
GEORGE MASON UNIVERSITY SCHOOL OF LAW
JOURNAL OF INTERNATIONAL
COMMERCIAL LAW



ARTICLE

IS A HUNGARIAN TRUST A CLONE OF THE ANGLO-
AMERICAN TRUST, OR JUST A TYPE OF CONTRACT?:
PARSING THE ASSET-MANAGEMENT PROVISIONS OF THE
NEW HUNGARIAN CIVIL CODE

Prof. Charles E. Rounds, Jr. & István Illés, Esq.

VOLUME 6

SPRING ISSUE

NUMBER 2

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Cite as 6 GEO. MASON J. INT'L COM. L. ____ (2015)

The *George Mason Journal of International Commercial Law* is published three times per year. The *George Mason Journal of International Commercial Law* can be contacted as follows:

George Mason Journal of International Commercial Law
3301 N. Fairfax Drive, Arlington, VA 22201
<http://www.georgemasonjicl.org/>

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**IS A HUNGARIAN TRUST A CLONE OF THE ANGLO-AMERICAN TRUST, OR
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PROVISIONS OF THE NEW HUNGARIAN CIVIL CODE**

Prof. Charles E. Rounds, Jr. & István Illés, Esq.

I. INTRODUCTION

On March 15, 2014, the Hungarian Parliament enacted into law the New Hungarian Civil Code (NHCC).¹ The NHCC creates out of whole cloth a civil law fiduciary asset-management vehicle (FAM) that in form and function bears some resemblance to the Anglo-American trust (A-A Trust). But is an FAM a true trust, or is it merely a contract variant? We conclude the latter.

The NHCC's legislative history confirms that the designers of the FAM had something akin to the A-A Trust in mind. An FAM is an arrangement between the FAM settlor and the FAM manager under which the FAM settlor transfers title to property to the FAM manager, who, either for compensation or gratuitously, manages the property for the benefit of the FAM beneficiaries.²

In this article we lay out in what respects the FAM and the A-A Trust are alike, and in what respects they are different. We conclude that the FAM is neither an A-A Trust nor its clone. Rather, it is a form of contract.³ Although the FAM meets the definition of a trust as that term is defined in the Hague Convention on the Law Applicable to Trusts and Their Recognition,⁴ it is in reality a partial statutory trust analogue operating in a legal environment that is not even remotely similar to English equity. The FAM, for example, has no complementary resulting trust and constructive trust analogues.

Functionally, there are critical differences as well. At the top of the list of deviations is the inability of the FAM to bestow property rights on

¹ The full official name of the Code is: Act V of 2013 on the Civil Code.

² NHCC § 6:310(1).

³ There is a general consensus among trust scholars that the A-A Trust is not a contractual relationship, but a *sui generis* legal/equitable relationship. See generally Charles E. Rounds, Jr. & Charles E. Rounds III, *Loring & Rounds: A Trustee's Handbook* §8.22 (2015 ed.), at 1310.

⁴ Hague Conference on Private International Law, *Convention on the Law Applicable to Trusts and on their Recognition* (1985), available at: http://www.hcch.net/index_en.php?act=conventions.text&cid=59.

persons who have yet to be conceived. Also, unlike an A-A Trust, a FAM may not be created for charitable purposes, nor does it have a power of appointment feature. It is not even clear that one may settle an irrevocable FAM.

In Part II we give our North American readers a quick tour of the civil law environment into which the FAM has been released by Hungary's parliament. We explain why it determined that there was a need for an FAM.

In Part III, we discuss the practical aspects of introducing a partial trust analogue into a civil law jurisdiction. Unfortunately, there has been little thought given to servicing the analogue. Imagine buying a Boeing 747, but not the part-supply, employee-training, and operational support infrastructure that goes along with it. The A-A Trust, on the other hand, is supported by a system of thousands of courts world-wide, each drawing upon a general trust jurisprudence that has evolved by trial and error over many centuries. Hungarian judges should look to Anglo-American trust law for guidance when adjudicating FAM disputes, but will they?

In Part IV, we address the myriad practical implications of the FAM being a contract rather than an A-A Trust clone.

In Part V, we consider whether the creditors of the FAM settlor, of the FAM manager, and of the FAM beneficiary may gain access to the FAM property.

In Part VI, we zero in on the rights, duties, and obligations of the FAM manager. We conclude that there are critical differences between the two regimes when it comes to the scope and intensity of the fiduciary's duty of loyalty.

Part VII focuses on some of the remaining critical substantive differences between the FAM regime and the A-A Trust regime. The power of appointment, for example, is unknown in FAM jurisprudence. There are registration and licensure requirements unique to the Hungarian cultural/political environment. There is no such thing as a charitable FAM, whereas charitable A-A Trusts are ubiquitous in the common law jurisdictions. An FAM for the benefit of persons yet to be conceived is out of the question. In the common law jurisdictions, A-A Trusts for the benefit of such persons are the rule rather than the exception in the estate planning context.

Part VIII addresses the intersection of FAM law and Hungarian succession law.

II. BACKGROUND – HISTORICAL, POLITICAL AND JURISPRUDENTIAL ASPECTS

As the FAM is a civil law construct, we begin with a general primer on the critical differences between the common law and the civil law approach to the regulation of legal relationships. We then place the FAM in its historical context. Finally, we consider in this section the political forces in Hungary that turned the FAM from a dream into a reality.

a. The Common Law and Civil Law Regimes Have Fundamental Structural and Conceptual/Doctrinal Differences

Civil law jurisdictions have generally not been receptive to the trust concept. This is because attributes of the Anglo-American trust were considered to be incompatible with certain foundational civil law principles.⁵

i. Structural Differences

Civil law is first and foremost statutory law. Common law as enhanced by equity is, for the most part, judge-made. Hungary is a civil law jurisdiction. Since the 19th Century, Hungarian courts have not been bound by *stare decisis*.

To be sure, the decision of a Hungarian appellate court in a given matter will bind the trial court. Still, the appellate court's function is to interpret and apply pre-existing statutory law, not to create new law.⁶ Thus, the Hungarian judiciary could not create a new legal relationship out of whole cloth. The English judiciary, specifically its courts of equity, did just that when it invented the A-A Trust.

This is not to say that the Hungarian parliament may not promulgate a principles-based regime, leaving it to the Hungarian judiciary to flesh out the skeleton over time. In fact, that is just what it did when it launched the FAM.

Civil law jurisdictions, such as Hungary, however have not developed an equity jurisprudence. Thus, the Hungarian parliament in designing the FAM had to come up with a *functional* equivalent of the equitable or

⁵ See generally Vera Bolgár, *Why No Trusts in the Civil Law?* 2 Am. J. Comp. L. 204 (1953).

