

LEGALINK

INVESTMENT AND BUSINESS START UP IN HUNGARY

(A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

The Hungarian legal system is a statute-based civil and criminal law system based on the German-Austrian legal system. According to the recently adopted Constitution, Hungary is a parliamentary republic. Since Hungary's accession to the European Union on 1 May 2004, European laws also form part of the Hungarian legal system.

Although the Hungarian legal system is a statute-based system, the higher court decisions are regularly reported and followed by the lower courts. In addition to the above, the Supreme Court (in Hungarian: Kúria) may issue judicial guidance opinions (in Hungarian: elvi bírósági határozatok), which are binding on the lower courts.

The legal system of the Republic of Hungary accepts the universally recognized rules and regulations of international law, and shall harmonize the internal laws and statutes of the country with the obligations assumed under international law. Hungary is a signatory to a number of international conventions and bilateral treaties which provide for the recognition and enforcement of awards from other states.

2. What are the major law courts in your country?

Hungary has a four-tier court system, which include the Local Courts, the County Courts/ the Metropolitan Court in Budapest, the five Appellate Courts and the Supreme Court. Separate courts deal with first instance labor and administrative disputes.

In most matters first instance jurisdiction (civil, commercial and criminal) rests with the Local Courts. The territorial competence of the Local and County Courts is determined by the areas of public administration. Appeals against decisions of the Local Courts may be submitted to the County Courts/ the Metropolitan Court, which in this regard function as appellate courts. In cases specified by law (e.g. in civil cases with a minimum value of HUF 30 million (approx.: € 100.000), intellectual property cases, corporate lawsuits etc.) they have first instance jurisdiction. The appellate courts hear appeals against the first instance decisions of the County Courts/Metropolitan Court. The appellate courts contain criminal and civil divisions. The Supreme Court hear request for extraordinary remedy and is obliged to ensure the uniform application of law. The Supreme Court consists of adjudication and harmonization panels (ítélkező és jogegységi tanács), panels concerning municipal administration and decisions of legal principle, as well as criminal, civil and administrative and labour divisions (kollégium) and sections for case law analysis.

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

The main sources of legislation are the following: (i) Constitution, (ii) the Acts of Parliament, (iii) government and ministerial decrees, (iv) decrees of local governments and (v) EU law.

4. What is/are the official language(s) in your country?

The official language in Hungary is the Hungarian (in Hungarian: magyar).

(B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?

There are no general restrictions on foreign investment. However in some highly sensitive sectors, such as real estate acquisition or agriculture certain restrictions should be faced.

In accordance with the Government Decree No. 7/1996 (I.18.) on the Acquisition of Real Estate by Foreign Nationals the authorization of the competent Budapest or county government agency is required for the acquisition of non-agricultural real estates.

In accordance with Act LV of 1994 on Agricultural Land EU national natural person may only acquire agricultural land if (i) he or she is wishing to settle in Hungary as someone independently engaged in agricultural production, and (ii) he or she has been legitimately residing in Hungary for at least three consecutive years and is pursuing agricultural activities. Further restrictions may apply on a case by case basis.

6. Are there any exchange control or currency regulations in your country?

There are no exchange control or currency regulations.

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

The corporate tax regime is generally very favorable for investments and holding structure (e.g. no withholding tax on dividends and generally no corporate tax on dividends received). In addition to the above there are certain corporate tax releases on investments exceeding a certain threshold.

The Hungarian Government might also grant special project status to certain projects. The granting of such special project status to a project has key importance in accelerating the administrative proceedings connected to an investment, thereby minimizing the administrative burdens of key investors in Hungary.

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country?

Generally, the following forms of operation may be considered when a foreign corporate entity or individual wishes to extend its operation to Hungary:

- a) establishment of a local subsidiary by foundation of a new company with limited liability (such as limited liability company, private and public company limited by shares)
- b) acquiring a majority or 100% share in an existing limited liability company
- c) establishment of a branch office of the foreign corporate entity (not applicable to individuals)

The **limited liability company** (in Hungarian: “korlátolt felelősségű társaság”, “kft.”, hereinafter: LLC) is the most popular and numerous company form in Hungarian business life.

The contributions of the members of an LLC are symbolized by their ‘quotas’, thus the members are ‘quotaholders’. The quota does not only refer to the contribution, but the voting rights and other rights of the quotaholder. The quota is not a physical or a digital share; however, it can be transferred easily. An LLC is a separate legal person. The liability of each quotaholder for the debts of the company is limited to its quota.

The limited liability company may be founded by one or more private individuals or legal entities. A limited liability company with only one quotaholder is also possible and broadly used. There is no limitation on the participation of foreign individuals. The supreme organ of a limited liability company is the quotaholders’ meeting, or, where applicable, the sole quotaholder. The quotaholders’ meeting has the right to appoint managing directors, company secretaries, supervisory board members, to decide about the amendment of the articles of association, the transformation, merger or dissolution of the company, and to approve the annual reports and the payment of dividend.

In an LLC, the conditions on quota transfer to other quotaholders or third parties can be specified with great liberty. The quotaholders’ meeting can significantly restrict the transfer of quota by requiring its own consent or granting extensive pre-emption rights.

