

der gleichen Pflicht unterworfen ist. Das Beschlussbuch und das Gesellschafterverzeichnis ist auch in Ungarn zu führen und gewisse im Gesetze aufgezählte wichtigere Beschlüsse sind in Bezug auf die inländische Niederlassung unwirksam, bevor sie in das hiesige Handelsregister eingetragen worden sind. Die Rechtsfolge der obigen Vorschriften ist: Ordnungsstrafe, in gewissen Fällen aber auch die Löschung der Niederlassung, was unter den im Gesetze vorgeschriebenen Voraussetzungen durch jedermann beantragt werden kann. Dies gilt gleichfalls auf ungarische Niederlassungen von Aktiengesellschaften, Genossenschaften und Gesellschaften mit beschränkter Haftung.

Handelsgesellschaften, wenn sie ihre Firma auch eintragen liessen, haben noch bei den Gewerbebehörden gewisse im Gesetze vorgesehene Anmeldungen zu erstatten, bezw. eine Gewerbebelizenz auszulösen, insofern dies in Hinsicht auf das ihrerseits zu betreibende Gewerbe im Sinne des Gesetzes erforderlich ist. So können z. B. Aktiengesellschaften und Gesellschaften m. b. H. Gewerbe nur in einem das Handwerk übersteigenden Masse ausüben; Einzahlungen auf Sparkassabuch können im allgemeinen nur solche Aktiengesellschaften annehmen, die Mitglieder einer amtlichen Organisation, der Geldinstitutszentrale sind; eine private Versicherungsunternehmung kann bloss in der Form einer Aktiengesellschaft oder Genossenschaft errichtet werden, zur Gründung ist vorherige Genehmigung und nach einem jeden Versicherungszweige Ausweis eines Versicherungsfonds von P 290,000.— erforderlich. Im allgemeinen kann jedoch festgestellt werden, dass diese gesetzlichen Erfordernisse in überwiegender Zahl solche Formalitäten sind, die durch jedermann erfüllt werden können und die keine bemerkenswerten Hindernisse für jene in- und ausländische Gesellschaften bilden, die in Ungarn eine Geschäftstätigkeit entfalten wollen.

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### **The legal position of foreign creditors in Hungary.**

The world crisis has created an exceedingly difficult situation for individual enterprises as well as for the State and other public bodies. The excessively reduced reserves of foreign exchanges and currencies have become entirely inadequate for settling foreign debts even at the cost of utter ruin to the debtors. Hungary, however, did not

consider for one moment to adopt the convenient attitude of repudiation, but from the very beginning sought to discharge her debts in spite of the difficulties.

In their endeavours to find a solution our Government at last resorted, in July, 1931, to a system of foreign exchange control, and has since developed it by issuing about 50 decrees embodying restrictions upon dealings in foreign exchanges. The object of the following few pages is to survey in what manner the question of foreign debts has been settled by the relevant regulations, without entering into an analysis of the problem in its bearing upon economic policy.

I. The fundamental principle of the settlement of the problem is that without the authorisation of the National Bank of Hungary it is prohibited to make payments to foreign creditors, either in foreign currency or in Pengoes. Not only direct payment is prohibited, but also all its substitute forms, such as crediting, depositing or payment into a bank-account etc. If, however, the National Bank of Hungary, at the request of either creditor or debtor, authorises a payment (transfer, crediting, payment into a bank-account etc.), there is no legal obstacle to such a payment being effected.

By the decrees issued in this connection the Government gave the National Bank full powers to decide which claims may entirely or partially be satisfied, whether such payments may be effected in foreign currency or in Pengoes, and whether they may be transferred abroad or utilised in the country. The National Bank has been entrusted to establish the principles of foreign exchange control and to carry out the administrative work thereby entailed. By virtue of the powers thus obtained the National Bank introduced certain measures, made agreements with the Central Banks of other countries, and cooperated in the conclusion of agreements with various groups of foreign creditors. Amongst the latter are the important Standstill and Clearing Agreements, as also agreements regarding the exchange of goods (compensation agreements). The first Standstill Agreement (made with the British, American and Swiss banking-creditors) came into force on February 1st, 1932. At present the fourth Agreement of April 4, 1934 is in force, to which the Swiss banking-creditors are no parties. The significance, however, of these Standstill Agreements exceeds their limits, because they all pronounced that none of our decrees shall grant preferential treatment to creditors of other countries to the detriment of the signatories of these Agreements, and also

because the principles of the Agreements apply not merely to claims arising from bank-credits, but to other claims as well.