⁶ See A Magyar Köztársaság Alkotmánya [Constitution of the Republic of Hungary] §§ 25, 28, available at: <http://www.kormany.hu/en/news/the-new-fundamental-law-of-hungary>.

beneficial property interest that was compatible with civil law principles, particularly the civil law's indivisibility of ownership principle and the *numerus clausus* of proprietary rights. Recall that in the case of an A-A Trust, the legal title is in the trustee; as to the world the trustee is the legal owner of the entrusted property. The trust beneficiary, however, simultaneously possesses the equitable property interest in the entrusted property. That two people can simultaneously possess a different collection of ownership rights in the same asset is anathema to the civil law's indivisibility of ownership principle. We explain how the Hungarian Parliament managed to thread the needle later.

ii. Conceptual/Doctrinal Differences

We begin with a discussion of the civil law's indivisibility of ownership principle. Since the Napoleonic era, "ownership" or its equivalent "legal title" has been defined in civil law jurisdictions as an absolute right that cannot be divided into 'legal' and 'beneficial' parts.⁷ Thus, it cannot be said that one "owns" an item of property unless one possesses three fundamental rights with respect to the property: (1) the right to use the property (*usus*); (2) the right to benefit from it (*fructus*) and (3) the right of disposition (*abusus*).⁸ Ownership is an indivisible right in every civil law jurisdiction. That X holds the legal title to an item and Y owns the equitable or beneficial interest in it, as is the case with the A-A Trust, is incompatible with civil law's indivisibility of ownership principle.

The principle of *numerus clausus* of proprietary rights is statute-based. Neither the judiciary nor private parties may invent new proprietary rights, or manipulate those that have been created by statute. The *numerus clausus* of proprietary rights is a set menu.⁹

⁷ See generally Stathis Banakas, *Understanding Trusts: A Comparative View of Property Rights in Europe*, InDret, Vol. 323, No. 1/2006, 1-9, (2006), available at: <http://ssrn.com/abstract=1400130>.

⁸ This does not mean that one's ability to exercise these three fundamental rights of ownership, such as the right to use the property, cannot be encumbered. A lease agreement, for example, shifts the right of possession from the lessor to the lessee. But when the lease terminates, the lessor will be the one who becomes entitled again to use and possess the subject property. See generally René David & John E. C. Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law* (1978) at 325-26.

⁹ See generally Vera Bolgár, *supra* note 5, at 212-13.

b. History & Politics – How the ‘Proxy-management Idea’ Took Root in Hungary?

In the words of Professor Frederick William Maitland, “If we were asked what is the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence I cannot think that we should have any better answer to give than this, namely the development from century to century of the trust idea.”¹⁰ He was extolling the A-A Trust’s elasticity, that is to say its protean attributes. What other single legal relationship can serve as a securitization vehicle, think mutual fund; an asset-securing vehicle, think a corporate bond issue; or a vehicle for securing the economic welfare of yet-to-be-conceived grandchildren, think a garden-variety discretionary family trust? In a civil law jurisdiction, it would require a cocktail of partial trust analogues to perform these various tasks. Moreover, some tasks would still not be performable under the civil law, such as the creation of property rights in persons unborn and unascertained. As we shall see, introducing a full-blown trust analogue into Hungary’s jurisprudence turned out to be easier said than done.

i. No Need for a Civil Law A-A Trust Analogue under the Soviet Union’s Sphere of Influence

Why only now are the Hungarians turning their attention to asset management? The simple answer is that Hungary fell within the USSR’s sphere of influence after WWII. Though Hungary had managed to preserve her territorial integrity and formal sovereignty, her political and economic systems were forced to adapt to the socialist ideology. Needless to say, there was not a lot of demand in Hungary in the years before the Wall fell for innovative legal vehicles designed to facilitate the private proxy management of accumulated private wealth. With the fall of the Wall however, that issue became moot.

ii. Market Economy Created Need for FAMs

In the years immediately after the Wall fell, wealth management by proxy was looked upon with suspicion by those Hungarians who were accumulating private wealth. These first-generation wealth accumulators were loath to relinquish the management of that new-found wealth to others. It was “hands on” when it came to building one’s nest egg; it was “hands on” when it came to protecting and managing it.

¹⁰ D. J. Hayton, *The Law of Trusts*, Sweet & Maxwell, London, 1989 at p. 2.

Now that these first-generation wealth accumulators are getting on in years, the need for proxy wealth management is becoming self-evident, even to them. Their physical and mental capacities will not remain intact forever. And not everyone in the second and third generations has the ability and/or inclination to prudently manage accumulated private wealth. In addition, Hungarian succession law has needed to be updated to facilitate the inevitable inter-generational transfer of this accumulated private wealth.

The collapse of the Cypriote bank system in 2013¹¹ and the increasing pressure from the US/EU and the OECD to eliminate offshore tax havens are supercharging these reform efforts.¹² Hungary's Parliament realized that a proxy asset-management vehicle (accompanied by a favorable tax regime) might not only be attractive to domestic entrepreneurs, but also stimulate foreign investment and the repatriation of Hungarian wealth from the offshore jurisdictions.

c. The FAM's Political/Legislative History

An earlier version of the NHCC,¹³ which, in part, authorized Hungarians to establish FAMs, post-enactment was declared unconstitutional by Hungary's Constitutional Court on procedural grounds.¹⁴ A fine-tuned NHCC text was re-submitted to the Parliament in a way that passed constitutional muster. It became law in 2013. In the interim, the NHCC's FAM provisions had been fine-tuned as well, so perhaps the delay was a good thing.

i. The FAM's civil law Competitors

It was not a foregone conclusion that Hungary needed an FAM to facilitate the management and postmortem succession of private wealth. The civil law already had numerous partial trust analogs. What follows is a brief description of the three most serious contenders.

¹¹ See Paul Mason, *Cyprus crisis: Clouds of uncertainty as banks reopen*, BBC (Mar. 28, 2013), <http://www.bbc.com/news/world-21966775>.

¹² See *Standard for Automatic Exchange of Financial Account Information*, Organisation for Economic Co-operation and Development, <http://www.oecd.org/ctp/exchange-of-tax-information/Automatic-Exchange-Financial-Account-Information-Common-Reporting-Standard.pdf> (last visited Apr. 8, 2015).

¹³ 2009. évi CXX. törvény a Polgári Törvénykönyvről (Act CXX of 2009 on the Civil Code) (Hung.).