The representative of a limited liability company towards third parties is on one or more managing directors. The managing director may be any quotaholder or external person (and in case of only one quotaholder, the sole quotaholder as well), and any foreign person, but only natural persons may be managing directors. The managing director owes a fiduciary duty towards the company and can be re-appointed or withdrawn by the quotaholders’ meeting anytime. Managing director(s) is/are entitled to decide upon each issue which do not fall within the exclusive competence of the quotaholders’ meeting. A company secretary with a representation right may also be appointed, and employees may be granted a representation right.

The minimum initial capital required for the establishment of an LLC is HUF 500,000 (less than EUR 2,000) which may consist of cash contribution as well as in-kind contribution. Unless contribution in kind exceeds 50% of the initial capital, only half of the contribution shall be paid up at the foundation, payment of the other part can be deferred for a year. Please note that in case of certain activities, laws may provide that the entire capital shall be paid up at foundation, or that the initial capital may not consist of contribution in kind.

The voting power of a quotaholder may be different than its contribution to the capital. Nevertheless, such arrangements shall be set out in the articles of association (which is a public document), or otherwise they will not be enforceable before the courts. In the latter case, however, a monetary penalty may be agreed, which shall be paid by the quotaholder violating the voting agreement.

The **private company limited by shares** (in Hungarian: “zártkörűen működő részvénytársaság”, “zrt.”) is a company issuing paper or dematerialized stock, where the shareholders are not publicly solicited.

The operation of a private limited company is just slightly different from the operation of an LLC. First of all, the private company limited by shares issues shares (either paper certificates or digital) to its shareholders. These shares are transferable by endorsement or wire transfer. Second, a private company limited by shares is either directed by a single chief executive officer, or a board of directors. Third, the transfer of shares can be restricted to a lesser extent, compared to the quotas of an LLC. Also, certain more strictly supervised activities (such as banking) may be pursued in the form of a private company limited by shares, but not as a limited liability company.

The share capital of a private company limited by shares shall be at least HUF 5 million (approx. EUR 18,500), but a higher statutory minimum is set for certain licensed activities. Payment by the founding shareholders of maximum 75% of the initial capital can be deferred to one year from the registration of the company, in case of in kind contribution this deadline is five years.

Technically, the **public company limited by shares** (in Hungarian: “nyilvánosan működő részvénytársaság”, “nyrt.”, hereinafter: “public company”) is a variant of the private company limited by shares, however, rules relating to shares, shareholder rights and corporate governance differ considerably.

Only dematerialized (digital) shares may be issued, with the assistance of the Central Clearing House. No shares with pre-emption rights can be issued and other restrictions also apply. Although a public company is not necessarily traded on the stock exchanges, shares may be listed at the Budapest Stock Exchange or other trading platforms.

The public limited company may be managed by a (simple) board of directors or a “unified” board of directors, which also contains the supervisory board. The unified board of directors shall consist of at least 5 and at maximum 11 members and the majority if its members shall be independent from the company. If there is a separate supervisory board, then the supervisory board members shall be independent. Also, an audit committee shall be elected by the general meeting.

The minimum share capital is HUF 20 million (approx. EUR 74,000). A foundation of a public limited company is executed through a subscription procedure (public offering). Initially, a prospectus shall be prepared by the founders and approved by the Hungarian Financial Supervisory Authority. If the subscription procedure is successful, an inaugural general meeting shall be held, where the statutes of the company are approved by 75% majority. Registration may be requested afterwards.

With respect to bookkeeping and auditing requirements it can be outlined in general that the company may keep its books in other currency than HUF, e.g. EUR, if it may be expected that more than 25% of its costs or income will incur in the selected currency.

The election of a statutory auditor is not mandatory in case of a company unless the average net revenue of the company calculated on an annual basis during the two business years prior to the current business year exceeds HUF 100 million (approximately EUR 370,000) and the average number of employees of the company of the two financial years preceding the financial year under review exceeds 50 persons. At foundation, however, the appointment of the auditor is not required due to lack of data on preceding years' income and average employment. The auditor may be a natural person or a firm of auditors, in both cases, a member of the Chamber of Auditors. The worlds' biggest auditing companies are also present in Hungary.

(D) Employment

9. What are the main laws regulating employment relationships in your country?

The main law regulating employment relationships is Act I of 2012 ("Labour Code") which entered into force in two phases (July 1, 2012 and January 1, 2013) which includes minimal standards of the employment relationship, from which, under the terms and conditions as regulated in the Labour Code, the parties by their agreement or the collective agreements can deviate. The role of the state is to protect the employees' interests via guaranteed social and health safety.

The provisions of the Labour Code are significantly in harmony with EU regulations, particularly with respect to the establishment of the employment, types of employment, leasing employees, prohibition of discrimination. Regulation of health and safety in the workplace is also in harmony with EC Directives.

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

The employment relationship is established by an employment agreement which must be concluded in writing, which is the responsibility of the employer. An employee can only claim invalidity on the grounds of failure to set the contract in writing within thirty days from the first day on which he/she commenced work.

