

**DID YOU KNOW THAT IN HUNGARY  
IN THE CASE OF THE NOVATION OF AN AGREEMENT  
(EITHER CONTRACTUALLY OR BY LAW) THE SECURITY  
INTERESTS AUTOMATICALLY CEASE TO EXIST?**

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## WHAT DID WE DO WITHOUT NOVATION UNTIL NOW?

- **Novation** (*szerződésátruházás*) = transfer of contractual position
- Until the entry into force of the new Civil Code:

**assignment of claims**

(*engedményezés*)

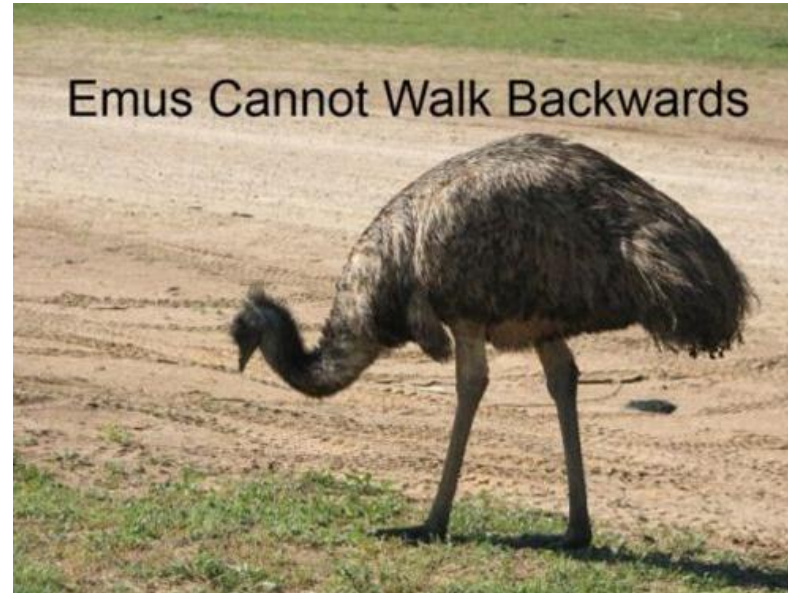
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**assumption of obligations**

(*tartozásátvállalás*)

- ◆ court practice: „contracts” can be transferred in this structure
- ◆ security interests: will remain in place if the security provider consents to the assumption of obligation

## WHY DID WE NEED IT THEN?



...but it seems that our legislation can...

## WHAT IS THAT WE CALL „NOVATION” UNDER HUNGARIAN LAW?

- Not clear...
  - ◆ Is this novation at all? Does it create a new legal relationship?
  - ◆ Or is it an amendment to the contract and results in a continuous relationship?
  - ◆ Best guess: amendment with a novation element

## WHY IS IT A PROBLEM?

- Security interests automatically cease to exist upon novation  
(Remember: they remain in place in case of a consented assumption)
  - ◆ Re-creation on the same rank? How?
  - ◆ What qualifies as „security interest“?
  - ◆ Can the „new“ security interest be challenged by the liquidator?
  
- Statute of limitation
  
- Novation by law - same rules apply
  - ◆ Want to buy a shopping mall? Good luck with negotiating all the 300 lessees to re-create the security interest granted by them...
  
- Continue to apply the previous structure?
  - ◆ No guarantee that it will not be requalified as novation by the court...

## WHAT CAN BE THE ADVANTAGE?

...if novation is applied **carefully**...

- **direct agreements**

- ◆ step in right in respect of project agreements
- ◆ watch the security interests!

- **BUT! not in syndicated loan agreements**

- ◆ the Hungarian version of the security agent is only a „procedural” position (pretty much for registration purposes only)
- ◆ the lenders remain the actual beneficiaries of the security interests

# THANK YOU FOR YOUR ATTENTION

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