With regard to the agreements and regulations of the National Bank there must be distinguished, from the point of view of their settlement, three categories of debts: a) bank-credits, b) merchandise-debts and c) other debts.

a) Bank-credits (credits against bills, cash-credits). These come under the terms of the Standstill Agreement, if the creditor is a foreign financial institute party to the Agreement, and the debtor an inland financial institute, bank, commercial or industrial firm, provided the foreign bank creditor notified his debtor prior to April, 1934 that he adhered to the Agreement.

The main thesis of the Standstill Agreement is that any debt falling under its terms may, with the consent of the National Bank, only be repaid if similar facilities for similar purposes and equal in amount to the repayment are held by the foreign bank creditor at his or some other Hungarian debtors disposal (hence the term „Standstill“). If no such facilities are granted, the foreign creditor may only claim from the Hungarian debtor the payment in Pengoes of 5% of the capital and interest on the facilities granted him prior to October 1st of the current year, such payments only to be made to accounts utilisable in Hungary. The Standstill Agreement also specifies the ways in which foreign bank creditors may utilise the amounts thus paid into their accounts, such as for the acquisition of inland real estate, industrial undertaking shares and other securities, for granting mortgages on Hungarian real estate and credits to Hungarian banks or industrial or commercial concerns, for defraying the expenses of foreigners whilst staying in Hungary etc.

If a bank-credit does not come under the terms of the Standstill Agreement, it is entirely left to the discretion of the National Bank to determine the conditions on which payments may be made, but such conditions may on no account be more favourable than those prescribed by the Agreement.

b) Merchandise-debts are divided into two main groups, according to whether Hungary has or has not concluded a Clearing Agreement with the country where the goods come from. In the former case the National Bank gives its permit for payment unconditionally, and it must only be proved that the goods originate from a clearing country. In such an event the Hungarian debtor does not effect direct pay-

ment to his creditor, but pays here into the clearing account of the National Bank of the country concerned; the foreign creditor receives his due from his own National Bank. At present we have Clearing Agreements with Austria, Belgium, Bulgaria, France, Luxemburg, Germany, Italy, Roumania and Switzerland.

In the case of goods coming from non-clearing countries we distinguish — owing to the above-mentioned effect of the Standstill Agreements — between merchandise-debts that arose prior to February 1st, 1932 (old debts) and debts that have arisen subsequently (new debts). *Old* debts may accordingly, with the consent of the National Bank, only be settled (and only by means of Pengoe payments to inland blocked accounts) if the foreign creditor grants to a Hungarian resident an adequate new credit. *New* merchandise-debts may be settled regardless of this stipulation and, dependent upon the consent of the National Bank, either in Pengoes or in foreign currency.

c) There are debts which belong to neither of the afore-said categories, such as cost of maintenance, wages, lawyers' fees, private loans, damages etc. The provisions of the Standstill Agreement extend also to these debts, but the practice of the National Bank is to consider the circumstances of each case, thus the financial circumstances of debtor and creditor, and also to what extent the debtor's claims require to be satisfied.

This classification made, I draw attention to the following important rules:

1. As already pointed out debtors may only effect payments on obtaining the consent of the National Bank. The practice of our Courts developed the rule that it is *the debtor*, and not the creditor, who must take all the steps necessary for obtaining the consent of the National Bank. If, therefore, an overdue debt remains unsettled, the creditor may go to law without any special permit to do so. If, however, in the course of the law-suit the debtor proves that he had applied to the National Bank for a permit to pay, but the latter either prohibited payment or granted a postponement, the Courts suspend proceedings whilst the prohibition or the postponement are operative. The position is different in the case of an execution which is only admitted by the Courts if *the creditor* proves that the National Bank had given its consent for the debt to be collected.

