

## 匈牙利

匈牙利，国名全称为匈牙利共和国。匈牙利是欧洲中部的内陆国。国土面积为 93030 平方公里。人口 998 万（2010 年 12 月），主要民族为马扎尔族，约占 90%。居民主要信奉天主教（66.2%）和基督教新教（17.9%）。官方语言为匈牙利语。首都布达佩斯。

1849 年匈牙利建立共和国，但不久即为奥地利和俄国所扼杀。1867 年与奥地利组成奥匈帝国。第一次世界大战后奥匈帝国解体，1918 年 11 月 16 日宣布成立匈牙利共和国。1919 年 3 月建立匈牙利苏维埃共和国，并于 6 月 23 日颁布匈牙利苏维埃共和国宪法，这是匈牙利历史上第一部成文宪法。1919 年 8 月 1 日匈牙利苏维埃共和国被推翻，恢复君主立宪制。第二次世界大战后，匈牙利于 1946 年 2 月 1 日宣布废除君主制，成立匈牙利共和国。1949 年 8 月 18 日通过了匈牙利人民共和国宪法，8 月 20 日生效。这部宪法仿效苏联 1936 年宪法，确立了共产党领导的宪法体制。在 1949 年至 1989 年之间，这部宪法经历数次修改，但其社会主义宪法的性质保持不变。1989 年苏联东欧发生剧变后，匈牙利国会于 1989 年 10 月 23 日通过宪法修正案，确立了多党制和议会民主体制，并取消马列主义政党在国家机构中领导作用的规定。匈牙利因此成为在苏联东欧剧变后惟一个没有制定新宪法的前苏联东欧国家。2011 年 4 月 18 日，匈牙利国会通过了名为《匈牙利根本法》的新宪法草案，并于 4 月 25 日由总统签署，于 2012 年 1 月 1 日正式生效实施。

### 匈牙利根本法\*

（2011 年 4 月 18 日匈牙利国会通过，  
2011 年 4 月 25 日总统签署，  
2012 年 1 月 1 日生效）

上帝佑我匈人

### 国家宣言

我们匈牙利人民，基于所有匈牙利人的责任感，于新千年伊始宣告如下：

我们自豪于，在千年之前，圣斯提温国王建立了巩固的匈牙利国家，并使我国成为基督教欧洲的一部分。

我们自豪于为我国的生存、自由和独立而战的先辈们。

我们自豪于匈牙利人民杰出的文化成就。

我们自豪于我们人民在数个世纪的斗争中保卫了欧洲，并以其智识和勤勉丰富了欧洲的共同价值。

我们确认基督教在维护民族性上的作用。我们认同我国不同宗教传统的价值。

我们宣誓维护我国文化和精神上的统一，这个统一曾在上个世纪的风暴中瓦解过。我们的民族性构成了匈牙利政治共同体的一部分，也是国家的构成要素。

我们致力于对我国的传统、我们的特有语言、匈牙利文化、居住于匈牙利的各民族的语言和文化以及喀尔巴阡盆地所有文化和自然遗产的发展和保护。我们肩负着对后代的责任，我们将审慎利用我们的物质、文化和自然资源，以保护未来世代子孙的生存条件。

我们确信我们国家的文化对欧洲统一的多样性作出了重要贡献。

我们尊重其他国家的自由和文化，并将致力于同世界各国的合作。

我们确认，人的生存立基于人的尊严。

我们确认，只有与他人和谐共处，方能有完全的个人自由。

我们确认，家庭和国家构成了我们共处的基本框架，而忠诚、信心和友爱则是我们共同的基本价值观。

我们确认，共同体的力量 and 个人的荣誉建立在劳动和人的心智的发展之上。

我们确认，对弱者和穷人的帮助是我们的一项普遍义务。

我们确认，公民和国家的共同目标在于获得尽可能高的康乐、安全、秩序、正义和自由。

我们确认，只有当国家服务于其人民，并以公平且没有偏见和滥权的方式管理其事务时方有民主的可能。

我们尊重我国历史上的宪法所取得的成就，我们尊重匈牙利圣冠，她体现了匈牙利国家在构成上的连续性和民族的统一性。

我们不承认我国宪法在外国占领期间的中止。我们不承认在民族社会主义和独裁体制下针对匈牙利国家及其公民所犯非人道罪行的任何限制性立法。

我们不承认 1949 年宪法，并宣告其无效。

我们认同首届自由国会诸成员的看法，其在首个决

\* 文本来源于匈牙利政府官方网站的该国宪法英文版。

议中宣告我们当下的自由诞生于 1956 年革命。

我们记录下,我国的自我决定权丧失于 1944 年 3 月 19 日,而于 1990 年 5 月 2 日首届自由选举的人民代表会议成立时重新获得。我们认为这一天是我国新的民主和宪法秩序的一个开端。

我们确认,在历经了 20 世纪数十年的道德沦丧之后,我们持久地需要精神和文化上的更新。

我们相信共同塑造的未来以及年轻一代的奉献。我们坚信我们的子孙后代因其智识、坚韧与道德力量而使匈牙利复兴。

我们的根本法是我国法律秩序的基础,它是过去、现在和将来的匈牙利人的盟约,一个表达着国家的意志并且不断在生长的框架,和我们想要生活于其中的形式。

我们,匈牙利公民,准备好了在国家共同事业的基础上建立国家的秩序。

## 第一章<sup>①</sup> 宪法基础

### 第 A 条

我国国名为匈牙利。

### 第 B 条

- (1) 匈牙利为独立、法治的民主国家。
- (2) 匈牙利的政府形式为共和制。
- (3) 一切公权力源于人民。
- (4) 人民通过选举出的代表或者在例外的情况下以直接的方式行使其权力。

### 第 C 条

- (1) 匈牙利国家的运行以权力分立原则为基础。
- (2) 禁止任何人从事以暴力获取、行使或者独占权力为目标的活动。任何人都拥有且有权以合法的方式抵抗这种企图。
- (3) 惟有国家可以使用强制力以实施本根本法和立法。

### 第 D 条

铭记世界上只有一个团结的匈牙利民族,匈牙利担负着境外匈牙利人的命运;匈牙利将促进其共同体的生存和发展,支持其维护匈牙利民族同一性的努力,支持其个人和集体权利的主张,支持其团体自治的确立和在当地的繁荣,并将推进他们之间以及他们与匈牙利的合作。

### 第 E 条

- (1) 为推进自由、繁荣和欧洲国家的安全,匈牙利将促成欧洲一体化的实现。
- (2) 考虑到作为欧洲联盟的成员国,为了行使基础条约赋予的权利和履行规定的义务,匈牙利将依据本根本法,在国际协议的基础上和其他成员国一起通过欧

洲联盟机构而履行其职责。

(3) 按照本条第(2)款规定的条件,欧洲联盟的法律可以规定具有普遍约束力的行为规范。

(4) 对本条第(2)款规定的具有约束力的国际条约的确认,需要国会全体议员以 2/3 以上多数的批准。

### 第 F 条

- (1) 匈牙利首都是布达佩斯。
- (2) 匈牙利领土划分为县、市、镇和村。市和镇可以设区。

### 第 G 条

(1) 匈牙利公民的子女一经出生即为匈牙利公民。匈牙利国籍之拥有和取得的其他情形,由基本法律规定。

- (2) 匈牙利应保护其公民。
- (3) 匈牙利公民基于出生或者以合法方式获得的国籍不得剥夺。

(4) 国籍的具体规则由基本法律规定。

### 第 H 条

- (1) 匈牙利语为匈牙利官方语言。
- (2) 匈牙利应当保护匈牙利语言。
- (3) 匈牙利应当将匈牙利手语作为匈牙利文化的构成部分予以保护。

### 第 I 条

(1) 匈牙利国徽为尖底竖格盾,其左侧为 8 道红银色相间横条;右侧为红底,三绿色顶饰在底部为基,中间凸起处为金色王冠,上镶大主教十字架,圣冠座于盾形之上。



(2) 匈牙利国旗由 3 道分别代表力量、忠诚和希望的红、白、绿色等宽横条从上到下构成。



(3) 匈牙利国歌为弗兰克·俄尔克谱曲、弗兰克·寇勒作词的《圣诗》。

(4) 国徽国旗可以在其他历史场合下使用。使用

<sup>①</sup> 译者注:原文没有章序号,此为译者所加,下同。



国徽国旗和国家勋章的具体规则,由基本法律规定。

#### 第 J 条

(1) 匈牙利的国家节日是:

(a) 3 月 15 日,以纪念 1848—1849 年革命和独立战争,

(b) 8 月 20 日,以纪念国家的创立和创立人圣斯提温国王,和

(c) 10 月 23 日,以纪念 1956 年革命和独立战争。

(2) 国庆日为 8 月 20 日。

#### 第 K 条

福林为匈牙利法定货币。

#### 第 L 条

(1) 匈牙利保护男女基于自愿结合基础之上的婚姻制度和作为国家生存基础的家庭。

(2) 匈牙利鼓励生育子女。

(3) 对家庭的保护由基本法律规范。

#### 第 M 条

(1) 匈牙利的经济以劳动创造价值和自由企业为基础。

(2) 匈牙利确保公平的经济竞争,反对任何对垄断地位的滥用,并将保护消费者的权利。

#### 第 N 条

(1) 匈牙利实施平衡、透明和可持续的预算管理原则。

(2) 国会和政府对本条第(1)款规定原则的实施负有首要责任。

(3) 在履行其职责过程中,宪法法院、法院、地方政府以及其他国家机构有义务遵守本条第(1)款规定的原则。

#### 第 O 条

每个人对其自己负责,并且有责任尽其最大能力为国家和社会之任务的完成贡献力量。

#### 第 P 条

所有自然资源,特别是农地、森林和饮用水供给、生物多样性——尤其是野生动植物——和文化遗产构成了国家的共同遗产,对它们的保护、保持和保存是国家和所有人对后代的责任。

#### 第 Q 条

(1) 为缔造和维护和平与安全,并让人类可持续发展,匈牙利将与世界各民族和各国通力合作。

(2) 匈牙利将确保国际法与匈牙利国内法的一致,以履行其国际法上的义务。

(3) 匈牙利接受公认的国际法规则。其他国际法渊源将通过立法公布程序而成为匈牙利法律体系的组成部分。

#### 第 R 条

(1) 本根本法为匈牙利法律体系的基础。

(2) 本根本法和立法的拘束力及于所有人。

(3) 对根本法的解释,以其目的、国家宣言和我

国历史宪法取得的成就为准则。

#### 第 S 条

(1) 共和国总统、政府、国会委员会或者国会议员都有权提议通过新根本法或者对本根本法的修改。

(2) 新根本法的通过或者对本根本法的任何修改,需要议会全体成员 2/3 以上的多数赞成。

(3) 国会议长签署根本法或者根本法的修正案,并将其提交共和国总统。共和国总统在收到之后 5 日内签署根本法或者根本法的修正案,并将其在官方公报上公布。

(4) 所公布之根本法的修正案应当包括标题、修正案序号和公布日期。

#### 第 T 条

(1) 根据根本法有立法权的机构有权制定法律规定普遍适用的行为规范,并在官方公报公布。对地方条例和特别法律秩序下制定的其他立法,其公布的具体规则由基本法律规定。

(2) 立法包括国会制定的法律、政府法规、匈牙利中央银行行长发布的条例、总理发布的条例、独立规制机构发布的管理规定和条例以及地方规章。立法亦包括国防委员会和总统在国家危机或者紧急状态下发布的条例。

(3) 立法不得违背本根本法。

(4) 国会制定的法律为基本法律,其通过和修改须取得国会出席会议 2/3 以上的多数同意。

## 第二章 自由和责任

#### 第 I 条

(1) 尊重和保护人的不可侵犯和不可放弃的基本权利是国家的首要责任。

(2) 匈牙利确认个人和共同体享有的基本权利。

(3) 基本权利和义务由特别的立法予以规定。只有在为行使其他基本权利或者维护宪法价值而有绝对必要时方可限制基本权利,且要与所要达到的目的合乎比例,并须尊重该基本权利的本质内容。

(4) 依法成立的法人依其性质享有非仅适用于自然人的基本权利和义务。

#### 第 II 条

人的尊严不可侵犯。所有人享有生命权和人的尊严。胎儿的生命自受孕时受保护。

#### 第 III 条

(1) 对任何人不得施以酷刑、非人道或者有辱人格的对待、处罚和奴役。禁止人口贩卖。

(2) 未经当事人自愿和知情,不得进行有关人体的医学和科学试验。

(3) 禁止一切人种改良以及任何出于获利目的而使用人体或者人体的一部分;禁止克隆人类。

#### 第 IV 条

(1) 所有人都享有自由和人身安全的权利。

(2) 没有法律依据或者未按照法律规定的程序,不得剥夺任何人的自由。无假释的无期徒刑只适用于故意和暴力犯罪。

(3) 任何涉嫌犯罪和因犯罪受羁押的人应当尽快释放,或者应当尽快将其送交法院。法院应当及时进行审讯,并作出附有无罪释放或者有罪认定理由的书面判决。

(4) 任何人的自由受到限制,如果限制理由不正当或者限制方式不合法,其都有权要求得到赔偿。

#### 第 V 条

所有人都有权反抗对其人身和财产的侵害或者侵害的直接威胁。

#### 第 VI 条

(1) 所有人都有权得到对其本人或者家庭成员之生命、住宅、亲属关系和良好声誉的保护。

(2) 所有人都有权得到对其个人信息的保护,有权得到和传播有关公共利益的信息。

(3) 对保护个人信息和获得有关公共利益的信息之权利的行使,由独立的机构予以监督。

#### 第 VII 条

(1) 所有人都有思想、良心和宗教信仰的自由。这项权利包括自由选择 and 改变宗教信仰或者其他任何信念的自由,自由表达或者不表达的自由,以及个人和团体在公共领域和私生活当中公开或者秘密地通过宗教行为、仪式或者以其他任何方式,宣称和讲授其宗教信仰或者其他任何信念的自由。

(2) 政教应予分离。教会应当自治。为了达到社会的目标,国家和教会应当协调一致。

(3) 有关教会的具体规则,由基本法律规定。

#### 第 VIII 条

(1) 所有人都有和平集会的权利。

(2) 所有人都有权建立和参加组织。

(3) 结社自由权包括政党的自由建立和自由活动。政党应当参与人民意志的形成和宣告。禁止任何政党直接行使国家权力。

(4) 政党活动和财政管理的具体规则,由基本法律规定。

(5) 结社自由权包括工会和其他代表团体的自由建立及其自由活动。

#### 第 IX 条

(1) 所有人都有权自由表达其意见。

(2) 匈牙利确认和保护新闻自由及其多元化,并为了民主公意形成之必要而确保信息的自由传播。

(3) 有关新闻自由以及媒体监管机构、新闻制品以及信息通信市场的具体规则,由基本法律规定。

#### 第 X 条

(1) 匈牙利保障科学研究和艺术创作的自由,为获取更多知识而学习的自由,以及在法律规定的框架下教学的自由。

(2) 国家无权决定科学真理问题,科学家有评价

科学研究的排他性权利。

(3) 匈牙利保护匈牙利科学院和匈牙利艺术研究院的科学研究和艺术自由。所有高等教育机构在研究内容、研究和教学方法上自治,其组织和财政管理由特别法律规定之。

#### 第 XI 条

(1) 所有匈牙利公民有受教育的权利。

(2) 匈牙利通过扩展和普及公共教育、提供免费和义务的初等教育、免费和普及的高等教育,以及每个人因其能力而获得的高等教育且保障这项权利。并对受教育者提供法定财政支持。

#### 第 XII 条

(1) 所有人都有权自由选择其工作、职业和经营活动。所有人都有责任尽其最大能力为社会的繁荣贡献力量。

(2) 匈牙利将尽力创造条件为每个有能力且愿意工作的人提供工作机会。

#### 第 XIII 条

(1) 所有人都享有财产权和继承权。财产权承担社会义务。

(2) 只有在例外情形下和出于公共利益的需要,方可在法律规定的情形和方式下征收财产,且必须给予完全、无条件和及时的补偿。

#### 第 XIV 条

(1) 禁止将匈牙利公民驱逐出境;所有匈牙利公民得随时返回国内。对居住于匈牙利境内的外国人非经法律判决不得驱逐出境。禁止集体驱逐。

(2) 禁止将任何人驱逐或者引渡至有死刑判决、酷刑或者任何其他非人道对待和惩罚之危险的国家。

(3) 匈牙利根据申请,可以给予在其母国或者经常居住地所在国因种族、民族、与政治团体的关联,或者其宗教和政治信仰而受迫害或者有受迫害之虞的非匈牙利公民以庇护权,除非其已经得到其母国或者任何其他国家的保护。

#### 第 XV 条

(1) 所有人在法律面前一律平等。所有人具有平等的法律权能。

(2) 匈牙利保障所有人的基本权利,不因种族、肤色、性别、是否残疾、语言、宗教、政治或者其他观点、出身、财产、出生及其他因素而有差别对待。

(3) 男女权利平等。

(4) 匈牙利将采取特别措施以推进法律平等的实现。

(5) 匈牙利将采取特别措施保护儿童、妇女、老人和残疾人。

#### 第 XVI 条

(1) 所有儿童都有权受到保护和关照,以促进其身心成长和道德发展。

(2) 父母有权为其子女选择其认为合适的抚育方法。



(3) 父母有抚养其子女的义务, 该义务包括为其子女提供学校教育之义务。

(4) 成年子女有赡养其父母的义务。

#### 第 XVII 条

(1) 雇员和雇主应当相互协助, 以保障工作机会、促进国民经济可持续发展和其他社会目标。

(2) 雇员、雇主及其代表为其利益进行协商、缔结集体协议、采取联合行动或者举行罢工的法律权利。

(3) 所有雇员都有权获得与其健康、安全和尊严相当的工作条件。

(4) 所有雇员都有日、周休息时间和年度带薪休假的权利。

#### 第 XVIII 条

(1) 除法律另有规定并对其身心成长和道德发展无危害外, 禁止雇用童工。

(2) 匈牙利将采取特别措施保护工作场所的青年和父母。

#### 第 XIX 条

(1) 匈牙利将尽力为其公民提供社会保障。所有匈牙利公民在其年老、疾病、残疾、孤寡、失怙和非由其本人造成的失业时, 均有权获得法定津贴。

(2) 匈牙利将建立社会制度体系并采取措施为第(1)款所规定者和其他有需要者提供社会保障。

(3) 社会保障措施的类型和范围, 按照受益者的行为对社会的效用原则由法律规定。

(4) 通过建立在社会团结基础上的国家普遍年金制度和自愿设立的社会机制, 匈牙利将推进对老人生计的保障。国家年金的领取条件由法律规定, 其应当考虑到对妇女的特别保护。

#### 第 XX 条

(1) 所有人有身体和心理健康权。

(2) 为推进第(1)款所规定权利的实现, 匈牙利保障其农产品不接受任何转基因生物技术, 为公众提供健康食品和饮用水, 组织安全生产和提供保健, 支持体育事业和日常身体锻炼, 保护环境。

#### 第 XXI 条

(1) 匈牙利确认和推行所有人都享有健康环境的权利。

(2) 对环境造成损害的人依照法律有恢复环境或者承担恢复费用的义务。

(3) 禁止为了填埋的目的而将污染废物运入匈牙利。

#### 第 XXII 条

匈牙利将尽力为所有人提供适宜的住房和公共服务。

#### 第 XXIII 条

(1) 所有匈牙利成年公民都有选举国会议员、地方议员和市长以及欧洲议会议员的选举权和被选举权。

(2) 居住于匈牙利的欧洲联盟其他成员国的所有

成年公民, 都有选举地方议员和市长以及欧洲议会议员的选举权和被选举权。

(3) 被确认为匈牙利入境难民、移民和居民的所有成年人都有选举地方议员和市长的选举权和被选举权。

(4) 基本法律得规定投票权的行使者须在匈牙利有住所, 基本法律亦得规定候选人的其他附加条件。

(5) 每位选举人得参与其居住地或者登记住所地之地方议员和市长的选举。每个选举人得在其居住地或者登记住所地行使其选举权。

(6) 因犯罪或者限制精神能力而被法院剥夺选举权者没有投票权。居住于匈牙利的欧洲联盟其他成员国公民, 如果被其本国法律、法院或者官方决定剥夺选举权, 则不得行使消极投票权。

(7) 所有享有国会议员选举权的人都有权参加公民复决。所有享有地方议员和市长选举权的人均有权参加地方公民复决。

(8) 所有匈牙利公民均有权按其能力、资质和专长担任公职。任何政党成员及其官员不得担任的公职, 由特别法规定。

#### 第 XXIV 条

(1) 所有人均有权将其事务提交有关机关以公正、无偏私和及时处理。有关机关应当按照法律规定的方式给出其作出决定的理由。

(2) 对国家机关在履行职责时造成的违法损害, 所有人均有权获得法定的国家赔偿。

#### 第 XXV 条

所有人均有权向任何行使公权力的机构单独或者联合提出书面请求、诉愿或者建议。

#### 第 XXVI 条

国家利用最新技术措施和科学成果, 以提高工作效率, 提升公共服务水准, 促进公共事务透明化, 推进机会平等。

#### 第 XXVII 条

(1) 所有合法居住于匈牙利境内的人都有迁徙自由和选择住所的自由。

(2) 所有匈牙利公民在境外停留期间都有权得到匈牙利的保护。

#### 第 XXVIII 条

(1) 所有人都有权将针对其的任何指控、诉讼中的权利义务提交依法设立的独立而公正的法院, 以公正公开和及时的审判方式裁判之。

(2) 除非法院有效裁决认定其刑事责任, 否则任何人不得被认定为有罪。

(3) 任何受到起诉的人在审判的所有阶段都有权获得法律辩护。律师不得因其在提供法律辩护时发表意见而承担责任。

(4) 人民之行为若在设计时不构成匈牙利之法律或者根据国际协议不构成其他国家或者欧洲联盟成员国法律规定的犯罪, 不得定罪和处罚。

(5) 对行为人在实施行为时根据公认的国际法准则构成犯罪之行为的追诉和定罪,不受第(4)款的限制。

(6) 除法律规定的法律补救的特殊情形外,经匈牙利法院之有效裁决或者根据国际协议经其他国家法院的有效裁决或者欧洲联盟任何法律已被宣告无罪或者定罪之人,不得基于同一犯罪再被追诉和定罪。

(7) 所有人都有权对任何侵害其权利或合法利益的法院、行政机关或者其他官方的决定寻求法律救济。

#### 第 XXIX 条

(1) 匈牙利境内的各民族构成国家的组成部分。匈牙利各民族公民都有权自由表达和保持其身份。匈牙利境内的各民族有权使用本民族语言,单独或者集体使用本民族语言的姓名、发展其民族文化,并接受民族语言的教育。

(2) 匈牙利境内的各民族有权建立地方和民族的自治政府。

(3) 匈牙利境内各民族之权利及其地方和民族自治政府之选举的具体规则,由基本法律规定。

#### 第 XXX 条

(1) 所有人应按其能力以及参与经济的程度为满足社会的需要而贡献力量。

(2) 抚育子女者,其对社会之贡献程度的确定应当考虑到其抚育子女的花费。

#### 第 XXXI 条

(1) 匈牙利公民都有保卫国家的义务。

(2) 为了国防的目的,匈牙利实行志愿预备役制度。

(3) 在国家危机状态,或者在防御性防务状态下根据国会的决议,所有居住于匈牙利的成年男性公民应当服兵役。如果武装服役有违于服役者的良心,其应当不持武装服役。兵役的方式和具体规则由基本法律规定。

(4) 根据基本法律的规定,为了国防的目的,可令匈牙利境内的成年公民在国家危机期间从事工作。

(5) 根据基本法律的规定,为了国防和灾害救治的目的,可令匈牙利境内的成年公民从事民防活动。

(6) 根据基本法律的规定,为了国防和灾害救治的目的,可令所有人提供经济和财政服务。

## 第三章 国 家

### 国 会

#### 第 1 条

(1) 国会为匈牙利之最高代议机构。

(2) 国会有权:

(a) 制定和修改匈牙利根本法;

(b) 通过国会之法律;

(c) 通过国家预算和批准其实施;

(d) 根据其职责和权限批准具有约束力的国际协议;

(e) 选举共和国总统,宪法法院法官和院长,元老院院长,最高检察长,基本权利专员及其代表,国家审计署署长;

(f) 选举总理,并决定对政府的信任事务;

(g) 解散违反根本法的代议机关;

(h) 决定宣布战争状态和媾和;

(i) 就特别法律秩序作出决定,并参与军队的运行;

(j) 宣布特赦;和

(k) 行使由根本法和其他法律规定的其他职责和权限。

#### 第 2 条

(1) 选民通过直接和秘密投票行使其普遍和平等的选举权选举国会议员,选举应当是选民意志的自由表达,其方式由基本法律规定。

(2) 匈牙利境内各民族按照基本法律的规定参与国会的活动。

(3) 除了自动或者强制解散后举行的选举外,国会每隔四年选举一次,在四月或者五月举行选举。

#### 第 3 条

(1) 国会会期自其开幕时始至下一届议会开幕时止。国会会议由共和国总统在选举后 30 日内召集。

(2) 国会得决定是否解散。

(3) 在下列情形下,共和国总统得解散国会并同时宣布大选:

(a) 政府任期届满,对共和国总统提名的总理人选,国会在首次提名后 40 日内不能选举出总理;

(b) 国会在当年 3 月 31 日前不能批准国家预算案。

(4) 在解散国会前,共和国总统应征询总理、议院议长和议会党团领袖的意见。

(5) 共和国总统得行使其第(3)款(a)项规定的权利,直至国会选举出总理。共和国总统得行使其第(3)款(b)项规定的权利,直至国会批准国家预算案。

(6) 上一届国会自动或者强制解散后 90 日内举行新一届国会的选举。

#### 第 4 条

(1) 议员权利义务平等,应当为公共利益恪尽职守,不接受训示。

(2) 为保障其独立,议员享有豁免权,并得支领薪酬。议员不得担任的公职以及议员不适任的其他标准,由基本法律规定。

(3) 遇有下列情形,议员的任期终止:

(a) 国会任期终止;

(b) 议员死亡;

(c) 被宣布其不适任;

(d) 辞职;

(e) 其当选的条件不复存在;



(f) 在一年内未参与国会的工作。

(4) 国会以出席议员 2/3 以上的多数宣告议员当选的必要条件不存在；宣告议员不适任；确认特定议员在一年内未参与国会的工作。

(5) 议员之法律地位及薪酬的具体规则，由基本法律规定。

#### 第 5 条

(1) 国会会议公开。应政府或者议员之请求，国会得以议员 2/3 以上的多数决定举行秘密会议。

(2) 国会自议员中选举议长、副议长和秘书。

(3) 国会设立由议员组成的常设委员会。

(4) 议员组成议会党团，根据议事规则协调其活动。

(5) 议员过半数出席即达开会法定人数。

(6) 除非根本法另有规定，国会以出席议员的简单多数赞同通过决议。根据议事规则特别的决议须以特别的多数通过。

(7) 国会以出席议员 2/3 以上的多数制定议事规则规定其活动规则和辩论程序。

(8) 国会常会之召开由基本法律规定。

#### 第 6 条

(1) 共和国总统、政府、国会委员会和议员都可提出法案。

(2) 法案提案人、政府或者议长在法案最终表决前提出动议，国会得将其已通过的法案提交宪法法院以审查其是否符合根本法。国会在最后投票后对上述动议作出决定，如果上述动议得以通过，议长应立即将已通过的法案提交宪法法院以审查其是否符合根本法合宪性。

(3) 议长签署法案并在 5 日内将其呈递共和国总统。共和国总统在接到法案后 5 日内签署并公布之。如果议会根据第 (2) 款的规定将法案提交宪法法院以审查其是否符合根本法，议长只有在宪法法院未认定法案违反根本法之时才签署法案并将其呈递共和国总统。

(4) 如果总统认为法案或者其任何组成条款不符合根本法，且没有依据第 (2) 款之规定进行审查，则总统应当将该法案提交宪法法院审查其是否符合根本法。

(5) 如果总统对法案或者其任何组成条款持有不同意见，但未依据第 (4) 款之规定行使其权利，总统在签署前得附上其评论并将法案退回国会重议。国会应重新举行对该法案的辩论，并重新表决通过。如果宪法法院根据国会的决议在审查期间未认定任何违反根本法之情事，则共和国总统亦可行使此项权利。

(6) 根据本条第 (2)、(4) 款之规定的动议，宪法法院应在接受后 30 日内尽快作出判决。如果宪法法院认定违反根本法，国会应当重新举行对该法律的讨论以消除违宪情形。

(7) 根据总统的提请，宪法法院在审查期间未认定违反根本法，共和国总统则应当立即签署法律并公

布之。

(8) 宪法法院可被请求再行审议国会根据本条第 (6) 款之规定重新讨论和通过的法案是否按照本条第 (2)、(4) 款之规定符合根本法。宪法法院对第二次提议应当在接受后 10 日内尽快作出判决。

(9) 如果国会对共和国总统持有不同意见而退回的法案予以修改，根据本条第 (2)、(4) 款进行的是否符合根本法的审查应当仅限于修改后的条款以及审查立法过程中是否遵循根本法规定的程序性规定。如果国会对总统持有不同意见而退回的法案未予修改，则共和国总统得提议对其是否遵守根本法规定的立法程序进行是否符合根本法的审查。

#### 第 7 条

(1) 议员可就其职权范围内的任何事项询问基本权利专员、国家审计署署长、最高检察长以及匈牙利国家银行行长。

(2) 议员可就其职权范围内的任何事项向政府及其成员提出质询和询问。

(3) 国会委员会的监督活动以及到会的义务，由基本法律规定。

## 公民复决

#### 第 8 条

(1) 根据不少于 20 万选民的提议，国会应当举行公民复决。根据共和国总统、政府或者 10 万选民的提议，国会应当举行公民复决。有效且终局的复决对于国会具有拘束力。

