Trusts & Trustees, 2024, **30**, 333–338
https://doi.org/10.1093/tandt/ttae040
Advance Access Publication Date: 8 June 2024
Article

OXFORD

Article

Hungary: Unlocking wealth—a guide to maximizing benefits with Hungarian Asset Management Foundations for single-family offices

Ákos Menyhei*

*Trustee and Attorney-At-Law in Budapest, Primus Trust Corp., Szépvölgyi út. 6, 1023 Budapest, Hungary. Tel: +36 1 2448308; Fax: +36 1 2448309; Email: akos.menyhei@primus-wealth.com; amenyhei@aliantlaw.com, www.primus-wealth.com; www.aliantlaw.com

ABSTRACT

Hungarian Asset Management Foundations (AMFs) present a distinct legal entity tailored for wealth management by blending traditional trust principles with the flexibility of foundations. This article explores the evolution and significance of AMFs within the Hungarian legal framework, examining their role in wealth preservation, asset protection, and estate planning for single-family offices. Key findings reveal that AMFs offer a sophisticated platform for managing and preserving assets, with founders enjoying substantial control over foundation activities. Notably, AMFs provide a robust framework for asset protection, by ensuring separation of assets and shielding them from creditor claims. The confidentiality afforded by AMFs adds an extra layer of security, crucial for maintaining privacy in family wealth matters. Moreover, AMFs demonstrate adaptability to changing circumstances, allowing for dynamic adjustments to wealth management strategies and governance structures. This flexibility, coupled with tax efficiency and compliance mechanisms, positions AMFs as a comprehensive solution for single-family offices seeking to safeguard and grow their wealth across generations.

BRIEF OVERVIEW OF HUNGARIAN ASSET MANAGEMENT FOUNDATIONS

Hungarian Asset Management Foundations (AMFs) represent a unique legal entity designed to manage and preserve assets for specific purposes outlined in their founding charters. These foundations combine elements of traditional trust management[1] and foundations,[2] providing a versatile and flexible structure for wealth management.

The Hungarian legal landscape underwent a significant transformation with the introduction of the new Civil Code a decade ago.[3] This reform brought about noteworthy changes in estate planning options, introducing an English-style trust and redefining the nature of Hungarian foundations.[4] Unlike the previous requirement of serving long-term public interest,[5] the current rules allow the establishment of private foundations for private purposes.[6] The AMF Act[7] further expanded the scope of private foundations, aiming to position them as key elements in the wealth planning of larger family estates.[8]

Apart from wealth planning, the creation of an AMF offers asset protection advantages. The foundation ensures a strong separation of assets, thereby limiting potential creditor access to assets held within it. Once the founders transfer assets to the foundation, they forfeit ownership, as the foundation becomes a distinct legal entity.[9] Despite this apparent loss of direct ownership control, founders retain certain powers, including the ability to appoint themselves as member of the board of trustees,

1 Á Menyhei, "Development of the estate planning industry through the introduction of the trust in Hungary" 22 (6) Trusts & Trustees (2016) 659.
2 See the topic in detail: GB Szabó, Á Menyhei and I Sándor, *The Foundation* (HVG Orac 2021).
3 Act V of 2013 on the Civil Code of Hungary, available in English at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=96512&p_country=HUN&p_count=937&p_classification=01.03&p_classcount=4 (last accessed 5 February 2017).
4 See in detail: Á Menyhei, "The use of the Hungarian Foundation for asset protection and private purposes" 23(6) Trusts & Trustees (2017) 673–677.
5 Act IV of 1959 on the Civil Code of the Republic of Hungary, section 74/A, available in English at: http://www.angelfire.com/mn2/reformclub/hunc1.html (last accessed 26 January 2024).
6 Civil Code 3:386 para (1).
7 Act XIII. of 2019 on the AMF Act.
8 Á Menyhei, "The new Hungarian asset management foundation" 25(6) Trusts & Trustees (2019) 599–610.
9 Civil Code Section 3:378.

beneficiaries, or to dissolve the AMF. The protection extends to shield the foundation's assets from undue claims by beneficiaries or their creditors. The Civil Code outlines specific conditions under which beneficiaries can claim benefits, emphasizing a structured and regulated approach to asset distribution.[10]

In essence, the introduction of the AMF, together with the broader changes in foundation laws, not only revolutionized wealth planning strategies but also provided a sophisticated legal framework for asset protection within the context of family offices.