The employer and the employee can settle any issues in the employment agreement. According to the general rule concerning employment agreements, deviation from the Labour Code is only allowed in favour of the employees. However, the Labour Code provides more

possibilities for the parties to deviate from the provisions of the Labour Code, even to the detriment of employees. In collective agreements, the parties are free to agree on the conditions (even if such conditions are not favourable for the employees) except if there is a provision to the contrary. It is important to note that, in each chapter of the Labour Code, there is a list of paragraphs where deviation from the main rules is prohibited or, in the case of collective agreements, where the deviation is allowed only in favour of the employees. In the case of executive employees, parties are free to differ from the Labour Code.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

The following employees are not obliged to obtain a permit from the competent employment authority:

- persons with refugee status,
- beneficiaries of subsidiary protection,
- persons enjoying temporary protection,
- persons who have been granted immigrant or permanent resident status,
- persons with the right of free movement and residence (citizens of European Economic Area and their family members)

An employer of the above mentioned foreigners must notify the competent employment authority about the employment relationship before the start of the employment.

The employment of other foreign persons not mentioned above is subject to a work permit issued by the local branch of the Public Employment Service in Hungary.

If the employer fails to comply with the above rules, the competent employment authority may order sanctions to be borne by the employer.

The procedure for applying for a work permit takes several weeks (the deadline for such procedure is 30 days).

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

Yes. According to Section 38 (1) of Act IV of 2006 ("Company Act") if the annual average of the number of full-time employees employed by the business association exceeds two hundred, the employees shall have the right to partake in the supervision of the company, unless there is an agreement between the works council and the management of the business association to the contrary. In this case the representatives of the employees shall comprise one-third of the members of the supervisory board.

Also, a workers representative (between 15 and 50 employees), or a works council (above 50 employees) shall be elected if, during the half-year prior to the date when the election committee was established, the average number of employees at the employer or at the employers independent establishment or division, is higher than fifteen or fifty, respectively. Works councils shall monitor compliance with the provisions of employment regulations.

In case of corporate transactions such as transfer of undertaking, within fifteen days following the time of transfer, the receiving employer shall inform in writing the workers affected concerning the transfer of employment upon the transfer of enterprise.

If the transferring employer has no works council or worker's representative, the transferring or - if so agreed by the employers - the receiving employer shall inform in writing the employees concerned not more than fifteen days before the date of transfer of the following:

- (i) the date or proposed date of the transfer;
- (ii) the reason for the transfer;
- (iii) the legal, economic and social implications of the transfer for the employees;
and
- (iv) any measures envisaged in relation to the employees.

In case of redundancies the employer, if planning to carry out collective redundancies, shall initiate consultations with the works council. At least seven days before the discussions, the employer shall inform the works council in writing regarding essential informations concerning redundancies.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

Yes, the minimum wage is set annually, currently it is regulated by Government Decree 390/2012 and is HUF 98,000/month (HUF 114,000/month for a position requiring at least a high school degree). The Labour Code also contains such rules regarding maximum working hours or payment of wages which guarantee the rights of employees.

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

Yes. In Hungary the pension system had three pillars until 31 December 2010:

- the mandatory state pension;
- mandatory private pension funds;
- voluntary 'mutual' private pension funds.

The second pillar (mandatory private pension fund) has been abolished as of 1 January 2011. Participants of the mandatory private pension funds were entitled to opt out and join the

traditional state pension scheme until 31 January 2011. All those who did so were entitled to the yields of their pension-contributions. Apart from these payments, all of their contributions will be merged into the state pension fund and they will be entitled to the traditional state pension.

Those who chose to remain in the mandatory private system were required to make a declaration to the Statutory Pension Funds by the end of January 2011. Those who remained in the private scheme will be entitled to a lower amount of state pension in the future.

The full old age pension is based on the recognized service time and the monthly average salary

15. How is the termination of individual employment contracts regulated in your country?
Under what circumstances is the dismissal of an employee unlawful?

An employment relationship may be terminated (i) by mutual consent; (ii) by dismissal or (iii) by dismissal with immediate effect.

Employers are required to justify their dismissals. An employee may be dismissed only for reasons in connection with his/her behavior in relation to the employment relationship, with his/her ability or in connection with the employers operations.

Employees are required to give reasons only for terminating their fixed-term employment relationship. The reason given for termination may only be of such a nature as would render the maintaining of the employment relationship impossible or that would cause unreasonable hardship in light of his/her circumstances.

The reasoning shall clearly specify the grounds for termination. The burden of proof to verify the authenticity and substantiality of the grounds of the act of termination shall lie with the party taking the legal act.

In case of dismissal, the notice period shall begin at the earliest on the day following the date when dismissal is communicated. The notice period is generally thirty days which increases proportionally with the term of the previous employment.

An employer or employee may terminate an employment relationship with immediate effect if the other party:

- (i) willfully or by gross negligence commits a grave violation of any substantive obligations arising from the employment relationship; or
- (ii) otherwise engages in conduct that would render the employment relationship impossible.

