# Restrictions on successions – special rules

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**1 Under the law of this Member State, do special rules impose, for economic, family or social considerations, restrictions concerning or affecting the succession in respect of immoveable property, certain enterprises or other special categories of assets located in this Member State?**

**1) Agricultural and forestry lands**

*1.1 In general*

Under Hungarian law, strict rules govern the acquisition of ownership over agricultural and forestry lands. These restrictions also affect acquisition by way of succession, whether by Hungarian nationals, the nationals of other Member States, or other foreigners. The restrictive provisions are included in the following two acts:

- Act CXXII of 2013 on transactions in agricultural and forestry land (*a mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény*) (Land Transactions Act) and
- Act CCXII of 2013 laying down various provisions and transitional measures concerning Act CXXII of 2013 on transactions in agricultural and forestry land (*a mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról szóló 2013. évi CCXII. törvény*) (2013 Act on Transitional Measures).

The rules are very complex; the main provisions relevant in terms of succession may be summarised as follows.

*1.2 Immovable property falling under the material scope of the restrictions*

The legal restrictions concern the acquisition of *'agricultural and forestry land'*. According to Section 5(17) of the Land Transactions Act the term 'agricultural and forestry land' (agricultural land) includes the following:

- all parcels of land which are registered for one of the following uses in the register of immovable property: cropland, vines, orchard, garden, meadow, pasture (grassland), reed, forest and woodland (irrespective of whether the land is located within an urban or peripheral zone); and
- parcels of land registered as taken out of cultivation and which are entered in the register of immovable property as: 'area registered as forest in the National Forestry Database'.

*1.3 Restrictions affecting the acquisition of ownership by succession*

The Land Transactions Act treats intestate succession and testamentary succession differently with regard to the acquisition of the ownership of agricultural land. The restrictions described in the Act apply only to acquisitions by testamentary succession and do not apply to the acquisition of agricultural land by intestate succession.

Within the meaning of Section 8(1) of the 2013 Act on Transitional Measures, a case where a testamentary heir may become an heir by operation of law – in the absence of a will and provided that other heirs are debarred from succession – is also deemed an acquisition of ownership by intestate succession for the purposes of the application of the restrictions concerning the acquisition of ownership.

*1.3.1 Rules concerning the acquisition of ownership by testamentary succession*

*a) an authorisation from the public authority is required*

If the testator has disposed of the ownership of agricultural land in a will, in order for the heir entitled under the will to obtain its ownership, approval by a public authority (agricultural administrative body) in the form of an authorisation is necessary (Section 34 of the Land Transactions Act). In the course of the approval procedure the agricultural administrative body ascertains

- whether the heir is eligible to acquire and
- that the will would not result in the infringement or circumvention of a restriction on the acquisition of ownership.

*b) restrictions concerning the acquisition of agricultural land*

The Land Transactions Act treats individual categories of legal entities differently in terms of eligibility to acquire agricultural land. The following categories of persons should be distinguished in this respect:

*i) legal entities which may not acquire ownership over agricultural land under any circumstance*

These include

- foreign natural persons (citizens of Member States are not included under this definition);
- foreign States (or their provinces, local governments, or any of their bodies);
- domestic or foreign legal persons (with a few exceptions).

Exception: the prohibition of legal persons from acquiring agricultural land through a disposition of property upon death does not apply to established churches (or to their organisations, institutions or units having legal personality according to the church's internal ecclesiastical rules).

*ii) persons falling under the definition of 'farmer'*

The term 'farmer' is defined under Section 5(7) of the Land Transactions Act. Natural persons of Hungarian nationality or the nationality of another Member State who have been registered by the competent authorities in an official register kept for this purpose fall under this definition. Preconditions specified by law must be met in order to be registered (agricultural or forestry specialist qualifications; certified agricultural or forestry activities and revenue from such activities, etc.).