(2) 对国会职责和职权范围内的任何事项都可以举行公民复决。

(3) 下列事项不得举行公民复决：

(a) 对根本法的任何修改；

(b) 国家预算法的内容及其执行，中央税的种类，年金或者医疗特别费，关税和地方税的核心条件；

(c) 国会议员、地方议员及市长、欧洲议会议员选举法的内容；

(d) 根据国际条约需要承担的义务；

(e) 有关人事的任何事务，以及在议会权限范围内机构的设立；

(f) 议会的自动解散；

(g) 所有代议机构的强制解散；

(h) 战争状态、国家危机和紧急状态的宣布，预防性国防的宣布和延期；

(i) 任何与参与军事行动有关的事务；

(j) 决定特赦。

(4) 依所有选民的过半数有效投票，公民复决有效；所有选民的过半数投票一致同意某一问题，公民复决则具有终局性。

## 共和国总统

### 第9条

(1) 共和国总统为匈牙利国家元首，象征国家的统一，是国家机构民主运行的保证。

(2) 共和国总统为匈牙利武装力量的统帅。

(3) 共和国总统：

(a) 代表匈牙利；

(b) 出席国会并致辞；

(c) 提出法案；

(d) 提议举行公民复决；

(e) 确定国会议员、地方议会议员和市长、欧洲议会议员选举以及公民复决的举行日期；

(f) 就特别法律秩序作出决定；

(g) 召集国会的首次会议；

(h) 解散议会；

(i) 将国会通过的法律提交宪法法院以审查其是否符合根本法，或者将其退回国会重议；

(j) 提名总理、元老院院长、最高检察长和基本权利专员的人选；

(k) 任命职业法官和预算委员会主任；

(l) 确认匈牙利科学院院长的任命；

(m) 组建其工作机构。

(4) 共和国总统应当：

(a) 根据国会授权确认国际协议的拘束力；

(b) 任命和接受大使、公使；

(c) 任命部长、匈牙利国家银行行长、副行长、独立规制机构首长和大学教授；

(d) 任命大学校长；

(e) 任命和晋升将军；

(f) 授予法定勋章、奖励和称号，批准外国勋章的使用；

(g) 行使特赦的权力；

(h) 在其职责和职权范围内决定国土管理事务；

(i) 决定公民资格的获得和终止；

(j) 决定法律授权其的其他事务。

(5) 共和国总统根据第(4)款采取的措施和作出的决定，由政府组成人员副署。按照法律的规定，共和国总统在法定职权范围内作出的决定无须副署。

(6) 如果法律条件不具备或者其有充分理由认为将导致严重危害国家的民主运行，共和国总统得拒绝履行本条第(4)款(b)至(e)项规定的义务。

(7) 如果对根本法保障的价值造成侵害，共和国总统得拒绝履行第(4)款(f)项规定的义务。

### 第10条

(1) 共和国总统由国会每隔5年选举一次。

(2) 年满35周岁的匈牙利公民可以当选为共和国总统。

(3) 共和国总统只能连任一届。

### 第11条

(1) 共和国总统应在不早于现任共和国总统任期届满前60日，但不晚于其届满前30日内选出；现任总统提前结束任期的，则在其任期结束后30日内选出。总统选举日由国会议长确定。总统由国会秘密投票选举。

(2) 共和国总统的选举应有预先的提名。1/5以上的国会议员书面提出的提名有效。提名须在投票之前提交国会议长。一名国会议员只能提名一名候选人，多重提名无效。

(3) 候选人在第一轮投票获得2/3以上国会议员多数投票支持的，当选为共和国总统。

(4) 如果第一轮投票未选出总统，则举行第二轮投票。只有在第一轮投票中获得投票最多和次多的两名候选人参加第二轮投票。如果在第一轮投票中获得选票最多者票数相同，则获得选票最多者参加第二轮投票。如果在第一轮投票中获得选票次多者票数相同，则所有获得选票最多和次多者参加第二轮投票。在第二轮投票中获得有效选票多数者当选共和国总统，不论票数多少。如果第二轮选举依然无法选出，则应重新提名进行新选举。

(5) 选举程序应当在连续最多2日之内完成。

(6) 共和国当选总统应当在现任共和国总统任期届满时在国会宣誓就职；如果现任总统提前结束任期，则应当在选举结果公布8日后宣誓就职。

### 第12条

(1) 共和国总统不可侵犯。

(2) 共和国总统之职位与其他任何国家的、社会的、经济和政府机构或者岗位不相容。共和国总统不得从事其他有薪酬的职业，并且除著作权保护的行为外不得从事其他活动以获取报酬。

(3) 遇有下述情形，共和国总统的任期终止：

(a) 任期届满时；

(b) 总统死亡时；

(c) 不能视事超过90日；

(d) 其当选的条件不复存在时；

(e) 宣告其不适任时；

(f) 辞职时；或者

(g) 被解除共和国总统职位时。

(4) 国会以出席议员2/3以上的多数规定总统超过90日而不能视事、欠缺当选资格和被宣告不适任的条件。

(5) 共和国总统之法律地位与薪酬的具体规则，由基本法律规定。

### 第13条

(1) 对共和国总统的追诉，须在其任期届满后进行。

(2) 如果共和国总统在任职期间故意违反根本法或者其他法律，或者实施故意犯罪行为，1/5以上国会议员可以提出弹劾。

(3) 弹劾程序须得到国会议员2/3以上的多数支持。投票应当秘密进行。



(4) 自国会作出弹劾决议日至弹劾程序终结前，共和国总统暂停行使其职权。

(5) 弹劾程序由宪法法院进行之。

(6) 宪法法院认定共和国总统应承担公法上的责任者，得解除其职务。

#### 第 14 条

(1) 共和国总统暂时不能视事者，其职权由国会议长代为行使，直至不能视事状态消除；如果共和国总统的任期在其间届满，则代行至新总统就职时止。

(2) 经由共和国总统、政府或者国会议员之提议，由国会确定共和国总统暂时不能视事。

(3) 在代行共和国总统职权期间，国会议长不得行使其国会议员的权利；其国会议长的职责由国会任命的副议长履行之。

## 政 府

#### 第 15 条

(1) 政府行使行政权，其职责和权限包括根本法和其他立法未明确规定为其他机构之职责和权限的所有事务。政府对国会负责。

(2) 政府为行政管理的最高机关，可按照法律的规定设立行政管理机关。

(3) 政府在其职权范围内根据法律授权对法律未予规定的事项制定法规。

(4) 政府制定的法规不能违反法律。

#### 第 16 条

(1) 总理和部长为政府组成人员。

(2) 总理可以颁布规定任命一名或者两名部长为副总理。

(3) 国会根据总统的建议选举总理。

(4) 总理由国会以过半数的多数选出，选出后即就职。

(5) 共和国总统根据本条第(3)款之规定提出其建议：

(a) 如果在新一届国会组成时总理的任期届满，则在新一届国会召集时提出建议；

(b) 如果总理的任期因辞职、死亡、被宣告不适任、当选条件缺失或者在信任投票中国会表达对总理的不信任而终止，则在总理任期终止 15 日后提出建议。

(6) 如果国会未根据本条第(5)款之规定选出新总理，共和国总统应当在 15 日内提名新候选人。

(7) 共和国总统根据总理的建议任命部长。部长在其委任状任命之日就职，无委任状时在任命之日就职。

(8) 各部部长任命后政府即为组建完成。

(9) 政府成员应当在国会宣誓。

#### 第 17 条

(1) 各部由特别法律予以具体规定。

(2) 政府得任命不管部长 (Ministers without Portfolio) 承担政府规定之职责。

(3) 都会和县政府机构为政府之具有一般权限的区域管理机构。

(4) 基本法律关于各部、部长或者行政机关之名称的规定，可由法律修改。

(5) 政府官员之法律地位由法律规定。

#### 第 18 条

(1) 总理决定政府的总体政策。

(2) 各部部长在其权限范围内按照政府的总体政策独立管理其行政部门和下属机构，并履行政府或者总理确定的职责。

(3) 在其权限范围内，政府组成人员根据法律或者政府法规的授权单独或者与其他各部联合发布规章。所发布的规章不得违反法律、政府法规或者匈牙利国家银行行长颁布的命令。

(4) 政府组成人员就其行为对国会负责，各部部长对总理负责。政府成员可以出席国会会议并发表咨文。国会和国会委员会得令政府成员到会。

(5) 政府组成人员之法律地位及薪酬、各部部长之更替，由法律规定。

#### 第 19 条

国会可以就政府在政府参与其中的欧洲联盟各机构决策过程中要采取的立场征询政府，并可就决策程序的议程蓝图提出意见。在欧洲联盟决策过程中，政府应当考虑国会的立场。

#### 第 20 条

(1) 政府的任期终止于总理任期终止时。

(2) 遇有下述情形，总理的任期终止：

(a) 新选出的国会组成时；

(b) 国会通过对总理的不信任案并且选举出新总理；

(c) 根据总理的提议国会在信任投票中通过对总理的不信任案；

(d) 总理辞职；

(e) 总理死亡；

(f) 总理不适任；或者

(g) 总理当选的条件不复存在时。

(3) 遇有下述情形，部长的任期终止：

(a) 总理的任期终止时；

(b) 部长辞职；

(c) 被免职；

(d) 部长死亡时。

(4) 总理当选条件不复存在和不适任的决定，由国会以出席议员 2/3 以上的多数通过。

#### 第 21 条

(1) 1/5 的国会议员可以书面提出对总理的不信任案，并提出新总理人选。

(2) 国会通过不信任案即表示对总理的不信任，不信任案中新提名的总理人选视为当选。国会以简单多数通过上述决议。

(3) 总理可以提出信任投票。国会议员的简单多数不支持总理提出的信任投票，即视为通过对总理的不

信任投票。

(4) 总理可以提出对政府议案的投票视为信任投票。国会不赞成政府议案即视为通过对总理的不信任投票。

(5) 提出不信任案或者总理根据本条第(3)、(4)款提出建议后,国会应当在3日后且至迟在8日之前对其信任问题作出决定。

## 第22条

(1) 政府任期终止后直至新政府组建前,政府得作为看守政府行使职权,但不得批准具有约束力的国际协议,且只能按照法律的授权颁布急需的法规。

(2) 因总理辞职或者新国会组成而终止任期的总理可以作为看守政府总理行使职权,直至新总理选出,但不能提议免除部长职务或者新任命部长,且只能按照法律的授权颁布急需的法规。

(3) 因总理死亡、被宣告不适任或者其当选的条件不复存在,或者国会在信任投票中通过不信任案而终止总理任期的,总理的职权由副总理行使;当副总理为复数时,由第一副总理行使,直至新总理选出。副总理之行使总理职权,受本条第(2)款之限制。

(4) 总理任期终止后各部部长作为看守部长行使职权,但只能在有急需时颁布规章,直至新部长任命或者指定新政府成员临时履行该部职责。

## 独立规制机构

### 第23条

(1) 国会得通过基本法律设立独立规制机构履行和行使行政机关的特定职责和职权。

(2) 根据基本法律规定的条件,独立规制机构的首长由总理任命,或者经总理提名后由共和国总统任命。独立规制机构的首长得任命一名或者多名副职。

(3) 独立规制机构的首长应当向国会提交年度工作报告。

(4) 独立规制机构的首长根据法律授权在其职权范围内颁布命令,其命令不得违反法律、政府法规、总理令、部长令和匈牙利国家银行行长颁布的命令。独立规制机构的首长可在命令中委任其副职代为颁发命令。

## 宪法法院

### 第24条

(1) 宪法法院为根本法之最高维护机构。

(2) 宪法法院应当:

(a) 审查已经通过但尚未公布的法律是否符合根本法;

(b) 应法官之申请,对具体案件中适用的法律是否符合根本法予以审查;

(c) 在宪法诉愿中对具体案件中适用的法律是否符合根本法予以审查;

(d) 在宪法诉愿中对法院裁判是否符合根本法予以审查;

(e) 应政府、1/4国会议员或者基本权利专员之请求,对立法是否符合根本法予以审查;

(f) 审查立法是否符合国际条约;以及

(g) 行使根本法和基本法律规定的其他职权。

(3) 宪法法院:

(a) 根据本条第(2)款(b)、(c)、(e)项规定之职权,宣告违反根本法的任何立法和任何法律条款无效;

(b) 根据本条第(2)款(d)项规定之职权,宣告违反根本法的任何法院裁判为无效;

(c) 根据本条第(2)款(f)项规定之职权,宣告违反国际条约的任何立法或者法律条款为无效;并根据基本法律的规定确定具体法律效果。

(4) 宪法法院由15名成员组成,任期12年,由国会以2/3以上的多数选举之。国会以2/3以上的多数选举宪法法院成员之一为院长,任职至其作为宪法法院成员的任期终止。宪法法院成员不得参加任何政党,或者从事任何政治活动。

(5) 宪法法院之职权、组织和运行的具体规则,由基本法律规定。

## 法 院

### 第25条

(1) 法院行使审判权。最高法院为元老院(Curia)。

(2) 法院对下列事宜进行裁判:

(a) 刑事案件、民事纠纷,或者法律规定的其他事务;

(b) 行政行为的合法性;

(c) 地方规定与其他立法之间的冲突以及无效宣告;

(d) 地方政府疏于履行法定职责的认定。

(3) 除了根据本条第(2)款规定的职责外,元老院保证法律在适用上的统一,其因此作出的决定对所有法院有拘束力。

(4) 司法机关应为多层次组织。对特殊类别的案件,尤其是行政和劳动争议案件,得设立特别法院。

(5) 司法机关的自我管理机构参与法院的管理。

(6) 法律得授权其他机构解决特定的法律纠纷。

(7) 法院之组织和管理以及法官之法律地位和薪酬的具体规则,由基本法律规定。

### 第26条

(1) 法官独立,只服从法律,其司法活动不受指示。非根据基本法律规定的理由和程序不得免除法官职务。法官不得参加任何政党和从事任何政治活动。

(2) 共和国总统根据基本法律之规定任命职业法官。年满30周岁以上方有资格担任法官。除元老院长之外,超过普通退休年龄者不得再担任法官。

(3) 元老院院长任期9年,根据共和国总统的提



名由国会在议员中选出。元老院院长的选举须得到国会议员 2/3 以上的多数赞成。

#### 第 27 条

(1) 除非法律另有规定, 法院由陪审员裁判。

(2) 非职业法官按照法律规定的方式参与对法定案件的审判。

(3) 独任法官和陪审员主席为职业法官。依据第 26 条第 (1) 款之规定, 法院书记官在独任法官之职权范围内亦可裁决法律规定的案件。

#### 第 28 条

法院在适用法律时对法律条文的解释应当符合法律的目的和根本法。对根本法和其他法律的解释应推定其服务于与常识和公益相一致的道德和经济目标。

### 检察机关

#### 第 29 条

(1) 最高检察长和检察机关执行国家追惩权, 参与司法活动。检察机关追诉犯罪, 惩办其他非法之作为或者不作为, 预防违法行为。

(2) 根据法律的规定, 最高检察长和检察机关应当:

- (a) 行使侦查权;
- (b) 在法院诉讼中代表公诉方;
- (c) 监督刑罚执行的合法性;
- (d) 行使法律规定的其他职责和职权。

(3) 检察机关由最高检察长领导, 检察官由最高检察长任命。除最高检察长外, 超过通常退休年龄的其他检察官不得继续任职。

(4) 根据共和国总统的提名, 国会在检察官中选举最高检察长, 任期 9 年。对最高检察长的选举须得到国会议员 2/3 以上多数通过。

(5) 最高检察长应当向国会提交年度工作报告。

(6) 检察官不得参加政党, 不得参加政治活动。

(7) 检察机关之组织和活动、最高检察长和检察官之法律地位和薪酬的具体规则, 由基本法律规定。

### 基本权利专员

#### 第 30 条

(1) 基本权利专员保护基本权利, 并应人民之申请采取行动。

(2) 对基本权利之任何滥用行为, 基本权利专员得审查或者提出审查, 并提出救济的一般或者特别措施。

(3) 基本权利专员和副专员由国会以 2/3 以上的多数选出。副专员保护未来世代的利益和匈牙利境内各民族的权利。基本权利专员和副专员不得参加政党, 不得参加政治活动。

(4) 基本权利专员应当向国会提交年度工作报告。

(5) 基本权利专员和副专员的具体规则, 由基本法律规定。

### 地方政府

#### 第 31 条

(1) 匈牙利设立地方政府管理地方事务, 行使地方公权力。

(2) 对法律规定的属于地方政府职责和职权范围内的事项, 可以举行地方复决。

(3) 地方政府的具体规则, 由基本法律规定。

#### 第 32 条

(1) 在法律允许的范围内, 地方政府在管理地方事务时, 得:

- (a) 颁布条例;
- (b) 作出决定;
- (c) 进行自主管理;
- (d) 决定其组织和运行;
- (e) 作为地方政府财产所有人行使权利;
- (f) 决定其预算, 并独立开展相应的财政管理活动;

(g) 以其资产和可得的收入从事经营活动, 但不得损害其应有任务的履行;

(h) 规定地方税的类别和税率;

(i) 创设地方象征物, 设立地方奖章和荣誉称号;

(j) 向有权机构征询信息、提出决策建议和观点;

(k) 与其他地方政府自由联合, 建立利益代表联盟, 在其职权范围内与国外地方政府合作, 并自由加入国际地方政府组织;

(1) 行使法定的其他职责和职权。

(2) 地方政府在其职权范围内颁布地方条例, 以规范法律未予规定或者未授权规定的地方社会关系。

(3) 地方条例不得违反任何其他立法。

(4) 在地方条例制定后, 地方政府应当立即将其送交都会和县政府。如果认为该条例或者其组成条款不合法, 都会和县政府机关得请求法院审查该条例。

(5) 都会和县政府得申请法院就地方政府疏于履行其法定立法职责作出认定。如果地方政府在法院认定其疏于履责之日依然疏于履行其法定立法职责, 应都会和县政府之倡议, 法院得令都会和县政府首长以地方政府的名义颁布所需的条例, 以补救地方政府的履责疏忽。

(6) 地方政府财产为公共财产, 服务于地方政府职责的履行。

#### 第 33 条

(1) 地方政府的职责和职权由地方代表机构行使。

(2) 市长为地方代表机构之首长。县代表机构在其任期之内选举其成员之一作为主席。

(3) 地方代表机构按照基本法律的规定设置委员会和办公机构。

#### 第 34 条

(1) 地方政府和中央国家机关应予合作, 以完成社会目标。地方政府之应有职责和职权由法律规定。为

履行其应有职责和职权, 地方政府有权得到合比例的预算和其他财政支持。

(2) 法律可授权地方政府通过联合的方式履行其应有义务。

(3) 代表机构之市长和主席根据法律或者法律授权的政府法规, 可以在其承担的地方职责外, 例外地履行行政职责和职权。

(4) 政府通过都会和县政府机构对地方政府予以法律监督。

(5) 按照法律的规定, 地方政府为保持预算平衡而在法定幅度内借债或者承担其他承付款项, 须满足规定的条件或者应当得到政府的同意。

### 第 35 条

(1) 选民以法律规定的方式行使普遍和平等的选举权, 在选举中自由表达其意志, 并通过直接和秘密投票选举地方代表机构和市长。

(2) 根据基本法律之规定, 地方代表机构和市长每五年选举一次。

(3) 地方代表机构的任期于地方代表机构和市长选举日终止。在选举因无候选人而取消时, 地方代表机构的任期延长至过渡选举日。市长的任期于新市长选举日时终止。

(4) 按照基本法律的规定, 地方代表机构得决议解散。

(5) 应政府在咨询宪法法院后之提请, 国会得解散违反根本法的地方代表机构。

(6) 市长的任期亦因地方代表机构自动和强制解散而终止。

## 公共财政

### 第 36 条

(1) 国会在每个财政年度通过关于国家预算及其执行的法律。政府在法律规定的期限之前应当向国会提交国家预算及其执行的法案。

(2) 国家预算及其执行的法案应当包括全部国家支出和收入在内, 且应当结构相同, 公开透明, 详细程度合理。

(3) 国会通过国家预算法律授权政府征收税款, 按照预算规定支出。

(4) 国债超过国民生产总值半数的国家预算法律, 国会可以不予批准。

(5) 若国债超过国民生产总值半数, 国会只能通过包含有按国民生产总值之比例削减国债的预算法律。

(6) 只有在特殊法律秩序之下, 而为减缓其造成的后果; 或者如果存在剧烈和持久的经济衰退, 而为恢复国民经济的平衡, 方可偏离本条第 (4)、(5) 款之规定。

(7) 国会在财政年度开始前未予通过国家预算法律时, 按照预算法律确定的支出目标, 政府得依比例按

照上年度的法定收入和支出征收税款和进行支出。

### 第 37 条

(1) 政府应当有效管理公共基金, 负有义务以合法、实用和透明的方式执行国家预算。

(2) 在国家预算执行期间, 除第 36 条第 (6) 款规定的情形外, 不得承担债务或者财政义务而使国债超过国民生产总值半数。

(3) 在国家预算执行期间, 只要国债超过国民生产总值的半数, 除第 36 条第 (6) 款规定的情形外, 不得承担债务或者财政义务而使与国民生产总值相关的国债份额超过前一年度的水平。

(4) 遇有国债超过国民生产总值半数的情形, 宪法法院在第 24 条第 (2) 款 (b) 至 (e) 项规定的权限范围内, 只审查国家预算及其执行的法律、中央税种类、进口关税、年金和保健费、关税、地方税的核心要件是否符合根本法, 或者以侵犯生命权和人的尊严、个人信息保护权、思想、良心和宗教自由以及有关匈牙利公民的其他权利而宣告上述法律无效。宪法法院以相关立法的制定和公布程序不符合根本法程序性条款为由宣告其无效的权利不受限制。

(5) 国债和国民生产总值核算的具体规则, 以及第 36 条和本条第 (1) 至 (3) 款之施行的具体规则, 由法律规定。

### 第 38 条

(1) 国家和地方政府的资产为全民财产。考虑到未来世代的需要, 全民财产管理和保护的目标应当服务于公共利益、满足共同需要以及自然资源的保护。全民财产的维护、保护和责任管理由基本法律规定。

(2) 国家独占财产和排他性经济活动的范围、有关国计民生的全民财产转让的限制和转让条件, 由基本法律按照第 (1) 款设立的目的而规定。

(3) 全民财产的转让应当符合法律规定的目的和例外规定, 并且应考虑均衡价值的要求。

(4) 全民财产移转和利用的协议, 只得与拥有透明所有权结构的组织缔结, 其组织和活动的目标在于管理已移转或者让与利用的全民财产。

(5) 国家或者地方政府所有的商业组织应当以合法、负责、实用和有效的方式独立从事经济管理。

### 第 39 条

(1) 国家预算只能用于为拥有透明所有权结构的组织提供资助或者履行合同责任, 其组织和活动的目标在于利用资助。

(2) 管理公共资金的组织应当就公共资金的管理对公众负责。公共资金和全民财产的管理应当遵循透明和消除腐化的原则。公共资金和全民财产的数据为与公共利益有关的数据。

### 第 40 条

一般税和年金制度的基本规范, 应当考虑到满足公共需要所需税收和保障老人相当之生活条件, 由基本法律规定。



**第 41 条**

(1) 匈牙利国家银行为匈牙利中央银行。匈牙利国家银行根据基本法律的规定负责货币政策。

(2) 匈牙利国家银行行长、副行长由共和国总统任命，任期 6 年。

(3) 匈牙利国家银行行长应当向国会提交匈牙利国家银行的年度工作报告。

(4) 在基本法律规定的权限范围内，匈牙利国家银行行长根据法律授权发布命令，其命令不得违反法律。匈牙利国家银行行长可由根据命令指定的副行长替代而发布命令。

(5) 匈牙利国家银行之组织和运行的具体规则，由基本法律规定。

**第 42 条**

有关金融中介体系之监督机关的规则，由基本法律规定。

**第 43 条**

(1) 国家审计署为国会的财政和经济审计机关。在其职权范围内，国家审计署审计国家预算的执行、公共财政的管理、公共财政资金的使用和国有财产的管理情况。国家审计署对合法性、实用性和效益性进行检查。

(2) 国家审计署署长由国会以 2/3 以上多数选举，任期 12 年。

(3) 国家审计署署长应当向国会提交国家审计署的年度工作报告。

(4) 国家审计署之组织和运行的具体规则，由基本法律规定。

**第 44 条**

(1) 预算委员会为国会立法活动的辅助机关，审查国家预算的合理性。

(2) 预算委员会依法参与国家预算法律的拟定。

(3) 为符合宪法第 36 条第 (4)、(5) 款之规定，国家预算法律在通过之前应当取得预算委员会的同意。

(4) 预算委员会委员包括预算委员会主任、国家银行行长和国家审计署署长。预算委员会主任由共和国总统任命，任期 6 年。

(5) 预算委员会之运行的具体规则，由基本法律规定。

**匈牙利武装力量****第 45 条**

(1) 匈牙利武装部队为匈牙利武装力量。匈牙利武装力量的核心任务是武力保护国家独立、领土完整和国境，履行共同防御和依据国际条约承担的维护和平任务，根据国际法准则承担人道主义任务。

(2) 除非国际条约另有规定，国会、共和国总统、国防委员会、政府以及负有责任和职权的部长按照根本法和基本法律的规定排他性地指挥匈牙利武装力量。匈

牙利武装力量的行动由政府指挥。

(3) 匈牙利武装力量参加灾害防治和灾害后果的抢救和消除。

(4) 匈牙利武装力量中的职业军人不得加入政党或者参加政治活动。

(5) 匈牙利武装力量之组织、任务、指挥、管理和行动的具体规则，由基本法律规定。

**警察和国家安全机关****第 46 条**

(1) 警察的基本职责包括预防和调查犯罪，维护公共安全、法律和秩序以及国境。

(2) 警察的活动由政府指挥。

(3) 国家安全机关的基本职责包括保护匈牙利的独立和法律秩序，维护国家安全利益。

(4) 国家安全机关的活动由政府指挥。

(5) 职业警察和国家安全机关人员不得加入政党，不得参加政治活动。

(6) 警察和国家安全机关组织和活动的具体规则，使用秘密措施和方法的规则以及国家安全活动的规则，由基本法律规定。

**决策参加军事行动****第 47 条**

(1) 匈牙利武装力量和外国武装力量的越境行动，由政府作出决定。

(2) 国会以出席议员 2/3 以上的多数决定匈牙利武装力量在国内外的部署和在国外驻扎、外国武装部队在匈牙利的部署和撤离，但本条第 (3) 款规定者不在此限。

(3) 政府根据欧洲联盟、北大西洋公约组织的决议，根据本条第 (2) 款决定匈牙利武装力量和外国武装部队的部署和其他行动。

(4) 根据本条第 (3) 款作出的决定，或者决定授权匈牙利武装力量在国外维护和平或者从事人道主义活动时，则政府应当立即向国会报告，并且通报共和国总统。

**特别法律秩序****国家危机状态和紧急状态之通则****第 48 条**

(1) 国会应当：

(a) 在战争状态或者存在外国军队武装入侵的紧迫危险（战争危险）时宣告进入国家危机状态，并设立国防委员会；

(b) 当发生意图颠覆宪法秩序和独占国家权力的武装行动，以及存在使用武器危及人民生命和财产的大

规模暴力行为时宣告进入紧急状态。

(2) 根据本条第(1)款宣告特别法律秩序、媾和以及宣告进入特别法律秩序状态,由国会以2/3以上多数通过。

(3) 如果国会无法作出决定,则由共和国总统宣告进入战争状态和国家危机状态,宣告设立国防委员会,宣告进入紧急状态。

(4) 国会在休会期间,或者时间紧迫,或者导致战争状态、国家危机状态和紧急状态的事件造成国会集会存在不可抗拒的障碍时,即认为国会无法作出上述决定。

(5) 国会议长、宪法法院院长和总理一致作出决定,认定国会不能决定和宣告战争状态、国家危机状态和紧急状态的合法性。

(6) 国会能重新召集时应当在首次开会时审查战争状态、国家危机状态和紧急状态之宣告的合法性,并决定所采取措施的合法性。上述决定以国会议员2/3以上的多数通过。

(7) 在国家危机和紧急状态期间,国会不得自动或者强制解散。在国家危机或者紧急状态期间,不得召集和举行大选。在这种情形下,应当在国家危机或者紧急状态结束后90日内举行新议会的选举。如果国会议员选举已经举行,但新政府尚未组建,共和国总统应当在国家危机或者紧急状态结束后30日内召集国会第一次会议。

(8) 当国会自动或强制解散后,在国家危机状态下得由国防委员会召集,在紧急状态下得由共和国总统召集。

## 国家危机状态

### 第49条

(1) 共和国总统为国防委员会主席,其成员为国会议长、议会党团领导人、总理、各部部长和国防军参谋总长。

(2) 国防委员会行使下列权力:

- (a) 国会授予其的权力;
- (b) 共和国总统的权力;
- (c) 政府的权力。

(3) 国防委员会作出下列决定:

- (a) 匈牙利武装力量在国内外的部署,参与维护和平活动,在国外参加人道主义活动及其海外的驻扎;
- (b) 外国武装部队在匈牙利的部署和撤离及其在匈牙利的驻扎;
- (c) 按照基本法律的规定采取任何非常举措。

(4) 国防委员会得发布命令中止特定法律的施行,不受任何法律条款之限制,并有权采取任何非常举措。

(5) 国防委员会发布的命令在国家危机状态结束时归于无效,除非其效力得到国会的延长。

## 紧急状态

### 第50条

(1) 如果警察和国家安全机关不足以应对紧急状态,则匈牙利武装力量得投入使用。

(2) 在紧急状态下共和国总统在国会丧失决定能力时根据本条第(1)款得决定投入匈牙利武装力量。

(3) 在紧急状态下共和国总统根据基本法律的规定发布命令采取特殊措施。共和国总统发布的命令可以中止特定法律的施行,不受任何法律的限制,并且可以采取进一步的特殊举措。