¹⁴ Alkotmánybíróság (AB) [Constitutional Court], Apr. 26, 2010, 436/B/2010 (Hung).

1. *The Mandate*

The mandate is a civil law agency, the subject of which may be property.¹⁵ The mandator is the principal; the mandatee is the agent. A civil law mandate may either be gratuitous or contractual. Title to the subject property remains with the mandator. The mandatee is at all times subject to the control of the mandator. Should title to the property pass to the mandatee, the legal status of the mandator with respect to the property would be merely that of a general creditor of the mandatee. There would be no greater interest in the property itself.¹⁶ On the other hand, were the mandatee a true trustee of the property and the mandator the trust beneficiary, then the mandator would enjoy a much more intense proprietary relationship with the subject property. The Anglo-Americans refer to it as an equitable interest incident to a trust relationship. It is functionally an enhanced security interest. The mandate is not an attractive vehicle for proxy private wealth management, in large part because it lacks a comparable security feature.

2. *Usufruct*¹⁷

How about dusting off the civil law *usufruct*? The property-administration powers of the holder of a *usufruct* are broader than those of the holder of a mandate, making the former relationship somewhat more suited to the facilitation of wealth management. For all intents and purposes, the only power lacking is the power of encumbrance and disposition. The problem is that usufruct cannot be a vehicle for *proxy* wealth management. Not only is the holder of the *usufruct* a beneficiary of the *usufruct*, the holder also owes no fiduciary-type duties to anyone else. This is a poor excuse for a trust analog.

3. *The Foundation*¹⁸

The third competitor was the (private) foundation, a *sui generis* civil law wealth-management vehicle that was invented by the Germans (“*Privatstiftung*”).¹⁹ The civil law foundation has corporate and trust aspects

¹⁵ 2013. évi V. törvény a Polgári Törvénykönyvről (Act V of 2013 on the Civil Code) (Hung.).

¹⁶ See also Norbet Csizmadia & István Sándor, *A bizalmi (fiduciárius) vagyonkezelés modelljei és a Ptk. reformja. [The fiduciary (trustee) asset management models and the Civil Code. reform]* 4 Polgári jogi kodifikáció 10, 10.

¹⁷ See NHCC §§ 5:146-5:158.

¹⁸ See NHCC §§ 3:378-3:404.

¹⁹ A foundation in the German and Hungarian legal traditions is a distinct legal person without shareholders. The creator of a foundation transfers property to the foundation, which is a juristic entity. The creator appoints a managing council or a board. The entity’s purpose can

to it, but it is neither a corporation nor a trust. Like a corporation, it is managed by a board of fiduciaries, but unlike a corporation, it has no shareholders. Instead it exists for a specified purpose or for designated beneficiaries. In this respect, it resembles the A-A Trust, except for the fact that foundation beneficiaries have no enforceable property rights in the foundation's assets. The foundation being a creature of statute, it is less nimble when it comes to adapting to changed circumstances on the ground than is the A-A Trust, a principles-based creature of the Anglo-American judiciary.²⁰ Hungary has its own foundation jurisprudence, but its practical application is constrained by statute to a few specialized tasks.²¹

ii. Characteristics of the FAM

Having found these various civil law relationships wanting as effective wealth management and succession vehicles, the Hungarians set about inventing a civil law relationship that would be an effective vehicle for such purposes. The vehicle would be a creature of statute.

One learned jurist and commentator has suggested that legislative tampering tends to have a stultifying effect on the A-A Trust, a creature of the equity courts. It actually makes the A-A Trust less protean and less adaptable to changed circumstances on the ground. If the FAM owes its very existence to statute, then is there any room for it to organically evolve over time via court decision?

The FAM provisions of the NHCC are not that detailed for a reason. The Hungarian Parliament intended that the FAM be as principles-based as possible, taking into account the statutory focus of the civil law legal tradition. With any luck, the relationship will evolve over time incrementally and efficiently via judicial decision in response to changes in the asset management environment.

be either charitable or non-charitable (private foundation). Even beneficiaries can be appointed, but they lack the enforceable legal or quasi-equitable property rights in the foundation assets. See Rounds Jr. & Rounds III, *supra* note 3 at 1533-34.

²⁰ In Hungary, the functions of the foundation and the FAM generally do not overlap. The foundation, due to its legal personality, lacks the FAM's flexibility and nimbleness. The foundation, for example, unlike the FAM, is heavily regulated by the state.

²¹ See NHCC §§ 3:383(1)-(2). (Under § 3:383(1), the creator can be the beneficiary of a foundation only if its purpose is to take care of the creator's scientific, literary, or artistic works. This is the same for the creator's relatives with the exception that, under § 3:383(2), the purpose of the foundation can also be to provide for the welfare or support of the creator's relatives (e.g. covering educational or health care expenses etc.).)

III. HUNGARY CURRENTLY LACKS A JUDICIAL/CULTURAL ENVIRONMENT THAT WOULD ALLOW THE FAM TO FLOURISH

Again, a trust is a creature of English equity that is sustained by equity. Hungary has no equity jurisprudence. The FAM, for the moment at least, is very much a fish out of water.

a. The Hungarian Bar's Lack of Expertise with Equity Jurisprudence

While the Hungarian bar is receptive to the idea of a Hungarian partial trust analog, most of its members have only a vague understanding of what goes on under the hood of an FAM. With time this will change. The Hungarian lawyer who endeavors to become a serious student of the A-A Trust and the equity doctrine that supports it will have a competitive advantage over his or her brothers and sisters at the bar in that equity has centuries of experience regulating the fiduciary management of wealth. Hungarian law schools should and have taken note: Comparative jurisprudence now has a powerful practical application.

b. The Hungarian Bench's Lack of Expertise with Equity jurisprudence

The Hungarian judicial system is yet to accumulate experience with applying equitable principles. If the FAM is to get off the ground in Hungary anytime soon, her judicial system will need to get itself up to speed, and sooner rather than later. The Anglo-American system of equity jurisprudence has evolved by trial and error over centuries. The Hungarians would be ill-advised not to exploit the lessons that have been learned along the way.

