

Collision of foreign retention of title with Hungarian asset pledge: Important legal information for export-import companies

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In export-import trade transactions across Europe, sellers commonly protect their assets by retaining the title of ownership until the buyer has paid the full purchase price. Retention of title allows sellers to reclaim the assets in case of non-payment or the buyer's bankruptcy before full payment. However, in Hungary, such an arrangement can present unexpected challenges for sellers.

Retention of title in Hungary is subject to registration requirement. Without this registration, often omitted in export-import transactions, the asset intended for the seller may become encumbered with a pledge without the buyer's intention or knowledge. This risk is significant for businesses with foreign commercial relationships, especially in Germany, where securing the purchase price with retention of title governed by German law is common.

Retention of title offers significant benefits for both, seller and buyer. It allows the seller to maintain ownership until the full purchase price is paid, reducing the risk of buyer default. Even if the buyer meets all other conditions for obtaining ownership the seller remains the owner if the purchase price is unpaid. This protection is crucial, particularly if the buyer resells the asset or establishes a pledge on it.

Under Hungarian law, the agreement must be in writing, even if the sales contract is concluded orally or by implied conduct. There is no requirement for the title retention to occur at the conclusion of the sales contract; it can be agreed upon at any time, such as when the buyer faces unexpected payment difficulties.

Key rules to consider:

If a sales contract contains foreign elements, the effects of the retention of title will be governed by the law of the country where the asset is located, unless the parties choose a different law, such as the law of the asset's future destination.

For movable assets, retention of title is valid without registration but is enforceable only between the parties. Its effectiveness against third parties can be questionable. In most legal systems, registration of retention of title is not mandatory and foreign law-governed retentions of title are usually not registered in the Hungarian Collateral Register (Hitelbiztosítéki nyilvántartás). This can lead to problems when an unregistered foreign retention of title collides with a registered Hungarian movables pledge.

This issue often arises unintentionally. A foreign seller considering retention of title as payment security may not realize that the buyer could have automatically created a pledge on the asset upon taking possession. If the buyer previously granted a pledge to a Hungarian bank over future movable assets - a common practice in Hungarian banking - such pledge may cover the newly purchased asset without the seller, buyer or even the bank realizing it. As a result, if the retention of title is not registered with the Hungarian Collateral Register (as is usually the case)

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and the purchaser becomes insolvent before full payment, the seller may reclaim the sold assets. However, the asset will be encumbered by an enforceable bank pledge, complicating the situation, as Hungarian law permit this.

Possible solutions:

A more detailed definition of the pledged assets in the pledge agreements with Hungarian banks, excluding movable assets subject to unregistered retention of title, is highly desirable. This requires a high level of awareness from purchasers, which may be present in Hungary's large corporate sector but is often lacking in the SME sector. Even with awareness, negotiating financing contracts individually in the SME sector is challenging, as the most common solution involves using general terms and conditions and standard form contracts.

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