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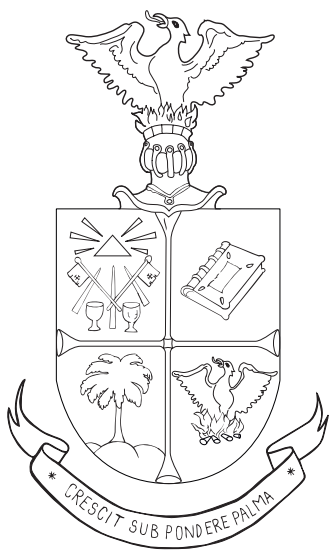

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The Legal Institutions of Asset Preservation and Asset Transfer in Hungary

1. Introduction; Typical life situations where asset preservation and asset transfer may be relevant

Asset transfer and asset preservation are hot-button issues today. While Western Europe boasts considerable traditions in this area too, legal devices that had been existing in the western part of the continent for decades, have only recently appeared in the countries of the former socialist bloc. Until recently, the demographic crisis experienced all over Europe and the relatively weak will and ability of the succeeding generation in Central and Eastern Europe have also been exacerbated by a lack of legal institutions facilitating the preservation and transfer of assets. In Hungary, legal devices supporting estate planning have already been established, and not only do they offer solutions to domestic problems, they are also attractive to foreign investors.

First, we should review briefly the typical life situations where interest in the institutionalized forms of asset transfer and preservation can arise, i.e. where the legitimacy of the available legal institutions is derived from. For example, when may a person become interested in transferring his assets or taking certain measures to protect such assets in the course of good faith business practices? It is high time to address the issue of succession within family businesses across Europe. Sad statistics show how many companies fall victim to the fact that the head of the family does not prepare timely or with due care for the generational change and that there is no successor who would be able to continue the business. The success of succession in family businesses depends to a large extent on the retiring leader making well-informed use of the opportunities inherent in the institutionalized forms of wealth transfer and preservation. At the same time, the issues of asset preservation are on the agenda not only for family businesses, but also, for example, when a wealthy owner wants to dispose over his estate while still alive, but has concerns about the character of his future heir. Worries in such cases mostly concern the child, who lacks the skills to preserve and increase the family wealth and it is feared that he will live off the accumulated assets, or risk or squander them by making bad financial decisions. In case of multiple heirs, the equity owner may also fear that a dispute over inheritance breaks out between his descendants (potentially born from different relationships)

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that leads to a further prolongation of the already time-consuming probate procedure and ultimately to a loss of property.

Wealth transfer also offers solution to cases, where the individual assets are located in different countries and thus, upon succession, multiple probate proceedings would need to be conducted in accordance with the laws of the various countries. This problem is not completely bridged by the European certificate of succession either.

Accordingly, in the above cases, the purpose of the wealth transfer is to preserve its unity and to ensure that the heirs (or other beneficiaries) benefit from the proceeds of the accumulated wealth without compromising its actual assets.

The need for wealth preservation has prompted the legislator to expand the range of legal instruments serving this purpose. In the spirit of this consideration, the new Civil Code allows for fiduciary asset management and introduces the legal concept of private foundations (family foundations). While in case of the former, a largely Anglo-Saxon influence can be detected, the latter has proved to be an effective device mainly in the Austrian legal system in preserving complex (family) estates over multiple generations. Our new legal institution serving similar purposes -that has been in effect since 2019- is the asset management foundation, through which the legislator intends to provide a special alternative for the preservation and increase of truly significant estates.

Since in Hungary lineal-descent inheritance and giving have not been subject to taxes and duties[2] for almost a decade, the above listed legal options are primarily used for preserving and enriching estates and not as means for tax optimization.

The newly adopted legal institutions may also be attractive to foreign equity owners, because during the geographical diversification of their assets, they may now focus on Hungary and may take advantage of the extremely favorable Hungarian tax environment. Below, we examine the professional forms of asset transfer and asset preservation institutionalized in the Hungarian law.