IV. THE CONTRACTARIAN APPROACH – HOW HUNGARIAN LAW SAFEGUARDS THE VARIOUS INTERESTS?

As we have already noted, the A-A Trust is *sui generis*. It is not a type of contract. The trust is a substantive product of the coexistence of common law and equity in the Anglo-American legal tradition. That legal title to an item of property can be in X and the equitable ownership can be in Y at the same time is the juristic phenomenon that makes the A-A Trust *sui generis*. It means that a beneficial interest under a trust is more than just a collection of *in personam* rights against the trustee. This bifurcation is generally incompatible with civil law principles, as we have already noted. Thus, a civil law court is tempted to construe the interests of an A-A Trust

beneficiary either as a limited property right (like the *usufruct*) or as a complex set of contractual rights against the trustee.²²

Hungary was not the first civil law jurisdiction to adopt a regime that had some A-A Trust attributes. There is the Québec trust, for example. The trustee of a Québec trust, however, does not hold the legal title in the subject property. Neither does the trustee of a South African *bewind*.²³

Scotland has a quasi-trust regime that, instead of bifurcating ownership into the legal and the equitable, segregates out from the aggregate inter vivos estate of the trustee the entrusted property from the rest of the estate, which would include the property that the trustee personally owns. The segregation is so complete that virtually the only nexus between the entrusted property and the trustee's own property is that legal title to each class of property is lodged in the trustee. In every other respect the two *patrimonia*²⁴ are independent. This is the principle of *patrimonia*-separation. The Scottish term is "dual patrimony."

a. *The FAM Beneficiary's Interest is a "Reinforced" in Personam Right*

The Hungarian FAM most closely resembles the Scottish model, although it has some French *fiducie* attributes to it.²⁵ Recall that the FAM by statute is a *sui generis* contract between the settlor and the trustee. The FAM settlor transfers property to the FAM manager who undertakes to administer the property for the benefit of one or more beneficiaries.²⁶ The FAM manager receives full title to the property, but the settlor retains and the beneficiaries are granted extensive monitoring and supervisory rights.²⁷ In addition, the FAM arrangement reserves to the settlor and bestows on the beneficiary rights as against good faith purchasers for value (BFPs) should

²² M.J. de Waal, *The Uniformity of Ownership. Numerus Clausus and the Reception of the Trust Into South African Law*, 8 EUR. REV. OF PRIVATE LAW 439, 448-49.

²³ *Id.*

²⁴ See 1 Bouv. Inst. n. 421 to 446, available at <http://legal-dictionary.thefreedictionary.com/patrimonium>. (*Patrimonium* is a civil law specific term. Things capable of being possessed by a single person exclusively of all others, are, in the Roman or civil law, said to be in *patrimonio*; when incapable of being so possessed they are *extra-patrimonium*. Today, a *patrimonium* is generally understood as a dedicated aggregation of assets within a larger aggregation.)

²⁵ See Julien Saïac & Daniel Gutman, *The French "Fiducie": A Missed Opportunity or a Work in Progress?*, *European Taxation*, Apr. 2010.

²⁶ NHCC § 6:310(1).

²⁷ NHCC §§ 6:318(1), 6:315,6:320.

the subject property be wrongfully alienated.²⁸ Thus, the beneficiary's interest under a FAM, as is the case with a beneficiary's interest under a Scottish trust, is a quasi-proprietary contractual right.

i. Elements of the FAM Beneficiary's 'Reinforced' Personal Right

Although the beneficiary's property interest in an FAM is contract-based, the interest is more than just an aggregation of *in personam* rights against the FAM manager.

1. Segregation of FAM Assets

Unlike, say, the life insurance premium paid to an insurance company under a life insurance contract that is commingled with the general assets of the company, the property subject to an FAM is segregated from the personal assets of the FAM manager. The assets of each FAM are segregated in separate funds and separately accounted for by its manager.²⁹

Again, the segregated FAM fund is a separate *patrimonium*.³⁰ Though the FAM is not a juristic entity, its assets are beyond the reach of the creditors of the FAM manager in whom legal title is lodged. His or her spouse and children also would have no access to the subject property.³¹

Death of the FAM manager (or its corporate dissolution) does not prevent the surviving co-managers from continuing to administer the FAM.³² Should a vacancy in the office of FAM manager occur, the settlor or the beneficiary may appoint someone to fill the vacancy.³³ Each has standing to seek judicial enforcement of the terms of the FAM. The FAM manager is saddled with an affirmative duty of full disclosure.³⁴ Otherwise, this right of action would be illusory.

2. The Bona Fide Purchaser Rule – Possible Inapplicability of Tracing

Asset segregation and *patrimonia* separation are not the only features of the FAM that are non-contractual. The beneficiary of an FAM, as is the

²⁸ NHCC § 6:318(3).

²⁹ NHCC § 6:312(1).

³⁰ See Kenneth G.C. Reid, *Patrimony Not Equity: the trust in Scotland*, 8 Eur. Rev. Private L., 427, 435 (discussing the separation of *patrimonia*).

³¹ NHCC § 6:313.

³² NHCC § 6:326(4)-(5).

³³ § 6:325 and 6:326(1)(c) of the Civil Code (Hung.).

³⁴ 2013. évi V. törvény a Polgári Törvénykönyvről (Act V of 2013 on the Civil Code) (Hung.) (§ 6:320).

case with beneficiary of an A-A Trust, is entitled to equitable relief in the event of a wrongful transfer of the subject property to someone who is not a BFP.³⁵ The NHCC is silent as to whether the procedural remedies of tracing and following into the product would be available to an FAM beneficiary. It would be if the FAM were an A-A Trust. We shall see whether the Hungarian courts develop a common law of tracing and following into the product in the FAM context.

3. *No Early FAM Termination for the Beneficiary*

The A-A Trust beneficiary's inability under the material purpose doctrine, when applicable, to acquire the trust property free of trust before the time established by the terms of the trust for the trust's termination lacks a counterpart in the FAM context.³⁶ As a practical matter, however, the fulfillment of a FAM's material purpose will usually coincide with the time of termination that had been specified in the FAM contract.

ii. *Summary of the Beneficiary's Interest in the Trust Property*

To summarize, the FAM beneficiary's interest in the underlying FAM property itself is not as linked as is the A-A Trust beneficiary's interest in the trust property. Still, the FAM is an equitable-contractual hybrid that generally looks and feels more equitable than contractual.³⁷

b. *Creating the FAM*

i. *Expanded Statute of Frauds is Applicable to Express FAM*

For an FAM to be enforceable under Hungarian law, its terms must be memorialized in a writing that is signed by the FAM settlor and the FAM

³⁵ 2013. évi V. törvény a Polgári Törvénykönyvről (Act V of 2013 on the Civil Code) (Hung.) (§ 6:318(3)).