SIGNIFICANCE OF HUNGARIAN AMFs FOR SINGLE-FAMILY OFFICES

Legal framework

The AMFs—governed by the Hungarian Civil Code and specific regulations outlined in the AMF Act—differ significantly from private foundations in various key aspects. First, the primary focus of AMFs lies in conducting economic activities, specifically asset management, which distinguishes them from private foundations.[11] Secondly, AMFs can be established with a specific focus on benefiting the founder, the founder's family members, and individuals designated by the founder, thus providing financial benefits and distributions to these individuals.[12] Thirdly, the founder and family members may have direct participation in the board of trustees, which is responsible for managing the AMF.[13] Fourthly, AMFs can act as trustees without being subject to the law on trustees, which offers greater flexibility in their operations.[14] Fifthly, founders may retain significant control over AMFs, with the ability to change the composition of the board of trustees and beneficiaries at any time, as well as the authority to decide on the dissolution of the AMF. In case of dissolution, the founder is entitled to receive both the capital and the income from the AMF's assets.[15] Founders also have the power to exercise their founders' rights and can transfer or delegate these rights to the AMF or to the board of trustees.[16]

An existing foundation can be transformed into an AMF, provided it meets the minimum capital requirement.[17] The primary role of the AMF is to manage assets endowed by the founder and to provide distributions for the beneficiary or beneficiaries identified in the founding charter. Unlike trusts, AMFs come into existence upon registration, and the legal entity is formed by court resolution following the initiation process through the creation of the founding charter.

Purpose and objectives

The purpose and objectives of an AMF shall be explicitly outlined in its founding charter so as to provide a clear roadmap for its existence. Unlike other foundations, AMFs may also have objectives, beyond asset management, related to philanthropy and the preservation of family legacies.

The founding charter serves as a statutory document and guiding framework by delineating the precise purpose of the AMF, the identified beneficiaries, and the governing principles, including the investment policy, that will guide its operations. This charter plays a crucial role in defining the scope and direction of the AMF's activities, including how it manages assets, distributes benefits, and serves the interests of the designated beneficiaries.[18]

Flexibility and versatility

The flexibility and versatility of an AMF make it a dynamic and adaptable tool in the realm of wealth management. These qualities are the main reasons why it is ideal for the purposes of a single-family office. One of the key attributes is the high degree of flexibility it provides for implementing wealth management strategies by offering a tailored approach that aligns with the specific needs of single-family offices. The internal structure and composition of various AMF organs, as well as the decision-making powers and their limits, may vary because of the founder's discretion.[19]

AMFs showcase versatility by not only serving as standalone entities for asset management but also by seamlessly integrating into trust relationships. This unique hybrid structure allows them to play a dual role, that is, acting as both asset owners and trustees.[20]

Furthermore, the versatility in asset management extends to the incorporation of various financial instruments and investment approaches. AMFs have the capability to navigate diverse financial landscapes by accommodating different asset classes and investment strategies. This adaptability allows them to respond effectively to changing market conditions and evolving financial objectives and demonstrates the inherent flexibility that makes AMFs a powerful asset management tool.

Tailored wealth preservation

Hungarian AMFs are a strong vehicle in the preservation of family wealth, offering a tailored and comprehensive framework that aligns seamlessly with the unique goals of individual families for managing assets and preserving wealth for future generations.