2. Fiduciary asset management

The new Civil Code introduced fiduciary asset management contracts in 2014, which have no historical precedents whatsoever in the Hungarian legal system. In enacting this legal institution, the device of the trust -a concept of widespread application in Anglo-Saxon legal systems- served as a model, but due to the specifics of the Hungarian legal environment, certain corrections had to be made. In light of this, we can conclude that fiduciary asset management has become an integral part of the Hungarian law as a legal institution performing the functions of trusts.[3]

2 See e.g., Sec. 16 (1) i) of Act XCIII of 1991 on Duties that provides that the share of the estate received by the decedent's next of kin or surviving spouse shall be exempt from inheritance duty.

3 See details in B. SZABÓ Gábor, ILLÉS István, KOLOZS Borbála, MENYHEI Ákos,

The introduction of fiduciary asset management in Hungary was simultaneously met by aversion rooted in philosophical traditions and expectation born out of natural needs. The legislator had to weight, in this situation, which model to follow and to consider the regulatory environment into which this completely new, but undoubtedly gap-filling legal institution was adopted.

Fiduciary asset management is a special, atypical legal relationship that carries certain characteristics of agency, professional service and consignment relationships. Contracts are not the only way to establish fiduciary asset management relationships, they can also be created by unilateral statements, such as a will, provided of course that the trustee makes a declaration of acceptance.[4]

Fiduciary asset management under the new Civil Code is a three-party legal relationship, the subjects of which are the settlor, the trustee and the beneficiary. The essence of this legal concept is that the settlor transfers the ownership of his property or properties (assets) to the trustee for the purpose of asset management, determines the method of asset management and at the same time designates the beneficiary, i.e. the person in whose interest and for whose benefit the assets must be managed.[5] The trustee, therefore, becomes the owner of the assets entrusted to him, but is obligated to manage the assets separated from his own assets or other assets he manages, and keep separate records thereon. Fiduciary asset management is an independent title for the transfer of ownership and must be indicated as such in the real estate register and the company register. Therefore, if for example the founder of a family business transfers all shares of the company to fiduciary asset management, the trustee will be listed in the company register as the holder of the shares, but he will acquire the ownership of shares under the title of fiduciary asset management. A further feature of the legal relationship is that the trustee manages the assets in his one name, but on behalf of the beneficiary designated by the settlor. This is also reflected by the related terminology, according to which the trustee is the legal owner and the settlor is the economic owner. The main advantage of splitting the ownership and the decision-making positions is to provide the expertise needed for making decisions and keeping private estates together.

The formal requirements for fiduciary asset management contracts should also be mentioned here. The Civil Code provides for a so-called simple writing, which

SÁNDOR István: *A bizalmi vagyonkezelés*, Második, bővített és aktualizált kiadás, Budapest, HVG-ORAC Lap- és Könyvkiadó Kft., 2018.

4 See Sec. 6:329 (2) of the Civil Code providing that where fiduciary asset management is created under a will, it shall take effect upon the trustee`s acceptance of the appointment under the conditions set out in the will with a retroactive effect to the death of the testator.

5 Civil Code, Sec. 6:310 [Fiduciary asset management contracts] (1) Under a fiduciary asset management contract the trustee undertakes to manage the assets, rights and receivables entrusted to him by the settlor (hereinafter referred to as: assets managed) in his one name and on the beneficiary's behalf, and the settlor undertakes to pay the fee agreed upon. (2) The contract shall be executed in writing.

means that, as a general rule, neither legal representatives nor witnesses need to be involved in the transaction.[6] If, however, the ownership of real estate is conveyed while establishing fiduciary asset management relationship, then the additional requirements stated by specific legislation i.e. the Act on Real Estate Registration[7] are applicable at least to the documents, based on which entries to the real estate register are made. Obviously, different requirements apply if the fiduciary asset management concerns business shares, rights, claims, or contractual rights and obligations. Depending on this, we have to keep in mind the requirements of suitability for registration by the court of registration and the requirements applicable to subrogation[8], assignment[9] and transfer of contracts[10]. The trustee may be remunerated for his activities, which is payable by the settlor. The parties may also agree that the trustee is entitled to remuneration depending on and to be paid from the outcome of the asset management activity. Through the latter, the legislator also recognizes the legitimacy of success fee-type arrangements -which is widely accepted by judicial practice- for fiduciary asset management relationships.[11]