³⁶ 2013. évi V. törvény a Polgári Törvénykönyvről (Act V of 2013 on the Civil Code) (Hung.) (§ 6:314(1)). This provides that beneficiaries of an FAM will have no access to its assets other than as expressly authorized by the terms of the FAM contract. The beneficiary of an A-A Trust that lacks a material purpose, on the other hand, may be able to defeat the trust and gain access to the subject property prior to its specified termination date. *See generally* Rounds, Jr & Rounds III, *supra* note 3 at 1133-36.

³⁷ *See generally* Gabor Szaboet al., *A bizalmi vagyonkezelés*, HVG-ORAC LAP- ÉS KÖNYVKIADÓ KFT (2014)(Hung.).

manager.³⁸ Self-declared FAMs require notarial deed executed by only the FAM settlor.³⁹ The writing requirement applies not only when the subject of the FAM is land but also when the subject of the FAM is personal property. In the Anglo-American legal tradition, the statute of frauds requires only that a trust of land be memorialized by writing. Purchase money resulting trusts of land and constructive trusts of land, however, are not subject to the statute of frauds. The FAM regime has nothing equivalent to either the resulting trust⁴⁰ or the constructive trust.⁴¹

ii. The Equity Maxim “A Trust Shall not Fail for the Want of a Trustee” Needs to be Qualified in the FAM Context

As the relationship between the FAM manager and the FAM beneficiary is contractual, it cannot be said that an FAM shall not fail *at inception* for want of an FAM manager. If there is no FAM manager *at inception* then no FAM can arise. Once the FAM manager has accepted his/her/its appointment, however, the FAM becomes independent from the manager’s persona and thus may survive the FAM manager’s death or corporate dissolution.⁴²

iii. FAM Declarations and Testamentary FAMs are Possible: Critical Non-Contractarian Features of the FAMs

Although FAMs are contracts this does not mean that only FAMs created via contract are enforceable. The FAM declaration, the testamentary FAM, and the donative inter-vivos-transfer FAM come to mind. The parties to an FAM that is created other than via contract are generally subject to the

³⁸ 2013. évi V. törvény a Polgári Törvénykönyvről (Act V of 2013 on the Civil Code) (Hung.) (§ 6:310(2)).

³⁹ 2013. évi V. törvény a Polgári Törvénykönyvről (Act V of 2013 on the Civil Code) (Hung.) (§ 6:329(1)).

⁴⁰ The resulting trust is a common law/equitable procedural device for dealing with the property of a failed A-A Trust. The court declares the trustee of a failed express trust a resulting trustee and orders the trustee to convey legal title back to the settlor, or to the settlor’s executor. Does Hungarian jurisprudence have a comparable device for dealing with failed FAMs? The answer is definitely ‘no’. Hungarian law follows a different logic. Contract rules apply when it comes to the sorting out of the rights, duties, and obligations of the parties to a failed FAM.

⁴¹ A consequence of the FAM’s expanded statute of frauds is that a FAM may not be created by implication of law. There is also a ban on constructive FAMs. Implied FAMs seem to be possible only in extremely rare cases. A court, for example, might find that a particular standard written contract coincidentally also has the requisite elements of an FAM.

⁴² 2013. Act V § 6:326(5) of 2013 on the Civil Code (Hung.).

same rights, duties, and obligations as are the parties to an FAM that is created via contract.⁴³

Self-declaration FAMs, as explained supra, arise by means of the settlor's unilateral notarized declaration.⁴⁴ It is also possible to create an FAM by will.⁴⁵ Although a Hungarian will, just like its Anglo-American counterpart, speaks at death, no testamentary FAM comes into existence until such time as the designated FAM manager agrees to serve. Whether a failure to accept the office of manager may be cured by the judicial appointment of an alternate manager remains to be seen.

Finally, an FAM may arise via an inter vivos donative transfer. The relationship is deemed a contract even though there is no exchange of consideration.⁴⁶

iv. Uncertainty as to whether an FAM can be irrevocable

There are two categories of express A-A Trusts: revocable and irrevocable. The settlor of an FAM may reserve a right of revocation. It is, however, unsettled whether the grant of a revocation power to an FAM beneficiary would be enforceable.⁴⁷ That having been said, it may be the case that a FAM under which no one possesses a right of revocation is unenforceable.⁴⁸

⁴³ 2013. Act V § 6:329(3) of 2013 on the Civil Code (Hung.).

⁴⁴ 2013. Act V § 6:329(1) of 2013 on the Civil Code (Hung.).

⁴⁵ 2013. Act V § 6:329(2) of 2013 on the Civil Code (Hung.).

⁴⁶ 2013. Act V § 6:61 of 2013 on the Civil Code (Hung.).

⁴⁷ The FAM beneficiaries are not parties to the FAM agreement. It is currently unclear whether FAM beneficiaries or third parties can be granted by the FAM contract enforceable revocation powers.

⁴⁸ An A-A Trust is enforceable even in a case where the settlor has reserved no right to revoke. This may also be the case with an FAM, although not all Hungarian commentators are in accord. Some see the FAM as a type of mandate. Recall that each party to a mandate agreement is vested with the power to terminate the agreement unilaterally. The problem is that an FAM is a *sui generis* contract variant with different termination rules than a mandate.

c. Unlike a Pure Hungarian Contract, an FAM agreement can survive the Removal, Incapacity, Death and Dissolution of the FAM Manager

The removal,⁴⁹ incapacity,⁵⁰ or death/dissolution⁵¹ of the FAM manager will not necessarily terminate the FAM. In this respect an FAM more closely resembles an A-A Trust than a contract.

d. The FAM Settlor's (Beneficiary's) Residual Right to Remove and/or Appoint Managers

Even in the case of an irrevocable FAM, the right to remove and replace managers is reserved to the settlor.⁵² The settlor is free to exercise this right without restriction, but if a FAM remains without a manager for more than three months, it terminates.⁵³ The FAM beneficiary is granted standing to petition the court to remove the manager, but only after the settlor's death/dissolution and only if the FAM manager commits a serious breach of the FAM agreement.⁵⁴

e. To Summarize: The FAM Has Some Non-Contractarian Attributes

To summarize, the FAM is a special type of contract that has some features that are traditionally non-contractual, such as asset-segregation. The two critical trust-like features are:

- a FAM beneficiary has an interest in the very property that is the subject of the FAM agreement; and
- a FAM manager is *per se* a fiduciary.⁵⁵

⁴⁹ A FAM manager can only be removed if a successor FAM manager is appointed simultaneously. Removal alone, therefore, will not result in the termination of the FAM. *See* 2013. Act V § 6:325(1) of 2013 on the Civil Code (Hung.).

⁵⁰ The incapacity of the FAM manager will not necessarily bring about the FAM's termination as the court is empowered to appoint a guardian to stand in the shoes of manager and carry out his FAM responsibilities. *See generally* 2013. Act V § 2:34 of 2013 on the Civil Code (Hung.).