The right of termination with immediate effect may be exercised within a period of fifteen days of gaining knowledge of the grounds, in any case within not more than one year of the occurrence of such grounds, or in the event of a criminal offense up to the statute of limitation.

The right of termination with immediate effect may also be exercised, without justification:

- (i) by either party during the probationary period;
- (ii) by the employer in connection with fixed-term employment relationships.

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

Collective redundancy shall mean when an employer, based on the average statistical workforce for the preceding six-month period, intends to terminate the employment relationship:

- (i) of at least ten workers, when employing more than twenty and less than one hundred employees,
- (ii) of 10 per cent of the employees, when employing one hundred or more, but less than three hundred employees,
- (iii) of at least thirty workers, when employing three hundred or more employees,

inside a period of thirty days, for reasons in connection with its operations.

The employer, if planning to carry out collective redundancies, shall initiate consultations with the works council. At least seven days before the discussions, the employer shall inform the works council in writing regarding certain information concerning the redundancy e.g the reasons for the projected collective redundancies and the number of workers to be made redundant broken down by categories.

In order to reach an agreement, the consultations shall, at least, cover the possible ways and means of avoiding collective redundancies, the principles of redundancies, the means of mitigating the consequences and the reduction of the number of employees affected.

The agreement concluded in the course of negotiations shall be made out in writing, a copy of which shall be sent to the government employment agency. The employer shall also notify the government employment agency of its intention regarding collective redundancies.

The employer shall notify in writing the government employment agency of its decision regarding collective redundancies at least thirty days prior to delivering the notice of dismissal.

The employer shall notify in writing the workers affected of its decision regarding collective redundancies at least thirty days prior to delivering the notice of dismissal. The notice of dismissal may be delivered after thirty days following the time of notification. The notification shall be sent to the works council and the government employment agency as well.

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Unless an applicable double taxation treaty ("DTA") provides otherwise, tax resident private individuals are subject to tax liability in respect of all their income (full tax liability). The tax liability of non-resident private individuals only applies to income that originates in Hungary as the place of the gainful activity or is taxable in Hungary by virtue of international agreement or reciprocity (limited tax liability). Therefore, the main rule is that of tax residency, while the supplementary rule is that of territoriality.

The question as to whether the income is also subject to social contributions is decided upon by the relevant EU-legislation.

18. Under what circumstances are employees subject to taxation in your country?

As described under point 17 above, all income of Hungarian tax residents is taxable in Hungary.

The Hungarian Personal Income Tax Act ("**PIT**") applies a different method of establishing tax residency than most of the DTAs that are based on the OECD standard model. As opposed to the OECD model agreement and notwithstanding any contrary provision of a DTA, a private individual will qualify as resident if he/she is a Hungarian citizen. The sole exception to this rule are citizens with more than one citizenship and no registered domestic address.

Further, any natural person exercising his/her right of free movement and the right of residence for a period of longer than three months in the territory of Hungary in the calendar year in question for at least 183 days, including the day of entry and the day of exit; and any third-country national having a permanent residence status, or person without any citizenship are also considered to be tax resident in Hungary.

As a supplementary rule, any natural person, other than the above,

(i) whose only permanent residence is in Hungary; or

(ii) whose center of vital interests is in Hungary if there is no permanent residence in Hungary or if Hungary is not the only country where they have a permanent residence; or

(iii) whose habitual residence is in the domestic territory if there is no permanent residence in Hungary or if Hungary is not the only country where he/she has a permanent residence, and if their center of vital interests is unknown;

is also considered to be tax resident in Hungary.

For employees not tax resident in Hungary, only the income originating from Hungary are taxable under the PIT. An income from employment is considered to be originating from Hungary if the activities are normally performed in Hungary.

19. What income tax or social security contributions must be paid by:

i. Employees?

Employees must pay (i) personal income tax of 16 %, (ii) social security contributions of 7 % for health care benefits and (iii) 10 % to the pension fund, as well as (iv) 1.5 % contribution to the employment fund calculated after their gross income, *i.e.* a total of 34.5 %.

ii. Employers, in relation to their employees?

Employers must pay social contribution taxes amounting to 27 % and vocational contribution amounting to 1.5 %, both calculated after the gross salary of the employee, *i.e.* a total of 28.5%.

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Corporations are subject to the Hungarian Corporate Tax Act ("**CTA**") if they are Hungarian tax residents, if a non-resident corporation carries out business operations through their permanent establishment in Hungary or if they obtain any income through the transfer or withdrawal of participating interest in a company with real estate holdings (note that not all companies holding real estates qualify as companies with real estate holdings). Therefore, the main rule is that of tax residency, while the supplementary rule is that of territoriality.

21. Under what circumstances are incorporations subject to taxation in your country?

Hungarian law does not have any distinction between corporations and incorporations. Once a legal entity is subject to the CTA (and most legal entities are), it is taxed as per the provisions of the same. For details, please see the answers to points 20 and 22.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

Corporate tax rate is 10% of the positive tax base up to HUF 500 million, and 19% of the remaining portion of the tax base.