For this category of persons the upper limit of the dimensions of agricultural land which may be owned by any one of them – the *'upper limit of land acquisition'* – is 300 hectares; this has to include the area of land already owned by the person concerned and the area of land over which he or she already exercises usufruct rights (Section 16(1) of the Land Transactions Act).

*iii) natural persons who are not 'farmers', but who are nationals of Hungary or another Member State*

Persons in this category may acquire the ownership of agricultural land, if the area of the agricultural land in their possession – together with the area of the agricultural land they wish to acquire – does not exceed 1 hectare (Section 10(2) of the Land Transactions Act).

Exception: the above-mentioned restriction does not apply to acquisitions between close relatives. However, the upper limit of land acquisition of 300 hectares also applies in such cases (Sections 10(3) and 16(1) of the Land Transactions Act).

For the purposes of the above provisions, the following persons are covered by the definition of *'national of a Member State'* (Section 5(24) of the Land Transactions Act):

- a national of a Member State (other than Hungary) of the European Union;
- a national of a State party to the Agreement on the European Economic Area;
- a national of another State who is treated in the same way as the above persons on the basis of an international treaty.

*1.3.2 Acquisition of ownership by intestate succession*

The restrictions described above (point 1.3.1) do not apply to acquisitions of agricultural land by intestate succession. Thus, a person who would be barred from acquiring the ownership of Hungarian agricultural land by testamentary succession (or through an acquisition between living persons) (for example someone who is not a national of a Member State) could acquire such ownership by intestate succession.

**2) Firearms and ammunition**

*2.1 In general*

Under Hungarian law firearms and ammunition may only be obtained with a firearms licence. The following legislation comprises the provisions on the possession of firearms:

- Act XXIV of 2004 on firearms and ammunition (*a lőfegyverekről és lőszerekről szóló 2004. évi XXIV. törvény*) (Firearms Act),
- Government Decree No 253/2004 of 31 August 2004 on weapons and ammunition (*a fegyverekről és lőszerekről szóló 253/2004. Korm. rendelet*) (Weapons Government Decree),
- Decree No 49/2004 of 31 August 2004 of the Minister for the Interior on shooting ranges, the storage of firearms and ammunition by public authorities and the theoretical knowledge and skills required to possess firearms (*a lőterekről, a lőfegyverek, lőszerek hatósági tárolásáról, a fegyvertartáshoz szükséges elméleti és jártassági követelményekről szóló 49/2004. BM rendelet*),
- Instruction No 2/2016 of 7 January 2016 of the Chief Commissioner of the National Police on the rules for storage by public authorities, sale, alienation, disposal, surrender without consideration and destruction of firearms (*a lőfegyverek hatósági tárolásának, értékesítésének, elidegenítésének, hatástalanításának, érték nélküli leadásának, megsemmisítésének szabályairól szóló 2/2006. ORFK utasítás*).

*2.2 Asset falling under the material scope of the restrictions*

The statutory restrictions concern the acquisition of *'firearms and ammunition'*. Within the meaning of Section 2(16) and (22) of the Firearms Act

- *firearm*: means any portable gun or airgun from which a projectile of solid material may be fired with a muzzle energy exceeding 7.5 Joules;
- *ammunition*: means any cartridge which is made up of a projectile, gunpowder and a primer and is pre-assembled in a single case.

*2.3 Restrictions affecting the succession of weapons*

According to Section 14(1) and (2) of Decree No 49/2004 of 31 August 2004 of the Minister for the Interior, when a licence holder dies, the heir may request – after the *grant of probate has become final* – the firearm and/or ammunition to be

- sold by a firearms dealer,
- alienated to a person or organisation that holds an authorisation for its acquisition,
- disposed of, destroyed or
- surrendered without consideration.

If the heir fails to make use of the options described above, the police may destroy the stored firearm and/or ammunition or may hand them over to a firearms dealer for sale following a trade expert's appraisal. The amount from the sale of the weapon and/or ammunition must be paid to the owner, after any costs incurred have been deducted.