The key factor for customized asset protection in AMFs is the ability to set specific asset allocation conditions in the founding charter,[21] as well as to prohibit or limit the alienation of specific strategic assets.[22] This level of customization allows families to create bespoke plans for legacy planning, thus ensuring that the

10 Civil Code Section 3:387
11 AMF Act Article 1 (2): We must stress that the asset management foundation can only perform asset management as an economic activity.
12 AMF Act Article 4 Section (4).
13 AMF Act Article 4 Section (4).
14 AMF Act Article 2 Section (3)C.
15 AMF Act Article 11 Section (1).
16 AMF Act Article 5 Section (1).
17 The minimum capital is currently HUF 600 million—AMF Act Article 1 Section (1). This minimum capital requirement must be maintained throughout the existence of the AMF. If the AMF's capital falls below the minimum amount, the board may suspend or reduce distributions for beneficiaries. If the AMF fails to meet the minimum capital requirement for three consecutive years, it must be liquidated.
18 AMF Act Article 9 Section (2).
19 The founder enjoys extensive freedom regarding the content and internal structure of the foundation.
20 AMF Act Article 2 Section (2).
21 AMF Act Article 9 Sections (3) and (4) and Article 10 Section (2).
22 AMF Act Article 9 Section (2).

distribution of assets aligns precisely with the family's values, preferences, and long-term aspirations.

Founder's rights

Founder's rights in the AMF play a crucial role in shaping the foundation's activities and direction, offering a unique level of control to the founder. The founder enjoys significant decision-making powers, thereby influencing key aspects of the foundation's functioning, including appointments, amendments, and overall strategic direction.

A notable feature of AMFs is the founders' ability to transfer their rights to the foundation, thus entrusting the AMF itself or the Board of Trustees with their exercise.[23] This transfer can include a wide range of founder's rights that grant the board the authority to make important decisions. In order to maintain a balance of power and to prevent unjustified changes, the AMF Act provides that the Board of Trustees can only modify the foundation charter with express authorization from the founder[24] or in specific circumstances necessitated by changing conditions or legal requirements.[25]

In cases where the founder transfers rights to the foundation or empowers the Board of Trustees, the AMF Act introduces the role of a protector, an external person tasked with overseeing the board's activities, exercising founder's rights, and managing the foundation's assets. The protector serves as a check against misuse of authority and has the power to initiate legal enforcement procedures, thereby enhancing transparency and accountability.[26]

The AMF Act aims to enable AMFs to operate as self-driven entities, thus emphasizing their autonomy for an extended period. The founders can choose to relinquish their founders' rights, by allowing the foundation, including the Board of Trustees, to exercise these rights independently.[27] This autonomy is discretionary and can be retained for up to a decade, thereby facilitating the foundation's self-sufficiency.

Additionally, the AMF Act provides flexibility by allowing the founder to delegate the founder's rights to the AMF without amending the foundation charter. The Board of Trustees assumes responsibility for exercising these rights, and while the appointment can be revoked with a modification of the charter, certain decisions, once made, are irrevocable.[28]

Even in cases where the founder has not designated a person or body to exercise the founder's rights, the Board of Trustees assumes this role within the limitations laid out by the Civil Code. The AMF Act introduces flexibility by allowing the Board of Trustees or the Supervisory Board, or both, to retain certain founder's rights, thus ensuring the complete independence of the AMF from its founder. This power also extends to the election of the members of the bodies and the chairpersons by the AMF bodies themselves, creating a strong framework for the foundation's governance.

Founder's control

In the context of a single-family office, founder control is a characteristic feature of AMFs that emphasizes the influential role of the founder in directing the foundation's activities. The founder retains substantial control, particularly when exercising founder's rights, which encompass various key aspects.[29]

In terms of asset management, the founder plays an important role in the decision-making processes, thereby contributing to the formulation of the mandatory investment policy.[30] This policy serves as a guiding framework that the board of trustees must adhere to during asset management activities. This involvement ensures that the management of assets aligns closely with the founder's vision, family values, and long-term objectives.

The founder's control extends beyond asset management and also includes important decisions in connection with appointments and changes within the AMF. This control over appointments enables the founder to determine the composition of the Board of Trustees and to ensure that people who are in line with the family's objectives are entrusted with key tasks. Additionally, the founder has the authority to make modifications to the foundation, thereby influencing its evolution over time.