Value added tax has a general rate of 27%, and two preferential rates of 18 % and 5 %.

The local business tax may also apply depending on the decision of the local municipality in which the business is carried out. (*i.e.* it is payable by all corporations and entrepreneurs whose registered office or branch office is located within the municipality). The maximum rate of the local business tax is 2%, while the tax base is calculated after the net sales revenues minus a specific proportion of purchase value of goods sold, value of services intermediated, the cost of research and experimental development and material costs.

Real properties may also be subject to land tax amounting to HUF 301/m² or 3% of the adjusted market value and/or building tax amounting to HUF 1,658 / m² or 3.6% of the adjusted market value.

Further, depending on the activity performed by the company, they might be subject to special sector taxes like the bank tax, insurance tax, telecommunications tax or special taxes levied on public utility providers.

23. Please explain how each of the following is taxed in your country:

iii. Dividends paid to foreign corporate shareholders?

Since there is no withholding tax on dividends, no taxes apply.

iv. Dividends received from foreign companies?

If the dividend is received from a company that does not qualify as controlled foreign company, then the amount of dividend received may be deducted from the tax base, effectively making the receipt of the dividend tax free. This does however not apply to dividends received from controlled foreign companies, meaning that these will be accounted for as revenues from financial transactions and may not be deducted from the tax base.

v. Interest paid to foreign corporate shareholders?

Since there is no withholding tax on interest paid, no taxes apply.

vi. Intellectual property (IP) royalties paid to foreign corporate shareholders?

Since there is no withholding tax on royalties paid, no taxes apply. Royalties received by Hungarian tax resident companies are also subject to a preferential taxation.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

Yes. The corporate tax base of a company must be increased with proportionate value of the interest paid to non-financial institutions if the liabilities of the company owed towards non-financial institutions are in excess of threefold the company's equity.

If the company reduced its tax base due to transfer pricing regulations with the amount of the market interest, the customary market interest of the liabilities against affiliated undertakings must also be considered. This may deteriorate the effect of a free loan to an affiliated company.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

Yes, rules of controlled foreign companies are present both in the field of personal income tax as well as in the field of corporate tax.

A foreign company qualifies as a controlled foreign company ("CFC") if (i) in the majority of the year it has a resident owner under the PIT, or (ii) the majority of its revenues are from abroad, or (iii) if the corporate tax effectively paid is less than 10%, or (iv) if the company gained profits but is not taxed due to a tax base of zero or lower.

A company will not qualify as CFC despite the above if such company has a registered office or residence of the foreign business in a member state of the European Union or the OECD or in a state with which Hungary has signed a DTA, provided in all cases that the company has a real economic presence in that country. The burden of proof – i.e. that the company is *not* a CFC – lies with the taxpayer.

Private individuals

Under the PIT interest and dividends paid by a person or other organization established in a low tax-rate state or by a controlled foreign company or income from the sale and purchase of shares of such company will qualify as "other income", which, under certain circumstances, may have less favorable tax conditions than receipt of the same income from a non-CFC.

The most important rule however is, that in some cases even undistributed profits of a CFC are taxed. If therefore a private individual holds interest in a CFC and if such person has a direct or indirect participation or voting right in such company on the last day of financial year, and the participating interest held in such company by the private individual directly or indirectly reaches 25 per cent, the sum allocated to the private individual from the CFC's after-tax profit shown for the last day of its financial year, less any dividend distributed, paid to the private individual according to his/her indirect and/or direct share are also qualified as income and are therefore taxable.

Companies

Under CTA, a company has to prove that any consideration paid to the CFC serves the purposes of its business operations, *i.e.* the burden of proof lies with the Hungarian tax payer making the payment.

Also, separate records must be maintained for each contract (or they may be consolidated for contracts of the same subject), containing the name, address and tax number (or a similar identifier, failing these, the registered or registration number) of the companies which are parties to the contract, the name and address of the court (authority) where the companies register (registration) is maintained (of all contracting parties), the subject (subjects) of the contract, date of conclusion or amendment of the contract, term of the contract, the manner and conditions of performance, the date when the register was drawn up, the reasons underlying the accounting of costs and expenses. The fine for a non-compliance with the these recording obligations may be as high as HUF 2,000,000 (approx. EUR 6,900) per record concerned or up to HUF 8,000,000 (approx. EUR 27,600) in case of repeated infringement.

Also, as mentioned above, a dividend received from a CFC will qualify as revenues from financial transactions and will not be deductible from the tax base, meaning that it is effectively taxed by corporate tax (which is, as mentioned above, not the case for dividends received from non-CFCs).

26. Are there any transfer pricing rules (*i.e.* restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

Hungary generally follows the OECD regulations on transfer pricing.

Under the CTA, related parties are obliged to set their prices on an arm's-length basis, or alternatively adjust their tax bases accordingly. Consequently, one party will increase its pre-tax profits with the amount of diversion from the fair market value while the other party will – subject to certain conditions – have the possibility to reduce its pre-tax profits accordingly. All

business except for micro and small business are required to prepare a transfer pricing documentations on a contract-by-contract basis.