**2 Under the law of this Member State, do these special rules apply to the succession in respect of the above-mentioned assets irrespective of the law applicable to the succession?**

Yes (in respect of each of the above mentioned assets).

With regard to agricultural and forestry lands (agricultural lands), the preamble of the Act itself (Land Transactions Act) lists economic, family policy and social considerations (such as the ability of villages to maintain their populations, improving the age structure of their local populations, improving rural employment, ensuring the stable operation of small farms, etc.) which clearly demonstrate the legislator's intention that the restrictions laid down in the Land Transactions Act should be applied in each case, irrespective of which State's law is the law governing the succession.

**3 Under the law of this Member State, do special procedures exist to ensure compliance with the above-mentioned special rules?**

**1) Agricultural and forestry lands**

Yes.

If the notary public conducting probate proceedings becomes aware during the proceedings that the estate includes agricultural or forestry lands (agricultural lands), and the testator has disposed of such land in his or her will, he or she will send the will to the agricultural administrative body with jurisdiction according to the land's location. The latter body has the competence to grant official approval to acquire the ownership of the agricultural land (Section 34 of the Land Transactions Act). In such cases the notary public suspends the probate proceedings until the agricultural administrative body has taken a decision (Section 71(2)(*d*) of Act XXXVIII of 2010 on probate proceedings).

In the course of the approval procedure the agricultural administrative body ascertains

- whether the heir is eligible to acquire and
- that the will would not result in the infringement or circumvention of a restriction on the acquisition of ownership.

The agricultural administrative body communicates its decision on the subject of approval to the notary public as well. If the agricultural administrative body refuses to grant the heir approval to acquire ownership of the land, this provision of the will must be considered invalid (Section 34 of the Land Transactions Act). In such a case the provision of the will in question is thus legally void, which must be taken into account by the notary public, and the transfer of the part of the estate concerned (the agricultural land in question) to the heir entitled under a will cannot be established (Section 71(6) of Act XXXVIII of 2010 on probate proceedings).

The duties of the agricultural administrative body are carried out by the county government offices.

**2) Firearms and ammunition**

Yes.

According to Section 13 of Decree No 49/2004 of 31 August 2004 of the Minister for the Interior, if a person who has a firearms licence dies, any firearms and ammunition must immediately be notified to the police by the person in possession of them, who must also ensure their safekeeping until the police arrive. The police take over and store the notified firearms and ammunition and draw up a record of their actions.

According to Chapter III of Instruction No 2/2016 of 7 January 2016 of the Chief Commissioner of the National Police, after the police have taken over the firearms and ammunition, they will

- inform in writing the official of the deceased licence-holder’s local government who drew up the inventory of the estate (inventory official) that the firearms and ammunition are in public authority storage,
- simultaneously request that the firearms and ammunition be listed in the inventory of the estate,
- and request information regarding which notary public will conduct the probate proceeding.

The police will inform the notary public conducting the probate proceeding in writing of where the firearms and ammunition are located and request the final grant of probate to be forwarded to them after the probate proceeding has been closed.

The notary public accordingly forwards the grant of probate issued following the closure of the probate proceeding to the police. On the basis of the grant of probate, the police informs the heir that within 180 days he or she may request the firearms and ammunition to be sold by a firearms dealer or to be alienated to a person or organisation holding an authorisation to acquire them, or may initiate the disposal, destruction or surrender without consideration of the firearms and ammunition.

If the heir fails to make use of the options described above within the set deadline, the police may destroy the stored firearms and ammunition or may hand them over to a firearms dealer for sale following a trade expert’s appraisal. The amount from the sale of the weapons and ammunition must be paid to the owner, after any costs incurred have been deducted (Sections 13 and 14 of Decree No 49/2004 of 31 August 2004 of the Minister for the Interior).

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