

# STEP JOURNAL

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## **CROWN DEPENDENCIES**

Cutting-edge court judgments and legislative changes from the islands

## **INVESTMENT AND INSURANCE**

How global mobility affects clients' wealth strategies and tax compliance

## **SOCIETY UPDATES**

News on STEP's latest events and thought leadership campaigns



**CELEBRATING THREE DECADES  
AT THE FOREFRONT OF TRUSTS AND  
ESTATES PRACTICE**



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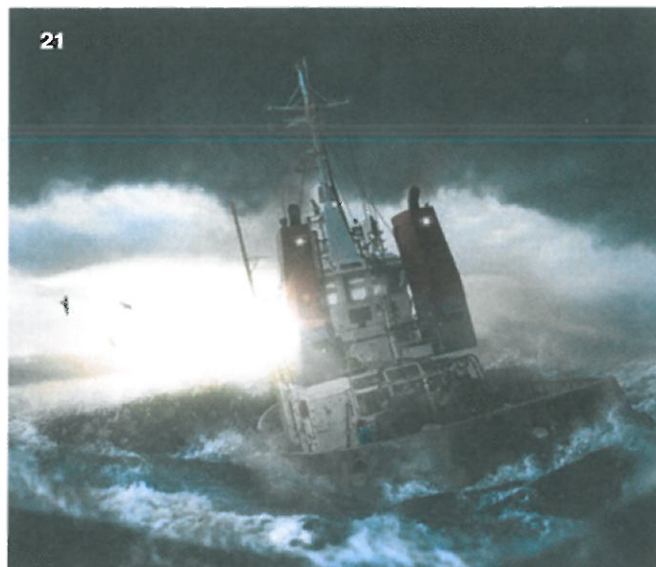
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## KEY POINTS

**What is the issue?**

A new law on asset management foundations (AMFs), first amended in late 2019 and again at the end of 2020, was enacted in Hungary.

**What does it mean for me?**

The aim of the legislator was to create a legal background for a new type of asset management, where a foundation can fulfil this role, in addition to the existing rules of trust and fiduciary asset management regulations.

**What can I take away?**

Advisors with Hungarian clients would do well to study the AMF, which may be suitable for managing both Hungarian and foreign family assets.



## ISTVÁN SÁNDOR ASSESSES THE INTRODUCTION OF ASSET MANAGEMENT FOUNDATIONS IN HUNGARY

**ADVANTAGES OF THE AMF**

In 2019, Hungary set out special regulations for asset management foundations (AMFs) in *Act XIII of 2019* (the Act), with the rules of Hungary's *Civil Code* (the Code) also applying to some extent. It is important to highlight that the asset management legal relationship established by the AMF does not fall within the scope of the law regulating fiduciary asset management (trust) activities. Therefore, the legal relationship does not have to be registered by the Hungarian National Bank (unlike ad hoc trust relationships) and an AMF does not need to be licensed by the Hungarian National Bank (as in the case of profit-oriented trustee companies).

Another distinct advantage of the AMF is that it is not restricted to managing the assets contributed to it by the founder; it may also enter into a trust contract with third parties and can manage several separate assets. The only limitation of this is that the purpose of the trust

relationship with third parties must be the same as the original objectives of the AMF. The provisions of the Code concerning trust contracts also apply to these trust relationships; therefore, the trust properties are separated and enjoy protection against creditors of the settlor, the AMF and the beneficiaries.

**ESTABLISHMENT OF AN AMF**

Two sub-types of AMFs are regulated, one for the benefit of private beneficiaries and one for public interest.

**Operation of public-interest AMFs**

In the case of a public-interest AMF, the beneficiaries are not predetermined persons and the activities of the AMF are aimed at achieving public-purpose goals. The Act exhaustively defines these activities, and the AMFs performing public tasks are listed as those involved in the financing or support of: education, research, health, charity, social, family, child and youth protection, cultural or sports activities. Further, the maintenance and operation of institutions providing such activities are considered to be public-interest objectives. An AMF is considered



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to be in the public interest if three conjunctive conditions are met:

- it has been established for public-interest purposes, as listed in the Act;
- the range of its beneficiaries is open; and
- the founder has requested that it be declared in the public interest.

Among the public-interest AMFs, there are those that qualify as a public-interest AMF performing a public function, the list of which is included in the annex to the Act. According to practice so far, mainly universities have been set up as public-interest AMFs in Hungary.