(4) 在采取特殊举措时共和国总统应当及时通报国会议长。在紧急状态下,国会,在国会丧失决定能力时,国会之国防委员会应当持续举行会议。国会,在国会丧失决定能力时,国会之国防委员会可以中止共和国总统颁布的任何特殊举措的执行。

(5) 根据命令采取的任何特别举措的有效期为30日,除非国会或者在国会丧失决定能力时由国会之国防委员会延长其效力。

(6) 共和国总统发布的命令在紧急状态结束时归于无效。

## 防御性防务状态

### 第51条

(1) 当存在外来武装入侵的危险或者为了履行军事同盟义务时,国会得宣告特定时期为防御性防务状态,同时应当根据基本法律的规定授权政府采取特别措施。防御性防务状态的期间可以延长。

(2) 本条第(1)款规定的防御性防务状态的宣告和延长,须由国会以2/3以上的多数通过。

(3) 在提议宣告防御性防务状态后,政府可以颁布法令采取措施,不受有关公共行政、匈牙利武装力量和执法机构之法律的限制,并应当持续地通报共和国总统和国会相关的常设委员会。政府采取的上述措施生效至国会决定宣告防御性防务状态之日,但不得超过60日。

(4) 在防御性防务状态期间,政府可以颁发法令中止特定法律的施行,其法令不受法律条款的限制,并可以根据基本法律的规定采取进一步的举措。

(5) 政府颁布的法令自防御性防务状态结束时归于无效。

## 突然攻击

### 第52条

(1) 遇有外来武装力量突然入侵匈牙利国土时,政府有责任按照共和国总统批准的武装防御计划,以训练良好的部队立即采取行动,以相应的力量反击攻击,



并以国内和盟国的应急空军、海军保卫匈牙利领土，维护法律和秩序、人民的生命和财产，维护公共秩序和公共安全，直至其作出决定宣告紧急状态或者国家危机状态。

(2) 政府应当将其根据本条第(1)款所采取的行动及时通报国会和共和国总统。

(3) 在遇有突然攻击时，政府可以颁布法令中止特定法律的施行，其法令不受法律条款的限制，并可以根据基本法律的规定采取进一步的特别举措。

(4) 政府颁布的上述法令自突然攻击结束时归于无效。

## 极端危险状态

### 第 53 条

(1) 遇有危及生命和财产的自然灾难和工业事故，或者为减缓其后果，政府应当宣告极端危险状态，并根据基本法律的规定采取特别举措。

(2) 在极端危险状态下，政府得颁布法令中止特定法律的施行，其法令不受法律条款的限制，并得根据基本法律的规定采取进一步的举措。

(3) 按照本条第(2)款颁布的政府法令有效期为 15 日，除非政府根据国会授权延长其效力。

(4) 政府颁布的上述法令自极端危险状态结束时归于无效。

## 特殊法律秩序的共同规则

### 第 54 条

(1) 在特殊法律秩序下，除根本法第 II、III、XX-

VIII 条第(2)至(5)款规定的基本权利外，可以中止其他基本权利的行使或者超越根本法第 I 条第(3)款之规定限制基本权利。

(2) 在特殊法律秩序下，不得中止根本法的适用，不得限制宪法法院的活动。

(3) 当特殊法律秩序的条件消失时，特别法律秩序由任何引入特别法律秩序的机构予以终止。

(4) 特别法律秩序的具体规则由基本法律规定。

## 最后条款

1. 匈牙利根本法于 2012 年 1 月 1 日生效。

2. 国会根据 1949 年法律之第 19 条第(3)款(a)项和第 24 条第(3)款制定本根本法。

3. 国会根据第 2 点规定的特殊程序制定有关根本法的过渡条款。

4. 政府有义务向国会提出根本法施行所必要的法案。

我们，2010 年 4 月 25 日当选的国会议员，认识到我们在上帝面前和作为人的责任，行使宪法赋予我们的权力，通过匈牙利第一部统一的根本法。

“愿人世间有和平、自由与和谐”

帕尔·施密特 共和国总统  
克韦尔·拉斯洛 国会议长

(杜强强译，陈国飞校)





# 匈牙利

作者: Gábor Damjanovic、Andrea Jádi Németh、Marc-Tell Madl

译者: 韩俊、王磊

## 一、概述

### (一) 匈牙利关于外商投资的政治、经济、社会与法律环境概述

在 1989 年东欧剧变和 1990 年第一次自由选举后, 匈牙利结束了苏联领导和一党制, 并开始向市场经济转型。1990 年, 随着匈牙利民主论坛(匈牙利语: MDF) 赢得选举, 自由民主党联盟(匈牙利语: SZDSZ) 成为反对党中最强的政党, 政府开始实行以西方为导向的外交政策, 最终加入了一些主要国际组织/联盟。例如, 1996 年加入经济合作与发展组织、1999 年加入北约组织和 2004 年加入欧盟。这种以西方为导向的外交政策持续到 2010 年, 当时自由民主党—匈牙利公民联盟(匈牙利语: FIDESZ) 及其总理维克托·奥尔班成为多数党并开始推行以东方为导向的外交政策, 与阿塞拜疆、中国、俄罗斯和土耳其建立更好的关系。因此, 中国和匈牙利之间的官方和商业关系较好, 给希望投资该地区中国投资者以及希望投资中国的匈牙利投资者提供了机会(而前者则更为典型并成为主流)。

匈牙利最近经历了人民大规模流亡: 根据现有的数字, 在过去几年中, 约有 50 万人(占人口的 5%) 离开了匈牙利, 他们大多数在欧洲大陆(主要在奥地利和德国) 和英国工作, 而许多人甚至去了更远的国家(美国、加拿大、澳大利亚和新西兰是首选)。许多人计划返回匈牙利, 但这仍有待观察。这导致劳动力严重短缺, 既包括白领(如医生、护士及 IT 专家等), 也包括蓝领(特别是在建筑业), 并给雇主带来严重的困难。此外, 根据现有数据, 预计将有更多的人流出, 大约 50% 的受过教育的 30 岁以下的人仍然可能离开匈牙利。这可能是匈牙利在中短期所面临的主要挑战之一; 如果这些人中的大多数仍留在国外, 那么这种挑战将会是长期的。

匈牙利政府是欧盟国家中率先支持开放的国家之一, 也是欧洲联盟运动的主要倡导者之一, 旨在使成员国保留更多的主权, 而减少中央欧盟官僚机构的权力。

经历了 2008 年金融危机之后, 时至今日, 匈牙利经济已经稳步增长, 似乎在可预见的未来将会迎来良好的前景。从危机开始直到 2015 年, 房地产项目已经严重下降, 但最近住宅和商业地产领域又重新复苏, 而且前景良好。如前所述, 这一行业的增长因为工人短缺而遭遇到巨大的障碍。

### (二) “一带一路”下与中国企业合作的现状与趋势

匈牙利在 2013 年引入了所谓的居民债券制度, 即第三国的个人(即不是匈牙利或 EEG 成员国公民的个人) 可以通过投资这种债券而获得居民许可证, 从而进入和留在匈牙利, 当然也就留在了欧盟。这意味着根据这种制度, 投资 30 万欧元(2015 年以前是 25 万欧元) 购买匈牙利国债就可以为他自己及其家人获得(第一次是 5 年, 然后是永久性的) 匈牙利的居住许可。

在引入该制度时, 居民债券主要面向阿拉伯、中国和前独联体投资者/申请人, 但在实践中, 该制度迄今为止在中国申请人中最为成功(据相关新闻报道, 大约 85% 的成功申请人来自中国)。

由于这一原因, 以及当前政府政策从西方世界向东方的转移, 越来越多的中国投资者在匈牙利表现活跃。许多人认为匈牙利是通往欧洲的门户, 并由此建立了他们在欧洲的基地, 匈牙利已经被中国投资者视为该地区中受欢迎的商业目的地。

匈牙利长期以来被认可的主要行业是农业、汽车、生命科学和 TMT, 这些行业可能是投资者特别感兴趣的行业。

由于越来越多的这类企业家以及匈牙利政府对这类人员流入所采取的积极措施, 人们希望可以克服文化差异, 匈牙利可以提供安全港, 并为将在中东欧地区以及整个欧洲开展业务的中国企业提供机会。

## 二、投资

### （一）市场准入

#### 1. 投资主管部门

若对“投资”作狭义界定，匈牙利主管法院应被视为负责监管企业合法经营情况的主管部门。

匈牙利投资促进局负责处理外商投资有关的查询以及促进双边贸易。匈牙利投资促进局提供一站式管理，在该管理框架内的咨询服务确保为有意在匈牙利投资的企业提供量身定制的服务选择以及适当的配套信息资料。

#### 2. 投资行业的法律规定

匈牙利已于 2004 年加入欧盟，作为欧盟的成员国之一，匈牙利有义务使其本国法律与欧盟的各种法规和指令保持一致。在匈牙利，有关设立现代化商业实体及其监管法规方面所作的最新的重大修改是采纳新的《匈牙利民法典》（2013 年《民法典》修订第 5 号法，以下简称《民法典》）。

《关于上市公司信息和法院登记程序和解散程序法》（2006 年第 5 号法，以下简称《公司法》）与《民法典》一起规定了相对简单的公司注册程序，但《民法典》或《公司法》（或其他法律）中规定的所有关于企业责任的要求应严格遵循。

总体而言，匈牙利法律对国内公司和外资参股公司一视同仁，无差别化对待。

#### 3. 投资方式

##### （1）企业组织形式

《民法典》规定了（外国）投资者为在匈牙利开展业务活动可以采取的五种不同的企业组织形式。

##### ① 无限合伙

在无限合伙中，每名成员对合伙债务负有无限连带责任。这种合伙必须有至少两名合伙人，并且其设立和运营无最低注册资本要求。

##### ② 有限合伙

有限合伙应至少有两名合伙人，（至少）其中一名应对合伙的债务负有无限责任（普通合伙人）。合伙的另一个（或更多）成员以其认缴的出资额为限承担责任（有限合伙人）。对这种合伙的设立和经营没有最低注册资本金的要求。

##### ③ 有限责任公司

更多信息，参见“企业设立与解散”部分。

##### ④ 私人股份有限公司和公众型股份有限公司<sup>①</sup>

如需了解详细信息，参见“企业设立与解散”部分。

##### （2）代表处和外资企业分支机构

希望在匈牙利投资但又不想依据匈牙利企业之规定设立新实体的投资者也可以在匈牙利设立分支机构。下述两种组织形式应在公司注册处进行登记。

##### ① 代表处

在匈牙利设立代表处有助于外国投资者在进行大量投资前熟悉匈牙利的市场和业务情况。通过这种投资类型，代表处可以代表母公司履行正常的联络职能。但是，代表处不得独立开展任何核心的业务活动。

##### ② 外资企业分支机构

分支机构是外资企业的组织部门，获授权代表母公司履行常规业务活动。根据匈牙利法律，分支机构不具有法人资格，因此，外资企业应对分支机构的的活动承担责任。

#### 4. 市场准入条件及审查标准

所有者为匈牙利人的公司所适用的法律规则，也同样适用于外资参股公司。因此外商投资无须额外许可，但在某些特定领域（例如，水运、农业或林业用地和废物处理等）存在禁止条款和有关限制。

<sup>①</sup> 需注意，现在已不太可能设立公众型股份有限公司。但是，私人股份有限公司可以决定将其公司形式变更为公众型股份有限公司。



投资者设立企业应在公司注册处注册登记,每家商业机构在匈牙利均需注册。公司注册受主管注册法院管辖。

设立公司的章程文件需由在匈牙利注册的律师起草并会签(根据相应法律若适用的)。公司资料的任何修正需在公司注册处进行登记,并支付相应的税费和版面费。

新注册的公司也需在国家税务和海关总局注册登记以申报增值税和收入,此外,还需在匈牙利中央统计局以及社会保障机构注册登记(更多资讯,请参见“企业设立与解散”部分)。

## (二) 外汇管理

### 1. 外汇主管部门

#### (1) 匈牙利国家银行

匈牙利国家银行负责多项监管职责,包括监督外汇交易、确定和公布官方汇率。匈牙利国家银行负责外汇储备经营管理以及落实汇率政策。

匈牙利国家银行是匈牙利的中央银行,并且也是欧洲中央银行体系和欧洲金融监管体系的成员。匈牙利国家银行及其决策机构的成员独立执行其任务以及履行由《匈牙利国家银行第139号法》(以下简称《匈牙利国家银行法》)赋予的义务。从理论上而言,匈牙利国家银行无须向除了欧洲中央银行以外的本国政府、欧盟机构或组织以及其他欧盟成员国政府和机构寻求或者接受其指令。匈牙利政府以及所有其他机构均需充分尊重这一原则并且不得在匈牙利国家银行及其机构在执行其任务时对其施加影响。

在不影响其主要目标的情况下,匈牙利国家银行应坚持维护金融中介体系的稳定、提高金融中介体系的复原能力以及确保金融中介体系对经济增长的持续贡献,并用其掌握的手段支持政府的经济政策。

#### (2) 外汇汇率

匈牙利国家银行提供外汇报价并公布官方外汇汇率,以供外币兑换成匈牙利福林以及福林兑换成外币。

重要的是,汇率机制的变更不得影响匈牙利国家银行就其实现和维护价格稳定的主要目标。在汇率机制的框架内,匈牙利国家银行应在必要及可能的情况下,保护并影响本币和外币市场的汇率。此外,政府及匈牙利国家银行应将汇率政策视作欧盟成员国彼此关注的事项。

### 2. 外汇法律法规概况

#### (1) 介绍——兑换和划拨政策

匈牙利政府与匈牙利国家银行一同决定汇率机制。自2008年2月26日起,福林汇率以欧元为参考并随之自由浮动,福林汇率的变动由供需决定。<sup>①</sup>自那时起,市场力量决定福林兑欧元和其他货币的汇率,人们可在所有银行及货币兑换处自由获得外币。

根据匈牙利的入欧协议,虽然匈牙利加入欧元区的确切时间尚未确定,但匈牙利从理论上必须采用欧元。但是根据当前政府的声明,匈牙利将不会加入欧元区。

#### (2) 相关外汇法律

《外汇自由化法》(2001年第93号法)(以下简称《自由化法》)。《自由化法》取消了所有剩余的外汇限制并允许资本根据欧盟规定自由流动。因为此前外汇交易备受管制,所以在当时该法是对匈牙利货币政策的一项重大变更。

《匈牙利国家银行法》。根据《匈牙利国家银行法》,匈牙利国家银行的基本任务与金融市场以下领域有关:货币政策、最低准备金、基准利率、货币发行、现金交易、监管以及维护央行信息系统。此外,《匈牙利国家银行法》规定了各种程序,例如对受《匈牙利国家银行法》管辖机构的活动予以相应的许可、控制及监管。

匈牙利国家银行行长发布的法令。匈牙利国家银行决定作为利率基准的央行基准利率。货币委员

<sup>①</sup> 汇率机制,可从<https://www.mnb.hu/en/monetary-policy/monetary-policy-framework/exchange-rate-regime>网站获取,访问日期:2016年10月27日。

会（匈牙利国家银行的最高决策机构）决定基准利率水平。匈牙利国家银行行长通过法令形式确定基准利率水平。近年来，匈牙利国家银行已将基准利率从2012年8月的7%大幅下调至2016年11月的0.9%。由于基准利率会影响到金融机构的利率，所以该法令非常关键。

### 3. 外资企业外汇管理要求

#### （1）废除外汇限制的后果

一般来说，匈牙利居民、外国居民以及匈牙利的非居民有权以外币、货币、国内支付方式进行交易，也可以要求以本币进行交易。

除了随之产生的其他问题，全面自由化所产生的一个最主要后果是废除了外汇管理局许可要求或者带外币入境时的申报义务。此外，还允许用外汇或福林开立银行账户以及出口时用外汇或本币支付。但是，携带等于或超过1万欧元的现金（即使是不同货币）或现金等价物（如可转让的证券、支票以及本票）出入境的自然人必须在进入或离开欧盟时向海关机构申报。<sup>①</sup>

在匈牙利从事商业活动（建立商业实体）的公司需在匈牙利银行开立银行账户。

#### （2）外汇管制下的反洗钱措施

根据《预防和打击洗钱和资助恐怖主义法》（2007年第136号法，以下简称《反洗钱法》），若业务交易额超过360万福林，其受益所有人的相关信息必须上报给主管机构。对总额达到50万（或以上）福林的外汇交易，其外汇服务提供商需执行识别程序以验证客户的身份并根据《反洗钱法》对客户进行尽职调查。

#### （3）货币债务的付款条件

各方有权以外币清偿在匈牙利的金融债务。

根据《民法典》，货币债务应在清偿时以清偿所在地的法定货币予以清偿。若货币债务以其他货币入账，则其应按清偿所在地的央行于清偿时规定汇率予以转换。否则，应按照货币市场利率予以转换。若货币债务将以外币予以偿还，但在清偿时该债务不能以外币予以偿还，则该货币债务应于清偿时以清偿所在地的法定货币予以偿还。

但是适用于特定付款义务的特殊规定依然存在，如根据《匈牙利经济稳定法》（2011年第194号法），针对匈牙利国家的付款义务（如税款、出资和费用）必须以福林予以履行。

## （三）融资

### 1. 主要金融机构

#### （1）匈牙利金融系统简介

匈牙利金融系统提供全面的金融服务。

匈牙利实行央行（匈牙利国家银行）和其他专业银行分开的双重银行体系。匈牙利也有两家国有信贷机构：匈牙利国家开发银行和匈牙利进出口银行。在匈牙利，信贷机构和金融企业被分类为金融机构。除金融机构以外，还存在多种类型的金融实体（非银行金融行业），如保险公司、资产管理公司、风险投资公司和私募股权公司。

#### （2）适用于金融机构的法律

《信贷机构和金融企业法》（2013年第237号法，以下简称《金融企业法》），该法是与金融机构有关的最重要的法律。该法对金融机构的批准、牌照发放和监管进行管理，也对金融机构的所有权结构和权利、管理及审慎运营进行监管，并且对金融机构的存款保险、机构保护以及财务和会计进行规定。

《金融体系稳定法》（2008年第104号法），该法向银行提供替代选择，以帮助银行在金融危机下其偿付能力及流动性受损时处理特定类资产。

《支付服务行业法》（2009年第85号法），该法适用于在匈牙利境内提供的支付服务。

《特定支付服务提供商法》（2013年第225号法，以下简称《支付服务法》）<sup>②</sup>，该法适用于支付

① 例外情况如黄金、电子卡或贵金属。

② 支付服务提供商在《支付服务法》中定义为其业务包括提供支付服务的信贷机构、电子货币机构、经营邮政清算中心的机构、支付服务机构、国家银行和财务部。



服务机构以及发行电子货币的机构。

《反洗钱法》，该法对金融机构的客户身份识别义务以及与之有关的特定进一步通知义务进行了详细规定。

### (3) 信贷机构

根据匈牙利法律，信贷机构是指：从整个金融服务领域来看，业务至少包括<sup>①</sup>从公众吸收存款或者其他可偿还资金以及授予信用和贷款的金融机构。

下述金融活动仅可由信贷机构从事：

- 从公众吸收超出机构自有资金的存款和其他可偿还资金，该信贷机构或匈牙利国家对偿还不提供保证或者保证工具；
- 货币兑换服务。

信贷机构可以是银行或者专业信贷机构或者设立为合作社的信贷机构；这些机构可以是股份有限公司或者合作社组织。设立为合作社的信贷机构可以以银行、专业信贷机构、储蓄和贷款协会或信用合作社的形式运营。银行和专业信贷机构仅可以以股份有限公司或者分支机构的形式运营，设立为合作社的信贷机构以合作社组织的形式运营，或者作为银行或专业信贷机构的股份有限公司及以股份有限公司、合作企业、基金或分支机构形式运营的金融企业。

银行是指以商业方式从事特定活动如从公众吸收存款和接收其他可偿还资金、授予信用和发放贷款以及货币传递业务的信贷机构。仅有银行获授权能从事《金融企业法》中所列载的所有金融活动。

可以说，匈牙利的大多数银行在为他们的客户提供如贷款、私人银行和投资银行以及证券交易之类的一般服务。

专业信贷机构根据特定法律的相关条款运营，但其将不会获授权从事《金融企业法》中所列载的所有金融活动。

在匈牙利，若第三国的信贷机构经设立所在国其主管机构作出相应批准从事金融活动的话，则其可通过在匈牙利的分支机构从事《金融企业法》中列载的所有金融活动和/或下述辅助金融活动：

- 货币兑换活动；
- 支付系统运营；
- 货币处理活动；
- 银行同业拆借市场中的金融中介活动；
- 信用咨询服务。

对于在匈牙利以分支机构运营的信贷机构，其设立、开始营运以及转移存款业务均需获得匈牙利国家银行的批准。在匈牙利以银行代表处形式运营的情况下，该外国信贷机构应当通知匈牙利国家银行相应的信息。

### (4) 金融企业

金融企业是指获授权开展一项或多项金融活动（下述活动除外）以及从事支付系统运营的金融机构和金融控股公司：

- 货币传递服务；
- 发行电子货币；

<sup>①</sup> 根据《金融企业法》第3(1)条的规定：

“金融活动是指以匈牙利福林和其他货币基于商业规模从事下述金融性质的活动：

- (1) 从公众吸收存款及接收其他可偿还资金；
- (2) 信用和贷款业务；
- (3) 融资租赁；
- (4) 货币传递服务；
- (5) 发行电子货币；
- (6) 发行纸基的现金替代支付工具（例如旅行支票和印在纸上的账单）并提供与之有关的服务，前述未被确认为货币传递服务；
- (7) 提供保证工具和保证以及银行债务的其他形式；
- (8) 外币和外汇的商业活动（货币兑换服务除外），以及为独立账户或者作为佣金代理商开立账单和支票；
- (9) 金融中介服务；
- (10) 保管服务，保管箱服务；
- (11) 征信服务；以及
- (12) 购买应收款项。”

• 从公众吸收超出其自有资金的存款和其他可偿还资金，该信贷机构或匈牙利国家对偿还不提供保证或者保证工具；

• 货币兑换服务。

金融企业可以在银行同业拆借市场中开展金融中介活动，以作为其唯一业务。

若外国金融企业经设立所在国其主管机构批准的话，则该外国金融企业可通过其匈牙利的分支机构从事下述金融活动及辅助金融活动：

- 信用和贷款业务；
- 融资租赁；
- 提供保证工具、担保以及其他形式的银行债务；
- 外币和外汇的商业活动（货币兑换服务除外），以及为独立账户或者作为佣金代理商开立账单和支票；

- 金融中介服务；
- 保管服务，保管箱服务；
- 征信服务；
- 保理；
- 货币兑换活动；
- 支付系统运营；
- 货币处理活动；
- 银行同业拆借市场中的金融中介服务；
- 发行可流通信用币；
- 信贷咨询服务。

对于以在匈牙利分支机构运营的金融企业，其设立和开始营运均需获得匈牙利国家银行<sup>①</sup>的批准。在金融机构和其他类型的金融实体中，银行业起着极为重要的作用。

## 2. 外资企业融资条件

根据《外国投资法》（1988年第24号法），匈牙利对非匈牙利居民投资者<sup>②</sup>的投资及业务提供全面保护，并且保证外国投资者将受到与国内投资者相同的待遇（即“国民待遇”）。因国有化、征收或影响外国公民所有权的其他类似法律措施所导致的损害，按其实际价值予以立即赔偿。有权方可获得的赔偿金额应以做出投资的货币支付。

为鼓励外国公司在匈牙利投资并促进双边贸易，匈牙利政府已设立匈牙利投资促进局。

根据这种承诺，在匈牙利的外国投资者可以从匈牙利金融市场中获得信贷以及可退还和不可退还的激励，但明确规定向小企业提供的政府贷款除外。

## （四）土地政策

### 1. 土地法律法规概况

不动产相关法规通常在下述三类法律中体现：

①《民法典》。《民法典》对产权（包括不动产的所有权）的取得予以规定。

②《土地登记法》（1997年第141号法）。

③《农业与农村发展部关于实施〈土地登记法〉（1997年第141号法）发布的法令》（1999年第109号法令，以下简称《实施条例》）。

对于在《民法典》中规定的取得不动产的程序，《土地登记法》和《实施条例》提供了详细背景说明。

《农业和林业土地交易法》（2013年第122号法，以下简称《土地交易法》）就获得特定性质土地

① 在其他欧盟经济区成员国设立的信贷机构及金融企业（对其有进一步的要求）的分支机构无须获得于此提及的批准。  
② 根据《外国投资法》（1988年第24号法）第2（b）条款，外国公民在匈牙利的投资是指“外国公民在通过成员（股本关系、合伙权益）方式在匈牙利成立的商业组织、分组或合作社的资产中所占份额，此外，外国公民在非居民公司的匈牙利分支机构或商业代表处及外国公民的独立企业……的资产中所占份额”。



(即农业或林业土地,作农业或林业用途的土地称为“土地”)的产权、用益权和使用权的规则予以规定。

其他法律也对购买不动产的一般规则作出了补充规定,例如《规费法》(1990年第93号法)、《个人所得税法》(1995年第117号法)、《外国注册公司在匈牙利的分支机构和商业代表处法》(1997年第132号法)、《政府关于外国公民就收购农业或林业用地以外的不动产发布的2014年第251号法令》。

通常,匈牙利土地和/或不动产取得的法规与相关的欧盟法规和法令保持一致,因此匈牙利法律与相关欧盟法规之间不存在明显差异。就不动产和土地法规来说,欧洲经济区的成员与匈牙利人(法人或自然人)通常具有同等待遇。

## 2. 外资企业收购土地的规则

在匈牙利,财产所有权被登记到主管政府机构管理的土地登记系统中。在土地登记系统中,相关法律规定的不动产的每条重要信息,如规模、位置、使用类型、所有权以及与财产有关的各种第三方权利(例如抵押、用益权和地役权等)均需登记。任何与不动产有关的权利和义务均应登记到土地登记系统中,因为登记是这些权利和义务得以确立并对第三方生效的必要条件。登记时也可能要求提交关于该权利或义务的协议(该协议根据相关匈牙利法律包含必要内容和格式制备,并通常由匈牙利律师会签,或者被纳入到匈牙利公证处制备的公证书中)。

对于非农业或林业土地类的不动产买卖,不存在重大限制。根据《土地登记法》和其他相关法律,对于欧盟或欧洲经济区的公民或法律实体,其获得位于匈牙利的不动产权不比适用于匈牙利公民或法律实体存在更多的要求。

欧洲经济区外的企业在购买一项或多项不动产的产权时需要额外获得主管机构的批准。但若在国际协议中明确规定,或者匈牙利与外国母公司所在国之间提供互惠待遇,则位于欧洲经济区以外的外国母公司的分支机构则无须获得批准。

然而,匈牙利的不动产法规对土地规定了主要限制。根据《土地交易法》的相关规定,所有的国内或国外公司均被排除在可以获得任何该土地<sup>①</sup>的实体范围之外。相应的,企业可以通过设立农业生产协会(以下简称“生产协会”)、或者加入已有的生产协会或使企业符合生产协会的要求来获得这种土地。如果可行的话,获得这种土地的其他办法是与土地所有者签署租赁协议,但法律对这种买卖以及土地产权的获得也有类似限制。

## (五) 企业设立与解散

### 1. 企业组织形式

根据《民法典》规定,可以设立下述企业形式:

- 无限合伙;
- 有限合伙;
- 有限责任公司;
- 私人股份有限公司。

上述企业实体的最低注册资本如下所述:

- 有限责任公司的最低注册资本为300万福林;
- 私人股份有限公司的最低注册资本为500万福林。

根据匈牙利法律,无限合伙和有限合伙无最低注册资本要求。

一般而言,股东(母公司)无须对有限责任公司和私人股份有限公司的任何债务负责(公司面纱)。然而,在某些特殊情况下股东将承担无限责任,但我们注意到这些特殊情况通常难以证明/适用,因此,在实际操作中这些特殊情况非常少见。例如,若公司实体终止时无法定承继方,则债权人有权要求对该公司实体直接或间接享有特定多数控制权(至少为75%的表决权)的股东(母公司)对该公司实体的未决赔偿完全负责,但前提是上述公司实体的终止是因为股东的长期不利商业政策(不当交易)所致。因此,若股东滥用其有限责任并因此导致债权人的债权在公司实体结束之时仍未解决,并

<sup>①</sup> 少数例外情形,如由匈牙利国家所有的法律实体、登记教堂以及信托机构。

且公司实体无法定承继方，则股东应对这些索赔承担无限责任。但若债权不是因为股东滥用上述有限责任所致，并且公司实体终止后无法确定承继方，则股东应对被终止公司实体的未清偿债权进行代为赔付，上限是该股东在被终止公司实体分配资产中所获取的份额。

无限合伙的合伙人和有限合伙的普通合伙人需对合伙的债务承担全部责任。然而，作为一般原则，有限合伙的有限合伙人对合伙的债务不承担无限责任。

## 2. 企业的设立程序

无限合伙、有限合伙、有限责任公司和私人股份有限公司可通过简易程序设立。在这种简易程序中，公司设立时应使用相关法律中规定的公司章程/设立契约模板，企业通常可以在1~2个工作日内完成注册。这是在匈牙利设立一人外资企业的常规程序。

但若企业要求设立更为复杂的内部组织，或者上述公司章程/设立契约的模板不符合投资人的要求，则企业可通过正常程序（非简易程序）予以设立。正常登记程序将在最长15个工作日内完成，但该15个工作日截止期仅是指注册程序的截止期，不含公司法院要求提交补充文件的情况（这种情况下程序截止期将额外延长45天），也不含法官未在法定注册截止期内行使职权的情况。