Upon the termination of the fiduciary asset management relationship, the trustee releases the managed assets to the person designated by the settlor, who can be the former beneficiary of the fiduciary asset management, or even a new trustee. It is important to note, however, that the death or dissolution of the settlor, the trustee, or the beneficiary does not, or does not necessarily, result in the termination of the fiduciary asset management relationship. This is where one of the main virtues of this legal device lays, since the owner of the estate can set up, while being alive, a long-term system of guarantees making sure that his estate remains unified and serves the intended purpose.

Fiduciary asset management contracts can be concluded for definite or indefinite terms, but not more than fifty years. This provision of the Civil Code is compulsory and thus the parties cannot derogate therefrom by their agreement. In my opinion, this kind of time constraint is not very favorable to founders of family businesses, because their minds are set (or will be set) for much longer time periods once family businesses in Central and Eastern Europe have multi-generational history. For a long time, the issue of the ways of terminating fiduciary asset management contracts has been uncertain. Can the settlor exercise the right of termination, if the fiduciary asset management contract was concluded for an indefinite term? A positive answer would

6 See Sec. 6:310 (2) of the Civil Code.

7 See Sec. 32-36 of Act CXLI of 1997 on Real Estate Registration.

8 See Sec. 6:202 of the Civil Code.

9 See Sec. 6:193-6:201 of the Civil Code.

10 See Sec. 6:208-6:211 of the Civil Code.

11 A success fee or commission is a special service that is due in exchange for taking care of a matter or for performing an activity subject to the occurrence of a result causally related thereto (BH2014.46.).

follow from the agency nature of the legal relationship, the Civil Code, however, provides that the settlor may terminate the fiduciary asset management contract established for an indefinite term, if the contract, itself, does not provide otherwise. In other words, it is possible to exclude or limit the right of termination.[12] Accordingly, the legislator sets forth a special rule for fiduciary asset management relationships regarding the exclusion or restriction of the right to terminate. This option will undoubtedly be attractive to family businesses interested in the long-term survival of the legal relationship. The trustee may terminate the contract with three months' notice, but the Civil Code allows the parties to derogate in this regard. Finally, the settlor has the option to recall the trustee by simultaneously appointing another trustee. In the latter case, the legal relationship survives, but there is a change in the person of the trustee. Furthermore, the Civil Code states that the settlor, himself, may arrange for his own replacement in the event of his death or dissolution without legal succession, by appointing in the contract the person who is entitled to exercise the rights and fulfill the obligations of the settlor. The settlor is also entitled to limit the rights of the designated person, i.e. he can for example exclude the termination of the asset management contract by the designated person.[13]

The legal relationship at hand is also special because, although it is an agency-type relationship, the Civil Code expressly states that the trustee may not be instructed either by the settlor or by the beneficiary. Contrary to this, in traditional agency contracts, the principal has a wide scope of instruction rights.[14] Nevertheless, the trustee does not have unlimited right to dispose over the assets entrusted to him, rather he may dispose over the managed assets within the limits of and subject to the conditions set out in the fiduciary asset management contract. Consequently, the settlor has the best opportunity to have a formative impact on the asset management activity at the time of contract conclusion.

The trustee -by taking into account the primary objective of serving the beneficiary's best interest- is obligated to protect the managed assets from foreseeable risks under the principle of reasonable business practices. This creates an enhanced requirement in comparison with the principle of reasonable conduct expected in a particular situation.[15]

Therefore, the settlor must carefully consider before contract conclusion his objectives, interests and the potential future risks that he wishes to avoid, because this

12 Compare with Sec. 6:213 (3) of the Civil Code providing that "unless otherwise provided for in this Act, a contract entered into for an unfixed duration, setting up a long-term relationship may be terminated by either party giving a reasonable period of notice. Any exclusion of the right to terminate shall be null and void."