⁵¹ Death or dissolution results in the termination of a FAM only if no new FAM trustee is appointed during a three-months statutory moratorium. *See* 2013. Act V § 6:326(1)(c) of 2013 on the Civil Code (Hung.).

⁵² 2013. Act V § 6:325(1) of 2013 on the Civil Code (Hung.).

⁵³ 2013. Act V § 6:326(1)(c) of 2013 on the Civil Code (Hung.).

⁵⁴ 2013. Act V § 6:325(2) of 2013 on the Civil Code (Hung.).

⁵⁵ Hungarian law is similar to the South-African law in this regard. *See* Waal, *supra* note 22 at 441-47.

V. RIGHTS OF THE CREDITORS OF THE PARTIES TO A FAM

With some minor exceptions, it is a core principle of the civil law (recall our discussion *supra* of the indivisibility of ownership principle) that he who holds the title to property must also own the beneficial interest in that property. The A-A Trust with its legal-equitable bifurcations would seem incompatible with this core principal. Certainly, it is the rare A-A Trust where it is self-evident from the public record who possesses the economic interest in the subject property. This is because the record title to the property is in the trustee.

To the lawyer trained in the civil law tradition this ownership bifurcation seems illogical and untidy. He is also likely to consider the absence of transparency as bad public policy in that it puts the creditors of the A-A Trust beneficiary at an unacceptable disadvantage.⁵⁶ Hungary addressed these concerns in the design and implementation of the FAM regime. We will now examine how.

a. *The FAM Beneficiary's Creditors Stand in the Shoes of the Beneficiary*

The law is clear: The creditors of an FAM beneficiary stand in the shoes of the FAM beneficiary.⁵⁷ In other words, only the beneficiary's quasi-equitable interest is reachable. As to the subject property itself, that is only reachable once the property is distributable pursuant to the terms of the FAM.

b. *The FAM Manager's Creditors Have No Access to the Subject Property*

FAM property being a separate *patrimonium*, it is off-limits to the FAM manager's personal creditors, spouse, partner, and children.⁵⁸ Moreover, the FAM manager is duty-bound to keep his/her/its personal assets and the FAM assets physically segregated, and to separately account for them.⁵⁹ Both the beneficiary and the settlor have standing to seek judicial relief should FAM property wrongfully come into the hands of third parties, such as the FAM manager's creditors, spouse, partner, or children.⁶⁰

⁵⁶ Bolgár, *supra* note 5, at 210.

⁵⁷ 2013. Act V § 6:314(2) of 2013 on the Civil Code (Hung.).

⁵⁸ 2013. Act V § 6:313(1) of 2013 on the Civil Code (Hung.).

⁵⁹ 2013. Act V § 6:312(1) of 2013 on the Civil Code (Hung.).

⁶⁰ 2013 Act V § 6:313(2) of 2013 on the Civil Code (Hung.).

c. The FAM Settlor's Creditors

Unless the settlor has reserved an interest in the FAM property or the FAM was established fraudulently, the settlor's creditors may not reach the property. A retained interest, however, would be reachable, for the most part under the same rules and conditions that are applicable to the beneficiary's creditors.⁶¹ At least this is what the Parliament had in mind, although the language of the statute is not a model of clarity in this regard.⁶²

VI. THE DUTIES, POWERS, LIABILITIES, AND RIGHTS OF THE FAM MANAGER

We now discuss the critical duties, powers, liabilities, and rights of the FAM manager.

a. Source of the Duties, Powers, Liabilities and Rights: Title to FAM Property Rests Always with the FAM Manager

The heart of the FAM is the FAM manager's sole and undivided legal title to the subject property.⁶³ On the public record, the FAM manager is the owner of the subject property.⁶⁴ If title is not in the manager, then the legal relationship of the parties with respect to the subject property is something other than a FAM. The corollary of this rule is that legal life estates and legal remainders may not be created via a FAM.⁶⁵

Title, on the other hand, bestows on the FAM manager critical duties and powers. Duties keep the FAM manager honest and are an incentive to administer the FAM in the interests of the FAM beneficiary. Powers are the

⁶¹ The symmetry between the rights of the creditors of the FAM settlor and those of the FAM beneficiary is not exact. The settlor's creditors in a revocable FAM have the right to terminate the FAM and reach the subject property that would otherwise go back to the settlor. Act LIII on the Judicial Enforcement Procedure (§ 132/A(3)) (Hung.) "Judicial Enforcement Act"). The creditors of the beneficiaries of neither revocable nor irrevocable FAMs have the same privilege. They have to wait until the FAM terminates.

⁶² The fuzziness stems from § 132/A(3) of the Judicial Enforcement Act, which provides that the settlor's creditors may reach such FAM property that either the settlor or "the holder of the right to disburse from the FAM" receives at termination. This latter phrase seems to empower the settlor's creditors to reach property in which the settlor no longer has any interest whatsoever. Such an interpretation would be, however, contrary to fundamental civil law principles and could have not been the true intention of the legislator.

⁶³ 2013 Act V § 6:310(1) of 2013 on the Civil Code (Hung.).

⁶⁴ *E.g.* 1997. évi CXLI § 17(1)(c), (m) törvény az ingatlan-nyilvántartásról (Act CXLI of 1997 on Real Estate Registration) (Hung.).

⁶⁵ Via a FAM, [A] may, by contract, transfer property to [B] inter vivos, subject to an obligation on the part of [B] to transfer the property to [C] at [B]'s death. This creates a mere *in personam* obligation in [B], who still remains the sole titleholder. [C] may sue [B] in contract should he fail to transfer the [C] in accordance with the terms of the FAM.

tools that enable the FAM manager to discharge those duties. First we take up the duties of an FAM.

b. The FAM Manager's Duties

The FAM manager's core duties, unlike the core duties of a trustee, are imposed by statute. They include the duty of undivided loyalty, the duty to be generally prudent, the duty to protect and defend the FAM property, the duty of confidentiality, and the duty to account. The FAM manager is also saddled with myriad specific duties that are incident to these general duties.

i. Duty of Loyalty⁶⁶

An A-A Trustee generally must act *solely* in the interest of the trust beneficiaries. A FAM manager, however, need only act *primarily* in the FAM beneficiary's interest. This is not a license for the FAM fiduciary to self-deal. What it appears to mean is that when the interests of the FAM beneficiary are in conflict with the interests of a third party, the interests of the third party are subordinated. How this all plays out in practice remains to be seen.

ii. Duty to be Generally Prudent⁶⁷

The professional FAM fiduciary must exercise due diligence in all dealings with the FAM property. He/she/it must possess the skills and competence of the prudent professional manager when it comes to the administration of the FAM assets.⁶⁸ In other words, the manager's lack of a critical skill or his/her ordinary intelligence is not a viable defense to an allegation that the manager has imprudently administered the FAM assets. As the FAM statute contains no further guidance, it remains to be seen whether the same standard governs amateur FAM fiduciaries as well.

iii. Duty to Protect FAM Property Against All Foreseeable Threats in a Commercially Reasonable Manner⁶⁹

Unlike in an A-A Trust, a FAM manager has an express duty to protect the FAM assets in a commercially reasonable manner. This would

⁶⁶ 2013 Act V § 6:317(1) of 2013 on the Civil Code (Hung.).