除上述规定外，匈牙利国内税务和海关管理局（以下简称“税务机关”）会在企业注册之前对其进行初步审核，该审核通常会在1个工作日内完成，但在特殊情况下（例如，税务机关发现企业因为其所有人、常务董事的历史背景或者其他原因而存在税务风险），税务机关有权暂停注册程序，直至完成初步税务清缴为止。

针对待设立企业的活动，企业可以在向公司法院提交注册请求后开展业务。但若公司法院拒绝对企业进行注册（现实中很少出现这种情况），则截止于拒绝注册时所产生的债务应通过股东向公司提供的资产予以偿还。然而，股东应当向未能从上述资产中获偿的第三人承担连带责任。此外，若到期债务未能由通过企业和股东的资产予以清偿的话，则董事还应对上述债务向第三方承担无限连带责任。

## 3. 企业解散

企业无论是否有法定承继方均可予以终止。企业在下述情况中可在无法定承继方的情况下终止，例如：

- 企业设立时即确定经营期限；
- 企业决定终止存在（自愿解散程序），或者企业遭受了任何清算程序或进入了强制解散程序（强制解散程序）；
- 企业法院根据法定原因决定企业终止存在。

关于清算程序，《破产和清算程序法》（1991年第49号法）的规定应予适用。

## （六）合并收购

### 1. 参与私人收购的主要企业形式

通常参与私人收购的主要企业形式是有限责任公司和私人股份有限公司。

根据《民法典》，有限责任公司可以300万福林的最低注册资本进行注册并由常务董事管理。有限责任公司不可以发行股票，但其成员的所有权利益应按其份额予以表示。

私人股份有限公司可以500万福林的最低注册资本进行注册，其由董事会或者单一首席执行官管理，可发行实物股票或电子股票。

私人股份有限公司也可以就收购公众型股份有限公司股票达成私人收购协议。

### 2. 股份购买和资产购买比较

股份购买是收购私人公司最常见的方式，比资产购买更为常见。

股份购买的主要优点及资产购买的主要缺点如下所示：

#### （1）简易性

公司业务可以与公司股票（公司股份）转让而一起转让，而无须单独转让合同、实物资产、知识产权、雇员或许可证等。但在资产转让中，则需进行这种单独转让。



## (2) 转让商业合同无须第三方批准

除非商业合同中包含了控制权转让的特别条款，否则商业合同一般不受股权交易影响。但在资产交易中合同转让通常需第三方批准。

## (3) 许可证不受影响

除特别行业中超出特定门槛的所有权变更需获得相关监管机构的批准（例如，持牌电力或燃气公司需经能源办公室批准）这种情况之外，牌照在股份买卖中通常不受影响。收购金融机构中具适格影响力的股份需获得金融监管机构（目前纳入到匈牙利国家银行中）的批准。

## (4) 无雇员谈判过程

除劳资谈判协议下的特定通知或咨询要求外，股份购买无须通知或咨询雇员，但仍需考虑员工关系，特别是在交易是否完成取决于买方对保留重要员工所作安排能否满意时尤其重要。对于资产或业务销售，若出售会导致雇员转让，则可能需通知雇员、工会或工人代表。此外，目标公司的工会或工人代表也可启动工人意见咨询程序。

资产购买的主要优点在于买家可以挑选其希望购买的资产并且通常可以把负债留给目标公司。这也确保买家免于承担其尽职调查中未发现的任何隐性负债。资产购买一般发生在廉价急售情况下，在这种情况下，仅有目标公司业务的价值部分被购买，而公司的其余部分将要自动清算，或者是在目标公司的许多业务线中，仅有一项或少数几项业务将被买家接管。

## 3. 主要文件

在收购（无论是股份还是份额出售）中的主要文件如下所示：

- 买卖协议；
- 披露函（由卖方制备）；
- 股东协议（若卖方仍然为股东）；
- 相关公司文件（包括股份有限公司经修订的章程 / 成立契约和修订的董事会规则）。

在资产出售中的主要文件是资产买卖协议，该协议常附如下附件：

- 待转让的合同清单；
- 待转让的员工清单；
- 待转让的资产清单（动产和不动产）；
- 待转让的知识产权清单；
- 合同当事人要求批准合同转让的通知单。

在一对一的交易中，通常是买家准备买卖协议的初稿。而在拍卖程序中，则通常是卖家准备可由竞拍者提出意见的协议初稿。

## 4. 收购协议

收购协议主要包括下述条款：

- 定义（有时是协议的附件）；
- 先决条件（如竞争主管机构的批准、含有控制权变更条款的合同的主要缔约方作出的同意、与重要雇员的新雇佣协议）；
- 价格及价格调整；
- 交割机制；
- 签署与交易完成之间间歇期业务的安排；
- 陈述和保证；
- 披露函；
- 保证下的索赔责任限制；
- 竞业禁止条款；
- 税收契约；
- 格式化条款。

## （七）竞争管制

### 1. 竞争管制主管机构

在匈牙利，负责竞争管制的机构为匈牙利竞争管制局（以下简称“竞争管制局”）。<sup>①</sup>理论上讲，竞争管制局是一家自治公共管理机构，不受任何指令约束；竞争管制局履行职权之时独立于其他任何机构并且不受任何其他干扰。竞争管制局直接向议会报告工作。

根据《禁止不正当及限制性市场行为法》（1996年第57号法，以下简称《竞争法》），竞争管制局是基于欧盟法向成员国主管竞争管制机关授予所有职权的具体执法机关。

### 2. 《竞争法》概况

匈牙利《竞争法》符合欧盟《竞争法》的规定。在适用之时可以互相参考匈牙利《竞争法》和欧盟《竞争法》的规定。本章仅重点介绍匈牙利《竞争法》的规定。

《竞争法》中规定了受竞争管制局监管的下述领域内问题。

#### （1）禁止不正当竞争和不正当操纵业务决策

《竞争法》包含了禁止不正当竞争的基本规则。根据基本规则，禁止参与不正当经济活动或者在经济竞争中欺诈贸易伙伴。因此，所有这些种类和形式的行为均属此列并可视作是不正当商业行为。

#### （2）禁止限制经济竞争的协议（卡特尔）

匈牙利的竞争法规不仅对严格意义上的卡特尔（例如限制竞争的横向垄断协议）进行惩处，而且还适用于（同一市场中竞争者之间的）横向限制竞争协议和（在生产和营销渠道不同层级经营企业之间的）纵向限制竞争协议。

根据《竞争法》，任何限制竞争的协议均属无效。该基本规则存在例外和豁免规定，具体如下：

- 不应禁止不重要的协议。若协议参与企业（以及不独立于该参与企业的其他企业）在相关市场中共同所占份额不超过10%，则其签署的协议视为是不重要的协议，但其目的是为了固定竞争者之间的购买价格或销售价格或者是为了在竞争者之间分配市场的协议除外。

- 实现下述目标的协议不受《竞争法》禁止：致力于更合理的生产组织或营销组织，促进技术进步或经济进步，或者提高竞争力或者环境保护，并且允许其最终交易伙伴公平分享产生的利益，因此伴随的竞争限制或排除竞争范围不超过为了实现共同正当经济目的所需的范围，此外其未排除重大比例的相关产品竞争。

- 匈牙利竞争法规符合欧盟竞争法规的要求，其也规定一系列协议免于受基于集团豁免规章的基本限制，例如纵向协议、专业协议以及研发协议等。

#### （3）禁止滥用支配地位

与很多国家（特别是盎格鲁-撒克逊国家）不同，匈牙利《竞争法》会认定企业滥用其支配地位并且对该滥用行为进行处罚。《竞争法》刊载了这些行为的开放性清单，这些行为包括对最终交易伙伴造成损害的限制生产、经销或者技术开发的行为，以及为了取得不正当优势而对其他当事方经济决定造成影响的行为，以及在无正当理由情况下对有问题交易拒绝创立或维持正当的业务关系等行为。

#### （4）对企业合并（收购与合并）的控制

本部分内容用于规制不受欧盟并购法规调整的企业的合并程序。

对《竞争法》进行补充的法律。这些法律包括例如《禁止对消费者不公平的商业行为法》（2008年第47号法）、《商业广告活动的基本条件和相关限制法》（2008年第48号法）、《贸易法》（2005年第164号法）、《公共管理程序和服务基本规则法》（2004年第115号法），以及竞争管制局和其竞争管理委员会所作的其他立法等。

### 3. 竞争管制措施

#### （1）竞争监督程序

根据《竞争法》的相关规定，竞争管制局根据申请或者依照职权，通过公开的竞争监督程序执行竞争规章的法律规则。

<sup>①</sup> 匈牙利法院在小范围内也负责竞争管制，但对整个竞争管制体系进行详细介绍超出了本章范围。



## (2) 正式和非正式投诉

针对竞争管理局负责处理的任何侵权,任何涉嫌被侵权的人均可以向竞争管制局提交正式或非正式的投诉。与正式或非正式投诉相关的程序不构成竞争监督程序的一部分。

## (3) 市场分析和部门咨询

为了更高效地履行其法定职责,竞争管制局可以进行市场分析,在此框架内竞争管制局可以对特定市场的运作、市场进程以及市场发展趋势等问题进行调研和分析。

若价格波动或者其他市场情况显示在具体部门中的市场竞争可能会出现扭曲或受限,则竞争管制局应启动相应的部门调研以对市场进程进行讨论和评估。

## (4) 执行私人索赔和公共利益诉讼

个人可就他方违反《竞争法》导致其遭受的任何损失在匈牙利民事法院提起损害赔偿诉讼。<sup>①</sup>

针对违反竞争法律的行为还可提起如下公共利益诉讼:若任何人因为其违反《竞争法》规定的行为导致大量消费者利益受损,竞争管制局还有权代表消费者提起民事索赔。

对违反竞争法律的企业可做出多种处罚。

# 八) 税收

## 1. 税收体系与制度

匈牙利税务制度与欧盟法律一致,通常为业务开展提供可靠的法律框架。尽管税务制度看起来复杂并且有时过于繁琐,但从税收角度看投资匈牙利是非常值得的,因为较低的企业所得税以及大量税收优惠(特别是投资和开发税优惠)打造了宽松的税收环境。

税务制度主要涉及收入、销售和其他交易而非资本方面的税赋。公司不管其法律形式如何,均需缴纳企业所得税。国内销售通常要支付增值税(一般是27%,欧盟中最高)。

## 2. 主要税种与税率

匈牙利的征税分为中央和地方两个层级。国税构成了中央财政预算的收入,而地方税则归属地方政府。

国税依其征收目的可分为一般税或特别税。一般税包括传统税种(企业所得税、增值税和个人所得税),而特别税则包括针对特别行业/部门征收的税种(能源机构的所得税、针对金融组织和信贷机构以及信贷机构出资的征税、能源税、公共事业税、电信税、广告税、公共健康产品税等)。现政府通常用行业税等税种排挤掉欲对这些行业国有化/再私有化的外国投资者。

从公司课税角度看,以下税种与公司极为相关:企业所得税、地方营业税和增值税。

### (1) 企业所得税

公司收入需按其税前利润缴税。

根据《企业税和股息税法》(1996年第81号法,以下简称《企业税法》),居民纳税人包括商业组织如有限责任公司、无限责任合伙、有限责任合伙、私人股份有限公司和其他组织(如基金会和协会)。此外,其业务管理所在地位于匈牙利的非居民纳税人也被视为纳税人。

企业税税率对5亿福林(约160万欧元)以内的正数税基为10%,对超出5亿福林的部分税率为19%。

股息和利息豁免代扣所得税。特别税制度适用于版税收入,其中50%的一般税税率适用于版税(即5%和9.5%)。

税项亏损可无限期结转而无须税务局批准。

根据匈牙利法律,不允许组团纳税。

### (2) 地方营业税

受法律授权并在最大价值内,地方政府有权在其管辖区内征收地方税。这些地方税包括财产税、公共事业税、旅游税和地方营业税。

地方营业税是由公司注册所在地的当地政府征收。地方营业税的税基是净销售收入。地方税税率

<sup>①</sup> 启动该等诉讼之时,无须竞争管制局作出侵权决定。

取决于地方政府的决定，最高税率是 2%；但有些政府不征收地方营业税。

地方营业税每年分两次缴纳。应在纳税年度次年第 5 个月最后一日前申报年度地方税。

对股息、利息和版税不征收地方营业税。

### （3）增值税

增值税对大部分公司来说是最重要的间接税，受根据欧盟指令框架制定的《增值税法》（2007 年第 127 号法）管制。商品和服务的增值税标准税率是 27%。基本食品如牛奶、乳制品、面包和其他烘烤食品适用 18% 的低税率，5% 税率适用于特定产品和服务，如与医疗、书籍和报纸有关的商品和服务。

公司需依其营业额按年、按季和按月申报一次增值税。具有欧盟增值税纳税识别号的公司需至少按季申报增值税。

银行业和保险服务以及特定的其他商业活动免缴增值税。

## 3. 纳税申报与优惠

### （1）纳税申报

通常，纳税人依其自我评估纳税，即指公司需按法律要求登记、确定其纳税义务，并在正式到期日无须收到税务机关的正式通知，即可提交纳税申报单并支付相应款项，必要时对纳税申报单做更正、保存记录及提供信息。

税务机关随机审查纳税申报单以实施自我评估制度。

根据《会计法》（2000 年第 100 号法）以及《税收秩序法》（2003 年第 92 号法），公司需每年在纳税年度次年 5 月 31 日前提交年度企业纳税申报单（每个业务年度）。通常，纳税年度就是日历年。但根据《会计法》，纳税人可以自行决定不同于日历年的财务年度，特别是若其经营特点与这种纳税年度相符。在这种情况下，应在财务年度最后一日起算的第 5 个月最后一日前提提交纳税申报单。

### （2）缴税

取决于公司上个纳税年度的纳税责任是否达到 500 万福林（大约 1.6 万欧元），公司需按月或按季预缴企业税。若公司在上一年度的年营业额达 1 亿福林（大约 32 万欧元），则公司需预缴企业税并就此提交申报单。这种预缴企业税是为了弥补相关纳税年度内公司纳税责任计算的金额。

### （3）避免双重征税

匈牙利已与包括所有欧盟成员国、加拿大、中国、韩国、印度、日本和美国等在内的超过 75 个国家和地区签署了避免双重征税的条约。单边预扣税款适用于在国外已支付或应支付的所得税，但仅限于 90% 的国外税款并且不得超过根据匈牙利法律确定的金额。

### （4）免税额

特定种类的投资如在优惠地的投资、环境保护投资、电影制片投资以及促进创造就业的投资可以享有免税额。此外，通过赞助特定团队运动如足球或篮球也可以获得更多免税额（非常重要：实际除可以免除所有的纳税义务外，还可以有额外的奖励）。

## （九）证券交易

### 1. 证券法律法规概况

适用的证券法律如下：

《资本市场法》（2001 年第 120 号法），为促进匈牙利资本市场的发展、确保资本市场的透明度、提高对投资者的保护以及资本市场监管的效率，该法已由匈牙利国会通过。

《投资公司和商品经销商法》（2007 年第 138 号法）以及适用于上述企业单位的管理规章（以下简称《投资服务法》），该法确立了对市场参与者进行管理的监管构架，并规定了匈牙利国家银行作为监管机构的法定身份以及相关权力和授权。

《匈牙利国家银行法》（2013 年第 139 号法），该法规定了匈牙利国家银行履行监管和消费者保护职能的法律框架。

《民法典》，该法也规定了金融交易的基本法律框架。



## 2. 证券市场的监督和管理

根据应适用的法律规定，匈牙利国家银行对金融部门法律所涵盖的单位和个人行使持续监管权。

因此，匈牙利国家银行将以现场或非现场方式，通过使用审慎监管工具（例如，通过对业务稳定性调查的监管）以及市场监督和消费者保护工具，对金融和资本市场机构、基金、投资公司、保险公司以及金融基础设施（受管制的市场、结算所和中央存管处）的活动进行监管。必要时匈牙利国家银行还会就此采取相应措施。

匈牙利国家银行通过监管、预防以打击洗钱和对恐怖主义资助行为有关的金融机构活动，并就此履行 IT 监管职能。若需立即采取行动，国家银行将就此展开定向调查或专门调查。

匈牙利国家银行还会采取措施，通过金融服务来保护消费者的权益，并督促服务提供商做出公平负责的行为。在执行消费者保护测试过程中，匈牙利国家银行将重点关注能够影响到大范围消费者的系统级别消费者保护缺陷。

除匈牙利国家银行外，金融仲裁委员会也将作为替代性纠纷解决的专业独立平台。对于根据消费者和金融服务提供商签署的合同，而需以民事程序解决的消费者和金融服务提供商之间的金融纠纷，金融委员会提供了比法院诉讼程序更快捷和高效的解决途径。

## 3. 外资企业参与证券交易的要求

### (1) 外资企业作为投资人

法律对外资企业投资匈牙利市场无任何额外法定要求，并且外资企业适用上述投资人的基本法律规章，允许投资人在匈牙利市场内自由投资证券。

### (2) 作为金融（投资）服务提供商的外资企业

根据《投资服务法》的相关规定，仅有金融（投资）公司和信贷机构才有资格从事投资服务业务。投资服务业务以及就此提供的附带服务均需获得匈牙利国家银行的批准。

在其他欧洲经济区成员国设立的投资企业均有权通过跨境服务方式在匈牙利境内运营。

在第三国设立的投资企业可以通过设立分支机构的方式在匈牙利提供服务或者履行业务活动。上述非居民投资公司可以通过分支机构从事投资服务业务或者提供附带服务，但前提是就此已获其设立地所在国主管监管机关就这些服务的授权。

但是在下述情形下，匈牙利国家银行可以拒绝批准申请人参与投资服务业务：申请人与第三国个人或第三国设立的机构具有紧密联系，且因此存在相关法律障碍，可能会影响到匈牙利国家银行对投资企业有效地行使监管职能，或导致难以执行匈牙利国家银行的决定。

## (十) 投资优惠及保护

在本条中，投资是指购买、创造和生产有形资产，委托购买有形资产，在资产投入运行时履行的活动，对现有有形资产的扩展、转换或转变活动，或者对增加现有有形资产的使用寿命和 / 或产能也应包含在投资种类中。投资额以成本和市场价格中更低者为准。

投资成本为购买价格，其还包括为执行收购而产生的期权价格或者支付的佣金，但前提是无须对收购计算商誉或负商誉，即收购部分少于公司的有效多数。一经收购公司的有效多数股份，投资应按资产市值减去股权在所涉公司负债值中相应值入账，其差额应分别列为商誉或负商誉。

### 1. 优惠政策框架

匈牙利政府鼓励投资制造业和高附加值产业如研发中心、制造厂和（共享）服务中心。政府也认为生物技术、制药行业、信息和通信技术、软件开发、汽车工业和旅游业有重大机会。政府已作出大量努力来推进中小企业发展以及在信息和通信技术领域的创业。

### 2. 特别行业与地区的鼓励

匈牙利对投资者有完善的并与欧盟相关法规一致的激励制度。投资者有资格获得主要通过政府项目和代理机构分发的欧盟补助。政府也保持了许多从中央财政预算中拨出款项予以支持的激励项目。

匈牙利对外国投资者提供可退还和不可退还的激励。这些激励可以是现金补助、税收优惠、低息贷款、免费或折价提供的土地。



激励主要面向建立制造厂、物流设施、区域服务中心、研发设施、生物能设施或旅游业投资的投资者。

可获得的区域激励的最高金额是依区域援助力度而定的。对于首都布达佩斯，其援助力度率与在区域的其他首都（例如斯洛伐克首都布拉迪斯拉发、捷克首都布拉格）一样，为零投资补助，而在一些不发达地区的援助力度率可能达 50%。

大额投资（超过 5 000 万欧元）最高可获得援助金额会降低：5 000 万至 1 亿欧元之间的投资最高可获得援助金额的 50%，但 1 亿欧元以上的投资则最高只能获得援助金额的 34%。当计算可获得的区域激励的最高金额时，所有的区域激励包括现金补助、开发税收优惠等均需考虑在内。

环境保护投资、电影制片投资以及促进创造就业机会的投资，除其他补助外，还可以获得税收优惠。

### 3. 特殊经济区域

外资允许有 100% 的所有权，但在特定战略领域如国防行业除外。此外，政府在特定行业如公共事业（燃气、电力、水和废物处理）或能源领域有权取得并维持国家所有权。

根据相关法律，仅有匈牙利公民或在匈牙利居住并且有至少 3 年的农业工作经历或具有适当（农业相关）大学学历的欧盟公民可以购买土地（农业或林业土地），但对其购买面积设有限制，最多可购买 300 公顷（741 英亩）。所有其他人仅可以租赁土地。

### 4. 投资保护

匈牙利对财产和投资有重要的保护。

《匈牙利基本法》规定匈牙利政府仅可以在存有公共利益的某些特殊情况下征用财产，并且必须以合法方式进行征用，匈牙利政府也有义务立即并全部归还任何被征用的财产，而无须任何其他规定或条件。

此外，《在匈牙利的外国人投资法》（1988 年第 24 号法，以下简称《外国投资法》）对非匈牙利居民的投资者的投资和商业给予充分保护，并保证非匈牙利人的投资者将与匈牙利投资者享有同等国民待遇。《外国投资法》也含有资本调回保证，外国投资者可以据此在部分或全部终止其企业时将利润和投资资本汇回他们的母国。

其他法律如《民法典》也保护在匈牙利的外国投资，提供根据匈牙利法律享有的同等待遇以及使利润能够汇回母国。设有确保遵守法律及竞争规则的机构和程序，这些制度和程序对国内和国外投资者不加以区分，理论上对所有投资者一视同仁。

对投资者与国家之间不能以其他方式予以解决的纠纷，匈牙利接受国际仲裁。在匈牙利有多家国内仲裁机构，其中最常用的是隶属于匈牙利商会的仲裁机构。

匈牙利是国际投资争端解决中心（《国际投资争端解决中心公约》）的成员国，并签署了《承认及执行外国仲裁裁决公约》（1958 年《纽约公约》）。

匈牙利已与许多国家如澳大利亚、加拿大、中国、克罗地亚、德国、印度、印度尼西亚、俄罗斯、新加坡、韩国、泰国、英国及越南签署了双边投资公约。

## 三、贸易

### （一）贸易主管部门

#### 1. 匈牙利贸易许可办公室：贸易部

贸易政策的主要原则在欧盟层面规定，而国家主管部门负责其具体适用。匈牙利贸易许可办公室（Nemzeti Kereskedelmi Engedélyezési Hivatal）是匈牙利负责协调、控制和特许进出口及国内贸易的部门。在匈牙利贸易许可办公室组织内，贸易部负责全国进出口交易和贸易项目许可证的签发。每次商品从非欧盟成员国跨越匈牙利边境时，都需要获得该部门的许可。

作为原则，根据不同的欧盟法规，产品可以自由地进出欧盟，然而，一些限制性措施可以规范实际贸易活动。



根据匈牙利法律,《关于跨越国境和海关的货物、服务和权益的第 52/2012 号政府法令》(以下简称《贸易法令》)规定了需要进口、出口、再出口许可的完整的货物清单。该法令规定了许可条件和程序规则,以及申请许可证的官方表格。《贸易法令》中的例外情形都是基于保护公共安全的理由。例如,以下货物需要贸易办公室的特别许可证:用于民用目的的爆炸物和烟火物品、安全防护用品、武器装备、放射性物质、可回收或有害废物、濒危动物和植物物种的部分或衍生品、监视设施、军事工程防御技术和受保护动物物种的活标本。

至于农产品,匈牙利许可程序与欧盟共同农业政策(CAP)一致。因此,某些农产品的进口需要俗称“AGRIM”的进口证书。《欧洲议会和理事会第 1308/2013 号法规》规定了需要进口证的商品,如谷物和大米、橄榄油、牛肉和小牛肉、糖、酒。匈牙利贸易许可办公室的一个重要任务是发放上述货物的进口许可证。

此许可证不影响报关义务,当货物跨越边境时必须支付关税。但是,出口或进口许可证的申请必须先于海关报关程序。

## 2. 国家运输部

国家运输部是唯一的管理和监督运输有关活动的部门。作为运输管理的中央部门,该部门监督和管理所有市场参与者的运作。该部门的主要职责是批准、控制和规范公路运输、民用航空、国有航空、铁路运输和水运运输。该部门同时负责签发上述商品的出口和进口许可证。

## (二) 贸易法律法规概况

### 1. 《2005 年第 164 号有关贸易的法案》

该法规定了贸易活动的主要规则及其规范制度。

该法适用于零售和批发活动。最近的修正案取消了此前成本昂贵且耗时的授权程序,采用了一步到位通知制度,大大减少了在匈牙利开办企业的行政负担。因此,任何人希望在匈牙利境内从事贸易活动,只需事先通知相关商贸主管部门即可。因此,作为一般规则,没有必要领取贸易活动的营业执照。该法指定地方行政部门作为该通知制度的主管部门,负责维护该区域内的活跃贸易商的官方数据。

虽然通知为一般规则,但也有一些例外领域需要贸易许可办公室的许可。《第 210/2009 号政府法令》从公共安全、公共卫生和保护环境的角度,规范了此类贸易项目。此类贸易项目有销售烟草、武器、染料和杀虫剂。

根据贸易法案,贸易商有权在现有法律框架内选择其商业形式。虽然可以根据个人业务类型选择不同商业形式,但贸易法案就可能的商业形式提供了非强制性示范清单,如店内交易、购物中心、直销、街头销售、邮件零售、通过运输提供货物。

该法还设置了条款保护贸易活动中应受到尊重的消费者权益。贸易许可办公室负责监督这些规则的适用,如该规则未被遵守,贸易许可办公室有权处以罚款、暂停或责令关闭。

《消费者保护法》的实施由匈牙利消费者保护部门负责。

### 2. 《1990 年第 87 号有关价格的法案》

在匈牙利,价格由市场决定,因此贸易商有权自由设定其产品和服务的价格。根据该法,匈牙利政府仍有权设定一些特殊产品的价格。受政府价格管制的货物和服务包括烟草、电力、邮政服务和公共交通。

## (三) 贸易管理

### 1. 匈牙利工商会

匈牙利工商会是促进商业和企业活动的主要部门。除政府立法外,贸易活动由工商会发布自治监管管理条例,如建议和意见类“软法”文件。这类软法文件虽对企业没有约束力,但却被强烈建议适用以遵守现行有效的商业法律。

此外,工商会为贸易商提供有效的帮助,其中包括维护在线实时更新的业务运营注册系统、出具合同模板、提供税务和公共采购问题咨询、定期举行会议,以及展览和职业培训。



必须强调的是，企业和企业家有义务在开始业务之初注册为工商会的会员。

## 2. 匈中经贸商会

匈中经贸商会是促进匈中两国贸易的非政府组织。会员有中国和匈牙利的私人公司以及匈牙利的中小型企业。

匈中经贸商会的目的是加强两国之间的贸易、经济和文化联系，促进会员的商业利益。它为会员企业建立或发展对外贸易提供咨询帮助，尤其是为会员企业提供两国间潜在商业和投资机会的信息。

匈中经贸商会服务包括市场分析和市场调研，组织会议、研讨会和培训，目的是提高企业的创新性，促进匈牙利和中国乃至其他第三国之间的商品交流。

商会备受重视的工作包括：监测两国的经济和金融环境，并向政治、专业和媒体决策者通报双边关系中的经济问题。

## （四）进出口商品检验检疫

**进口报关：**所有跨越匈牙利海关边界的进出口货物应以所谓的“海关货物申报单”（以下简称“海关申报单”）的形式，由官方海关代表以电子方式通知进口商所在区域主管海关部门。因此，进口商必须委托海关边境且有权执行海关程序的官方海关代表办理报关手续。货物到达海关时，进口商应提供进口特定货物所必需的全套正式文件（如许可证等）。在货物预计到达海关之前 30 天内，可提交海关申报单。申报的货物到达海关时，海关申报单与货物一致的，海关会即时接受该批申报货物。

**海关检查：**随机检查或逐一检查所需的全部工作，如取样或检查运输工具，在海关部门的监督下皆由海关代表协助处理。海关检查通常只需要几个小时。货物离开海关边境后，可能会进行后清关检查程序，但此程序启动通常以事先书面通知为准。

如果第三国货物不符合海关规定（例如进口商不能提供所需文件），该货物从到达海关时会将被安放在临时储存库中。

**确定进口和出口税额：**进口或出口应付具体税额通常主要由受任的海关代表根据通用关税税率提出，海关部门可以接受或者更改海关代表所提出的税额。

特定产品享受减免进口税或关税优惠待遇。请注意，匈牙利禁止以处置为目的的污染物废物运输。

**罚款：**违反与抽检程序、清关程序、保管程序或免税申报等相关规定，海关部门可处罚款。

**应付税款：**根据通用的海关税率确定征收的进口或出口税，进口商应不迟于自申报日起 6~7 日内以现金、电汇或提供所谓的保函形式支付。除关税外，还需要支付进口增值税、消费税（进口矿物油、葡萄酒、啤酒）和其他特殊税（环保产品费）。如果延迟关税支付，应支付逾期利息。海关债务主要以保函支付。如未提供保函，海关部门将向进口商签发收款单。

**“自由流通放程序”：**根据进口商提交的海关申报单上的申请，拟在匈牙利和欧盟市场上销售的第三国货物可以适用所谓的“自由流通放程序”。该程序的海关税也由普通关税决定。自由流通放行将使第三国货物享受欧盟货物的关税地位。

## （五）海关管理

欧盟是一个单一的贸易区，货物在欧盟内自由流通。欧盟内部的关税和配额壁垒已被废除，因此欧盟成员国之间不适用关税。

2013 年 10 月 9 日欧洲议会和理事会制定了第 952/2013 号条例《联盟关税法》（欧盟）作为关于整个欧盟关税规则和程序的新框架法规。它规定了必须适用于进口或出口欧盟货物的一般规则和程序。

