that the trustee is obligated to the trust relationship after the death of the
settlor; moreover, the trustee’s responsibility is higher after the death of the settlor
as the trustee must act without prejudice to the trust deed and follow the rules of
the asset management and distribution without the settlor’s monitoring. As clari-
fied above, the Civil Code regulates the settlor’s monitoring rights, the right to give
waiver of confidentiality, the right to recall the trustee, but it expressly prohibits the
settlor from issuing instructions. These rules are one branch of the settlor’s control
rights. The instruction is strictly forbidden; therefore, the settlor must operate with
finer legal instruments of the control. The main instrument is the trust deed itself,
including the asset management guideline and the letter of wishes. If the settlor is
not satisfied with the trustee’s activity, he or she may enforce the rules of the trust
deed in several ways. The soft solution is to call the trustee to fulfil its duties, but the
settlor may enforce his will with a lawsuit, or in a simple way, by recalling the trustee
from its position and simultaneously appointing a new one.

Although the beneficiary is not a contracting party in the trust relationship, the
beneficiary also has the right to legally enforce the fulfillment of the trustee’s obliga-
tions. The beneficiary has the rights to claim the distribution of the trust asset, to
receive information, force the protection of the trust assets and to trace it as well.
Similar to the settlor, the beneficiary does not have the right to instruct the trustee.

There is no legal relationship between the settlor and the beneficiary. If the set-
tlor is a beneficiary as well, obviously his capacity is relevant in terms of exercising
particular rights.

In respect of the relationship between more than one settlor, it is necessary to
determine whether they assume joint or joint and several liability.

\footnote{366} B. Szabó, Illés, Kolozs, Menyhei and Sándor, \textit{op. cit.} 157.
In the case of co-trustees, their liability is joint and several towards creditors for the decisions adopted jointly, if they must cover the obligation with their own assets. In the case of co-trustees, their liability is joint and several towards the settlor and the beneficiary for the breach of their trust obligations.

Among the rules of the trustee's succession, the Civil Code adopted the right of survivorship of the other trustees in relation to the ownership of the ceased trustee. The relationship between successive beneficiaries is principally determined by the trust deed concluded between the settlor and the trustee. However, the possibility of substitution should be taken into account in relation to succession after the death of the beneficiary.

The rules of the Civil Code do not preclude the transfer of the assets distribution right from one beneficiary to another upon the fulfilment of certain conditions or after a given time.

3. The legal position of creditors

In terms of liability, the Civil Code does not allow the creditors of the settlor and trustee to assert claims for the trust asset. The beneficiary's creditors may enforce a claim against the trust assets only after the due date of the asset distribution for the beneficiary. The first rule is partially overridden in the Trustees Act to the extent that the creditors of the settlor may terminate the trust relationship in an enforcement procedure.

3.1. The creditors of the trust asset

The trustee is liable with the trust assets for the fulfilment of his obligations undertaken on behalf of the trust. Therefore, if the trustee conducts business with the trust asset and third party's claim arises from this activity, which cannot be covered from the trust property, then the creditor, as a general rule, may not seek fulfilment from the trustee's own assets. However, the trustee assumes unlimited liability with his own property toward third party, if the creditor's claim cannot be fulfilled from the trust asset and the third party was not or could not have been aware that the commitment of the trustee has exceeded the limits of the trust asset.

3.2. The legal relationship between the settlor and its creditors

As a general rule, the creditors of the settlor may not lay claim to the trust property unless the settlor is also a beneficiary. In respect to the contract between the settlor and the trustee, the creditors of the settlor may assert claims in accordance with the modern rules of actio Pauliana, under the general rules of the law of obligations. In
addition, the Trustees Act partially overrides the general rules of the Civil Code, providing termination rights to the settlor's creditor in the execution procedure launched against the settlor. If the enforcement procedure launched against the settlor has been unsuccessful or would not have produced any results within a foreseeable time, the bailiff calls the creditor and the creditor may terminate the trust relationship. Consequentially, those assets the settlor would be entitled to in the case of the trust relationship's cessation to be subject to enforcement proceedings. It must be noted that this rule is already drawing heavy criticism in Hungarian legal literature, as it ignores the differences in time between exercising the right of termination and the insolvency of the settlor. Nevertheless, using a carefully designed trust structure, the termination right of the creditor may be eliminated.

3.3. Legal relationship between the trustee and his personal creditors

Pursuant to regulation in the Civil Code, which corresponds to the rules of common law, in the event of the trustee's insolvency, the creditors of the trustee cannot lay any claim to the trust assets. This rule is also applicable to the successors of the trustee. The spouse, registered partner and successors of the trustee cannot lay any claim to the trust assets. This regulation provides strict asset separation within the trustee's assets, which is similar to the Anglo-Saxon trust rules.

3.4. Legal relationship between the beneficiary and his creditors

The creditors of the beneficiary clearly have the right to take action against the beneficiary's legal interest, quasi under the legal title of the beneficiary. Nevertheless, this is possible only if the beneficiary's right for distribution is due.

It is impossible to exercise the right for enforcement of the beneficiary's creditors in relation to the beneficiary's claim for the trust assets, if the trustee holds discretionary power for the distribution of the trust assets, because the claim of the beneficiary is uncertain as well and unascertainable in such a case.