Tax implications

The tax implications of AMFs are governed by specific regulations outlined in the Hungarian corporate income tax code.[31] Designated as a separate corporate taxpayer,[32] an AMF follows standard accounting procedures akin to a regular company. The annual taxable income of the AMF is subject to a 9% corporate income tax.[33] However, the AMF enjoys noteworthy tax benefits, especially if it qualifies under certain conditions.

If an AMF is deemed qualified—that is established by a private individual, with all beneficiaries being private individuals, and generating solely financial income from investments in the taxable year—its financial income is tax-exempt.[34] Additionally, dividends received by the AMF are exempt from taxation.[35] As a corporate tax payer, the AMF benefits from the participation exemption regulation, which leads to a tax exemption on reported capital gains from company participations after a 1-year holding period.[36]

A qualifying AMF has the option to open a long-term investment account and to transfer cash to fund the account. After a 5-year holding period, the income generated on this

23 AMF Act Article 5 Section (1).
24 AMF Act Article 9 Section (6).
25 AMF Act Article 9 Section (6).
26 AMF Act Articles 7 and 8.
27 AMF Act Article 5 Sections (3) and (4).
28 AMF Act Article 5 Sections (1) and (2).
29 AMF Act Article 9 Sections (1) and (2).
30 AMF Act Article 9 Section (2).
31 Act No. LXXXI of 1996 on Corporate Tax and Dividend Tax (CIT Act).
32 CIT Act Article 2 Section (2) g.
33 CIT Act Article 19.
34 CIT Act Article 20 Section (1) b.
35 CIT Act Article 7 Section (1) g.
36 CIT Act Article 7 Section (1) dz.

long-term investment account becomes tax-exempt.[37] A well-structured AMF can further benefit from a tax exemption at foundation level, which provides enduring tax advantages for the beneficiaries. The only taxable event that may occur is, when the AMF distributes funds to the beneficiaries, such distributions being subject to a 15% personal income or withholding tax.[38]

Confidentiality

Confidentiality is a hallmark feature of AMFs, and the highest level of confidentiality can be achieved by establishing a hybrid trust under the AMF.[39] In this arrangement, the assets managed by the AMF are shielded from the public, thus ensuring a confidential and private environment for wealth management. A key provision in the AMF Law plays a central role in this confidentiality, as it exempts trusts administered by an AMF from trust law.[40]

This exemption has substantial implications, offering freedom in performing trust activities without the obligation to notify the National Bank of Hungary. The AMF can efficiently manage a variety of assets without the need for a business-like fiduciary license and is not bound by specific rules on fiduciary procedures, except those set out in the Civil Code and the AMF Law. The exemption ensures full confidentiality in this hybrid trust relationship, as the AMF is not subject to the disclosure requirements specified in the Trustees Act. Consequently, the AMF is obliged to uphold the complete confidentiality obligations defined in the Civil Code regarding the trust relationship.[41] This includes a prohibition on disclosing information on the settlor, the trust assets, or the content of the trust relationship to third parties, including public bodies. This exemption allows for confidential asset management, particularly advantageous for private family offices. The strict confidentiality regime of AMFs provides a secure environment for managing the financial affairs of affluent families. Single-family offices, in particular, benefit from the confidential nature of AMFs, which ensures that sensitive information remains private and confidential.

Compliance and oversight

Compliance and oversight are integral aspects of AMFs, ensuring adherence to their founding charters and legal obligations. Oversight is primarily facilitated by the court, guaranteeing that the foundation operates within the boundaries of the law. However, in situations where the founder's rights are delegated to the board of trustees, an external entity or individual is necessary to counteract any activities that could jeopardize the interests or prudent management of the AMF and to restore its lawful operation.

To address this need for an additional layer of operational security, the AMF Act introduces the concept of the "protector".[42] When the founder empowers the board of trustees to exercise the founder's rights, the founder must appoint a protector in the founding charter.[43] The protector plays a crucial role in ensuring and restoring the foundation's integrity in case of deviations from the investment policy, the founding charter, or the AMF's purpose.