欧盟合并名目是关税同盟内部的关税和统计名目。欧盟共同关税是适用于进口到欧盟内产品的关税。欧盟一体化关税被称为关税。它包括所有欧盟关税以及进出口欧盟货物所适用的农业或贸易措施。均可以在线获得。欧盟委员会负责其系统管理和日常更新。它每年颁布一部条例，该条例含有一份完整的欧盟合并名目和欧盟共同关税的税率。该条例每年 10 月 31 日之前在官方公报上公布，自次年 1 月 1 日始适用。

根据欧盟第 952/2013 号条例，匈牙利通过了《关于欧洲关税法实施的 2016 年第十三号法令》。详细规定可参考主管部门第 11/2016 号法令（IV.29）。国家法律法规旨在支持欧盟法规所要求的数字化管



理程序。这些新的关税法规引入了各种简化措施,进口商公司既可借此节省成本,也能够以电子方式与海关当局沟通。根据目前的计划,这些新的电子平台将于2020年逐步建立。

国家税务和海关管理局(Nemzeti Adó-és Vámhivatal, NAV)及区域办公室是在匈牙利主管海关和税收的部门。NAV负责管理整个海关,即核查清关文件的数据以及负责报关和统计为目的的清关程序,包括更正这类文件。此外,NAV的职责还包括海关、税法及其他法规规定的通关后检查和后续审计。

## 四、劳动

### (一) 劳动法律法规概况

为了提高竞争力,匈牙利立法部门以在欧洲创造一个最灵活的劳动力市场为奋斗目标。因此,它通过了2012年7月1日生效的《劳动法》(2012年第1号法案,以下简称《劳动法》)作为规范劳动力市场的主要手段。新《劳动法》通过以下方式提供了广泛的机会使劳动关系更加灵活:①允许当事人限制《劳动法》规定的权益并将该权益转移至劳动者一方;②在某些条款上,集体协议会减少用人单位的利益;③相比之前的法律制度,新《劳动法》删减了强制性条款,对公司而言普遍受益。

劳动合同必须以书面形式签订。签订劳动合同也变得更加灵活,因为劳动合同唯一的强制性内容是双方必须约定个人基本工资和工作职责,其他条款直接受《劳动法》约束。一般来说,用人单位使用完整的劳动合同来规范劳动合同关系,相关的信息表和公司政策作为劳动合同的附件。

全职的工作时间为每天8小时;劳动者每周有权享受两个休息日:根据正常的工作计划,星期六和星期日为休息日。也可能启动银行系统的工作时间,工作时间按照每天的排班表确定,排班表周期更长(例如:两个星期);通过这种方法,用人单位可以更好地协调员工的工作班次。在该系统中,排班表通常的周期可以覆盖最多4个月或16个星期。

用人单位可能要求员工加班;每名员工每年加班的时间限制为250小时;加班工作的时间必须通过相同时间的调休和/或工资补贴来补偿。基本年假为每年20天,随着员工的年龄增加而按比例增加(35岁为25天,超过45岁的最长不超过30天)。

全职员工的法定最低基本工资规定为111 000福林(约363欧元/400美元)。计算员工净工资或用人单位成本时适用一个复杂的税收和社会保险法规体系。扣除所有的费用,员工的最低基本工资为73 815福林,而用人单位雇佣一个最低工资员工的总成本为142 635福林(约466欧元/515美元)。

经双方一致同意,可以通知或不经通知立即解雇的方式终止劳动合同关系。根据双方的约定,如果双方一致同意终止劳动合同关系,任何一方在质疑合同是否有效终止时会更为困难。用人单位单方面终止劳动合同关系时有义务提供解除理由,解除理由应当与劳动者的行为与劳动合同相关、个人能力及公司运营状况相关。通知期一般为30天,随着劳动合同关系年限增加而相应延长。但是,合同一方可立即终止劳动合同关系:当:①故意或由重大疏忽严重违反劳动合同的实质性义务条款;②其他行为导致劳动合同关系不能继续。

如果企业的经济单位(即物质和非物质资产达到独立运行的主体)被转让给另一企业,受让企业承继出让企业经济单位的用人单位地位。

在用人单位解散不再继续经营,或者用人单位转让旗下经济单位且受让者不受《劳动法》约束的情况下,如用人单位以通知方式终止劳动合同关系,则受雇3年以上的劳动者有权获得遣散费。遣散费的金额为1个月到6个月的薪金,取决于劳动者受雇于用人单位劳动的时间长短。

### (二) 外国人在当地工作规定

欧盟成员国公民及其家庭成员有权在欧盟境内自由流动和居住,欧盟内劳工的自由流动由欧盟统一协调。因此,在匈牙利我们只审查第三国国民是否获得就业许可。

#### 1. 工作许可

第三国国民通常获得就业居留许可证后被允许工作。

#### 2. 申请程序

通常情况下,第三国国民打算在匈牙利居住并工作时,这两个请求由部门合并并在单一申请程序中



处理，发放的是就业居留许可证，对于第三国国民而言，程序更简便。就业居留许可证将发放给第三国国民：当① 居留目的为依劳动合同从事工作的，或者② 以盈利性商事组织、合作社或其他法人的所有人或执行官身份从事工作的。申请应向移民和国籍办公室提交。居留许可证签发的最长期限为两年，可以根据请求续延，续约期最长为两年。

### 3. 社会保险

社会保险和社会保障的法律规定适用于第三国国民，与匈牙利国民待遇相同。根据法定要求，所有员工必须投保；社会保险一般涵盖健康险和养老保险。用人单位和劳动者都必须按月缴纳保险，根据月薪计算，代扣代缴。健康险福利包括：保健服务、带薪病假、产假福利、病假工资、意外事故福利；养老保险福利包括：如养老金、家属福利（例如寡妇养老金、孤儿养老金）及康复福利。

## （三）出境和入境

### 1. 签证类型

因匈牙利为《申根协定》成员国，180天有效期限内可在欧盟成员国境内中转或停留不超过90天的签证，其签发程序和条件由欧盟统一制定。除欧盟统一签发的签证外，还有两种其他类型的签证：① 居留签证（单次入境，最长停留期30天）；② 国家签证，单次或多次入境，根据国际协定，180天周期内在匈牙利境内预定逗留可超过90天。

### 2. 出境和入境的限制

出境和入境的限制受《申根边界法》约束，对申根协议的所有成员国一致适用：出境和入境时，第三国国民必须接受彻底检查。

## （四）工会和劳工组织

### 1. 概况

为保护劳动者的社会和经济利益，维护劳资关系，在匈牙利劳动者享有宪法权利，可以组织、参加或不参加工会或其他如工人理事会之类的劳工组织。此外，《劳动法》规定了集体谈判以及预防和解决与就业有关冲突的程序。法律上承认的有三种不同形式的劳动者代表：工会、工人理事会和员工代表。

### 2. 工会

工会依匈牙利《民法典》成立，登记注册于管辖法院。他们独立于用人单位的内部组织，并自主地开展自己的活动。劳动者有权在其工作地点设立一个不少于10名创始成员的工会。现存工会有权在各用人单位设立组织，他们的成员可能包括这些用人单位的劳动者。劳动者无须通知用人单位其参加工会事宜。工会的两个最大权利是罢工权（见劳动争议条款）和缔结集体协议权。集体协议的缔约方为用人单位或用人单位协会，另一方为工会或工会组织。一个用人单位可以缔结一份集体协议，集体协议可限制《劳动法》规定的劳动者权利和义务。此外，工会领导在匈牙利有特殊权利，例如，劳动合同终止时，可减少工作时间或获得特别保护。

### 3. 工人理事会和员工代表

工人理事会和员工代表为用人单位内部组织，只能在一个用人单位开展活动。他们由用人单位资助。如果用人单位拥有50名以上的劳动者，劳动者有权成立一个工人理事会，理事会成员由该用人单位雇佣的劳动者选举产生。仅工人理事会主席享有其他权利，如其劳动合同终止受到保护等。工人理事会可以代表劳动者的利益，有权知悉、询问，在某些情况下甚至可以参与用人单位的决策（共同决策，例如，关于社会福利支出的决定）。工人理事会最重要的工作是与用人单位缔结工人理事会协议，可以规定劳动合同关系的权利和义务（薪酬条款除外）。如果用人单位雇佣的劳动者少于50名但超过15名，则可以选举一个作为劳动者代表的个人代表，其职责类似于工人理事会。

如果公司雇佣的全职劳动者年均人数超过200人且公司设有监事会的，1/3的监事会成员由工人理事会任命的员工代表组成。但是，经工人理事会事先同意，员工代表任职工监事会成员可以超过5年的任期上限。



## (五) 劳动争议

### 1. 概况

劳动争议包括用人单位与劳动者或劳动者组织之间与劳资相关的利益冲突（集体纠纷），以及与劳动法有关的法律纠纷。

### 2. 集体纠纷

集体纠纷可能与工作条件或报酬等有关。工会有权代表劳动者的利益。这种由用人单位和劳动者利益冲突引起的争议可以通过协商解决，但是，如果不能和平解决，它也可能导致罢工。劳动者有（宪法）罢工权利，以提升其经济和社会利益。但是，政治罢工是被禁止的。罢工可以由工会发起。罢工可能开始的情况有：①争议经集体劳资争议框架内调解程序，7日内无结果；②因非可归于罢工发起者原因而导致协调程序无法实现。参加合法罢工的员工可不从事工作；但是，他们必须到达工作现场。工会也可以发起罢工。匈牙利有多种形式的罢工，例如示威罢工、团结罢工以及警告罢工等。劳动者因罢工期间无法工作而无法获得报酬。

### 3. 劳动法纠纷

作为一般规则，自争议或争议事件发生之日起30日内，应提交起诉状，尽管匈牙利劳动法规定诉讼时效为3年。《匈牙利民事诉讼法》规定了适用于劳动诉讼的特别规则。在匈牙利，行政与劳动法院对劳动争议有管辖权，而管辖权是根据该用人单位的注册地或劳动者签订或履行劳动合同时其用人单位的永久所在地确定。

## 五、知识产权

### (一) 知识产权法律法规概况

匈牙利知识产权法律法规与欧盟法律一致。部门法规则包含以下权利保护的相关规则：

- 版权；
- 邻接权；
- 专利；
- 商标；
- 植物品种保护；
- 实用新型保护；
- 地理标志；
- 设计保护；
- 集成电路布图设计保护。

除与欧盟法规兼容外，匈牙利是世界知识产权组织（WIPO）管理条约的会员，因此，知识产权的设立、知识产权保护的限制和知识产权的救济措施都较符合国际法规。

版权保护与个人作者直接相关，因此版权不可转让，不能被抵押或放弃。然而，版权的商业使用可以许可给第三方。专利所有人是个人发明人或用人单位，有权通过许可合同向第三方许可使用专利。一旦专利注册，即成为可转让的资产，可以设定为抵押物。商标也一样被认为是可转让资产，可通过许可合同约定使用方式，也可以设定为证券抵押物。软件和软件界面有关的原理、概念、过程、操作方法或数学运算也受版权保护。与软件相关的所有知识产权皆可转让。

### (二) 版权保护

匈牙利版权法规受《1999年第76号版权法》（以下简称《版权法》）的约束。《版权法》没有明确列明受保护的作品，但明确了保护领域，所有文学、学术、科学和艺术作品受版权保护。作品或发明因作者的智力活动的独特性和原创性受到版权保护。版权保护不取决于数量、质量或审美特征或任何对作品质量的主观判断。

作者有权从作品完成之日起受到版权保护。因此，法律自动保护，无须启动官方承认程序来保护。

匈牙利版权法为作者提供财产权与人身权保护。作者有权要求在作品上署名，或者使用化名或匿名发表。作者有权决定他们的作品是否发表或不发表，也有权撤销出版许可。作者的主要财产权是利用作品的全部或任何可识别部分作品，或通过许可协议授权第三人使用。财产权有时间限制，保护期存续于作者有生之年和其去世后的 70 年。免费使用严格限于法律规定的目的，例如：文化、教育、科学和信息目的，以及普遍接受的个人私下使用。

### （三）申请专利

匈牙利专利申请的法律框架受《1995 年第 33 号关于发明专利保护的法案》（以下简称《专利法》）约束，符合国际规则。参照《欧洲专利公约》的定义，《专利法》对专利进行了清晰的定义，强调任何技术领域牵涉创造性劳动且具备工业实用性的任何新颖发明均可取得专利。此外，《专利法》规定了明显不能授予专利的例外情形：①发现、科学理论和数学方法；②美学作品；③智力活动、游戏、商业管理以及计算机程序有关的计划、规则或程序；④任何信息展示。

国家专利的授予，由匈牙利知识产权局（以下简称“知识产权局”）负责。知识产权局是依照《专利法》负责保护知识产权的政府部门。授予专利的行政程序通常持续 3～4 年，主要原因在于新颖性检索需耗费较长的时间。申请专利必须支付行政服务费。如果专利申请人是外国人，则强制要求专利代理人代理申请。如果专利申请及其相关的发明符合《专利法》中规定的审查标准（例如，申请费和检索费已支付、现有技术存在和新颖性检索成功等），知识产权局将授予申请的专利，并向专利权人发放专利证书。但是，某些类型的发明被明示为不被接受且不能授予专利，这些发明违反公共秩序或道德，且《专利法》明确列明不得授予专利（例如克隆人类的过程，将人类胚胎适用于工业或商业目的等）。授予专利后，专利保护效力可追溯至专利申请日。专利保护期限自申请之日起计 20 年。专利申请后 18 个月内，专利申请会刊登于知识产权局的官方刊物上。

### （四）商标

匈牙利的商标保护受《1997 年第 11 号关于保护商标和地理标志的法案》（以下简称《商标法》）约束，与《马德里协定》《马德里议定书》的规定一致。根据定义，任何能够将一种商品和服务区别于其他商品和服务的标识，皆可获得商标保护。

商标可以包含以下任何标识：

- 词、个人名字和口号的组合同、字母、数字、设计、图形；
- 平面或三维图形，包括商品或包装的形状、颜色、颜色的组合、光信号、全息图、声音；
- 以及上述标识的组合。

尽管《商标法》对标识作为商标使用规定的范围很广，仍有些标识不能受商标保护。例外情况分为两类：绝对不保护和相对不保护。绝对不保护的主要原因是涉及公共利益（例如，如果商标与公共秩序或善良风俗冲突，或者恶意注册等）。相对不保护的原因主要基于保护另一个商标所有人的利益。相对不保护最重要的原因为以下两种情况之一：一种情况是拥有在后优先权的商标与较早的商标类似，且注册的商品或服务与先前的商标相同；另一种情况是拥有在后优先权的商标虽然注册的是不同商品或服务，但该商标与之前在国内市场上享有高知名度的商标相同或相似。知识产权局可以依职权审查绝对不保护的原因；自商标注册公布之日起 3 个月内，相对不保护的原因可依第三人的异议进行审查。

商标所有人可以是自然人或法人。商标保护自向知识产权局申请注册之日起算，保护期为 10 年，可以展期 10 年，无次数限制。商标保护适用于匈牙利境内。注册程序通常持续 6～7 个月，但可以申请加速程序。

注册商标必须在注册后 4 年内开始使用，否则将失去法定保护。

### （五）知识产权保护措施

侵犯知识产权的保护可以通过民事、刑事及特定情形下竞争法（例如：不公平的市场竞争）诉讼程序来实现。一般民法下的救济途径包括诉前禁止令、损害赔偿、归还不当得利、发布侵权声明、停止侵权和恢复现状、禁止持续侵权行为。



这些救济措施可单独或一并提出。

知识产权法为受到侵权的知识产权权利人提供了更多的救济途径：

- 披露参与制造和销售侵权商品各方的信息；
- 扣押侵权商品使其退出商品流通领域或彻底销毁侵权商品；
- 对物质和非物质损害进行赔偿。

对于某些严重知识产权侵权行为，也可适用刑事制裁。在下述犯罪情形下，可判处最高 10 年的监禁，并可处以罚金：

- 剽窃；
- 侵犯版权和与版权相关的邻接权；
- 规避用于保护受版权保护作品的技术措施；
- 篡改版权管理信息的完整性；
- 侵犯工业品外观设计权。

## 六、环境保护

匈牙利加入欧盟开启了环境保护立法的新篇章，自此之后大量相关法条从根本上被重新修订。

### (一) 环境保护主管部门

环境保护主管部门由两级部门组成：区域级别为县级政府的环境和自然保护办公室，国家级为国家环境和自然保护监察局；大多数案件向县级部门提起，如果对一审的行政判决提出上诉，国家监察局为二审部门。

基于相关法律规定，环境保护主管部门在其权限范围内也可将某些环境保护相关的特定工作指定由其他机构（组织）负责。例如，国家公园局监督危害、污染或破坏保护区（例如国家公园）的活动，而市政部门和地方市政府的公证处处理如地方保护区之类的有关案件。

### (二) 环境保护法律法规概况

环境保护法律体系涵盖所有相关领域，例如保存相关环境记录、土地开发、废物管理、化学品、水资源管理、气候和大气、噪声和核保护。环境保护法律法规的主要来源是《1995 年第 53 号有关环境保护一般规则的法案》。

#### 1. 程序

为获得将来拟从事活动的许可，以下行政程序对于投资者至关重要：①初步评估程序；②事前咨询；③环境影响评估程序；④单次环境许可程序；⑤环境审计。

##### (1) 初步评估程序

初步评估程序的目的在于确定拟进行的项目是否会对环境带来负担，而该负担需要一个更详细、更彻底的程序（即环境影响评估程序或单一环境许可程序）进行评估。根据《政府令 314/2005 (XII.25)》，这类项目包括开办和经营电池厂、造船厂、铁路工厂及动物腐烂处理场等。法律还进一步规定了在某些特定情况下（例如石油钻探）应当进行初步评估程序。

##### (2) 事前咨询

如果环境影响评估程序有必要进行以启动拟进行的项目，且因为法律的特殊规定该项目由非环境保护部门的行政部门决定，则污染者可以申请相关部门进行事前咨询。如果拟进行项目仅需经单次环境许可程序，也可申请事先协商程序。事前咨询的目的是让环境部门就污染者申请环境影响评估程序或单次环境许可程序提出意见，并向具体的主管部门和公众提供其意见。事前咨询虽不是强制性的，但可能使申请人受益，因为环境主管部门的意见可以从根本上影响许可程序的最终结果。

##### (3) 环境影响评估程序

如果拟启动的项目可能对环境产生重大影响，则该项目启动之前必须进行环境影响评估。《政府令 314/2005 (XII.25)》列明了法律上认为可能对环境产生重大影响的项目（例如：运营高炉、处理危险

废物和处理核燃料的工厂等），因此，这类项目必须进行环境影响评估。如果环境主管部门在初步评估程序中决定应进行更详细的环境影响评估，则环境影响评估程序将不能避免。

该程序依污染者的申请而启动，初步评估程序和事前咨询中相关的意见或行政决议应附卷于申请书中。

主管部门批准申请人的请求后，至主管部门颁发环境许可证之时方可终止环境影响评估程序。此外，如果环境影响评估程序是法定的，该特定项目必须获得环境许可证后方可进行。一般来说，环境许可证有效期为 5 年以上。许可项目（或至少是必要的基础建设工作）须在许可证颁发后 5 年内开始启动，否则环境主管部门会撤销该许可证。

#### （4）单独环境许可程序

单独环境许可程序的目的是明确最佳可用技术，以防止环境污染，减少或避免有害排放及对环境造成损害。《政府令 314/2005（XII.25）》列明了应当履行这一程序的项目，例如与能源产业、冶金、建筑产品、化学工业、废物管理、食品工业和采矿相关的项目。这些项目必须获得单一环境许可后才能启动。

如果主管部门同意申请人的申请，单独环境许可程序自主管部门签发单次环境许可时结束。

但是，应当注意：对于某些项目，环境影响评估程序和单独环境许可程序都需要进行。在这种情况下，经申请人的申请，可以合并两个强制性程序，按一个复合程序处理，从而使整个许可过程更简便。但是，未经申请人请求，这两个程序不能合并。

#### （5）环境审计

环境审计的目的是审查特定项目的环境影响，确定是否满足环保的要求。任何项目的操作、技术启动、改进、更新、恢复或放弃，若影响环境或对环境（包括任何相关的建筑工程和准备工作）构成迫切的污染威胁，则必须进行环境审计。环境主管部门若检测到环境被破坏，或者某些项目对保护区（例如自然公园、保护区或水资源保护区等）造成或可能造成环境损害的，环境主管部门可能强制进行环境审计。

如果先前获颁的环境许可即将到期，且污染者希望在许可证到期之后继续该项目，则环境审计过程中可以展期。

主管部门批复问题项目并颁发环境许可证后，环境审计结束。如果主管部门发现特定项目为非法项目，会在行政决定中限制、暂停或禁止该项目；此外，出于保护环境的必要，主管部门对其所有权甚至可施加限制。

### 2. 法律责任、罚款、收费和费用

在匈牙利，环保最明确的规则之一是“污染者付费”原则，有效地确定了对环境造成污染且导致环境损害一方的法律责任。任何人违反旨在保护环境的法律法规时，该原则就会体现出来：违反这些法律会被处罚缴纳环境罚款，罚款与所致污染和环境损害的严重程度、范围、持续时间和频率一致。具体部门规章确定了各类侵权行为的罚款金额，从微小数额到巨额罚款不等。例如，违反关于电池分销的规定可处罚金 200 万福林（约 7 220 美元），或对受保护的生物物种造成损害的，每一物种可处最高达 100 万福林（约 3 610 美元）的罚款，具体数额取决于物种。缴付罚款并不免除污染者的刑事责任或损害赔偿赔偿责任，也不能免除其将损害环境恢复原状的责任。

如果依法从事某项活动，但法律上认为该活动对环境会造成损害的话，则使用者必须支付费用。这些项目均在部门规章中列明。费用包括诸如环境负荷费（用于补偿大气、水或土壤污染所致损害）、利用费（用于废物储存）、产品费用（例如电池、轮胎）和采矿权使用费。

环境主管部门的各类程序需支付行政服务费。

### （三）环境保护评估

如前所述，自从加入欧盟后，诸多匈牙利环境保护法已重新起草。由于相关的法律规定与欧盟法律规定一致，现在匈牙利保护环境的水平和要求与欧盟其他成员国的要求已有可比性。

由于环境保护是一个非常特殊的领域，建议投资者向该领域内具有丰富经验的顾问或专家寻求帮助，让其提供建议或由其代为向当地环境保护部门咨询。



## 七、争议解决

### (一) 解决争议的方式及部门

#### 1. 争议解决方式

在匈牙利,有关商业交易的法律争议通常通过非正式和正式的争议方法得以解决。最常见的非正式方法是通过争议当事方之间的双边协商解决,可以由调解人协助,调解人旨在便利双方之间的沟通,但不参与任何一方的谈判。正式的争议解决程序可以是在普通法院提起诉讼,也可以是仲裁的形式。这些正式程序以法院或者仲裁庭作出裁决后结束,裁决一旦终局且具有约束力之后则可以强制执行。

##### (1) 诉讼

一般而言,在向匈牙利普通法院提起诉讼之前,具有法人资格的经济运营体(例如公司)须首先尝试友好解决彼此之间的争议。

在匈牙利法院具有管辖权的情况下,争议一方可向具备级别管辖权和地域管辖权的法院提交起诉状而启动诉讼。根据案件的情况,当事人可以在起诉状中要求采取临时措施(类似于禁止令)。

一般来说,一审法院在收到起诉状的几个月内会举行听证会。此时,当事人可发表各种观点,并提供证据以支持其诉求或抗辩(例如文书证据、证人、申请法院指定专家)。开庭前后,当事人通常均有机会向法院提交书面说明。

一审法院作出的所有判决和部分裁定可以上诉,二审法院根据上诉请求决定是否维持、改判或撤销一审判决或裁定。作为一个特别程序,二审法院作出终审裁决后,理论上仍可在收到二审裁决后请求最高法院改判。最高法院作出的裁决,不得再行上诉。

小额案件和特别大额案件适用特别规则,目的是为这两类案件提供快速解决争议的通道。

与诉讼有关的费用包括立案费、专家费用和证人补助及律师费(其中立案费通常由原告预交)。一般来说,法院判令败诉方承担整个程序的全部费用(包括胜诉方的律师费)。如果一方仅部分胜诉,通常按照胜诉方其胜诉比例承担诉讼费用。外国(非欧盟居民)个人或实体在匈牙利作为原告提起诉讼,被告可要求其向法院提供一笔与诉讼费等额的押金。如果索赔败诉(或者部分败诉),这笔押金可用于支付法院判决原告应付的诉讼费用。

根据我们的经验,在匈牙利普通法院的诉讼可能持续几年,这取决于案件的复杂程度、上诉和其他类似附属程序的次数。

##### (2) 其他争议解决方式

###### ① 仲裁

只要双方同意选择仲裁这种争议解决方法,商事争议的当事人有权在争议发生之前或之后将争议提交仲裁。当事人提交仲裁申请后,仲裁庭成为解决特定争议的唯一场所,任何当事人不能再诉诸普通法院。通常允许缔约方选择仲裁部门或临时仲裁庭解决其争议。各方可自由商定仲裁程序规则,尽管大多数仲裁部门只依据其自己的规则解决争议。

根据匈牙利最常用的仲裁规则,仲裁程序自一方按照此前约定的仲裁协议(既可以是原商事合同的一部分仲裁条款,也可以是后续签订的仲裁协议)向仲裁部门或仲裁小组提交仲裁申请书开始。通常,仲裁协议要求由3位仲裁员组成仲裁庭解决争议,其中一方提名一名成员,另一方提名另一成员,双方共同选定首席仲裁员。通过这样的方式,每一方都参与仲裁庭的组建中。然而,需要重点注意的是,任何一方选任的仲裁员在整个仲裁程序中必须公正裁决。仲裁不公开进行,未经双方同意,仲裁程序及裁决不得公开。

仲裁庭通常从当事人处收取法律文书并至少举行一次听证会,争议当事人可在听证会进一步举证(包括书证、证人和专家声明)。在给予各方充分机会展示案件信息后,仲裁庭会作出仲裁裁决。在匈牙利作出的仲裁裁决或匈牙利法院承认的外国仲裁裁决具有与法院判决相同的法律效力,均可执行。值得注意的是,匈牙利是《承认及执行外国仲裁裁决公约》的缔约国之一。根据匈牙利法律,不能对仲裁裁决提出上诉,但可以极其有限的理由向普通法院申请撤销仲裁裁决。

###### ② 调解

调解是一种替代性争议解决方式,谈判各方旨在通过彼此达成的协议解决其争议。为此,各方邀



请一个中立、公正的第三方（调解人）来协调谈判。调解的结果通常是书面调解协议，但是该协议并不排除当事人一方向法院申请执行其请求。调解被认为比诉讼更快、更灵活。该程序是非公开的，参与的调解员受保密条款的约束。调解被认为几乎比其他所有形式的争议解决方式都耗费更低。公司之间或劳动争议可以自主进行调解。

### ③ 消费者保护程序

消费者有权向区域商会附属的调解委员会提交其与产品或服务供应商的争议，供应商有义务作出回应。消费者金融争议有特别调解委员会。这些调解委员会的调解结果可能是一项不具约束力的建议，或者（如果供应商自己选择受调解委员会的调解结果约束）有约束力的调解协议。争议当事人可以在法院对具约束力的建议提出异议，不具约束力的建议并不排除当事人通过诉讼解决其争议。

## 2. 争议解决部门

### （1）国家法院

匈牙利的法院系统分为两个级别，一些非常特殊的情形下，最高法院可能会作为三审法院。根据争议事项或诉讼金额不同，地区法院、行政和劳动法院或常设法院审理一审案件。上诉案件，由常设法院或高等上诉法院进行二审审理。匈牙利元老院（Curia）是匈牙利的最高法院。

#### ① 地区法院（járásbíróság）

地区法院审理各种类型的一审案件，但指定由常设法院或行政和劳动法院审理的案件除外。

#### ② 行政和劳动法院（közigazgatási- és munkaügyi bíróság）

行政机关的行政决议也可能被诉诸法院。该类案件由行政和劳动法院管辖。行政和劳动法院对就业和其他与就业相关的诉讼也有管辖权。

#### ③ 常设法院 / 区域法院（törvényszék）

以下情形下，常设法院审理一审案件：a. 标的价值超过 3 000 万福林（约 100 000 美元）；b. 该案件涉及国际货物运输和期货合同；c. 公司诉讼；d. 与证券法律关系有关的案件；e. 其他特定案件。

地区法院一审审理的案件，二审由常设法院审理。

#### ④ 高级上诉法院（ítélőtábla）

常设法院审理的一审案件，二审由高级上诉法院审理。

#### ⑤ 最高法院（Kúria）

如果符合特定理由，元老院可特别变更二审裁决。

### （2）仲裁部门

#### ① 匈牙利工商会

匈牙利最大的仲裁部门在匈牙利工商会的框架内运作。仲裁法院也有权处理国际争议，仲裁法院依自己的规则仲裁，且须符合国际条约和现代法的一般程序原则。

#### ② 货币和资本市场常设仲裁法院

货币和资本市场常设仲裁法院位于布达佩斯，仅处理与银行和投资事宜相关的争议。

#### ③ 临时仲裁庭

临时仲裁庭，仲裁程序不受任何组织约束。

当事人可自由约定仲裁庭成员、程序规则、仲裁费用和仲裁酬金及其他程序事宜。

## （二）适用法律

一般来说，在匈牙利，合同双方可自由约定其合同应适用的法律。如果涉外合同中未约定具体适用法律，匈牙利法院会检视欧盟和匈牙利国际私法规则以确定适用法律。

适用匈牙利法律时，这意味着法院将首先审查成文法。匈牙利有多个级别的法律，而不同层级的法律法规存在冲突时，较高级别的法律优先于较低级别的法律适用。最高级别法律为议会所通过的法律，法院倾向于参照各级法院的在先判例，以获得进一步的参考。但必须指出，法院此前对单独案件作出的裁决并不对以后案件的审理有约束力，匈牙利不适用遵循先例原则。但是，最高法院有权发布具有约束力的司法解释，下级法院应遵守执行。