13 See details in BODZÁSI Balázs: *A bizalmi vagyonkezelés (trust) magyar szabályozását érintő módosítások*, In: Fontes Iuris, Budapest, Magyar Közlöny Lap- és Könyvkiadó, 2018/1., 5.

14 See Sec. 6:273 (1) of the Civil Code providing that the agent shall follow the instructions of the principal.

15 See details in BODZÁSI Balázs: *A bizalmi vagyonkezelés (trust) magyar szabályozását érintő módosítások*, In: Fontes Iuris, Budapest, Magyar Közlöny Lap- és Könyvkiadó, 2018/1., 2.

is the time when he has the most power to shape the legal relationship according to his own interests. After contract conclusion -in the absence of the right to instruct- the primary task of the settlor and the beneficiary will be monitoring the asset management activity. If the settlor finds that the trustee has breached the contract, he can, of course, bring action against the trustee. Such as, for example, when the trustee transfers a specific property to a third party without authorization. The settlor may, at this time, reclaim the asset in question from the third party who did not acquire it in good faith or for consideration. Of course, the beneficiary can also exercise these rights, since the assets are managed for his benefit, and therefore, he also has a legitimate interest in keeping the assets together and having them managed according to the settlor`s instructions included in the contract. The scope of exercising the right to check must otherwise be elaborated by judicial practice.[16]

Generally speaking, the purpose of fiduciary asset management, on the one hand, is the separation of assets (for example before starting a risky business or concluding marriage) and, on the other hand, is providing income to the beneficiary by the settlor, without the beneficiary bearing the burden of making the necessary decisions, because e.g. he may lack the required skills. The main advantage of fiduciary asset management for family businesses is that even in the absence of capable successors, the founder can ensure the preservation and enrichment of the family estate by transferring e.g. all shares held in the family business to fiduciary asset management and by designating the beneficiary and determining the method and viewpoints of asset management. Thus, even if the offspring lacks the required abilities, he can still be taken care of without jeopardizing the family business and having to worry about the wasting of the family wealth. This legal institution also allows the use of arrangements that are excluded or only allowed to a limited extent in case of wills. For example, when assets are transferred to fiduciary asset management, the founder of the family business may provide that the ownership of shares will pass to the beneficiary subject to meeting certain conditions (for example, obtaining qualifications or diploma). It is also possible to cover the costs of the studies required for acquiring ownership of the shares from the proceeds of the managed assets. This legal device is, therefore, characterized by a degree of flexibility that wills and other transactions typical in the event of death usually lack. For example, fiduciary asset management can also be used for conveying assets much later than the death of the settlor and according to a predefined procedure to the successors, who meet the relevant requirements and are fit to continue the family business. In case of wills, this arrangement would be inconceivable, since such a provision is invalid under the rules of succession. These are precisely the advantages that make fiduciary asset management so attractive to family businesses interested in wealth preservation and enrichment. In conclusion, the Hungarian rules on fiduciary

16 See details in SÁNDOR István: *A bizalmi vagyonkezelési szerződés*, In: OSZTOVITS András (szerk.): *A Polgári Törvénykönyvről szóló 2013. évi V. törvény és a kapcsolódó jogszabályok Nagykommentárja*, III. kötet, Budapest, OPTEN Informatikai Kft., 2014., 797.

asset management have become sufficiently flexible. They provide adequate guarantees and thus this legal device has become an excellent solution for the challenges of asset transfer and preservation and that of generational changes.

At the same time, the last five years did not bring a breakthrough in the propagation of fiduciary asset management. The reason for this, on the one hand, is that due to the novelty of the regulation, few were informed that this legal device was adopted into our legal system, and on the other hand, it took some time for the legislator to eliminate the ambiguities and inconsistencies in the normative text. The spreading of the legal form might also have been hindered by the innate mistrust that characterizes the thinking of Hungarian businessmen –perhaps due to to historical experiences- and that equity owners were reluctant to transfer the ownership of their core assets.