Both an existing and a newly established foundation may conduct asset management activities, provided the court of registration registers it as an AMF. AMFs can be established by the unilateral declaration of the founder, who can be a natural or a legal person, domiciled either within or outside Hungary. The founder can design the operating rules of the AMF in its charter freely. The founder shall provide the AMF with assets corresponding to at least HUF600 million, which must be made available to the foundation prior to the submission of the AMF's application for registration.

#### Operation of private AMFs

As a general rule, an AMF may be established to manage assets ordered by the founder and the proceeds thereof for the performance of the tasks specified in the charter and for the distribution of assets to the person/s designated as beneficiaries. One main advantage of an AMF is that it can not only manage the assets contributed by the founder, but also enter into other trust relationships with third-party settlers without any administrative registration obligation. The asset management relationship may be established for an indefinite period, i.e., it is not subject to the general limit of 50 years for trust relationships in Hungary.

#### Bodies of private AMFs

The founder appoints a board of trustees that consists of at least three natural persons, but may also decide to entrust the task of the board to only one person. The founder may vest the founding rights to the board of trustees in the memorandum of association and, in such a case, co-opting may also take place in this body in the event of a vacancy. The board of trustees exercises the founding rights in certain cases in the manner specified by law. If the founding rights are exercised by the board of trustees, then they may, with the supervisory board (together, the Boards), decide on the appointment of the members and chairman of the Boards. The decision to recall members of the Boards or the chairman of the AMF may be made

## 'The introduction of the AMF in Hungarian private law is another significant step towards adopting asset management schemes established abroad'

in the same way as their appointment, provided that the right of recall may be subject to conditions or restricted in the memorandum. If the founder establishes the AMF with a unilateral declaration, then the memorandum may provide that the founder reserves the right to give instructions to the board of trustees.

In addition, the election of a supervisory board of at least three natural persons or a foundation asset supervisor (a protector) acting under its authority, and the appointment of a permanent auditor are also mandatory. Furthermore, the charter may dictate the necessary qualifications and other professional requirements for the chairman and members of the Boards.

The novelty of the regulation is the obligatory position of the protector if the founding rights are exercised by the board of trustees. The main task of the protector is to ensure the asset management of the AMF complies with the objectives specified in the deeds of the foundation and to monitor the fulfilment of the statutory obligations of the Boards in exercising the founding rights. The protector may call on the relevant body of the AMF to operate properly and may initiate legal proceedings before the court of registration.

The auditor of the AMF has the right to inspect, give opinions and, to operate legally, they may even initiate legal supervision proceedings at the court of registration.

#### THE POSITION OF THE BENEFICIARIES

Within the scope of the objective of the AMF, the assets of the foundation shall be used to provide services of pecuniary value to benefit the parties designated as beneficiaries in the deed of AMF or by the appropriate body of the foundation. The designated beneficiary shall not be entitled to raise claims against the AMF unless:

- the deed of foundation identifies the beneficiary;

- the deed of foundation specifies the services the beneficiary is entitled to and the date of performance in a manner required for the performance; or
- the board of trustees has decided to provide benefits to the beneficiary, communicated this decision to the beneficiary and the beneficiary has accepted the conditions of receiving the benefits.

#### ASSET MANAGEMENT RULES

The charter of the AMF must set out the basic objectives and principles of the management and use of the foundation's assets, but the founder may also attach the investment regulations to the articles of association as part of this. The investment regulations must include a definition of the AMF's asset portfolio, as well as the risk management and decision-making methods applicable for investments. The founder can ensure the flexibility of the operation of the trust fund by empowering the board of trustees to amend the memorandum of association. The founder may specify in the memorandum of association the amount below which the assets of the AMF may not fall; this may not be less than the minimum capital.

#### TERMINATION OF AMFs

A private AMF may be dissolved at the request of the founder exercising its right of founder. If the founder makes an application to that effect, the court of registration shall establish the cause of the foundation's termination in civil non-litigation. The termination of the foundation shall not affect the fulfilment of obligations already established and due in favour of the beneficiaries. The AMF shall also be wound up if its assets do not reach the minimum amount of capital for three full years, as this shall be deemed an impediment to the foundation achieving its objective. It should also be noted that the AMF may not be transformed into another legal person: the foundation may only merge with another foundation and may only be divided into foundations.

#### CONCLUSION

The introduction of the AMF in Hungarian private law is another significant step towards adopting asset management schemes established abroad. As a result of these flexible regulations, the AMF may be suitable for managing both Hungarian and foreign family assets and for developing well-considered asset plans for the preservation of wealth in generational asset transfers.