## 八、其他

### (一) 反商业贿赂

匈牙利是《经合组织反贿赂公约》的签署国之一，国际反贿赂工具和任务也适用于匈牙利。《匈牙利刑法》（2012年第100号法案）规定了与投资者相关的反贿赂条款，涉及公共和私营部门及行贿人和受贿人。匈牙利法律不区分贿赂和好处费，或者贿赂和商业贿赂。法律将商业贿赂定为刑事犯罪的一种。

#### 1. 反商业贿赂法律法规概况

《匈牙利刑法》与腐败相关的章节禁止勒索、滥用职权、欺诈、利用影响力交易和洗钱。无论公共部门还是私营部门，行贿和受贿都是违法的。贿赂外国公职人员和隐瞒贿赂也被认定为犯罪。

遵从国际惯例，贿赂不一定是货币形式，即使送礼和招待也可能被认为是非法的，这取决于当事人的意图和获得或旨在实现的利益。

根据法律，行贿指的是：一方给予或承诺给予另一方非法利益，目的在于使该人违反其所在经济组织内的职责。贿赂的结果或利益最终是否得到与否并不重要。承诺必须真实、具体，因此，简单的商务餐不算非法利益。

被动贿赂总与谋求或接受非法利益的人相关。为了个人或第三方利益而谋求或接受非法利益的事实，在审查案情时不是一个重要的因素。

#### 2. 反商业贿赂的主管部门

地方警察负责预防和发现贿赂行为。国家警察总局反贿赂部门是国家级的反贿赂专业部门。刑事诉讼程序从警察调查程序开始，警察调查程序终止后，由检察官决定提起刑事诉讼程序或终止调查。

#### 3. 惩处措施

违反匈牙利《反腐败法》的惩罚措施包括监禁（在某些情况下长达10年）、罚款或没收贿赂所得金钱或其他非法利益。

如果通过犯罪组织贿赂，犯罪者将受到严厉的惩处。

《匈牙利刑法》自动适用于匈牙利境内实施的贿赂案件，但该法也适用于国外实施的犯罪。

公司应当注意，法律明确禁止任何商业消费类型的贿赂和/或犯罪，每个部门都有义务向警方报告涉嫌贿赂的行为。因此，行贿人或受贿人立即向主管部门报告、上缴所接受的任何形式的非法经济利益或揭露贿赂的话，则可以完全豁免或无限地减轻处罚。

### (二) 工程承包

根据现行匈牙利法律，工程承包并不是一个具有明确含义的称谓。其最接近的解释涉及对公共采购规则的分析，这些规则为诸如部委、市政部门、公共部门和其他公共组织之类的公共部门采购货物、服务或建筑工程提供了适用的规则（也称“合同授予”）。

伴随着匈牙利首次接受公共采购行为并建立起相应的制度体系，对公共采购的规范开始于20世纪90年代初。2015年，根据相关欧盟法规和市场形势的变化，该法案进行了彻底的修订。新法律的主要目标为：保证采购过程透明度，实现最佳采购结果，简化和加快采购流程，减轻行政负担，以及降低中小型企业的参与门槛。这意味着在实践中，能参与竞标方的门槛价大幅降低，或者中标不能仅基于价格因素。提交欧盟单一采购文件的方式与其他国家类似，而价格评估的简化帮助采购部门缩短了采购时间。政府采购电子系统（2016年年底和2017年年初）的引入进一步为经常参与政府采购的中小企业和大公司提供了平等机会。法律不再强制规范分包行为。

#### 1. 许可制度

原则上，政府采购对私营部门的任何实体开放。不设地域限制，国内申请人也不享受优先待遇。然而，根据法律强制性规定，某些经济主体可能会被排除在外。

#### 2. 禁止领域

一般规则是，公共部门（采购部门）只能通过透明和规范的程序采购货物、服务或建筑工程。但

是，某些类型的商品和服务不受政府采购程序的限制。

这些例外情形包括但不限于国家安全和国防采购（例如武器和国家空军飞机用特殊燃料等）。

### 3. 招标邀请和投标

采购部门应在政府采购部门开发的政府采购数据库或政府采购部门的官方公报上公布采购通知和招标邀请书（均可在线访问）。这些文件包括与合同订立有关的全部必要信息、投标人投标的强制性要求和提交投标的截止日期。

投标主要有两种类型程序。公开招标时，所有经济主体皆可参与投标。邀请招标时，仅有受邀的经济主体获得投标机会。

外国经济主体与国内经济主体享受同等待遇。对外国公司可以提交投标申请，无附加要求。

投标截止期限届满后，采购部门审查所有标书决定其是否符合法律规定和招标邀请文件要求。采购部门自动排除不符合形式要求的标书，并将其通知投标人。

评标按照招标邀请文件所确定的数个标准进行。这些标准包括但不限于最低报价、最低成本或目前最重要的“性价比最佳”标准。

评标之后，采购部门确定中标方，将中标结果通知全部投标人，同时将评标结果确定详情及原因的评标文件提供给全部投标人。公布中标方后，按照规定的条件与中标方签订采购合同。

合同授予或合同签订过程中违反了有关政府采购的任何规定，政府采购仲裁委员会（以下简称“仲裁委员会”）可启动相应程序。作为具有全国管辖权的独立组织，仲裁委员会负责行政审查，确定存在侵权行为并宣布合同无效，也可以据此进行处罚。

仲裁委员会程序可依职权或依投标人或其他利益相关方的申请启动，其他利益相关方指其权利或合法利益受到采购部门非法决定或采购惯例的威胁或侵犯。

政府采购部门作为隶属于议会的一个独立部门，其作用是促使匈牙利公共采购行为依法进行。其主管中标合同的履行和防止非法修改合同而导致合同违约或合同迟延履行。它主要通过文件审查进行管理，必要时也可现场检查。自证过程（当经济主体自证诚信时）所采取的措施是否适当也由采购部门评估。

匈牙利也有欧盟内部市场的电子工具。内部市场信息系统（IMI）为一种电子工具，用于适格主体之间的信息交换，而电子证书有助于申请人了解欧盟各成员国常规的证书和证明要求。



# Hungary

Authors: Gábor Damjanovic, Andrea Jádi Németh, Marc-Tell Madl  
Translators: Han Jun, Wang Lei

## I. Overview

### A. General Introduction to the Political, Economic, Social and Legal Environment of the Country Receiving Investment

Hungary decided to break away from its Soviet-bloc orientation and one-party past and open up for the market economy after the fall of communism in 1989 and the first free elections after over 40 years in 1990. In 1990, with the Hungarian Democratic Forum (in Hungarian: MDF) winning the elections and the Alliance of Free Democrats (in Hungarian: SZDSZ) becoming the strongest party in opposition, the government began a Western oriented foreign policy, culminating in joining a number of major international organisations/unions, such as OECD in 1996, the NATO in 1999 and the EU in 2004. This Western orientation lasted until 2010, when The Alliance of Free Democrats – Hungarian Civic Alliance (in Hungarian: FIDESZ) and its prime minister, Viktor Orbán has gained a large majority and began to steer the country back towards the East, forging better and better ties with – among others – Azerbaijan, China, Russia and Turkey. As a result, official and business relationships between China and Hungary are good, signalling opportunities to Chinese investors wishing to invest in this region, as well as Hungarian investors wishing to invest in China (the former being more typical and mainstream).

Hungary has experienced a mass exodus of people recently; according to available figures, approximately half a million (representing 5% of the population) people left the country in the past few years and most of them now work in continental Europe (mostly in Austria and Germany) and the United Kingdom, while many travelled even further (the United States, Canada, Australia and New Zealand being preferred choices). Many plan to return, but this is yet to be seen. This results in serious shortage of workforce; both white collar (e.g. doctors, nurses, IT specialists) and blue collar (especially in the construction industry) and causes serious headaches to employers. In addition, a further outflux of people can be expected, as according to available figures, approximately 50% of educated people below 30 would still like to leave the country. This may be one of the major challenges the country faces in the short/medium term and, if a majority of these people remain abroad, then also in the long term.

The government was one of the first open supporters and is one of the major advocates of the movement in the European Union aiming at providing more sovereignty to member states and less power to the central EU bureaucracy.

After the years of hardships that followed the 2008 financial crisis, by today, Hungary has a steady growth and seems to have good outlooks for the foreseeable future. Real estate projects had been extremely down from the beginning of the crisis until 2015, but have also restarted recently both in the residential and the commercial arena and the outlooks are good. Growth of this sector is vastly hampered by the shortage of workers, as written above.

### B. The Status and Direction of the Cooperation with Chinese Enterprises under the B&R

Hungary introduced the system of so-called residence bonds in 2013, whereby individuals of third countries (i.e. any person who is not a Hungarian or EU member state citizen) may enter into and stay in Hungary – and consequently within the European Union – through a residence permit by investing into such bonds. This means that through this system, with a 300k EUR (250k before 2015) investment into Hungarian state bonds, one can obtain a (for the first time, a 5-year and then a permanent) Hungarian residency permit for him/herself and also for his/her family.

When introduced, residency bonds were mostly aimed at Arabic, Chinese and former CIS investors/applicants, but in practice, they have by far proven to be most successful among Chinese applicants (according to press reports, approximately 85% of successful applicants come from China).

As a result of this, as well as the current government's shift of attention from the Western world to the East, there are more and more Chinese investors active in Hungary. Many regard Hungary as a gateway to Europe and set up their European base accordingly, and Hungary is already viewed as the favourite business destination in the region for Chinese investors.



Major sectors Hungary has for long been recognized for include agriculture, automotive, life sciences and TMT and these sectors may be especially interesting for investors.

Thanks to the growing number of such entrepreneurs and the government's favourable approach to such influx, one may hope that cultural differences may be overcome and Hungary can provide safe harbour and offer a welcoming opportunity to Chinese businesses aiming to do business in the CEE region and the whole of Europe.

## II. Investment

### A. Market Access

#### a. Department Supervising Investment

If "investment" is defined narrowly, the competent Hungarian courts of registration shall be considered responsible for the supervision, thus for the lawful operation of enterprises.

The Hungarian Investment Promotion Agency (the "HIPA") is tasked with handling queries arising in connection with foreign investments and facilitating bilateral trade. HIPA offers the so-called one-stop-shop management, in the framework of which consultancy services ensure tailor-made offers and suitable information packages for enterprises, who wish to invest in Hungary.

#### b. Laws and Regulations of Investment Industry

As Hungary joined the European Union in 2004, as a member state of the European Union, it shall be obliged to harmonize national laws with the respective EU regulations and EU directives. In Hungary, the latest substantial amendment as regards establishing a modern and comprehensive regulation of business entities was the adoption of the new Hungarian Civil Code (Act No. V of 2013 on the Civil Code; the "Civil Code").

Act No. V of 2006 on Public Company Information, Court Registration Proceedings and Dissolution Procedures (the "Company Act") along with the Civil Code provides relatively simple company registration procedures, while all corporate responsibility requirements laid down in the Civil Code or in the Company Act (or in other laws) shall be strictly met.

In general, Hungarian legislation makes no distinction between local companies and companies with foreign participation.

#### c. Forms of Investment

##### a) Corporate Forms

The Civil Code defines five different corporate forms that may be used by (foreign) investors in order to carry out business activities in Hungary.

(i) Unlimited Partnership (in Hungarian: "közkereseti társaság")

In an unlimited Partnership, every member has joint and unlimited liability for the partnership's obligations. This type of partnership must have at least two members, and no minimum registered capital is required for its establishment and operation.

(ii) Limited Partnership (in Hungarian: "betéti társaság")

A limited Partnership shall have at least two members, (at least) one of which shall bear unlimited liability for the obligations of the partnership (the general member, in Hungarian: "betta"). The liability of the other one (or more) members of the partnership shall be limited to the amount of their capital contribution (the limited partner, in Hungarian: "küllta"). No minimum amount of registered capital is required for the establishment and operation of this type of partnership.

(iii) Limited Liability Company (in Hungarian: "korlátolt felelősségű társaság")

For more detailed information, please see: Chapter E.

(iv) Private Company Limited by Shares (in Hungarian: "zártkörű részvénytársaság") and Public Company Limited by Shares<sup>①</sup> (in Hungarian: "nyilvánosan működő részvénytársaság")

For more detailed information, please see: Chapter E.

##### b) Representative Office, Branch Office

It is also possible for investors willing to invest in Hungary, but not wishing to establish a new entity based on Hungarian corporate rules to establish a presence in Hungary. Both below mentioned forms of establishment shall be registered into the Companies' Registry (in Hungarian: "cégjegyzék").

<sup>①</sup> Please, note that it is no longer possible to establish a public company limited by shares. However, private companies limited by shares may decide to change their corporate form to public company limited by shares.



**(i) Representative Office**

This form of establishment in Hungary may be useful for foreign investors to familiarise themselves with the market and business conditions in Hungary in practice before the establishment of a more serious investment. Through this type of investment, normal liaison functions can be performed on behalf of the parent enterprise. However, the representative office shall not pursue any core business activities independently.

**(ii) Branch Office of a Foreign Enterprise**

A branch office is an organisational unit of the foreign enterprise, which is authorised to perform normal business activities on behalf of the parent company. Under Hungarian law, a branch office is an entity without legal personality – thus, the foreign enterprise shall bear the responsibility for the activities thereof.

**d. Standards of Market Access and Examination**

For companies with foreign participation, the same legal rules shall be applied as for companies with Hungarian owners. Thus, no additional permission is required for foreign investments, and prohibitions or restrictions apply only in some specific areas (e.g. water transport activity, lands used for agricultural or forestry purposes, waste management, etc.).

In order for investors to establish an enterprise as an investment, the company shall be registered into the Companies' Registry. The registration is mandatory in Hungary for every business association. The registration of companies falls under the competence of the competent court of registration.

The constitutive documents of the establishment have to be prepared and countersigned (if applicable according to the respective laws) by an attorney-at-law registered in Hungary. Any amendment to the company's data must be registered into the Companies' Registry, alongside with the payment of the respective duty and publication fees.

A newly registered company also has to register with the National Tax and Customs Administration for declaring VAT, and for income purposes, with the Hungarian Central Statistical Office, as well as with the social security authorities. (for more detailed information, please see: Chapter E)

**B. Foreign Exchange Regulation****a. Department Supervising Foreign Exchange****a) National Bank of Hungary**

The National Bank of Hungary (in Hungarian: Magyar Nemzeti Bank) (the "NBH") has numerous supervisory responsibilities, including the monitoring of foreign exchange transactions and setting and publishing official exchange rates. It shall manage foreign exchange operations in relation to the management of foreign exchange reserves and the implementation of exchange-rate policy.

NBH is the central bank of Hungary and it is also a member of the European System of Central Banks and the European System of Financial Supervisors. The NBH and the members of its decision-making bodies shall be independent in carrying out their tasks and meeting their obligations conferred upon them by Act No. CXXXIX of 2013 on the National Bank of Hungary (the "NBH Act"), and shall theoretically neither seek nor take instructions from the government, the institutions and bodies of the European Union, the governments of its Member States and any other bodies, except from the European Central Bank. The government, as well as all other bodies are required to fully respect this principle and shall not attempt to influence the NBH and its bodies in the performance of their tasks.

Without prejudice to its primary objective, the NBH shall uphold to maintain the stability of the financial intermediary system, to increase its resilience and to ensure its sustainable contribution to economic growth, and shall support the economic policy of the government using the means at its disposal.

**b) Exchange Rates**

The NBH shall quote and publish the official exchange rates for the conversion of foreign currencies into Hungarian Forint ("HUF") and HUF into foreign currencies.

It is important that changes in the exchange rate regime shall not be permitted to compromise the primary objective of the NBH with regard to the achievement and maintenance of price stability. Within the framework of the exchange rate regime, the NBH shall protect and influence exchange rates on domestic and foreign currency markets when necessary and possible. Furthermore, the government and the NBH shall treat the exchange rate policy as a matter of mutual interest of the Member States of the European Union.

**b. Brief Introduction of the Relevant Laws and Regulations of Foreign Exchange****a) Introductory Remarks — Conversion and Transfer Policies**

The Government decides on the choice of exchange rate regime in agreement with the NBH. With effect from



26 February 2008, the HUF exchange rate has been floating freely vis-a-vis the EUR as a reference currency, with movements in the HUF determined by the interaction between the forces of supply and demand.<sup>①</sup> Since that time, market forces determine the exchange rate of the HUF to the EUR and other currencies. With respect to access to foreign currencies, they are freely available in all banks and exchange offices.

According to Hungary's EU accession agreement, it theoretically must adopt the EUR; although the exact time of Hungary's entry into the Eurozone has not been determined yet. Nevertheless, according to the declarations of the current government, such entry will never actually take place.

#### **b) Relevant Foreign Exchange Related Legislation**

Act No. XCIII of 2001 on Foreign Exchange Liberalisation (the "Liberalisation Act"). The Liberalisation Act lifted all remaining foreign exchange restrictions and allowed free movement of capital in line with EU regulations. At that time it was a significant change in the monetary policy of Hungary due to the fact that previously the foreign exchange transactions were controlled extensively.

The NBH Act. Pursuant to the NBH Act, the fundamental tasks of the NBH are related to the following segments of the financial market: monetary policy, minimum reserves, base rates, money issue, cash transactions and oversight, maintaining the central bank information system. In addition, the NBH Act regulates various procedures, such as granting authorisation, control and supervision of activities with respect to institutions falling under the scope of the NBH Act.

Decrees issued by the Governor of the NBH. The NBH shall determine the central bank base rate as a benchmark interest rate. The Monetary Council (the supreme decision-making body of the NBH) shall decide on the level of the base rate. The Governor of the NBH shall establish the level of the base rate by way of a decree. In the recent years, the NBH has cut Hungary's base rate dramatically from 7% as of August 2012; as of November 2016, the base rate is 0.90%. The degree of the base rate is critical, since it influences the rates provided by financial institutions.

#### **c. Requirements of Foreign Exchange Management for Foreign Enterprises**

##### **a) Consequence of Annulment of Foreign Exchange Restrictions**

As a general rule, a resident in Hungary, as well as abroad and a non-resident in Hungary are entitled to pursue acts and transactions with foreign exchange, currency, domestic means of payment, as well as with claim for domestic currency.

As a consequence of the overall liberalisation, among other issues, the requirement of foreign exchange authority license or the duty of announcement with respect to bringing home foreign exchange/currency have been abolished. In addition, it is allowed to maintain the bank account in foreign exchange or HUF, as well to export foreign and domestic means of payment. Nevertheless, the import and export of cash (even in different currencies) or cash equivalents (such as transferable securities, checks, promissory notes) by natural persons equal to or more than EUR 10,000 (even in different currencies) must be declared<sup>②</sup> to the customs authorities upon entering or leaving the European Union.

Companies doing business (establishing a business entity) in Hungary are required to open a bank account at a Hungarian bank.

##### **b) Money Laundering Aspect of Exchange Controls**

According to Act No. CXXXVI of 2007 on the Prevention of and Combating against Money Laundering and Terrorism Financing (the "Money Laundering Act"), information in connection with beneficial owners must be submitted to the competent authority in the case of a business transaction exceeding the value of HUF 3,600,000. With regard to any transaction for the exchange of money involving a sum amounting to HUF 500,000 or more, the service provider providing the exchange service shall be required to carry out the identification procedure in order to verify the customer's identity, and to carry out the customer due diligence measures in accordance with the Money Laundering Act.

##### **c) Terms of Payment of Monetary Debts**

Parties are entitled to settle financial obligations in a foreign currency in Hungary.

According to the Civil Code, a monetary debt shall be settled in the legal tender at the place and time of settlement. If the monetary debt is recorded in another currency, it shall be converted at the exchange rate

<sup>①</sup> Exchange rate regime, Available at: <<https://www.mnb.hu/en/monetary-policy/monetary-policy-framework/exchange-rate-regime>>; accessed 27 October 2016.

<sup>②</sup> There are exceptions, as an example: gold, electronic card, precious metal.



specified by the central bank of the place of settlement in effect at the time of settlement, or failing this, based on the money market rate. If a monetary debt is to be repaid in a foreign currency, and at the time of settlement the debt cannot be repaid in that foreign currency, the monetary debt shall be settled in the legal tender at the place and time of settlement.

Although, there are special rules applicable to certain payment obligations, according to Act No. 2011 CXCV on Economic Stability of Hungary, payment obligations (such as tax, contributions, fees) to the Hungarian State must be fulfilled in HUF.

## C. Financing

### a. Main Financial Institutions

#### a) Preliminary Note on the Financial System in Hungary

The Hungarian financial system offers a full range of financial services.

Hungary has a two-tier banking system in which the central bank (NBH) and other specialised banks are separated. There are also two state-owned credit institutions: the Hungarian Development Bank and Eximbank. In Hungary, credit institutions and financial enterprises are classified as financial institutions. Besides financial institutions, there are several other types of financial entities (the nonbank financial sector), such as insurance companies, asset management companies, venture capital and private equity firms.

#### b) Relevant Legislation Applicable to Financial Institutions

Act No. CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (the "Financial Enterprise Act"). The Financial Enterprise Act is the most significant act in connection with financial institutions. This act governs the authorisation, licensing and supervision of financial institutions. It also covers the ownership structure and rights, management, and the prudent operation of financial institutions, and contains provisions regarding deposit insurance, institution protection, as well as regarding the financing and accounting of financial institutions.

Act No. CIV of 2008 on the Enforcement of the Stability of Financial Systems. It provides alternatives to help banks with certain types of assets if – under the circumstances of a financial crisis – their solvency and liquidity would be endangered.

Act No. LXXXV of 2009 on the Pursuit of the Business of Payment Services. This act applies to payment services provided in the territory of Hungary.

Act No. CCXXV of 2013 on Certain Payment Service Providers (the "Payment Services Act").<sup>①</sup> This act applies to payment service institutions and institutions issuing electronic money.

The Money Laundering Act. This act provides detailed rules regarding client identification obligation of financial institutions and certain further notification obligations related thereto.

#### c) Credit Institutions

Under Hungarian law, credit institutions are those types of financial institutions, whose business includes at least – from the whole arena of financial services<sup>②</sup> – taking deposits or other repayable funds from the public and granting credits and loans.

The following financial activities may only be pursued by credit institutions:

<sup>①</sup> Payment service provider is defined by the Payment Services Act as a credit institution, electronic money institution, the institution operating the Postal Clearing Center, payment service institution, the NBH and the Treasury, whose business includes the provision of payment services.

<sup>②</sup> Pursuant to s. 3 (1) of the Financial Enterprise Act, "Financial activities shall mean the pursuit of the following activities of a financial nature on a commercial scale, in Hungarian Forints and other currencies:

- a) taking deposits and receiving other repayable funds from the public;
- b) credit and loan operations;
- c) financial leasing;
- d) money transmission services;
- e) issuance of electronic money;
- f) issuance of paper-based cash-substitute payment instruments (for example traveler's checks and bills printed on paper) and the provision of the services related thereto, which are not recognised as money transmission services;
- g) providing surety facilities and guarantees, as well as other forms of banker's obligations;
- h) commercial activities in foreign currency, foreign exchange - other than currency exchange services -, bills and checks on own account or as commission agents;
- i) financial intermediation services;
- j) safe custody services, safety deposit box services;
- k) credit reference services; and
- l) purchasing receivables."

- taking deposits and other repayable funds from the public in excess of their own funds, without a guarantee or without any surety facilities provided by a credit institution or the State for guaranteeing repayment;
- currency exchange services.

Credit institutions may be banks or specialised credit institutions, or credit institutions set up as cooperative societies; these can be companies limited by shares or cooperatives. A credit institution set up as a cooperative society may operate in the form of a bank, specialised credit institution, savings and loan, or credit union. Banks and specialised credit institutions may only operate in the form of companies limited by shares or branches, credit institutions set up as cooperative societies in the form of cooperatives, or company limited by shares which is a bank or specialized credit institution, and financial enterprises in the form of companies limited by shares, cooperatives, foundations or branches.

Banks are credit institutions that carry out certain activities – taking deposits and receiving other repayable funds from the public, credit and loan operations, money transmission services – on a business basis. Only banks shall be authorised to perform all financial activities enumerated in the Financial Enterprise Act.

It can be concluded that most of the banks in Hungary are providing universal services – lending, private and investment banking, securities trading – for their clients.

Specialised credit institutions shall operate in accordance with the relevant provisions of specific other legislation; however, they shall not be authorised to perform the full spectrum of the activities enumerated in the Financial Enterprise Act.

In Hungary, a third-country credit institution may perform all financial activities described in the Financial Enterprise Act and/or the following financial auxiliary activities through its Hungarian branch office, if it has been authorised to engage in such activities by the competent supervisory authority of the state of establishment:

- currency exchange activities;
- operation of payment systems;
- money processing activities;
- financial brokering on the interbank market;
- credit consultancy services.

In the case of a credit institution operating as a branch office in Hungary, the authorisation of the NBH is required, among others, to its foundation, commencement of operation, as well as to the transfer of deposit. In the case of establishing a bank representative office in Hungary, the foreign credit institutions shall notify the NBH accordingly.

#### **d) Financial Enterprises**

Financial enterprise is a financial institution authorised to perform one or more financial activities, with the exception of the below mentioned activities, and to engage in the operation of payment systems, and a financial holding company:

- money transmission services;
- issuance of electronic money;
- taking deposits and other repayable funds from the public in excess of their own funds, without a guarantee or without any surety facilities provided by a credit institution or the state for guaranteeing repayment;
- currency exchange services.

A financial enterprise may perform financial brokering on the interbank market only as an exclusive activity.

A foreign financial enterprise may perform the below financial activities and financial auxiliary activities through its Hungarian branch, if it has been authorised to engage in such activities by the competent supervisory authority of the state of establishment:

- credit and loan operations;
- financial leasing;
- providing surety facilities and guarantees, as well as other forms of banker's obligations;
- commercial activities in foreign currency, foreign exchange – other than currency exchange services – bills and checks on own account or as commission agents;
- financial intermediation services;
- safe custody services, safety deposit box services;
- credit reference services;
- purchasing receivables;
- currency exchange activities;
- operation of payment systems;
- money processing activities;
- financial brokering on the interbank market;



- activities for the issue of negotiable credit tokens;
- credit consultancy services.

In the case of a financial enterprise operating as a branch office in Hungary, the authorisation of the NBH<sup>(1)</sup> is required, among others, to its foundation, commencement of operation.

From the arena of financial institutions and other types of financial entities, the banking sector plays the most significant role.

#### **b. Financing Conditions for Foreign Enterprises**

Pursuant to Act No XXIV of 1988 on Foreign Investment (the "Foreign Investment Act"), Hungary grants full protection to the investments and businesses of non-Hungarian resident investors<sup>(2)</sup> and it also guarantees that investors will be treated in the same manner as national investors. Damages resulting from nationalisation, expropriation or other similar legal measures affecting the ownership rights of foreign nationals shall be subject to immediate compensation at the actual value. The amount of compensation to the entitled party shall be paid in the currency in which the investment was made.

The Hungarian government has established the Hungarian Investment Promotion Agency with the purpose of encouraging foreign companies to invest in Hungary and to facilitate bilateral trade.

In accordance with this commitment, in Hungary foreign investors – with some exceptions, such as governmental loans available expressly for small businesses – have access to credit on the Hungarian financial market and refundable and non-refundable incentives are also available to them.

### **D. Land Policy**

#### **a. Brief Introduction of Land-related Laws and Regulations**

The real estate-related regulations are basically laid down in three major relevant laws:

a) The Civil Code. The Civil Code regulates the rules concerning the acquisition of property rights, including the property rights over real estates.

b) Act No. CXLI of 1997 on Land Registration (the "Land Registration Act").

c) Decree No. 109 of 1999 (XII. 29.) of the Ministry of Agriculture and Rural Development implementing Act No. CXLI of 1997 on Land Registration (the "Implementing Regulation").

The Land Registration Act and the Implementing Regulation provide the detailed background of procedures concerning the acquisition of real estates, as laid down in the Civil Code.

Act No. CXXII of 2013 on Agricultural and Forestry Land Turnover (the "Land Turnover Act"). The Land Turnover Act specifies the rules of acquiring property right, usufruct rights and use of land rights with specific quality; i.e. agricultural or forestry lands (lands used for agricultural or forestry purposes are hereinafter referred to as "Land").

Other laws also complement the provisions of the general rules for acquiring real estates, e.g. Act No. XCIII of 1990 on Duties, Act No. CXVII of 1995 on Personal Income Tax, Act No. CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign Registered Companies, and Government Decree No. 251 of 2014 (X. 2.) on the Acquisition by Foreign Nationals of Real Estates Other than Land Used for Agricultural or Forestry Purposes.

In general, Hungarian regulations of land and/or real estate acquisition is harmonised with the relevant EU regulations and directives; therefore, there is no significant difference in the Hungarian legislation when compared to the relevant EU regulations. As a general rule, members of the European Economic Area are treated equal to Hungarian persons (legal or natural, as well) when it comes to real estate and land regulation.

#### **b. Rules of Land Acquisition for Foreign Enterprises**

In Hungary, property ownership is registered into the land registry system, which is controlled by the competent government offices. In the land registry system, every significant detail of each real property – as prescribed by the relevant laws – is registered, such as size, location, type of the usage, ownership and various third party rights in relation to the property (e.g. mortgages, usufruct rights, land easements, etc.). Any such rights and obligations in connection with real estates shall be registered into the land registry system, as the registration is essential for such rights and obligations to be established and to be effective vis-à-vis third parties. The

<sup>(1)</sup> The authorisation referred to is not required for the branches of credit institutions and financial enterprises (in this case, there are further requirements) that are established in another EEA Member State.