Thanks to the statutory guarantees and the benefits offered by this legal arrangement, however, today more and more people choose this method of wealth preservation. To make fiduciary asset management a more attractive option, the legislator has also amended several related pieces of legislation. Examples include the Act on Judicial Enforcement, the amendment of which strengthens the asset protection function of fiduciary asset management, and the Acts on Corporate Tax and on Personal Income Tax, which make this vehicle increasingly popular from a taxation aspect. Regarding the asset protection function of the legal institution, it must be stressed that despite previous disputes, the untouchability of assets under fiduciary asset management now seems unambiguous in judicial enforcement procedures brought against the settlor, provided that the conveyance of property to fiduciary asset management does not involve the concealment of assets under the Civil Code.[17] Contrary to the former regulation, the party seeking judicial enforcement can longer terminate the fiduciary asset management and only the court can hold -in a lawsuit brought for establishing the relative ineffectiveness of the contract- that a transaction aims at the concealment of assets and impose the legal consequences resulting therefrom.

In summary, the concept of fiduciary asset management is a gap-filling development in the Hungarian civil law that provides solution to a number of problems that could not be tackled with traditional legal institutions. At the same time, some circumstances must also be taken into account in case of fiduciary asset management. Such as, for example, the compulsory share of inheritance, which is the part of the estate that the testator's next of kin is entitled to. The Civil Code provides that in determining the compulsory share, the assets under fiduciary asset management must be included.[18] Choosing the right trustee may also be a problem. Given the novelty of the legal institution, there are not many market players who would be adequately prepared

17 See Sec. 6:120 of the Civil Code.

18 Sec. 7:80 (1) of the Civil Code provides that the basis of a compulsory share of inheritance is the net value of an estate, and the net value, at the time of advancement, of the advancement granted by the testator inter vivos, including the value of the assets that the testator transferred to fiduciary asset management.

to perform such tasks, while this is a basic expectation, since the very essence of the legal relationship is trust. Thus, if the founder of a family business without a suitable successor, seeks to preserve the unity and income-generating capacity of the family fortune through fiduciary management, he must devote sufficient time to planning and electing the right partner. Both natural persons and legal entities can be appointed as trustee, but pursuing this activity in a professional manner is subject to license and meeting a number of conditions. Finally, the tax implications may also vary depending on who carries out the activity.[19]

3. The asset management foundation

As we could see above, the new Civil Code has created a new vehicle for preserving family wealth across generations by introducing the concept of fiduciary asset management. This legal institution, however, did not offer a comprehensive solution for every life situation due to its limitations. Its terminability arising from the contractual relationship and its time constraint can be pointed out as disadvantages.

Perceiving this, the legislator passed the bill on asset management foundations in the spring of 2019,[20] creating a special combination of fiduciary asset management and private foundations examined in detail below. This new legal form gives economic actors interested in wealth transfer, intergenerational asset preservation and wealth creation a new legal instrument applicable in virtually any life situations.

The legislative intent behind the Act on Asset Management Foundations, therefore, was to make a special type of foundation available to investors and estate owners for the purpose of managing their assets. These foundations -similarly to other foundations regulated in the Civil Code- are separate, independent legal entities and their specialty is that they carry out the asset management as their main activity. According to the applicable law, the asset management foundation may engage in the management of assets entrusted to it and other assets received by it for fiduciary asset management for a similar purpose.

The asset management foundation is established by the founder with the goal to manage the assets granted by him, to use the so generated proceeds to accomplish the objectives and tasks set out in the charter and to provide financial distributions to the designated beneficiary.[21]

19 See details in Act XV of 2014 on Trustees and the Rules of Their Activities (Bvktv.).

20 See Act XIII of 2019 on Asset Management Foundations.

21 See Section 2 (1) of Act XIII of 2019 on Asset Management Foundations providing that the asset management foundation may be established for the purpose of managing the assets conveyed by the founder and to ensure that proceeds therefrom are used for implementing the tasks specified in the charter document and for providing financial distributions to the person or persons designated as beneficiaries.