The AMF Act grants the Protector extensive rights and powers, including monitoring the activities and resolutions of the AMF bodies, inspecting documents, attending meetings, submitting comments prior to resolutions, and initiating legal proceedings to prevent the implementation of an unlawful resolution.[44] The founder has the option to vest the protector with additional rights and powers in the founding charter.

The AMF Law sets out specific eligibility criteria for a protector, which ensure that the protector is a licensed auditor, an audit company, an attorney at law, a law firm, or a natural person with specific knowledge as defined by the founder in founding charter.[45] To prevent conflicts of interest, the registry court reviews compliance with these requirements during the AMF registration procedure and the approval of amendments to the founding charter.

One of the protector's main powers is the authority to initiate court proceedings, compelling the AMF's bodies to restore the lawful operation of the foundation, especially in cases where asset management, the appointment of beneficiaries or new board members, or a distribution deviate from the founding charter.[46] The protector can also intervene if corporate bodies fail to fill a vacancy within a specified timeframe, proposing suitable appointees for court approval.[47]

Asset protection

AMFs serve as powerful vehicles for asset protection, providing a secure framework to shield family wealth from external risks and legal challenges. The legal structure surrounding AMFs enhances the overall security of assets held within the foundation, offering distinct advantages in terms of wealth preservation and protection.

One key aspect of asset protection within AMFs lies in the creation of a complete and final separation of assets. Once the founder establishes the foundation and transfers assets to it, the founder relinquishes ownership over these assets. The foundation, upon registration, becomes a new legal entity that owns the transferred assets.[48] This separation enables excellent protection by restricting the access of potential creditors to the assets held within the foundation.

While it may appear that transferring assets into an AMF limits the founder's ability to reclaim those assets, this is not the case. Founders retain significant control and flexibility.

37 Act No. CXVII of 1995 on Personal Income Tax (PIT Act) Article 67/B Section (14) a.
38 PIT Act Article 8 Section (1).
39 See in detail: Á Menyhei and J Zsoldos, "Privacy protection in Hungary" 26(6) Trusts & Trustees (2020) 542–549.
40 AMF Act Article 2 Section (3)c.
41 Civil Code Article 6: 319 Section (1).
42 AMF Act Articles 7 and 8.
43 AMF Act Article 7 Section (1).
44 AMF Act Article 8 Sections (1) and (4).
45 AMF Act Article 7 Section (3).
46 AMF Act Article 8 Section (3).
47 AMF Act Article 8 Section (5).
48 Civil Code Section 3:378.

They have the authority to appoint themselves as beneficiaries, thereby providing a mechanism for personal benefit from the assets held within the foundation. Furthermore, founders have the power to decide on the dissolution of the AMF, and thus offer an exit strategy if needed.[49]

It is crucial that the foundation's assets are shielded from undue claims by beneficiaries. The Civil Code imposes limitations on the potential claims of designated beneficiaries against the foundation.[50] These claims are only valid in certain cases, for example, if the identity of the beneficiary, the benefits, and the due dates are precisely defined in the charter or if the Board of Trustees decides to grant benefits and communicates this decision to the beneficiary, who accepts the applicable conditions.

It is important to note that the assets of the AMF are safeguarded against claims brought by creditors of the beneficiaries until the beneficiaries receive distributions. Creditors cannot assert any claims against the assets of the AMF until the beneficiaries have received distributions, either partially or in full. This protective measure ensures that the wealth held within the foundation remains shielded from external financial pressures and potential claims, thereby contributing to the overall asset protection benefits offered by the AMF structure.

Estate planning and succession

AMFs play an important role in estate planning, as they offer valuable tools to facilitate seamless transitions between generations within single-family offices. The distinct features of AMFs contribute to their effectiveness in estate planning and succession.

