GETTING INTO HUNGARY:
THE COUNTER-REVOLUTIONARY CODE ON FOREIGN INVESTMENT

ALASTAIR S. HUDSON*
Barrister, Lincoln's Inn, London

1. Introduction

The aim of this extended article is to provide some essential background information for the foreign investor who is contemplating entry into any sort of business in Hungary. It must be said from the outset that the author in no way intends to be bound by any statement made in this article and that anyone considering investment in Hungary must ensure that he obtains both Hungarian and domestic professional advice before proceeding. I have concentrated on the laws which came into force after the 1990/1991 upheavals. It must be understood that the legislative process in Hungary is slow and there are enormous problems in obtaining translations of Hungarian legislation with any clarity. The occasional ambiguities in the translation of the relevant laws reinforces the need to check with Hungarian legal advisers. The law is correct as of 1 May 1991.

Considering the aforementioned aim of this article, discussion shall be kept to a minimum in favour of an exposition on the most salient features of the legal system and the particular points of note for the foreigner. I shall begin with the Constitution which is the point from which all laws flow in Hungary. Then I shall explain the important provisions of the commercial code for those who are interested in straightforward sales in Hungary with particular reference to the few regulations that exist concerning the practice of foreign trade. Building on this commercial basis, I shall detail the variety of types of vehicles which can be created by foreigners and Hungarians for simple investment or for the creation of wholly foreign-owned trading undertakings or some form of joint venture. After this, I shall concentrate on those who wish to set up in business in Hungary by explaining the property laws with relation to the procure-

* The author is also the co-author of Doing Business in Hungary and Doing Business in Czechoslovakia (Kogan Page 1991) and the author of an Investment Guide to Central and Eastern Europe for Citibank NA.
ment of commercial premises, employment regulations, and the tax system. Allied to this final consideration is the problem of the repatriation of money and profits.

2. The Legal Framework

The aim of this section is to describe the legislative process, to explain the composition of parliament and government, and to give an overview of the political and traditional legislative framework in which the transition to a market economy is taking place.

2.1 The Constitution

The first legislative act of the new parliament in 1990 was the creation of a new constitution which is the basis upon which the entire legal edifice is built. All other laws are to accord with the constitution. Consequently, any right provided by the constitution which is breached by either the action of another person or of any legislative provision is actionable as such under the constitution. Similarly, any law which runs contrary to the constitution, or which attempts to deny or remove rights granted by the constitution, is void. The constitution itself is partially entrenched by a provision that a two-thirds majority of parliament is required to amend it.

There are two declarations which are central to the Hungarian constitution. Firstly, that the state is founded upon a market economy and, as a result, public and private property are to receive equal protection before the law. Secondly, the right to take part in an "economic enterprise" is acknowledged, together with the need for freedom of competition. On a more individual level, the principle tenet of the Hungarian constitution is that the state is a republic in which the people have absolute power which they exercise via their elected representatives.

The role of groups of private citizens is given a prominence in excess of the basic provision for the supremacy of the people. Political parties can be formed without sanction or control but there are positions within society to which the members of a political party cannot be appointed. A member of a political party cannot be made a judge of the constitutional court for example. Trade unions are expressly vested with the duty of protecting and representing the interests of employees, co-operatives, and entrepreneurs.

The constitution also contains basic human rights provisions which are

1. The problem with this provision is of course two-fold: firstly, it restricts the ability of individuals to take part in political activity in the capacity of ordinary citizens and, secondly, it seeks to deny the role of politics in an institution like the Constitutional Court which is making political decisions of necessity.