Accordingly, the function of the asset management foundation -similarly to fiduciary asset management- is to provide financial distributions to the beneficiaries. Asset management foundations may be established not only for private, but also for public interest purposes, however, the law sets forth special rules for asset management foundations created for such purposes.

The first asset management foundation established in Hungary for public interest purpose was the asset management foundation of Corvinus University, Budapest, which was set up as a pilot project in the spirit of developing a new structure for operating universities.

The minimum capital requirement of the asset management foundation is HUF 600 million, that is, the founder must allocate assets of at least this value to the foundation. This minimum capital must be provided by the founder upon the establishment of the foundation, before submitting the application for registration. Here, unlike in case of other legal entities, the initial capital (assets allocated to the foundation) cannot be provided later; this obligation must be met in full upon establishment. The law only permits the subsequent provision of the part of the asset contributions that exceed the minimum capital. It should be emphasized that the minimum capital does not include the assets transferred for fiduciary asset management. In other words, the minimum capital must be provided to the foundation by the founder without regard to the foundation`s assets received for fiduciary asset management.

Assets may be contributed, similarly to the establishment of companies, both in cash and non-monetary assets (in-kind contribution). However, there is an important difference: in case of asset management foundations, in-kind contributions must be evaluated by an auditor in all cases. The provided non-monetary contributions (in-kind contributions) must be included in the charter itemized by assets, with all details necessary for identification. The founder may decide to reserve the founder's rights to himself, or may, at his discretion, delegate them in whole or in part to the foundation or the board of trustees. One of the important goals of regulating this novel legal form in the Hungarian law was "to enable asset management foundations to be "autonomous" by guaranteeing that their long-term (potentially decades long) operation in pursuance of their goals is independent from the founders by ensuring the founder cannot intervene in this process, including by the exercising of the founder's rights."[22] With regard to the high minimum capital, the legislator imposes as an additional guarantee the requirement of appointing a permanent auditor, as well as the establishment of a supervisory board beyond the board of trustees of at least five members that acts as the executive body. This of course entails significant costs, which, depending on our point of view, can even be regarded as a disadvantage of the legal instrument. At the same time, the incurring costs should be considered in light of the fact that those who can meet the requirements stated for the assets to be allocated

22 Quote from the ministerial reasoning attached to Act XIII of 2019 on Asset Management Foundations, in particular the detailed reasoning attached to Section 5 of the Act.

to the foundation are likely to have adequate funds to cover these additional costs.

If the founder delegated the founder's rights to the foundation, or authorized the board of trustees to exercise these rights, he is also required to appoint an additional person beyond the auditor and the supervisory board. This person is the foundation's asset controller, who primarily monitors the activities of the board of trustees, but also, where appropriate, the supervisory board.

The foundation`s asset controller has extremely broad powers and a strong mandate. His main task is to control the exercising of the founder's rights and the foundation's management and operations, but may also exercise the supervisory board's rights, such as for example initiating judicial review proceedings, if he finds a legal anomaly and cannot be remedied otherwise.[23]

As we can see, the personnel of an asset management foundation is extensive, and thus the founder has to reckon with significant maintenance costs.

The founder has to state in the charter the objectives of the asset management activity and the circle of beneficiaries. In addition, an investment policy must be prepared, which, together with the asset management objectives set out in the charter, serve as the basis for managing the foundation's assets. The investment policy must specify the portfolio to be managed, the principles of risk management and the manner and rules of adopting resolutions necessary for making investment decisions. If the founder fails to draw up the investment policy, it shall become the obligation of the foundation within six months of establishment. The investment policy drawn up by the foundation, in such cases, is reviewed by the supervisory board and, if the body makes a proposal to adopt the policy, it must ultimately be approved by the person exercising founder`s rights.[24]

In summary, the asset management foundation is a special subtype of foundations regulated by the Civil Code, which does not become a trustee by virtue of its establishment and the allocation of assets necessary for its establishment, but only acquires this legal status, if it receives additional assets for fiduciary asset management for the purposes specified by law.[25]

Similarly to private foundations, the asset management foundation is set up by the founder to pursue a long-term objective with the funds provided and the organization described in the charter. What sets it apart from other foundations is that the founder creates it specifically to generate income for the designated beneficiaries. Its main activity is asset management and its goals are achieved by using the proceeds of the asset management activity.