4. The possibility of tracing

The framework provides broad rights to the trustee disposing the trust assets, as the trustee has the rights to exercise the trust assets' ownership to a large extent; however, the trustee is obliged to dispose of the trust assets according to the conditions and restrictions of the trust deed. Balancing between the trustee's rights and the settlor and beneficiary's interest, there are rules to protect the last two's interest against the trustee's breach of obligations. The beneficiary and the settlor may trace the trust asset, as they have the right to take action against third parties to whom the trustee alienated
the trust asset in breach of the trust deed, without consideration or in bad faith. Such regulation essentially corresponds to the rules of common law found in English law.

This asset tracing is an important element of the framework, which shows the real value of the trust, as that the settlor and the beneficiary may claim back the asset itself if the trustee alienates it without fair consideration. This rule makes the difference and creates a real English type trust instead of the German type (Treuhand) asset management.

In the case, the trustee alienates the trust asset without consideration or with breach of the requirement of good faith. The Hungarian regulation follows the rules of tracing known in the English law.

5. Termination of the trust

The trust relationship is deemed to be terminated, if:

a) no trust asset is left;
b) if the trustee terminates the trust relationship three months after the trustee's termination;
c) if at the date of the expiration of the trustee's mandate there is no trustee to manage the trust assets for over three months;
d) in the instance of the settlor's death, if the settlor was the sole beneficiary.

Even through the resignation of the trustee, the trustee must act for the utmost benefit of the beneficiary. If the settlor appoints another trustee, the previous trustee is obligated to transfer the trust asset's ownership to the new trustee, hand over the trust asset's books and provide final settlement about the trustee's activity to the settlor and the new trustee. The trustee's general obligation of cooperation contains all relevant information in connection to the trust assets, the rights and obligations.

If, due to a legal mistake, the trust deed contains a trust relationship established for an indefinite period or a fixed period of more than 50 years, it is to be terminated after 50 years from the date of the establishment.

The trust is not terminated if the settlor becomes a successor of the trustee. Moreover, the trust is not terminated upon the death or cessation of the settlor, trustee or beneficiary. This is one of the rules proving that though the trust is not a legal person, it is a legal instrument independent from the parties of the legal relationship. The trust survives the death or cessation of the settlor, trustee or beneficiary and operates without interruption. Naturally, in the case of the death or cessation of the trustee or beneficiary, new ones must be appointed, but the death or cessation of the settlor changes neither the trust’s operation nor the remaining parties’ rights and obligations.

In the case of termination of the trust relationship, the trustee remains subject to the accounting and information obligation imposed under the trust. If the termination of the trust creates a risk to the trust assets, until the transfer of the trust assets’
ownership and the accounts, the trustee must make all necessary actions required by the trust deed and laws.

In the case of recalling the trustee from its position, the trustee must transfer the trust assets to the co-trustee or the new trustee appointed by the settlor, otherwise to the settlor. If the trustee dies or ceases, the trust property must be transferred to the co-trustee or the new trustee appointed by the settlor, otherwise the trust is deemed to be terminated, and the trust asset is transferred back to the settlor. The obligations on the trust assets are passed on to the co-trustee or the new trustee as part of the trust assets, otherwise to the settlor. In the case of more than one settlor, the settlors become entitled to the trust assets transferred back to them in proportion to their original contribution to the trust assets, and they assume the obligations transferred back to them as part of the trust assets in the same proportion. In this case, the settlors assume joint and several liabilities toward the creditors of the trust assets. If the trust deed provides for the distribution of the assets in the form of succession in the position of the trustee, the rules defined above are appropriately applicable to the transfer of rights and obligations to the successor.

6. Some comparative remarks

The main areas where Hungarian trust varies from the Anglo-Saxon institution of the trust are detailed below.

Under the Civil Code, the trust relationship mostly resembles the express trust. Other types of the trust, like resulting, implied and constructive trust is not necessary in the Hungarian trust law, other legal instruments fill the function of these. Conditions give rise to a resulting trust only in exceptional cases [6:Sec. 321. (3)], while the constructive trust and expressis verbis charitable trust are not regulated. This is, to a certain extent, understandable, as under Hungarian private law, these legal situations are regulated with the institutions of unjust enrichment, foundations and public donations.

The trust must be created in writing, while the Anglo-Saxon trust may be created orally or by implied conduct. In the view of the fact that trust is a new legal instrument in Hungarian law, we believe it is reasonable that the relationship is bound to a written form to avoid any legal uncertainties.

At first sight, it may seem that the Civil Code does not expressly provide that the settlor has the right to revoke the trust, while in Anglo-Saxon law, the settlor may retain this option during his lifetime, if he or she stipulated this in the trust deed. Nevertheless, the rules of the mandate contract provide underlining rules for the trust, granting broad discretionary termination rights to the settlor. Therefore, the setting up irrevocable trust creates legal difficulties and requires creativity and deep understanding of the Civil Code.
Under the Civil Code, as a general rule, trust is a contract for consideration, while Anglo-Saxon law presumes gratuity, unless provided otherwise.

Under the Civil Code, the trust has a maximum duration of 50 years. A time limit is also applied in English law, with the exception of the charitable trust. International trends, however, increasingly suggest a loosening and elimination of time limits.

According to the principle derived from the *Saunders v. Vautier* case, the beneficiary is entitled to the distribution of the trust assets, if he/she is of legal age and the distribution does not breach the interests of other beneficiaries. The current Hungarian rules do not allow the beneficiary to force the distribution before it is due under the trust deed.

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367 Saunders v. Vautier ([1841], Cr. & Ph. 240.; 4 Beav 115).