<sup>(2)</sup> According to s. 2 b) of the Act No. XXIV of 1988 on Foreign Investment Act, investments of foreign nationals in Hungary shall mean "the share of a foreign national in the assets of a business association, grouping or cooperative society that is established in Hungary by virtue of membership (shareholder relationship, partnership interest), furthermore, in the assets of the Hungarian branch or commercial representation of a non-resident company and of the independent enterprise of a foreign national (...)".



registration is possible with the submission of an agreement concerning this right or obligation, prepared with the necessary content and formalities in accordance with the relevant Hungarian laws, and typically countersigned by a Hungarian attorney-at-law, or incorporated into a public deed prepared by a Hungarian notary public.

In case of non-agricultural or forestry lands, there are no significant restrictions for the acquisition of real estates. According to the Land Registration Act and other respective laws, as regards citizens or legal entities of the European Union or the European Economic Area, there are no additional requirements for acquiring the property rights of a real estate located in Hungary other than the ones that apply for Hungarian citizens or legal entities, as well.

For enterprises outside of the European Economic Area, the authorisation of the competent government office is additionally required for acquiring the property right of one or more real estates. However, this authorisation is not needed in case of branches of foreign mother enterprises located from outside the European Economic Area in case it is stipulated so in an international agreement, or in case reciprocity is provided between Hungary and the state which the foreign parent company is located in.

Nevertheless, the Hungarian regulations on real estates contain major restriction on Lands. According to the respective provisions of the Land Turnover Act, all enterprises – local or foreign – are excluded from the circle of entities that can acquire any such and<sup>①</sup>. Accordingly, acquisition of any such Land is possible through establishing a so-called agricultural productive association (in Hungarian: "mezőgazdasági termelőszervezet"; the "Productive Association"), to join to one already existing Productive Association or to make the enterprise meet the requirements of a Productive Association. Another possibility for acquiring such lands is concluding a lease agreement with its owner(s), if possible; though, there are also similar restrictions on this type of acquisition, as well as on acquiring the property right of lands.

## E. The Establishment and Dissolution of Companies

### a. The Forms of Enterprises

Pursuant to the Civil Law, the following corporate entities (in Hungarian: "gazdasági társaság") may be established:

- unlimited partnership (in Hungarian: "közkereseti társaság");
- limited partnership (in Hungarian: "betéti társaság");
- limited liability company (in Hungarian: "korlátolt felelősségű társaság"); and
- private company limited by shares (in Hungarian: "zártkörűen működő részvénytársaság").

The minimum registered capital of the above corporate entities shall be the following:

- HUF 3,000,000 as regards limited liability companies; and
- HUF 5,000,000 as regards private companies limited by shares.

Under Hungarian law, there is no required minimum registered capital as regards unlimited partnerships and limited partnerships.

As a general rule, shareholders (parent companies) are not responsible for any liabilities of limited liability companies and private companies limited by shares (veil of incorporation). However, there are certain exceptions from the limited liability of the shareholders, but we note that such exceptions are typically difficult to prove/apply and; therefore, in practice such exceptions are extremely rare. E.g. in case the corporate entity is terminated without a legal successor, a creditor may claim to hold the shareholders (parent companies) directly or indirectly exercising qualified majority control (at least 75% of the votes) over the corporate entity fully liable for its outstanding claim if the corporate entity's termination was due to the permanently disadvantageous commercial policy of the shareholders (wrongful trading). Also, in case the shareholders abuse their limited liability as a result of which, outstanding creditor claims remain unsettled at the time of the corporate entity's termination without a legal successor, then the shareholders shall bear unlimited liability for such claims. However, if the outstanding claim is not due to such abuse of limited liability, in case of termination without a legal successor, the shareholders shall be held liable for the outstanding claims of the terminated corporate entity up to their shares received from the allocated assets of the terminated corporate entity.

Shareholders of unlimited partnerships and general partners of limited partnerships shall be fully responsible for the corporate entity's liabilities. However, limited partners of limited partnerships shall not bear unlimited responsibility for the corporate entity's liability, as a general rule.

<sup>①</sup> With the minor exception of some legal entities owned by the Hungarian State or registered churches and fiducial institutes for fiducial aims.



## **b. Establishment of Corporate Entities**

Unlimited partnerships, limited partnerships, limited liability companies and private companies limited by shares may be established via a simplified process. In the course of such simplified process, the establishment shall be carried out by using the statutory template of articles of association/deed of foundation provided by the relevant laws, and the corporate entity may normally be registered within 1-2 working day(s). This is the usual process for setting up a Hungarian corporate entity owned by a single foreign shareholder.

However, in case the corporate entity requires a more sophisticated internal organisation, or if the statutory template of the articles of association/deed of foundation does not fit the needs of the investor(s), then the corporate entity may be registered in a regular (non-simplified) process. The regular registration process takes max. 15 business days. Nevertheless, the 15 working days' deadline only apply for the registration procedure and does not cover the cases when the Companies' Court requires supplementary documents (this may extend the process with an additional 45 days) or when the judge fails to act within the statutory deadline for registration.

Further to the above, we note that the Hungarian National Tax and Customs Administration (the "Tax Authority") carries out a preliminary check of the corporate entity prior to its registration, which normally does not take more than 1 working day, but in special and rare cases (if the Tax Authority finds a tax risk based on the history of the owners, managing directors or on other basis), the Tax Authority is entitled to suspend the registration procedure until preliminary tax clearance.

As regards the activity of the corporate entity to be established, the corporate entity may pursue business activity following the filing of the registration request with the Companies' Court. However, if the corporate entity is refused to be registered by the Companies' Court (which occurs rarely in practice), then liabilities undertaken until the refusal shall be satisfied from the assets provided to the corporate entity. Nevertheless, shareholders shall be subject to joint and several liability vis-à-vis third persons for the liabilities that cannot be satisfied from such assets. Furthermore, if any outstanding liability remains that has not been satisfied by the assets of the corporate entity and the shareholders, the directors shall also bear unlimited, joint and several liability vis-à-vis third parties for such liabilities.

## **c. Routes and Dissolution of Corporate Entities**

The corporate entity may be terminated with or without a legal successor. The corporate entity may be terminated without a legal successor in case, e.g.:

- the corporate entity was established for a definite period of time;
- the corporate entity decides on its termination (voluntary dissolution process (in Hungarian: "végelszámolás"), or becomes the subject of a liquidation process (in Hungarian: "felszámolás", or a forced dissolution process (in Hungarian: "kényszertörlesztés");
- the Companies' Court decides on the termination of the corporate entity due to reasons set forth in the applicable laws.

As regards the liquidation process, Act No. XLIX of 1991 on Bankruptcy and Liquidation Proceedings shall apply.

## **F. Merger and Acquisition**

### **a. Main Corporate Entities Commonly Involved in Private Acquisition**

The main corporate entities commonly involved in private acquisitions are limited liability companies (in Hungarian: "korlátolt felelősségű társaság") and private companies limited by shares (in Hungarian: "zártkörűen működő részvénytársaság").

Pursuant to the Civil Code, limited liability companies can be established with a minimum registered capital of HUF 3,000,000 and shall be managed by managing directors. However, limited liability companies shall not issue shares, but the ownership interest of members shall be represented by quotas (in Hungarian: "üzletrész").

Private companies limited by shares can be established with a minimum registered capital of HUF 5,000,000. Private companies limited by shares shall be managed by a board of directors or a single chief executive officer and they can issue either physical shares or electronic shares.

It is also possible to enter into a private acquisition agreement for the acquisition of a public company limited by shares (in Hungarian: "nyilvánosan működő részvénytársaság").

### **b. Comparison of Share Purchase and Asset Purchase**

Share purchases are the most common way to acquire a private company and are regarded as somewhat more common than asset purchases.

The main advantages of a share purchase and disadvantages of an asset purchase are:



#### **a) Simplicity**

The entire business can be transferred with the transfer of shares/quotas of the company to be acquired and there is no need to transfer individually the contracts, the physical assets, the IP rights, employees or licences, etc. In case of an asset transfer, such individual transfer shall be required.

#### **b) Third Party Approval to the Transfer of Commercial Contracts not Required**

Unless commercial contracts contain specific provision of change of control, such contracts are normally unaffected in a share deal. On the other hand, in case of an asset deal, third party approval to the transfer of contracts may typically be required.

#### **c) Licences Unaffected**

Except for particular industries, where a change of ownership in excess of certain thresholds requires the approval of the respective regulatory authority (for example, an electricity or gas licence-holder company is subject to approval by the Energy Office), licences are also normally unaffected in a share deal. The acquisition of a qualified influence in a financial institution requires approval of the financial supervisory authority (currently integrated in the Hungarian National Bank).

#### **d) No Employee Consultation Process**

Unless there are specific information or consultation requirements under collective bargaining agreements, it is not necessary to inform or consult employees or unions on a share purchase. Nevertheless, employee relations considerations still apply, especially where closing depends on the buyer's satisfaction with arrangements for the retention of key employees. In the case of an asset or business sale, there might be a need to notify employees or the workers' council or workers' representative if the sale leads to the transfer of employees. In addition, a consultation process may also be launched with the workers' council or workers' representative of the target company.

As regards an asset purchase, its main advantage is that the buyer can pick and choose the assets it wishes to acquire and generally leave liabilities with the target company. This also protects the purchaser from any hidden liabilities undiscovered by its due diligence. Asset purchase is typical in distressed sale situations where only the valuable part of the target's operations is purchased while the rest of the company will be subject to voluntary liquidation or when from among a number of business lines of the target, only one/a few shall be taken over by the purchaser.

### **c. Main Documents**

The main documents in an acquisition, whether a share or quota sale, are:

- sale and purchase agreement;
- disclosure letter (prepared by the seller) and
- shareholders' agreement (if the seller also remains a shareholder);
- the related corporate documentation (including the amended articles of association/deed of foundation and the amended board rules in case of a company limited by shares).

In an asset sale, the main document is the asset sale and purchase agreement, which will have several annexes, such as the:

- list of contracts to be transferred;
- list of employees to be transferred;
- list of (movable and immovable) assets to be transferred;
- list of IP rights to be transferred;
- notice form for contractual partners requesting approval of the transfer of contracts.

In a one-to-one transaction, it would be common for the buyer to prepare the first draft of the sale and purchase agreement. In an auction procedure, it is usually the seller who prepares the first draft, which can be commented on by the bidders.

#### **d. Acquisition Agreement**

The main substantive in an acquisition agreement shall include:

- definitions (sometimes in a schedule to the agreement);
- conditions precedent (such as the approval of the competition authority; consent of major contracting parties with a contract having a change of control clause; and new employment agreements with key employees);
- price and price adjustments;
- closing mechanics;
- how the business is to be run if there is a gap between signing and closing;



- representations and warranties;
- disclosure letter;
- limitations on claims under the warranties;
- non-compete clause(s);
- tax covenant;
- boilerplate clauses.

## G. Competition Regulation

### a. Department Supervising Competition Regulation

In Hungary, the organisation responsible for competition supervision is the Hungarian Competition Authority (in Hungarian: "Gazdasági Versenyhivatal" – GVH; the "HCA")<sup>①</sup>. The HCA is theoretically an autonomous public administrative authority, which should not be bound by instructions, and shall perform its functions independent of any other bodies, as well as should be free from any interference. The HCA reports directly to the Parliament.

According to Act No. LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (the "Competition Act"), HCA is the authority to carry out all the duties delegated by European Union law to the competence of the competition authorities of the member states.

### b. Brief Introduction of Competition Law

The Hungarian law of competition is in compliance with European Competition Law. The provisions of Hungarian competition law and European Competition Law shall be taken into consideration in conjunction with each other. This chapter focuses solely on the Hungarian regulations.

The Competition Act identifies the following areas that fall under the supervision of the HCA.

#### a) Prohibition of Unfair Competition and Unfair Manipulation of Business Decisions

The Competition Act contains a general rule on the prohibition of competing unfairly. Based on these provisions, it is prohibited to engage in unfair economic activities or to deceive trading parties in economic competition. Accordingly, all kinds and forms of unfair behaviour falls within this scope and may be qualified as unfair commercial practice.

#### b) Prohibition of Agreements Restricting Economic Competition (Cartels)

The Hungarian competition regulations sanction not only the strictly interpreted cartels, i.e. horizontal agreements restricting competition, but shall be applied to horizontal (between competitors on the same market(s)) and vertical (between undertakings that operate at different levels of the production and the distribution chain) restrictive agreements, as well.

According to the Competition Act, any agreement restricting competition is null and void. There are certain exceptions and exemptions from this general rule, as follows.

- Agreements of minor importance shall not be prohibited. Agreements shall be deemed to be of minor importance if the joint share of the participating undertakings (and undertakings not independent of them) does not exceed 10% on the relevant market, except if its object is to fix purchase or sale prices between competitors, or to share markets between competitors.

- An agreement is exempted from the prohibition, provided that it contributes to a more reasonable organisation of production or distribution, the promotion of technical or economic progress, or the improvement of competitiveness or of the protection of the environment; and it allows final trading parties a fair share of the resulting benefit; and the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified common goals; and it does not enable the exclusion of competition in respect of a substantial proportion of the goods concerned

- Hungarian competition regulations – in line with European competition regulations – also exempt group of agreements from the general prohibition based on group exemption regulations, e.g. vertical agreements, specialisation agreements, research and development agreements, etc.

#### c) Prohibition of Abuse of a Dominant Position

Unlike many countries – especially in the Anglo-Saxon world – Hungarian Competition Law acknowledges and sanctions any behaviour on the side of an enterprise that abuses its dominant position. The Competition Act provides a non-exhaustive list of such behaviours, e.g. limiting production, distribution or technical developments causing damage to the final trading parties; influencing the economic decisions of another party in order to gain

<sup>①</sup> In a small range, Hungarian courts are also responsible for the supervision of competition, but the detailed introduction of the whole system of competition regulation would exceed the extent of the present chapter.



unjustified advantages; refusing, without justification, to create or maintain business relations appropriate for the type of transaction in question; etc.

**d) Control of Concentration of Undertakings (Mergers and Acquisitions)**

This area regulates the proceedings of concentrations that are not subject to the European Merger regulation.

There are further laws complementing the provisions of the Competition Act. Such laws are, e.g.: Act No. XLVII of 2008 on the Prohibition of Commercial Practices that Are Unfair to Consumers; Act No. XLVIII of 2008 on Essential Conditions and Certain Limitations to Business Advertising Activity; Act No. CLXIV of 2005 on Trade; Act No. CXL of 2004 on the General Rules of Public Administrative Procedures and Services; Legislations of the HCA and HCA's Competition Council; etc.

**c. Measures Regulating Competition**

**a) Competition Supervision Proceedings**

The HCA enforces the legal rules of competition regulation by opening competition supervision proceedings, upon application or ex officio, depending on the respective provisions of the Competition Act.

**b) Formal and Informal Complaints**

A formal or informal complaint may be submitted to the HCA by anyone concerning any infringement, which falls within the competence of the HCA. The proceedings relating to formal or informal complaints shall not form part of the competition supervision proceeding.

**c) Market Analysis and Sectorial Inquiries**

With a view to discharging its statutory responsibilities more effectively and efficiently, the HCA may conduct market analyses, in the framework of which the HCA may survey and analyse the operation of particular markets, market processes and development of market trends, etc.

Where price movements or other market circumstances indicate that competition is possibly being distorted or restricted in a market within a specific sector, HCA shall initiate a sectorial inquiry with a view to exploring and assessing the market processes.

**d) Private Enforcement of Claims and Public Interest Action**

Individuals can bring damages actions before Hungarian civil courts for losses resulting from breaches of the Competition Act<sup>①</sup>.

The public interest action can also be used in connection with the breach of competition laws: the HCA may bring a civil law claim on behalf of consumers against anyone who harms a large number of consumers as a result of its activity, which breaches the provisions of the Competition Act.

Sanctions for enterprises in case of breach of the competition laws can be of various types.

**H. Tax**

**a. Tax Regime and Rules**

The Hungarian taxation regime is harmonised with EU law and, generally speaking, provides a secure legal framework for the conduct of business. Despite the seemingly complex tax regime and the sometimes excessive red tape, it is worthwhile to invest in Hungary also from a tax perspective, as the low corporate income tax base and the broad range of tax incentives (in particular investment and development tax incentives) create an accommodating tax environment.

The tax regime is designed to tax income, sales and other transactions, rather than capital. Companies are required to pay corporate income tax, regardless of their legal form. Domestic sales are usually subjected to value added tax (generally 27%; the highest in the EU).

**b. Main Categories and Rates of Tax**

Taxation in Hungary is divided into central and local levels. While central taxes constitute the revenues of the central budget, local taxes are due to local municipalities.

Central taxes may be categorised as general or special taxes, based on their intended purpose. General taxes include traditional taxes (corporate income tax, value added tax, personal income tax) while special taxes include taxes levied on specific industries/sectors (income tax of energy utilities, levies on financial organisations and credit institutions, credit institution contribution, energy tax, public utility tax, telecommunication tax, advertisement tax, public health product tax, etc). The current government often uses such sectoral taxes to squeeze out foreign

<sup>①</sup> For initiating this action, it is not necessary for the HCA to reach a prior infringement decision.



investors with an aim to nationalise/re-privatise those sectors.

From a company taxation perspective, the following taxes have major relevance: corporate income tax, local business tax and value added tax.

#### a) Corporate Income Tax

The income of companies is subject to taxation, which is based on profit before tax.

Pursuant to Act LXXXI of 1996 on Corporate Tax and Dividend Tax (the "Corporate Tax Act"), resident taxable persons include business associations such as limited liability companies (in Hungarian: "korlátolt felelősségű társaság" or "kft."), unlimited partnerships (in Hungarian: "közkereseti társaság" or "kkt."), limited partnerships (in Hungarian: "betéti társaság" or "bt."), private companies limited by shares (in Hungarian: "zártkörűen működő részvénytársaság" or "zrt.") and other organisations (e.g. foundations, associations). In addition, non-resident taxable persons with a place of business management in Hungary are also considered as taxable persons.

The corporate tax rate is 10% of the positive tax base up to HUF 500,000,000 (approx. EUR 1,600,000) and 19% for the part above HUF 500,000,000.

Dividends and interest are exempt from withholding tax. A special tax regime applies to income from royalties, under which 50% of the general tax rate may be applicable on royalties (i.e. 5% and 9.5%).

Tax losses can be carried forward indefinitely without the tax authority's approval.

Pursuant to Hungarian laws, group taxation is not permitted.

#### b) Local Business Tax

As empowered by law and at maximised values, local governments have the right to levy local taxes within their jurisdiction. These may include the following: property tax, utility tax, tourist tax and local business tax.

Local business tax is imposed by the local municipality where the company has its registered seat. The base of the local business tax is the net sales revenue. The maximum rate of the local tax is 2%, depending on the decision of the local municipality; certain municipalities, however, do not levy such tax.

Local business tax is payable in 2 instalments per year. The annual local tax return is due on the last day of the 5th month following the relevant year.

No local business tax is payable on dividends, interests and royalty.

#### c) Value Added Tax

Value added tax, the most significant indirect tax for the majority of companies is regulated by Act CXXVII of 2007 on the Value Added Tax (the "VAT Act"), which is based upon the framework of EU directives. The standard VAT rate is 27% for goods and services. Reduced 18% rate applies to essential food products, such as milk, dairy products, bread and other bakery products, whilst 5% rate applies to certain products and services, such as goods and services related to medical treatment, as well as books and newspapers.

Depending on the turnover, companies are required to submit a VAT report once per year, quarterly or monthly. Companies with EU VAT ID are to submit a VAT report at least quarterly.

Banking and insurance services and certain other business activities are exempted from VAT.

### c. Tax Declaration and Preference

#### a) Declaration of Tax

As a general rule, taxpayers pay their taxes on a self-assessment basis, meaning that companies are required to register, determine their tax obligation, file their tax returns and make the appropriate payments by the official due date without receiving any formal notice from the tax authority, make corrections to the tax returns as needed, keep records and supply information, as required by law.

The tax authority randomly examines tax returns to enforce the self-assessment system.

Pursuant to Act C of 2000 on Accounting (the "Accounting Act"), and Act XCII of 2003 on the order of taxation (the "Order of Taxation Act"), companies are required to file an annual corporate tax return every year (for each business year) until 31 May of the year following the tax year. Generally, the tax year corresponds to the calendar year. However, pursuant to the Accounting Act, taxable persons may exercise discretion in deciding on the operation of a financial year differing from the calendar year, especially if it is made reasonable by the characteristics of operation. In such case, the tax return shall be filed until the last day of the fifth month following the last day of the financial year.

#### b) Payment of Tax

Depending on whether or not the company's tax liability for the previous tax year reaches HUF 5,000,000 (approx. EUR 16,000), it is required to pay corporate tax advance on a monthly or on a quarterly basis. If the annual turnover of the company for the year preceding the current year reached HUF 100,000,000 (approx. EUR



320,000), the company is required to pay a corporate tax top-up and file a return form on that. This advance corporate tax payment is designed to make up for the amount calculated as the tax liability of the company for the relevant year.

#### **c) Avoidance of Double Taxation**

Hungary has entered into treaties on avoidance of double taxation with more than 75 countries and regions, including all EU members, Canada, China, South-Korea, India, Japan and the US. A unilateral tax withholding shall be applied to income taxes paid or payable abroad, limited to 90% of the foreign tax and may not exceed the amount determined according to the Hungarian rules.

#### **d) Tax Allowances**

Among others, tax allowances can be obtained with regard to certain types of investments, such as investment in preferential locations, environmental protection investments, investments related to production of films and investments promoting the creation of jobs. In addition, further (very significant; actually totally eliminating the full tax payment obligations plus providing an extra bonus) tax allowance may be obtained by sponsoring certain team sports, such as football or basketball.

### **I. Securities**

#### **a. Brief Introduction of Securities-related Laws and Regulations**

The applicable legislation on securities is as follows:

Act CXX of 2001 on the Capital Market (the "Capital Market Act"), which has been adopted by the Hungarian Parliament in order to promote the development of the Hungarian capital market, to ensure transparency, to improve investor's protection and the efficiency of the supervision of capital markets.

Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (the "Investment Services Act"), which establishes a regulatory regime for the supervision of market participants and regulates the legal status and powers and authorisations of the Hungarian National Bank, as the supervisory authority.

Act CXXXIX of 2013 on the Hungarian National Bank (the "National Bank Act"), which provides the legal framework for the Hungarian National Bank to perform its supervisory and consumer protection tasks.

The Civil Code, which also provides a general legal framework for financial transactions.

#### **b. Supervision and Regulation of Securities Market**

According to the applicable laws, the Hungarian National Bank exercises continuous supervision over the entities and persons covered by laws on the financial sector.

The Hungarian National Bank therefore monitors the activities of financial and capital market institutions, funds, investment firms, insurance companies and institutions of the financial infrastructure (regulated market, clearing house and central depository), both on-site and off-site, using the tools of prudential supervision (i.e. supervision investigating the business soundness), as well as market surveillance and consumer protection tools, and, if necessary, it takes measures.

The Hungarian National Bank monitors the activities of financial institutions in relation to preventing and combating money laundering and the financing of terrorism, as well as performs IT supervision. If immediate action is required, it will conduct targeted or topical investigations.

The Hungarian National Bank also takes actions to protect the rights of customers using financial services, and divert the service providers towards a responsible and fair behaviour. During its consumer protection tests, the Hungarian National Bank places system-level consumer protection defects affecting a wide range of consumers in the centre of its attention.

Besides the Hungarian National Bank, a financial arbitration board operates, which is a professionally independent alternative forum for resolving disputes. The board provides a faster and more cost-efficient solution than court proceedings for financial disputes requiring a civil procedure between consumers and the financial service providers under contract with them.

#### **c. Requirements for Engagement in Securities Trading for Foreign Enterprises**

##### **a) Foreign Enterprise Acting as an Investor**

If a foreign enterprise acts as an investor in the Hungarian market, there are no additional legal requirements and the general legal regulations are applicable to such investor, which, as a general rule, is therefore free to invest into securities in Hungary.



## b) Foreign Enterprise Acting as Financial (Investment) Service Provider

According to the relevant provisions of the Investment Services Act, only financial (investment) firms and credit institutions may engage in investment service activities.

Investment service activities may be carried out and ancillary services may be provided subject to an authorisation by the Hungarian National Bank.

An investment firm established in another EEA Member State may engage in operations in the territory of Hungary in the form of cross-border services.

An investment firm established in a third country shall be allowed to provide services or perform its activities in Hungary through the establishment of a branch. Such non-resident investment firm may engage in investment service activities or provide ancillary services through a branch if authorised by the competent supervisory authority of the country where it was established for these activities.

The Hungarian National Bank shall refuse to grant authorisation to engage in investment services activities if the applicant has close ties with a person or body established in a third country where there are legal impediments liable to prevent the Hungarian National Bank from the effective exercise of its supervisory functions over the investment firm, or there are difficulties involved in their enforcement.

## J. Preference and Protection of Investment

Investment in this context means the purchase, creation and production of a tangible asset, commissioning of a purchased tangible asset, the activities performed up to the time when the asset is placed into operation; any operation for the expansion, conversion, transformation of an existing tangible asset or to increase the useful life and/or capacity of an existing tangible asset shall also be included in this category. Investments are accounted for at the lower of cost and market value.

The cost of the investments is the purchase price, which should also include the option price or commission paid for acquisition, if no goodwill or negative goodwill is required to compute upon acquisition, i.e. acquiring less than a qualified majority of a company. Upon acquisition of a qualified majority of a company, the investment should be recorded at the market value of the assets less the value of the liabilities of the company concerned, proportionate to the shareholding acquired and the difference should be recorded separately as goodwill or negative goodwill.

### a. The Structure of Preference Policies

The Hungarian government encourages investments in both manufacturing and high-value added sectors, such as research and development centres, manufacturing facilities and (shared) service centres. The government also considers that significant opportunities exist in biotechnology, the pharmaceutical industry, information and communications technology, software development, the automotive industry and tourism. Considerable governmental efforts have been made to promote the expansion of small and medium sized enterprises and startups in information and communication technology.

### b. Support for Specific Industries and Regions

Hungary has a well-developed incentive system for investors and it is compatible with the relevant EU regulations. Investors are eligible for EU subsidies, which primarily are distributed through government schemes and agencies. The government also maintains a number of incentive programs funded from the central budget.

Both refundable and non-refundable incentives are provided for foreign investors. These incentives can be cash subsidies, tax incentives, low interest loans or land provided for free or discounted price.

The incentives are focused on investors establishing manufacturing facilities, logistics facilities, regional service centres, R&D facilities, bioenergy facilities, or tourism industry investments.

The maximum available amounts of regional incentives are based on a regional aid intensity map. For the capital city, Budapest, the intensity ratio will be 0% for investment subsidies, as in other capital cities in the region (e.g. Bratislava, Prague), whilst the intensity ratio will be 50% for the less developed areas.

The maximum available aid intensity decreases if the investment is a large investment (exceeds EUR 50 million): 50% of the maximum aid intensity determined in the regional aid map is available for that part of the investment between EUR 50 million and 100 million, while 34% of the maximum aid intensity for that part of the investment beyond EUR 100 million. When calculating the maximum available amount of regional incentives, all regional incentives – including cash subsidies, development tax incentive, etc. – need to be taken into account.

As per tax incentives, among others, they can be obtained with regard to environmental protection investments, investments related to the production of films and investments promoting the creation of jobs.

### c. Special Economic Areas

Up to 100% foreign ownership is permitted with some exception of certain strategic areas, such as defense-



related industries. In addition, the government is highly determined in obtaining and maintaining the state ownership in certain industries, such as public utilities (gas, electricity, water and waste management) or energy.

According to the relevant laws, only private Hungarian citizens or EU citizens resident in Hungary with a minimum of 3 years of agriculture related work experience or having appropriate (agricultural related) university degree can purchase land (agricultural or forestry land), but with limitations, up to 300 hectares (741 acres). All others may only lease land.

#### **d. Investment Protection**

There are significant protections for property and investment.

The Fundamental Law of Hungary states that the Hungarian state may only expropriate property in exceptional cases, where there is a public interest, that any such expropriations must be carried out in a lawful way, and that the Hungarian government is obliged to make immediate and full restitution for any expropriated property without any additional stipulations or conditions.

In addition, Act XXIV of 1988 on the Investment of Foreigners in Hungary (the "Foreign Investment Act") grants full protection to the investments and businesses of non-Hungarian resident investors and guarantees that non-Hungarian investors will be treated in the same manner, as Hungarian investors. The Foreign Investment Act also contains a repatriation guarantee under which foreign investors are free to remit profits and investment capital to their home country in the event of partial or complete termination of their enterprise.

Additional laws, such as the Civil Code also protect foreign investment in Hungary, provide equal treatment under Hungarian laws and enable profit repatriation. Institutions and procedures are in place to ensure compliance with legislation and competition rules without differentiating between domestic and foreign investors, theoretically treating all investors equally.

Hungary accepts international arbitration in cases where the disputes between the investor and the state cannot be settled in other ways. There are domestic arbitration bodies from which the one attached to the Hungarian Chamber of Commerce is the most commonly used one.

Hungary is a member state to the International Centre for Settlement of Investment Disputes (ICSID Convention) and is the signatory to the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention).

Hungary has bilateral investment treaties with a number of countries, including: Australia, Canada, China, Croatia, Germany, India, Indonesia, Russian Federation, Singapore, South Korea, Thailand, United Kingdom or Vietnam.

### **III. Trade**

#### **A. Departments Supervising Trade**

##### **a. Hungarian Trade Licensing Office: Department of Trade Affairs**

The main principles of trade policy are regulated at EU level, however, national authorities are in charge of their application. The Hungarian Trade Licensing Office ("Nemzeti Kereskedelmi Engedélyezési Hivatal") is the Hungarian authority responsible for coordinating, controlling and licensing export-import and domestic trade. Within the organization of the Office, the Department of Trade Affairs is countrywide responsible for authorizing export and import transactions and licensing trading activities. Each time commodities cross the Hungarian border from a non-EU member state, authorization of the Department is required.