It is possible to request the National Tax and Customs Authority to define the fair market value of goods and services. The fees may be as high as HUF 10,000,000, i.e. approx. EUR 35,000.

27. How are imports and exports taxed in your country?

Since Hungary is a member of the European Union it does not have separate rules on import or exports. The main framework of imports and exports is regulated by the Community Customs Code (European Union regulation no. 2913/92/EC).

28. Is there a wide network of double tax treaties in your country? If so, please give details.

Yes. Hungary has a total of 69 DTA's with various countries, including all European Union member countries, the United States of America to Singapore.

(F) Competition

29. Is there any competition law in your country? If so, please give details.

Yes, Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition.

30. Are restrictive agreements and practices regulated by competition law in your country?

Under Chapter IV of the Competition Act relating to restrictive agreements, any agreements or concerted practices between unrelated undertakings, as well as the decisions of social organisations of undertakings, public corporations, unions and other similar organisations, which are aimed at the prevention, restriction or distortion of economic competition, or which have or may have such an effect, are prohibited.

The Hungarian Competition Office can investigate restrictive agreements.

The Competition Act gives a non-exhaustive list of behaviour to which the prohibition of restrictive agreements applies, in particular:

- Fixing the purchase or sale price and defining other business conditions directly or indirectly.
- Restricting or controlling manufacturing, distribution, technical development or investment.
- Sharing the sources of available goods or restricting the freedom to choose from them, as well as excluding certain consumers and/or business partners from the option to purchase certain goods.

- Sharing the market, excluding anyone from selling, or restricting the choice of sales opportunities.
- Preventing anyone from entering the market.
- Discriminating against certain business partners.

Making the conclusion of an agreement dependent on the acceptance of obligations which, due to their nature or when compared to usual contractual practice, do not relate to the subject of the agreement.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

Yes, the rules of the Competition Act in connection with the abuse of dominant position and the rules of the Trade Act in connection with significant market power regulate unilateral conducts.

The Competition Act in general prohibits the abuse of a dominant position and provides a non-exhaustive list of such behaviors:

- i) Establishing purchase or sale prices unfairly in business relations, including the use of general contractual conditions, specifying unjustified advantages in another way or forcing the acceptance of disadvantageous terms and conditions on another party.
- ii) Restricting production, distribution or technical development to the detriment of consumers, or business partners.
- iii) Refusing, without justification, to establish or maintain business relations that are adequate for the nature of the transaction.
- iv) Influencing the other party's economic decisions to gain unjustified advantages.
- v) Withdrawing goods from general circulation or withholding goods without justification before price rises, or to cause prices to rise and otherwise acting in a way capable of securing unjustified advantages or causing a disadvantage to competition.
- vi) Making the supply and acceptance of goods dependent on the supply or acceptance of other goods, or making the completion of a contract dependent on the assumption of obligations which, due to their nature, or with regard to the usual contractual practice, do not form part of the subject matter of the contract.
- vii) Discriminating, without justification, against business partners in transactions of the same value or of the same nature, including using prices, payment deadlines, discriminatory sales or purchase conditions and other methods causing disadvantage to business partners in competition;
- viii) Forcing competitors out of the market, or using unduly low prices (not based on greater efficiency) which can prevent competitors from entering the market.

- ix) Hindering competitors from entering the market in any unjustified manner.
- x) Creating an unduly disadvantageous market situation for competitors, or influencing their economic decisions to gain unjustified benefits.

Specific rules exist in relation to dealers falling under the scope of the Trade Act. Namely, the Trade Act prohibits the abuse of significant market power (SMP) against suppliers.

Under the Trade Act, the term 'significant market power' refers to a market situation as a consequence of which the dealer becomes or has become a contracting partner for the supplier, where the supplier is unable to reasonably evade such a dealer when forwarding its goods and services to the customers and where the dealer is able, due to the size of its share in the turnover, to influence regionally or nationally the market access of a product or a group of products.

The Trade Act provides for an open catalogue of conduct which may in particular be considered as an abuse of SMP:

- (i) unjustifiably discriminating against suppliers,
- (ii) unjustifiably restricting suppliers access to sales opportunities,
- (iii) imposing unfair conditions on suppliers, which results in a distribution of risks that one-sidedly benefit the dealer; in particular, disproportionately shifting costs which are also incurred in the business interests of the dealer, such as the costs of storage, advertising, marketing etc., onto the suppliers,
- (iv) unjustifiably altering contract terms, to the detriment of the suppliers, after concluding the contract or reserving this option for the dealer,
- (v) subjecting future business relations of the dealer with the suppliers to conditions, in particular stipulating or retrospectively enforcing the application of a most-favourable-conditions clause or obliging the suppliers to give discounts, in respect of certain products and for a specified period of time, exclusively to the dealer in question, or obliging the suppliers to produce, in order to get any of their products to be distributed, products sold under the trade mark or brand of the dealer,
- (vi) charging fees one-sidedly to suppliers for, in particular, putting them on the dealer's suppliers-list or for allowing their goods to become part of the dealer's product range or in consideration of services not demanded by the suppliers,
- (vii) threatening the termination of the agreement (delisting) with the intention of enforcing one-sidedly beneficial contractual terms,
- (viii) unjustifiably forcing suppliers to avail themselves of third persons as suppliers or of a service provider of the dealer,

(ix) applying sales prices in cases in which the dealer is not the owner of the goods, which are lower than the invoice prices determined in its contracts, save for prices applied in the sales of substandard goods or in clearance sales within a seven-day period before the expiry of the quality preservation term or introduction prices applied for no longer than 15 days or prices applied in end-of season clearance sales or in cases where the types of products dealt with or the field of activities are changed or in clearance sales of stock of outlets which will be closed down.

