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New Limited Right In Rem on the Horizon – Building Right Could Spark a Turnaround in Solar Power Financing

- [1] The Ministry of Economic Development plans to introduce a new legal concept in “building right”, which can be created with respect to parcels of land and could have wide-ranging consequences, including giving a new impetus to solar power projects.
- [2] The bill on building rights is part of a wider package of proposed legislation that is designed to increase the competitiveness of the Hungarian economy and that was published for public consultation earlier this month.
- [3] The right would be regulated in the Civil Code and it would allow its holders to construct and exploit buildings on or under the land. A rights holder would be entitled to construct a building and to use a piece of land for that purpose, and to possess, use and collect the benefits of the new building or a building that already exists on the land.
- [4] The provisions of the Civil Code on buildings are applicable to all other structures, and therefore, building rights could be obtained with regard to all kinds of structures.
- [5] The reason for the proposed legislation is that obtaining financing for construction projects can be problematic in the absence of appropriate loan securities. The heart of the problem is that not-yet-existing buildings and structures cannot be mortgaged and are not accepted as security for loans. Mortgages could be established on building rights that could be entered onto title deeds would solve the issue of lack of loan securities.
- [6] The commentary to the bill specifically mentions solar power projects as an example, where the real value of the project lies in the permit pertaining to the land and the long-term feed-in guarantee rather than the equipment installed. The Ministry argues that the reintroduction of building rights that are marketable and can therefore be encumbered can make it easier for investors to secure financing for solar power projects.

- [7] Mortgaged building rights could serve as loan securities in construction concessions concerning public land and construction projects completed on, above or under public land (such as motorways, tunnels and underground parking garages).
- [8] While introducing the concept of building rights, the bill proposes to retain the option of having separate ownership of buildings and land, and would also not change the provision of the Civil Code that allows property owners to register a piece of land and a building standing on it as separate properties in the property register. The proposed building rights legislation would offer another option or, more precisely, another alternative for encumbering land with a limited right in rem for construction purposes.
- [9] The bill would introduce building rights in an arrangement where it could be optionally selected as an alternative to already available land use rights. However, the proposed legislation would disallow the coexistence of the two rights, because the government believes that this would be an inadvisable arrangement. Therefore, the bill states that where any part of a parcel of land is subject to a land use right, a building right may only be granted to the holder of the land use right if the land use right is simultaneously struck off the property register. However, if another part of the same land is not subject to a land use right, a building right can be granted with respect to such part to any entity irrespective of the existing land use right.
- [10] The Ministry argues that in terms of its characteristics, the building right is similar to usufruct in real property, noting, however, that it grants stronger powers to the rights holder than use or exploitation rights, because the rights holder, subject to the contract concluded with the owner, will be able to freely dispose over the building and its constituent parts that have been created with the exercise of the building right. Building rights, unlike usufruct, could be transferred (whether directly or in M&A transactions) and encumbered, and therefore, they would be more valuable than usufruct in this respect as well.
- [11] Although the Ministry intends to introduce building rights primarily to facilitate investment projects of the kind mentioned above, it is likely to have a wider impact on the entire property market.

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