⁶⁷ Act V § 6:317(1) of 2013 on the Civil Code (Hung.).

⁶⁸ *Id.* It is also sufficient if the professional FAM manager provides for the necessary expertise by resorting to the services of an external service provider.44 § of Act XV of 2014 (Hung.) (on FAM managers and their activities ("FAM Manager Act")).

⁶⁹ § 6:317(2) of 2013. évi V. törvény Polgári Törvénykönyv (Act V of 2013 on the Civil Code) (Hung.).

appear to be more analogous to the Anglo-American business judgment rule than any default rule of prudent investing that might govern the trustee of an A-A Trust.⁷⁰ It falls to the Hungarian courts to sort all this out over time.

*iv. Duty of Confidentiality*⁷¹

A strict duty of confidentiality is imposed on the FAM manager. The duty survives even the termination of the FAM. That having been said, there are statutory exceptions to the duty of confidentiality that relate to tax enforcement, EU regulatory compliance, and the like.⁷²

*v. Duty to Account to the Settlor, the Beneficiary, and the State*⁷³

The FAM manager must properly account to the FAM settlor and beneficiary at regular intervals, as well as upon reasonable request. The manager also must file with the state certain reports pertaining to the FAM, such as an annual tax return. The FAM manager who breaches his/her/its accounting and/or reporting duties is subject to judicial sanction.

vi. Other Express Duties

Professional FAM managers are subject to additional duties incident to the overarching duty to properly administer the FAM property. They include the following:

- Duty of cautious investment,
- Duty of prudently monitoring existing investments,
- Duty of distributing risk (diversifying the portfolio) and
- Duty to prudently hire agents and advisors as necessary.⁷⁴

⁷⁰ William T. Allen et. al., Jr., *Function Over Form: A Reassessment of Standards of Review in Delaware Corporation Law*, 56 Bus. Law. 1287, 1296, 1298 (2001).

⁷¹ § 6:319 of 2013. évi V. törvény Polgári Törvénykönyv (Act V of 2013 on the Civil Code) (Hung.).

⁷² The various authorities and other organs against which the FAM manager is relieved from the duty of confidentiality include e.g. the Tax Authority, police, courts, The European Commission Anti-Fraud Office (website: http://ec.europa.eu/anti_fraud/index_en.htm), etc. (§ 42 of FAM Manager Act).

⁷³ §§ 6:320 and 6:327 of 2013. évi V. törvény Polgári Törvénykönyv, (Act V of 2013 on the Civil Code) (Hung.).

⁷⁴ Although the FAM Manager Act refers both to the duty of utilizing FAM property and its elements, it leaves to the courts to elaborate the content of the principle (§ 45 of the FAM Manager Act).

c. The FAM Manager's Liability

The FAM manager who breaches a duty may be held liable for any harm that is occasioned by the breach.

i. Directions and Nature of the Liability

The FAM manager is liable contractually to both the FAM settlor and the FAM beneficiary.⁷⁵

The A-A Trust, on the other hand, is *sui generis*. It is not a creature of contract. As such, often the rights of the A-A Trust beneficiary will trump those of the A-A trust settlor, particularly in the case of an irrevocable A-A Trust.

ii. Extent of Liability – Different Rules for Fee-Based and Gratuitous FAM Administrations

Recall that under the civil law, there need not be an exchange of consideration for a contract to be enforceable. That having been said, one risks greater liability breaching a contract that has been supported by consideration than one that has not been. The FAM contract is no exception. Moreover, the compensated FAM manager generally assumes greater liability than his uncompensated counterpart.⁷⁶

d. External Liability – Personal Liability if the FAM Manager Fails to Disclose to Third Parties True Value of the FAM Estate

The FAM manager is personally liable in contract to third parties rendering goods and services to the FAM estate *only if* the manager fails to disclose to the third party the true solvency of the FAM estate when the contract is entered into. Otherwise, the third party's primary and only recourse is to the FAM estate, and only the FAM estate, in the event the contract is breached. In other words, the FAM manager is not personally on the hook should the third party be unable to obtain full satisfaction via levy on the FAM assets.⁷⁷

⁷⁵ § 6:321(1) of 2013. évi V. törvény Polgári Törvénykönyv, (Act V of 2013 on the Civil Code) (Hung.).

⁷⁶ § 6:142 of 2013. évi V. törvény Polgári Törvénykönyv, (Act V of 2013 on the Civil Code) (Hung.).

⁷⁷ § 6:323 of 2013. évi V. törvény Polgári Törvénykönyv, (Act V of 2013 on the Civil Code) (Hung.).

VII. FURTHER DIFFERENCES BETWEEN THE FAM AND THE A-A TRUST

*a. Powers of Appointment Doctrine under Hungarian Law
Murky*

A non-fiduciary power of appointment granted to someone by the terms of an A-A Trust is a personal power of disposition. The donee of such a power may exercise it in favor of a permissible appointee outright and free of trust, or in further trust if the terms of the power or default law so permit. Thus, it is functionally a power to short-circuit, alter, or extend the terms of the trust.⁷⁸

The FAM settlor may also reserve, or the FAM beneficiary be granted, a power to amend the terms of the FAM contract.⁷⁹ This power functionally bears some resemblance to a non-fiduciary power of appointment established via the terms of an A-A Trust. It may well be that one not a party to an FAM agreement also may be granted such an amendment power.⁸⁰ In general, however, a power of appointment may not be directly granted via a FAM contract.

b. FAM Registration and Fiduciary Licensure

Professional FAM managers are required to be licensed by the Hungarian National Bank (HNB), which has been designated as the licensing and supervisory authority over FAMs.⁸¹ Only corporations and limited liability companies are eligible to become professional FAM fiduciaries. They have to comply with statutory infrastructural and organizational criteria and hold a dedicated and segregated security reserve of HUF 70,000,000 (ca. \$311,000).⁸²

⁷⁸ Rounds, *supra* note 3, 828-29.