The AMF structure provides clear and comprehensive guidelines that aid in the succession planning process. Founders can benefit from the flexibility inherent in AMFs, namely by defining specific conditions for wealth distribution,[51] thereby ensuring a customized approach to legacy planning. This customization is particularly advantageous for single-family offices, where preserving family wealth and values across generations is a primary objective.

Through the establishment of an AMF, founders can set forth detailed provisions within the founding charter, including the identification of beneficiaries, conditions for distributions, and the overall governance structure.[52] This level of clarity within the AMF framework enhances the estate planning process by providing a well-defined roadmap for the transfer of assets and responsibilities from one generation to the next.

Adaptability to changing circumstances

The adaptability of AMFs is a key feature highly valued by single-family offices, as it allows for dynamic adjustments to wealth management strategies in response to changing circumstances. This flexibility extends to various aspects of the AMF structure, thus enabling it to stay relevant and aligned with the evolving financial objectives and family dynamics.

Single-family offices appreciate the capacity of AMFs to navigate changing market conditions effectively. The ability to modify the AMF structure provides a responsive mechanism to adapt investment portfolios, asset allocations, and financial strategies based on the dynamic nature of the financial markets. This ensures that the family's wealth is managed with agility, thus maximizing opportunities and mitigating risks in a timely manner.

Moreover, the adaptability of AMFs is instrumental in addressing shifts in family dynamics. As family structures, goals, and priorities evolve over time, the AMF structure can be adjusted to accommodate these changes seamlessly. This includes modifications to beneficiary designations, governance structures, and overall asset management approaches, thereby allowing the AMF to remain in harmony with the family's shifting needs and aspirations.

SUMMARY

In summary, AMFs provide single-family offices with a versatile and all-encompassing platform for wealth management. With a focus on bespoke wealth preservation, these foundations ensure the preservation and growth of family assets over generations. The robust compliance and oversight mechanisms within the AMF structure guarantee adherence to founding charters and legal obligations, with court oversight ensuring lawful operations.

The control by the founder remains a central feature, which allows the founder to steer decisions related to asset management, appointments, and modifications, thus ensuring alignment with family values. The AMF's commitment to asset protection and privacy is remarkable and provides excellent protection against external risks and legal challenges. The structure of the foundation provides confidentiality, limits access to assets for potential creditors, and protects sensitive information.

The AMF's adaptability to changing circumstances, including market dynamics and family needs, is a key strength. This flexibility allows for adjustments to wealth management strategies, thus ensuring ongoing relevance to financial objectives. Furthermore, the AMF excels in estate planning and succession by facilitating smooth transitions between generations with clear guidelines.

With their flexibility, confidentiality, and tax efficiency, Hungarian AMFs are a comprehensive solution for single-family offices, capable of safeguarding and growing family wealth over generations.

AUTHOR BIOGRAPHY

Dr Ákos Menyhei, LL.M., TEP, is the managing partner of Primus Wealth and Aliant-Menyhei-Molnár-B. Szabó Law Firm in Budapest, as well as member of STEP. Dr Menyhei has comprehensive international experience in providing tax and estate planning as well as structuring and wealth management services to high-net-worth families and individuals around the globe. He is one of the authors of "Limits to Tax

49 AMF Act Article 11 Section (2)
50 Civil Code Section 3:38.7
51 AMF Act Article 2 Section (1).
52 AMF Act Article 6.

Planning" (Linde Verlag 2013), "The Trust" (HVG-ORAC 2014, 2018 and 2023), "Business Law in Hungary" (Patrocinium 2016), "The Foundation" (HVG-ORAC 2021), and editor of "Introduction of the Trust in Hungary and the International Practice" (HVG-ORAC 2017). Furthermore, since 2014, he has been a regular contributor to *Trust & Trustee*, a journal published by Oxford Journals. His research interests include the implementation of trust in civil law jurisdictions. He is an H.C. assistant professor in the trustee diploma program of St Stephan University, Budapest. Email: amenyhei@aliantlaw.com, akos.menyhei@primus-wealth.com

Trusts & Trustees, 2024, 30, 333–338
https://doi.org/10.1093/tandt/ttae040
Article