2. The decrees regulating dealings in foreign exchanges acknowledged the stipulations regarding payments in actual foreign currency. Thus if by virtue of the transaction the

debtor must pay the creditor in actual foreign currency, the creditor is under no obligation to accept any other currency than that stipulated. There were instances when the debtor deposited with the Courts the Pengoe equivalent, calculated at the official rate, of his mortgage-debt payable in actual foreign currency, and the creditor, when approached, refused to cancel the debt. Our Courts rejected the debtor's application for cancellation of his debt in the Land Register on the ground that the decrees in question did not affect the creditor's right, to insist upon being paid in foreign currency. The motivation admits that creditors are unable to get actual foreign currency from their debtors, but they are on the other hand not obliged to accept in satisfaction anything but the stipulated foreign currency.

II. As regards payments of so-called *transfer-debts* (or, in other words, bonded debts, viz. capital and interest due on State Debentures, Mortgage- and other Bonds, Treasury Bills and Treasury Bonds), the aforementioned decrees provide no postponement, and matured interest and annuities on these debts must be paid into a special fund, the so-called Foreign Creditor's Fund, which is administered by the National Bank of Hungary. The *conversion into foreign currency and the transfer abroad*, however, of the amounts thus paid is suspended (hence the term *transfer-debts*).

The National Bank decides in each instance whether and to what extent obligations and coupons of bonded debts falling due are to be redeemed. The basic Transfer Moratorium Decree contains the provision, a guarantee from the creditor's point of view, that debtors are prohibited to make payments in respect of such loans in excess of the regular amortisation schedule, or to release such bonds by drawings. The Decree thereby prevents debtors from exploiting low rates of exchange to the detriment of creditors.

Payment of interest on transfer-debts is effected by debtors in Pengoes into the Foreign Creditor's Fund, and the National Bank decides as to the transfer of these amounts.

These restrictions do not apply to the League of Nations Loan, the so-called Caisse Commune bonds, to the payments on the pre-war loans of the City of Budapest to be made under the Ostende Agreement and to certain Treasury Bills placed in France.

In the foregoing we have outlined the arrangements made by Hungary, exerting herself to the utmost, to settle the problem of foreign debts. These arrangements were dictated by necessity, and their object had been to place temporary restrictions upon payments in order to be able to offer to creditors, pending the improvement of the economic situation, the maximum they can expect in the given circumstances, if the interests of creditors as well as debtors are to be regarded alike. It should not be forgotten that Hungarian Law, which had been built upon the classic foundation of respect for acquired rights, only departed from its traditional principle under duress, and only to such an extent and to such limits as seemed unavoidable.

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### **Rates of exchange to be applied when discharging debts in foreign currency.**

Our legal rules, when determining the rate of exchange to be applied in discharging debts contracted in foreign currency (but without the gold-clause) differ as to the date of such rates according to the nature of the transaction underlying the claim.

I. In *commercial matters*, unless payment in actual foreign currency had been stipulated, creditors may according to the Commercial Code only claim the Pengoe equivalent of the foreign currency amount, to be converted at the rate quoted on the *day of maturity* (though debtors are also entitled to pay in foreign currency).

II. The *Bill of Exchange* Act also discriminates as to whether or not payment in actual foreign currency has been stipulated by the drawer of a bill. In the latter case, the creditor may only claim the Pengoe equivalent of the foreign currency, but the debtor is entitled to make the payment in the stipulated foreign currency as well. According to the practice invariably followed by our Courts the rate to be applied to the conversion is that *quoted last prior to the day of maturity*.

If payment in actual foreign currency has been stipulated debtors can, in cases of commercial matters as well as of Bills of Exchange, only discharge their debt by a payment in the foreign currency concerned. Under normal conditions creditors as a rule accept the Pengoe equivalent