There is a non-rebuttable presumption that SMP vis-à-vis suppliers exists where the consolidated net turnover derived from commercial activities of the group of undertakings in question, including all the parent companies and subsidiaries as set forth in the Accounting Act or, for the case of joint purchasing, all the undertakings establishing the purchasing association in the previous year (the 'consolidated net turnover'), was higher than HUF 100 billion (USD 460.15 million). These undertakings are obliged to use fair commercial practices in their relations with suppliers, to prepare a self-regulating code of ethics listing those practices and to create a procedural system to be applied in cases in which the principles of the code of ethics in question are infringed.

In addition, significant market power of the dealer also exists where the commercial undertaking or the group of undertakings or the purchasing association is in, or acquires - based on the structure of the market, the existence of entry barriers, the market share and the financial strength of the undertaking and its other resources, the size of its trading network, the size and location of its outlets and all of its trading and other activities - a one-sidedly favourable bargaining position vis-à-vis its suppliers.

The HCO can bring proceedings against dealers that abuse SMP by applying the Competition Act's abuse of a dominant position provisions.

The above provisions of the Trade Act are not applicable in respect of agricultural goods and food. The reason for this is that there are special rules protecting the suppliers of agricultural goods and food which apply irrespective of the dominant position or market power of the dealer set out in Act XCV of 2009 on the prohibition of unfair dealer conduct towards suppliers of agricultural goods and food.

32. Are mergers and acquisitions subject to merger control in your country?

Yes, the Hungarian Competition Office enforces merger control in Hungary

(G) Intellectual property

33. Please outline the main intellectual property rights that are capable of protection in your country.

Patents

Nature of right:

For an invention to be patentable, it has to meet the following requirements: (i) new; (ii) involves an inventive step and (iii) is capable of industrial application.

Protection:

Patents must be registered with the Hungarian Intellectual Property Office (HIPO). A patent owner has moral and economic rights to his work.

Enforcement:

The patent holder can file the following actions for claims set out in the Patent Act:

- (i) he may demand a court ruling establishing that patent infringement has occurred;
- (ii) he may demand cessation of the patent infringement or threat of infringement, and an injunction aimed at prohibiting the continuation of the infringement;
- (iii) he may demand that the infringer provide information on the parties taking part in the manufacture of and trade in goods or performance of services which infringe on the patent, as well as on business relationships established for the use of the infringer;
- (iv) he may demand that the infringer make amends for his action - by declaration or in some other appropriate manner - and, if necessary, that such amends should be given due publicity by and at the expense of the infringer;
- (v) he may demand restitution of the economic gains achieved through infringement of the patent;
- (vi) he may demand seizure of those assets and materials used exclusively or primarily in the infringement of the patent, as well as of the products infringing on the patent, or demand that they are delivered to a particular person, recalled and definitively withdrawn from commercial circulation, or destroyed
- (vii) he may claim damages.

Length of protection:

Protection lasts for 20 years from the date of application to the HIPO and the right is not renewable.

Trade marks

Nature of right:

To be registered, a trade mark must be capable of both:

- (i) Graphic representation.
- (ii) Distinguishing the goods or services of one undertaking from those of another.

Protection:

The trade mark holder is entitled to use the protected trade mark exclusively. Trade marks must be registered with the HIPO or OHIM if such trademark is a community trademark.

Enforcement.

In case of trademark infringement, the trademark holder may request the following:

- (i) demand a court ruling establishing that trademark infringement has occurred;
- (ii) demand cessation of the trademark infringement or threat of infringement and inhibition of the infringer from further infringement;
- (iii) demand that the infringer provide information on parties taking part in the manufacture of and trade in goods or performance of services which infringe on the trademark, as well as on business relationships established for the use of the infringer;
- (iv) he may demand that the infringer make amends for his action - by declaration or in some other appropriate manner - and, if necessary, that such amends should be given due publicity by and at the expense of the infringer;
- (v) demand restitution of the economic gains achieved through infringement of the trademark;
- (vi) demand seizure of those assets and materials used exclusively or primarily in the infringement of the trademark, as well as of the goods infringing on the trademark or their packaging, or demand that they are delivered to a particular person, recalled and definitively withdrawn from commercial circulation, or destroyed.
- (vii) demand compensation for damages in accordance with the provisions of civil liability.

Length of protection

Protection lasts for ten years from the date of application. This can be extended indefinitely for further ten year periods.