⁷⁹ A power reserved to the settlor, such as to amend the material purposes of the FAM or to extend or limit the FAM manager's powers, may be acceptable under Hungarian law (NHCC § 6:191(4)). Neither the settlor nor the beneficiary, however, may direct the FAM manager. He must act independently of them (NHCC § 6:316). An amendment, therefore, purporting to direct the FAM manager to carry out a specific task, such as to invest in a particular company, would be unenforceable.

⁸⁰ The independence requirement explained in the previous footnote relates only to the FAM manager's dealings with the FAM settlor and the FAM beneficiary. In theory, there is nothing to prevent FAM settlors from granting powers of appointment to third parties. It remains to be seen, however, whether the Hungarian courts will enforce such grants.

⁸¹ § 3 of the FAM Manager Act. Once the corporate trustee is licensed, the FAM manager is subject to a HNB oversight. The HNB, however, has no authority to take action against the manager for breaching the terms of the FAM contract.

⁸² Gov. Decree No. 87/2014.

Amateur FAM managers are in a better position. They need not be licensed. Only the particular FAM has to be registered.⁸³

c. No Such Thing as Charitable FAMs

Hungarian law is influenced by the German legal tradition when it comes to charitable undertakings. Foundations are the traditional legal vehicles for dedicating property to charitable purposes. There is no statutory prohibition against establishing an FAM for a charitable purpose. There, however, may be tax reasons why the FAM would not be the way to go.

d. An FAM may not have Unborn or Unascertained Beneficiaries

The Hungarian legal tradition, unlike the Anglo-American legal tradition which spawned the trust relationship, has been reluctant to recognize property rights in persons who have yet to be conceived/born.⁸⁴ Thus, the terms of an FAM for the benefit of a designated unborn beneficiary are unenforceable. The Anglo-American guardian ad litem judicially charged with advocating for the property rights of the yet-to-be-conceived, the unborn, and the unascertained under an A-A Trust has no counterpart in the Hungarian legal tradition.

All this having been said, once a designated FAM beneficiary is born alive, enforceable property rights may accrue. But this is a far cry from the typical A-A Trust that has unborn and unascertained remaindermen whose equitable property rights are enforceable *ab initio*.

VIII. THE FAM AS AN INSTRUMENT OF HUNGARIAN SUCCESSION LAW

Anglo-American succession law and Hungarian succession law are the products of very different legal traditions. We now give the American reader a quick tour of the civil law of forced heirship.

⁸³ § 19 of the FAM Manager Act. The HNB in fact keeps two separate registries. One is a public register of licensed professional FAM managers. It contains no information about the FAMs they administer. The other registry is the registry of the FAMs whose managers are non-professionals. Its non-public database contains FAM-specific information (e.g. data on the settlor, the beneficiaries etc.).

⁸⁴ See NHCC § 2:2(1). Under NHCC, only persons born alive are entitled to judicially enforceable property rights protection. Such protection, however, has a retroactive effect reaching back to the date of conception.

a. The Influence of Forced Heirship Rules on Hungarian FAMs

Forced heirship rules are to ensure that a decedent's spouse, children, and parents are not left destitute. Forced heirship rules are a limitation on one's freedom of property disposition.

i. Forced Heirship Rules Governing Disposition by Will (Testamentary Dispositions)

If the testator leaves a will, his descendants, spouse and parents may claim mandatory dispositions from the estate.⁸⁵ The descendants and parents are essentially entitled to one third of what they otherwise would have inherited by intestacy.⁸⁶ The surviving spouse receives a *usufruct* right in the estate for his/her support and maintenance.⁸⁷

1. Influence on Testamentary FAMs

Testamentary FAMs are subject to the forced heirship rules as well. The testator's descendants, parents and spouse may seek satisfaction of their claims from the testamentary FAM assets.⁸⁸

2. Influence on Inter Vivos FAMs

Forced heirship rules capture *inter vivos* donative transfers made by the testator within ten years before his or her death.⁸⁹ Thus, it is likely that Hungarian courts will subject *inter vivos* FAMs established for donative purposes to the forced heirship rules, particularly *inter vivos* FAMs established within ten years before the /testator's/FAM settlor's death.

a. Forced Heirship Rules in Absence of a Will

If the deceased left no will, then the forced heirship rules allow family members to unwind donative transfers made to anybody within ten years before death.⁹⁰

⁸⁵ NHCC § 7:75.

⁸⁶ NHCC § 7:82(1).

⁸⁷ NHCC § 7:82(2).

⁸⁸ NHCC § 7:75).

⁸⁹ NHCC §§ 7:80(1) and 7:81(1)(a).

⁹⁰ NHCC §§ 7:80(1) and 7:84(1)(b) (explaining that a donative transfer can be unwound only if the estate proves to be insufficient to cover all forced heirship dispositions).

If multiple descendants inherit the estate, then for computation purposes inter vivos gifts are deemed advancements to the extent the testator had intended them as such.⁹¹ The *inter vivos* FAM is not exempt from these forced heirship rules.

*b. Forced Heirship Rules are
Inapplicable to Foreign
Settlers*

Hungarian Forced heirship rules have no application to non-Hungarian FAM settlors. If a U.S. citizen who is not also a Hungarian national sets up a FAM, Hungarian conflict of laws rules⁹² defer to applicable U.S. federal and state succession law.⁹³

IX. CONCLUSION

The FAM is a common law/civil law hybrid. Although it was inspired by the A-A Trust, it is not a true trust. Its asset-management applications are more limited, as well. It is apparent that the FAM is not suitable to accommodate all the various situations in which the A-A Trust can come in handy, but in exchange it provides a legal vehicle that fits comfortably into the framework of Hungary's civil law system. This was exactly what the Hungarian Parliament had in mind. The FAM was designed to serve primarily estate planning and asset management purposes via a highly adaptive and flexible form of contract. How well will the FAM ultimately be received by the Hungarian bench and bar? Time will tell.

⁹¹ NHCC § 7:56(1).

⁹² Since Hungary is not a federation, it has had no need to develop an internal conflicts of law jurisprudence. See *Hungary – Government*, GlobalSecurity.org, <http://www.globalsecurity.org/military/world/europe/hu-government.htm>. However, transnational conflicts are another matter.

⁹³ §§ 11 and 36 of 13/1979. Korm. r. (Law-Decree No. 13 of 1979 on Private International Law) (Hung.).