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23 See Sec. 6, 7 and 8 of Act XIII of 2019 on Asset Management Foundations on the board of trustees, the supervisory board and the asset controller.

24 See Sec. 9 (2), (3) and (4) of Act XIII of 2019 on Asset Management Foundations.

25 Regarding the purposes recognized by law, see Sec. 2 (1) of Act XIII of 2019 on Asset Management Foundations.

The main difference between the fiduciary asset management activity and the asset management foundation is that the latter only carries out portfolio management, the most important part of the asset management activity, with its own assets and does not provide investment services to third parties.

That the legislator fixed the minimum capital to be allocated to the asset management foundation in an amount that well exceeds the average size of Hungarian private estates indicates that this legal institution was not primarily intended for domestic equity owners. The primary goal of the legislator might have been to lure back to Hungary offshore assets that have been accumulated in tax havens by Hungarian equity owners since the change of regimes. In addition, the legislator might have also intended to attract foreign fortunes pursuing a geographical diversification strategy to Hungary. Polish wealth owners are expected to take advantage of the new Hungarian legal instrument first and to the greatest extent, but due to the favorable tax environment, Western European equity owners are likely to also consider transferring a part of their assets to Hungarian asset management foundations. Regardless of this, of course, there will be Hungarian equity owners, who can exploit the benefits provided by asset management foundations, but the widespread domestic propagation of this legal form is likely to take many years, since it is contingent on permanent economic growth, even if minor setbacks occur.

In any case, we can definitely say that one of the most effective means of preserving, maintaining the unity of and increasing large estates over decades and centuries, as well as that of their transgenerational transfer is the legal institution of the asset management foundation, provided that the founder can provide a contribution of at least HUF 600 million and can finance the relatively high operating costs resulting from the organizational structure of the asset management foundation.

4. The family foundation

An additional novelty of the new Civil Code is that it has laid the groundwork for the so-called family foundations. This means that contrary to the former rules, foundations now can be established for private purposes –and not exclusively for public purposes- provided that the private purposes are long-term.[26] This permissive attitude of the legislator paved the way for family foundations.

Definitions are not provided in any law as to what exactly what we mean by private purpose. According to the definition found in the professional literature, a foundation can be considered to be of private interest, if it serves the interest of a single person or a small community, without creating benefits for the society.[27]

26 See Sec. 3:378 of the Civil Code that provides that foundations are legal persons set up to pursue the long-term objective defined by the founder in the charter document.

27 See MICZÁN Péter: A magáncélú alapítványról, In: Gazdaság és Jog, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2018/6., 14-20.

The restrictions included in the Civil Code naturally apply to private or family foundations as well, including the provision that foundations may not be formed with the objective of performing economic activities. Foundations are only authorized to perform economic activities, if they are directly connected to the achievement of the foundation's goals. Consequently, the role of family foundations in managing family assets is negligible, but this organizational form is excellent for ensuring that family members are supported, raised and educated throughout the course of multiple generations. The use of this legal device for other purposes, however, is hindered by its applicability in a limited scope and the narrow framework of the allowed economic activities.

5. Summary

In light of the foregoing, we can conclude that family businesses facing the challenges of generational change and persons interested in asset preservation and partition can now choose from among several alternative solutions in Hungary as well. From a wealth preservation aspect, we can see that legal concepts having well-proven, centuries-old traditions in Western Europe have also appeared in the Hungarian law with a particularly flexible system of rules.

The legal instruments of wealth transfer enacted in Hungary not only provide reliable, advantageous and flexible estate planning vehicles for domestic equity owners, they can also attract foreign investors when they seek to create a diversified property structure alongside their portfolio or on a geographical basis. Among the advantages offered by Hungary, our 9% corporate tax rate -the lowest Europe- should be highlighted. This, together with the legal institutions of asset preservation, greatly increase Hungary's international competitiveness and attractiveness to foreign investors.