Designs

Nature of right:

Designs can be protected either:

As the realisation of an establishment, structure and co-ordination of parts of an object (design) or as the external outlook of an object (industrial design).

The design owner has moral rights (that is, of integrity and authorship) and economic rights (for example, the exclusive right to exploit and license the exploitation) to his work.

Protection:

A registered design confers on its holder the exclusive right to use it and to prevent any third party from its unauthorised use. Designs must be registered with the HIPO. An industrial design is also protected under copyright law (see below, Copyright) if it has an original element, without registration.

Enforcement:

The same sanctions apply as for patents (see above, Patents).

Length of protection:

Designs are protected for a maximum of ten years from the date of application for registration. Industrial designs are protected for five years from the date of application for registration and can be renewed for up to four additional five-year periods.

Copyright

Nature of right:

Copyright is a right attached to the following original works: literary, scientific or artistic. A work as an intellectual creation is entitled to copyright protection on the basis of its individualistic and original nature deriving from the intellectual activity of the author.

In the Hungarian system of copyright protection "copyright" is to be understood as an authors' right and all other protectable subject -matters are protected under the umbrella of related rights, which in turn covers neighboring rights (the protection of performances, sound recordings, films and radio and television programs) and the sui generis protection of databases.

Protection:

The owner has moral and economic rights to his works. Copyright is protected by law automatically without registration from the time the work is created.

Enforcement:

The copyright holder may have the following claims in connection with the infringement:

- (i) demand a court ruling establishing that there has been an infringement of rights;
- (ii) demand that the infringement of rights be terminated and that the infringer be enjoined to cease any further infringement of rights;
- (iii) demand that the infringer make amends for his action - by declaration or in some other appropriate manner - and, if necessary, that such

amends should be given due publicity by and at the expense of the infringer;

- (iv) demand that the infringer provide information on parties taking part in the manufacture of and trade in goods or performance of services affected by the infringement of rights, as well as on business relationships established for the use of the infringer;
- (v) he may demand restitution of the economic gains achieved through infringement of rights;
- (vi) he may demand that the infringement be terminated, the antecedent state of affairs be restored, and the seizure of those assets and materials used exclusively or primarily in the infringement of rights, as well as of the goods infringing on the rights, or demand that they are delivered to a particular person, recalled and definitively withdrawn from commercial circulation, or destroyed.
- (vii) demand compensation for damages in accordance with the provisions of civil liability.

Length of protection:

Protection lasts for the life of the author plus 70 years. The right is not renewable.

Know-how

Nature of right:

According to the Civil Code, persons shall also be entitled to protection with respect to their economic, technical, and organizational knowledge and experience that has pecuniary value (know how).

Protection:

The owner has the exclusive right to use it and to dispose of such right.

Enforcement:

The holder of such right may demand the following in case of an infringement:

- (i) demand a court declaration of the occurrence of the infringement,
- (ii) demand to have the infringement discontinued and the perpetrator restrained from further infringement;
- (iii) demand that the perpetrator make restitution in a statement or by some other suitable means and, if necessary, that the perpetrator, at his own expense, make an appropriate public disclosure for restitution;

(iv) demand the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator and, furthermore, to have the effects of the infringement nullified or deprived of their injurious nature;

(v) file charges for punitive damages in accordance with the liability regulations under civil law.

(vi) demand a share of the financial proceeds from persons who have expropriated or used their achievements.

Length of protection:

The protection of know-how lasts until such knowledge or experience becomes part of the public domain.

(H) Marketing agreements

34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

vii. Agency;

Agency is regulated by Act CXVII of 2000 on the Commercial Representation Contracts of Self-employed Commercial Agents.

Independent agency activities must be governed by a written commercial agency contract.

An agent is usually authorised to sign contracts in the name of the principal.

Both principal and agent are strictly liable for any breach of contract.

The contract can contain a non-compete clause for up to two years after termination, provided the agent is given an additional fee.

viii. Distribution; and

Distribution agreements are atypical agreements; *i.e.* they are not specifically regulated in the laws. General contract law rules are applicable.

ix. Franchising

Franchise agreements are atypical agreements; *i.e.* they are not specifically regulated in the laws. General contract law rules are applicable.

However, the new Civil Code entering into force as of March 15, 2014 will specifically regulate franchise agreements.

(I) E-commerce

35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

Yes, namely:

- Act CVIII of 2001 on Electronic Commerce and on Information Society Services (implementation of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal market)
- Act XXXV of 2001 on Electronic Signatures (implementation of Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures)
- Government Decree No. 17/1999 (II. 5.) on distance contracts (implementation of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts)

(J) Data protection

36. Are there any data protection laws in your country? If so, please give brief details.

Yes, Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information. (implementation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data)

Personal data may be processed under the following circumstances:

- when the data subject has given his consent, or
- when processing is mandatory under the law

Special data may be processed when the data subject has given his consent in writing, or if it is mandatory under the law.

(K) Product liability

37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

Yes, Act X of 1993 on Product Liability (implementing Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products).

The general rule is that the manufacturer of the product is liable.

Product liability covers damages arising from death, injuries or health impairment or damages of at least EUR 500.