As a principle, products may be imported and exported freely to and from the EU pursuant the respective EU regulations, nevertheless, some restrictive measures may regulate the international trade activities.

Under Hungarian law, Government Decree No 52/2012 on the Trade of Goods, Services and Rights of Material Value Traversing the State and Customs Frontier (Trade Decree) stipulates the full list of goods which require import, export, re-export authorization. Conditions of giving authorization and procedural rules, as well as the official forms for requesting license are laid down in the Decree. The exceptions in the Trade Decree are all based on the grounds of protection of public security. As an example, the following goods require special license from the Trade Office: explosives and pyrotechnical items for civil purposes, safety protective goods, armaments, radioactive materials, recyclable or harmful waste, parts or derivatives of endangered animal and plant species, devices used in surveillance, and military engineering defence technology and protected alive specimens of species of fauna.

As for agricultural products, the Hungarian authorization procedure complies with the EU's Common Agricultural Policy (CAP). Accordingly, the import of certain agricultural products requires an import certificate, called 'AGRIM'. Regulation of the European Parliament and the Council No. 1308/2013 determines the goods which require import certificate such as cereals and rice, olive oil, beef and veal, sugar, alcohol. An important task



of the Hungarian Trade Licensing Office is to issue import licenses of the above mentioned goods.

This authorization does not affect customs obligation; customs must be paid when goods cross the frontier. However, the application for an export or import license has to precede the customs procedure.

#### **b. National Transport Authority**

The National Transport Authority is the sole entity executing administrative and supervisory activities related to transportation. As the central institution of transport administration, the Authority supervises and monitors the market participants' operation. The main activity of the Authority is authorizing, controlling and regulating in the field of road transport, civil aviation, state aviation, railways management and shipping. Export and import licences of these type of commodities are also issued by the Authority.

### **B. Brief Introduction of Trade Laws and Regulations**

#### **a. Act CLXIV 2005 on Trade**

The Trade Act regulates the main rules of trading activities and the control system thereof.

The Act applies to both retail and wholesale activities. Recent amendments significantly reduced the administrative burden for starting a business in Hungary, by abolishing the former costly and time-consuming authorization procedure, and introducing a one-step notification system. Therefore, any person who wishes to engage in trading activities in the territory of Hungary shall only notify the competent authority of trade and commerce in advance thereof. Consequently, as a general rule, there is no need to obtain an operating license for pursuing trading activities. The Act appoints the local administrative body as the competent authority of the notification system, who maintains the official record of active traders of the given territory.

Although notification is the general rule, there are a few exceptional activities, which require the authorization of the Trade Licensing Office. Government Decree No. 210/2009 sets out these activities with a view of public safety, public health, and environment protection. Few examples are the distribution of tobacco, weapons, dye and pesticides.

According to the Trade Act, traders have full right to choose the business forms of their trading activities within existing legal framework. Although forms can be chosen according to individual business intentions, the Trade Act provides an exemplifying, non-compulsory list of the possible means of business forms, like in-store trading activities, shopping centre, direct sale, street sale, retail via mail, supply of goods by means of transport.

The Act also lays down several provisions protecting the interest of consumers that should be respected while performing trading activities. The Trade Licensing Office is in charge of monitoring the application of these rules, and has the right to impose fine, suspend or close the operation if the requirements are not met.

The application of the rules of Consumer Protection Act is controlled by the Hungarian Authority for Consumer Protection.

#### **b. Act LXXXVII 1990 on Prices**

In Hungary prices are market-determined, consequently traders are entitled to freely set the prices of their products and services. According to the Price Act, however, the Hungarian Government still has the right to set prices on some few exceptional products. The goods and services on which government price control remains are tobacco, electricity, postal services and public transportation.

### **C. Trade Management**

#### **a. Hungarian Chamber of Commerce and Industry**

The Hungarian Chamber of Commerce and Industry is the main body promoting the activity of businesses and entrepreneurs. Apart from governmental legislation, trade activity is regulated by self-governance means issued by the Chamber. Self-governance regulations such as recommendations and opinions are soft-law instruments, which are not binding on businesses, however, it is highly recommended to apply these rules in order to comply with effective commercial laws.

In addition, the Chamber provides efficient help to traders, among others, it maintains an online up-to-date registry of operating businesses, issues templates for contracts, advises on tax and public procurement questions, organizes regular meetings, exhibitions and vocational trainings.

It has to be highlighted that businesses and entrepreneurs are obliged to register as a member of the Chamber pertaining to the business operation as of the commencement of their business.

#### **b. ChinaCham Hungary**

ChinaCham is a non-governmental body promoting trade between Hungary and China. Its members are Chinese and Hungarian private companies, as well as Hungarian small and medium-sized businesses.



The aim of the ChinaCham Hungary is to enhance the trading, economic and cultural relationships between the two countries, as well as to promote the business interests of the members. It assists member enterprises with counselling in building up or develop their foreign trade activities, especially by providing information about the possible business and investment opportunities of the two countries.

Its services include conducting market research and drawing market studies, organizing conferences, seminars and trainings with the aim of promoting entrepreneurial initiatives that target the exchange of commodities between Hungary and China or even other third countries.

The Chamber's highly appreciated work includes monitoring the economic and financial environment in both countries and informing political, professional and media decision-makers on economic issues and of bilateral relations.

#### **D. The Inspection and Quarantine of Import and Export Commodities**

**CUSTOM DECLARATION:** All export and import goods crossing Hungarian custom frontier shall be notified electronically to the regional customs office competent at the importer's geographical location in the form of a so-called "Customs Declarations for Goods" (hereinafter: Custom Declaration) through an official customs representative. Therefore, importers must turn to and entrust an official customs representative who is available at the custom frontier and is entitled to carry out a customs procedure. The importer shall present all the necessary official documents (e.g. authorization) to import particular goods by the time goods are presented to customs. It is possible to lodge a Customs Declaration within 30 days prior to the expected arrival of the goods to customs. The Customs Declarations complying with the conditions will be accepted by the customs authorities immediately after that goods indicated in the declaration have been presented to customs.

**CUSTOM EXAMINATION:** All the handling necessitated by a random check or itemized examination of the goods, such as taking any samples or inspecting the means of transport are assisted by the customs representative under the supervision of the customs authority. Custom examination usually takes only a few hours in the custom frontier. After the goods leave the customs frontier, post clearance inspection procedure may take place, however, this procedure always starts with a prior written notice.

Third country goods can be placed in temporary storages from the moment they are presented to customs if they do not comply with the customs regulation (e.g. the importer does not have the necessary documents.).

**DETERMINATION OF THE AMOUNT OF IMPORT AND EXPORT DUTY:** The amount of import or export duty payable is usually proposed primarily by the entrusted customs representative in line with the common custom tariff; the amount of the proposed customs duty is either accepted or altered by the customs authority.

Particular products are granted relief from import duty or enjoy favorable tariff treatment. Please note that the transport of pollutant waste for the purpose of disposal is prohibited in Hungary.

**PENALTY:** The customs authority may impose fines in case of the violation of the relevant regulations related to the procedure of custom examination, custom procedure, the procedure of lodging custom declaration or duty relief.

**DUTY PAYABLE:** The amounts of import or export duty are imposed based on common custom tariff and must be paid by the declarant importer immediately but no later than 6-7 days in cash, by wire transfer or by providing a so-called guarantee to cover the duty. Besides the custom duty, import VAT, excise duty (import of mineral oil, wine, beer), and other special duty (environmental protection products charges) may have to be paid as well. In case of any delay in customs payment, late interest must be paid. Custom debt shall be paid primarily from the guarantee. If there were no guarantee given, collection note will be initiated by the customs authority towards the importer.

**"RELEASE FOR FREE CIRCULATION PROCEDURE":** Third country goods intended to be put on Hungarian and on the European Union market are placed under the procedure of a so-called "release for free circulation" procedure upon the declarant importer's request by lodging the Custom Declaration. Customs duties are determined by the common custom tariff in this procedure as well. Release for free circulation will confer on third country goods the customs status of Union goods.

#### **E. Customs Management**

The European Union is a single trading area; goods circulate freely within the EU. Internal tariff and quota barriers within the EU were abolished, therefore no customs apply in relation to the member states of the European Union. (Custom Union).

The Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laid down the Union Customs Code which serves as the new framework regulation on the rules and procedures for customs throughout the EU. It sets out the general rules and procedures that must be applied to goods imported into or exported out of the EU.



The Combined Nomenclature is the tariff and statistical nomenclature of the Customs Union. The Common Customs Tariff is the external tariff applied to products imported into the European Union. The Integrated Tariff of the European Union is referred to as Tariff. It incorporates all EU customs tariff, agricultural and trade measures applied to goods imported into and exported out of the EU and also available online. The European Commission is responsible for its computerized management and daily update. It adopts a regulation annually reproducing a complete version of the Combined Nomenclature and Common Customs Tariff duty rates. The regulation is published in the Official Journal no later than 31 October every year and it applies from 1 January of the following year.

In line with the EU Regulation No. 952/2013, Act XIII of 2016 on the implementation of European Custom Law was accepted in Hungary. The detailed regulation can be found in the Decree 11/2016. (IV. 29.) of the competent minister. The national laws and regulation aim to support the digitalized administrative procedures required by the EU regulation. These new customs regulations introduced a variety of simplification measures in which importer company can achieve cost savings and will be able to communicate with the authority electronically. According to the current plans, these new electronical platforms will be gradually developed until 2020.

National Tax and Customs Authority (Nemzeti Adó-és Vámhivatal, NAV) is the competent national authority with regional offices responsible for the custom and for taxation in Hungary. NAV is responsible for the entire customs management in the framework of which it carries out the inspection of data contained in customs documents and customs procedures for customs and statistical purposes, including any corrections made on these document, moreover, it performs post-clearance inspections and follow-up audits prescribed in customs, tax and other regulations.

## IV. Labour

### A. Brief Introduction of Labour Laws and Regulations

In order to increase competitiveness, the Hungarian legislator had set the goal of creating one of the most flexible labour markets in Europe, thus it adopted Act I of 2012 on the Labour Code (hereinafter referred to as "Labour Code") as the primary tool of the labour market, which entered into force on July 1, 2012. This new Labour Code provides a wide range of opportunities to achieve flexibility in employment relationships by means of (i) allowing the parties to derogate from the provisions of the Labour Code to the benefit of the employee, (ii) collective agreements may derogate to the benefit of the employer in the case of a number of provisions, and (iii) the new Labour Code has reduced statutory regulations compared to the previous legal regime, which is also beneficial to companies in general.

The employment contract must be concluded in writing. Signing an employment contract has also become more flexible, since the only obligatory content in an employment contract to be specified by the parties is a personal base wage and a job description: anything else can be left to be regulated by the Labour Code. Generally, employers use a full-fledged employment contract regulating all aspects of the employment relationship, with the related information sheets and company policies attached as well.

The daily working time in full-time jobs is eight hours; employees are entitled to two rest days a week: in a general work schedule, these rest days are Saturday and Sunday. It is possible to launch a 'banking' system of working hours, and working time is arranged in a schedule for each day, with the schedule covering a longer period (e.g., two weeks): in this way, the employer may better harmonise the working shifts of employees. In this system, a schedule may generally cover a period of maximum four months or sixteen weeks.

Employers may order employees to work overtime; the yearly limit on overtime work per employee is 250 hours; overtime work must be compensated by a rest period of equal length and/or wage supplements. The base vacation time is 20 days per year, which increases in proportion with the age of the employee (25 days at the age of 35; maximum 30 days over the age of 45).

The mandatory minimum base wage payable to full-time employees is HUF 111.000,00 (approximately EUR 363; USD 400) gross. There exists a complex system of tax and social insurance regulations which applies when calculating the net wage or the employer's costs. Without any further specific conditions, an employee with minimum base wage receives HUF 73.815,00, while the total cost of employing a person for the minimum base wage is HUF 142.635,00 (approximately EUR 466; USD 515).

An employment relationship may be terminated by mutual consent, by notice or by immediate dismissal without a notice period. Depending on the agreement of the parties, if an employment relationship is terminated by mutual consent, it is much more difficult for any party to challenge the validity of the termination. Employers are obliged to provide a reasoning when unilaterally terminating the employment relationship, and the reasons must be related to the employee's behaviour in connection with the employment relationship, his/her abilities or



### **c. Labour Law Disputes**

As a general rule, statements of claim are to be submitted within 30 days from the notification of the disputed statement or event, while the objective limitation period is 3 years under Hungarian labour law. The Hungarian Civil Procedure Code provides special rules that applies to labour lawsuits. In Hungary, the administrative and labour courts have jurisdiction to proceed in labour disputes, whereas the jurisdiction is based on the registered seat of the given employer or the employer's permanent establishment where the employee is or has been employed based on his employment contract.

## **V. Intellectual Property**

### **A. Introduction on IP Laws and Regulations**

Hungarian IP laws and regulations are fully harmonized with European Union law. The sector specific rules contain the rules relating to the following rights protected:

- copyrights;
- neighboring rights;
- patent;
- trademark;
- plant variety protection;
- utility model protection;
- geographical Indications;
- design protection;
- topography protection.

Besides the compatibility with EU legislation, Hungary is a member of most of the WIPO-Administered Treaties, so the establishment of IP rights, the limitations to their protection and the available redress are in close line with the international regulations.

Copyright protection is directly linked to the individual author, therefore the copyright is not-transferable, cannot be pledged or waived. However, its commercial exploitation can be licensed to a third party. The patent owner is the individual inventor or an employer and they are entitled to license to third parties the exploitation rights of the patent through a license contract. Once the patent is registered, it becomes a transferable asset and can serve as collateral. The same is valid for trademarks as they are considered to be transferable assets, their exploitation can be regulated in licence contract and they also can be pledged as securities. The software and the principle, concept, procedure, method of operation or mathematical operation on which the software interface is based are also under copyright protection. All the IP rights pertaining to software are transferable.

### **B. Copyright Protection**

The Hungarian copyright rules are regulated by the Act LXXVI of 1999 on Copyright (hereinafter referred to as "Copyright Act"). The Copyright Act does not contain an explicit listing on the protected works, but rather opens the field for protection stating that all literary, academic, scientific and artistic works are protected by copyright. Work or creation is entitled to copyright protection on the basis of its individualistic and original nature deriving from the intellectual activity of the author. Copyright protection does not depend on quantitative, qualitative or aesthetic characteristics or any subjective judgment of the quality of the work.

The author is entitled to copyright protection from the time a work is created. As a consequence, there is no need for official process for the recognition of the protection as it arises automatically by law. The Hungarian copyright law provides economic and moral rights to the authors. Authors have the right to request the designation of their name on the work or to use a pseudonym or publish it anonymously. Authors have the right to decide whether their works can be published or should be kept confidential and they also have a right to withdraw the permission for publication. The main economic right of the author is to exploit its works in whole or any identifiable part or authorize to use it to a third person through licensing agreements. Economic rights are limited in time and therefore, the protection lasts during the life time of the author and seventy years after the year of the death of the author. Free use is strictly limited to the aims specified by the law, e.g. cultural, educational, scientific and informative purposes together with the generally accepted private use by individuals.

### **C. Patent Application**

The Hungarian legal framework by patent application is regulated by the Act XXXIII of 1995 on the Patent Protection of Inventions (hereinafter referred to as "Patent Act") which is in line with the international regulations. The Patent Act, following the definition of the European Patent Convention, provides a clear definition on patents.



but highlights that any novel invention that involves an inventive activity and is industrially applicable can be patentable in any area of technology. Moreover, the Patent Act indicates some exceptions that are clearly not patentable: (i) discovery, scientific theory, and mathematical methods; (ii) esthetic works, (iii) a plan, rule or procedure relating to intellectual activity, games, business management, as well as computer programs; (iv) any display of information.

For granting national patents, the Hungarian Intellectual Property Office (hereinafter referred to as "Intellectual Property Office") is responsible. The Intellectual Property Office is a government office responsible for the protection of intellectual property rights regulated by the Patent Act. The administrative proceeding of granting a patent typically lasts for 3-4 years, mainly due to phase of novelty search. Obtaining patent administrative service fees must be paid for the application. The involvement of patent agents is only mandatory if the applicant is a foreign person. If the patent application and the invention to which it relates satisfy all the requirements of the examination described in the Patent Act (e.g. filing and search fee is paid, prior art exists, successful novelty search is conducted etc.) the Intellectual Property Office will grant a patent the subject matter of the application and issues a patent certificate to the patentee. However, there are certain types of inventions which are expressly considered as unacceptable and those cannot be granted to the patent. These are inventions which are contrary to public order or morality and the Patent Act also contains an explicit listing (e.g. processes for cloning human beings, uses of human embryos for industrial or commercial purposes, etc.). When the patent is granted, definitive protection is applicable with retroactive effect to the date of application. The term of definitive patent protection can be twenty years from the date of application. The patent application can be published in the official journal of the Intellectual Property Office after 18 months from the date of the application.

#### D. Trademark

The trademark protection in Hungary is regulated by the Act XI of 1997 on the Protection of Trademarks and Geographical Indications (hereinafter referred to as "Trademark Act"), which is in line with the Madrid Agreement and the Madrid Protocol. According to the definition, any mark which can be graphically represented and is suitable for distinguishing goods and services from other goods and services can be protected by trademark.

A trademark may consist of any of the following marks:

- a word, combination of words including personal names and slogans; letters, numerals; designs, graphics;
- flat or three-dimensional figures including the shape of the goods or packaging; a color; a combination of colors; a light signal; a hologram; a sound, as well as
- the combination of the marks listed above.

Although the Trademark Act gives a wide range of opportunity for using marks as a trademark, there are also marks which cannot fall under the trademark protection. These exceptions can be classified into two main groups. Absolute grounds for refusal are typically enforced by the public interest (e.g. if the mark is in conflict with public order or moral standards or it was submitted for registration in bad faith etc.). The relative grounds of refusal are mainly based on the protection of another trademark owner's interests. The most important relative grounds are either when the mark with later priority is identical to an earlier trademark and is to be registered for identical goods or services as the earlier trademark, or when the mark with later priority to be registered for different goods or services is identical or similar to an earlier trademark enjoying high recognition on the domestic market. Absolute grounds can be examined ex officio by the Intellectual Property Office; relative grounds can be examined based on the objection of a third party within three months from the publication date of registration of a trademark.

The owner of a trademark may be any natural or legal person. The trademark protection starts retroactively with registration by Intellectual Property Office and the protection lasts for ten years which can be renewed for further periods of ten years. The trademark protection is applicable for the territory of Hungary. The registration process usually lasts for 6-7 months but there is a possibility to request an accelerated procedure.

The use of the registered trade mark has to be initiated within 4 years after registration otherwise the statutory protection will be lost.

#### E. Measures for IP Protection

The protection against the infringement of the IP rights is provided through civil, criminal and in some cases competition law (e.g. by unfair market competition) proceedings. Remedies under general civil law include preliminary injunctions, damages, surrendering the unjust enrichment, declaration of infringement, termination of the infringement and restoration of the status quo, prohibition to continue the infringing activity.

These remedies can be claimed *independently* or in combination.

Specific IP laws provide further remedies for rights holders facing a breach of the IP rights:

- disclosure of information on parties taking part in the manufacture and trade of infringing goods;



- the seizure of the infringing goods and the withdrawal of them from commercial circulation or total destruction of the infringing goods;

- indemnification for material and non-material damage.

For serious infringement of certain intellectual property rights criminal law sanctions can be applicable as well. In these cases, imprisonment up to 10 years and penalty payment can be imposed for the following crimes:

- plagiarism;
- infringement of copyright and neighboring rights related to copyright;
- circumvention of technological measures used to protect copyrighted works;
- tampering with the integrity of copyright management information;
- infringement of industrial design rights.

## VI. Environmental Protection

Hungary's accession to the European Union opened a new chapter in the legislation of environment protection, with a number of related provisions fundamentally readdressed and reformulated since then.

### A. Department Supervising Environmental Protection

There is a two-tier system of authorities that are responsible for environment protection in general: the Departments of Environment and Nature Protection of the County Government Offices on the regional level, and the National Inspectorate for Environment and Nature Protection on the national level; most cases are initiated at the County Government Offices, and the National Inspectorate is the authority of second instance, if the administrative resolution of first instance is appealed.

The relevant statutory provisions on the competence and jurisdiction of environmental authorities designate other agencies or organisations for certain specific tasks related to environment protection as well; for example, National Park Directorates supervise activities that may endanger, pollute or damage protected areas (such as national parks), while municipalities and notaries of local municipalities handle cases related to, for instance, protected areas of local importance.

### B. Brief Introduction of Laws and Regulations of Environmental Protection

The legal system of environment protection covers all related areas, including – for example – keeping environment-related records, land development, waste management, chemicals, water management, climate and air, noise and nuclear protection. The primary source of legal regulations on environment protection is Act LIII of 1995 on the General Rules of Environment Protection.

#### a. Procedures

For investors, with regard to authorisation process of proposed, future activities, the following administrative procedures are of primary importance: (i) preliminary assessment procedure, (ii) prior consultation, (iii) environmental impact assessment procedure, (iv) single environmental authorisation procedure, and (v) environmental audit.

##### a) Preliminary Assessment Procedure

The objective of a preliminary assessment procedure is to decide whether the proposed activity is expected to place such a burden on the environment that a much more detailed and thorough procedure (i.e., an environmental impact assessment procedure or a single environmental authorisation procedure) is necessary. Based on Government Decree 314/2005. (XII. 25.), such activities include, for example, launching and operating battery factories, shipbuilding factories, railcar factories, animal carrion disposal sites etc. The law also prescribes further, specific cases (e.g., petroleum drilling) where a preliminary assessment procedure cannot be avoided.

##### b) Prior Consultation

Polluters may request the authorities to conduct prior consultations, if an environmental impact assessment procedure is necessary in order to launch the proposed activity, and it is an administrative body other than the environmental authority that decides on the case because of specific legal regulations. A prior consultation may also be requested, if the proposed activity is subject to a single authorisation procedure only. The objective of prior consultations is for the environmental authority to provide its opinion on the polluter's application for an environmental impact assessment procedure or a single authorisation procedure, as well as to offer its observations to specific, competent authorities and to the general public. Prior consultations are not obligatory yet they can be beneficial to the applicant, since the opinion of the environmental authority may fundamentally



influence the final outcome of the authorisation process.

#### c) Environmental Impact Assessment Procedure

If the proposed activities may have a significant impact on the environment, an environmental impact assessment procedure must be carried out before starting such activities. Government Decree 314/2005. (XII. 25.) lists the activities that are legally presumed to have a significant impact on the environment (for example, operating a blast furnace, processing hazardous waste, any plants processing nuclear fuel), thus making the environmental impact assessment procedure obligatory in these cases. If the environmental authority decides – within a preliminary assessment procedure – that a more detailed environmental impact assessment procedure is needed, it cannot be avoided either.

This procedure is initiated at the request of the polluter-applicant. The opinions or administrative resolutions issued during the preliminary assessment procedure and the prior consultation must also be attached to the request.

If the authority approves of the applicant's request, the environmental impact assessment procedure is concluded when the environmental licence is issued by the authority. Also, if an environmental impact assessment procedure is mandatory, the given activity may be started only in possession of the environmental licence. In general, environmental licences are valid for at least five years. The licenced activity – or at least the necessary preliminary construction work – must be started within five years after the licence is issued and becomes effective; otherwise the environment authority revokes the licence.

#### d) Single Environmental Authorisation Procedure

The objective of single environmental authorisation procedures is to specify the best available technologies in order to prevent environment pollution and minimize or avoid harmful emissions into – and any damage to – the environment. Government Decree 314/2005. (XII. 25.) lists the activities that require this procedure; for example, a number of activities related to the energy industry, metallurgy, construction products, chemical industry, waste management, food industry and mining can be started only in possession of a single environmental authorisation.

If the authority approves of the applicant's request, the single environmental authorisation procedure is concluded when the single environmental authorisation is issued by the authority.

It is to be noted, however, that for certain activities both an environmental impact assessment procedure and a single environmental authorisation procedure are necessary. In this case, at the request of the applicant, these two mandatory procedures may be consolidated and handled together as one complex process, thus making the whole authorisation process simpler. However, in the absence of the applicant's request, the two procedures cannot be consolidated.

#### e) Environmental Audit

The purpose of environmental audits is to examine the environmental impact of certain activities as well as to determine whether the requirements of environment protection are satisfied. Environmental audits must be conducted whenever any activity, operation or technology is started, pursued, renewed, restored or abandoned, if such activity affects the environment or poses imminent pollution threats to the environment, including any related construction works and preparations. The environmental authority may also order an environmental audit in case any damage to the environment is detected, or if certain activities cause – or threaten to cause – environmental damage to protected areas (e.g., natural parks, conservation areas, protective zones of water resources etc.).

In case the environmental licence previously issued is about to expire, and the polluter would like to continue the activity beyond the expiry date, the licence may be renewed in the course of an environmental audit.

If the authority approves of the activities in question, the environmental audit is concluded when the environmental operating permit is issued by the authority. In case the authority finds the given activity illegal, it restrains, suspends or bans the activity in its administrative resolution; furthermore, it may even impose restrictions on the exercise of ownership, in case it is necessary for the protection of the environment.

#### b. Liability, Fines, Charges and Fees

In Hungary, one of the most definitive rules regarding environment protection is the "polluter pays" principle, effectively establishing the liability of the party producing pollution for the damage caused to the environment. This materialises whenever a person infringes legal regulations aiming at the protection of the environment: such infringements are sanctioned by the obligation to pay an environmental fine that is consistent with the gravity, weight, duration and frequency of the pollution and environmental damage caused. Specific sectoral provisions prescribe the amount of fines in the case of each type of infringement, ranging from insignificant amounts to



significant ones. For example, breaching the provisions on the distribution of batteries may be sanctioned with a fine of HUF 2,000,000.00 (approximately USD 7,220.00), or damages caused to protected living organisms may be sanctioned with a fine of up to HUF 1,000,000.00 (approximately USD 3,610.00) per specimen, depending on the species. Paying the fine does not exempt the polluter from criminal liability or liability for damages, or from having to restore the environment as it was prior to the damage caused.

If a person lawfully conducts an activity that is legally presumed to place a burden on the environment, the user of the environment must pay charges. Such activities are listed in sectoral provisions. Such charges include, for instance, environment load charges (in exchange for air, water or soil pollution), utilization contributions (for waste storage), product charges (e.g., batteries, tyres) and mining royalties.

The procedures conducted by environment authorities are subject to administrative service fees.

### C. Evaluation of Environmental Protection

As has been mentioned, much of Hungary's legislation on environment protection has been redrafted since the country's accession to the European Union. As a result of harmonising the relevant Hungarian legal provisions with those of the European Union, the level of the protection of the environment and nature is now comparable to that of other member states of the EU.

Since environment protection is a very specific field, it is advised that investors should seek the help of local advisors or experts with significant experience in this field of law to provide advice and to represent them in front of environmental authorities.

## VII. Dispute Resolution

### A. Methods and Bodies of Dispute Resolution

#### a. Methods of Dispute Resolution

In Hungary, legal disputes regarding business transactions are usually resolved through informal and formal methods of dispute resolution. The most common informal method is resolution through bilateral negotiations between the parties to the dispute, which may be assisted by a mediator intending to facilitate communication between the parties but without taking any party's side in the process. Formal dispute resolution may either take the form of traditional litigation in front of ordinary courts or arbitration. These formal processes end with a decision handed down by the court or the arbitral tribunal, which may be enforced after it becomes final and binding.

##### a) Litigation

Prior to initiating a lawsuit in front of an ordinary court in Hungary, economic operators with legal personality (e.g., companies) must, as a rule of thumb, first attempt amicable settlement of their disputes with each other.

In cases where Hungarian courts have jurisdiction, a lawsuit may be initiated by a party to the dispute by submitting a statement of claim to the court with appropriate jurisdiction and territorial competence. Depending on the circumstances of the case, the party may ask for temporary measures (similar to injunctive relief) in the statement of claim.

Generally, first instance courts set a hearing in the case within a few months of receiving the statement of claim. At the hearing, the parties may make various types of statements and may offer evidence to support their claim or defense (e.g., documentary evidence, witnesses, initiate the appointment of an expert by the court). Both before and after hearings, parties usually have the opportunity to submit written briefs to the court.

All judgments and some types or orders brought by a first instance court may be appealed and a second instance court decides whether to uphold, amend or vacate the first instance judgment or court order depending on the request set out in the appeal. As an extraordinary procedure, once a final and binding second instance decision is handed down, it is theoretically possible to ask the Curia for a revision after the second instance decision is received. No further appeal can be filed against a decision by the Curia.

Special rules apply to small claims and extraordinarily large claims, in both cases with the aim of providing a fast track resolution of the dispute.

Costs relating to litigation include court fees usually payable upfront by the claimant, fees of experts and reimbursable costs of witnesses, as well as attorneys' fees. As a rule of thumb, courts order the losing party to cover the costs of the whole procedure (including attorneys' fees of the winning party). In case a party prevails only partially, costs are usually split in proportion to the amount the prevailing party won compared to its original claim. In case a foreign (non-EU domiciled) individual or entity initiates a lawsuit in Hungary as claimant, the defendant may demand that it makes a security deposit to the court in an amount that will likely cover the litigation costs. In



case the claimant loses (even partially) the lawsuit, this deposit can be used for covering the litigation costs the court order such claimant to pay.

In our experience, lawsuits in front of ordinary courts in Hungary can last for several years depending on the complexity of the matter and the number of appeals and other similar ancillary procedures.

## **b) Alternative Dispute Resolution**

### **(i) Arbitration**

Parties to commercial disputes are entitled to submit their dispute to arbitration either before the dispute arises or afterwards as long as they mutually agree on choosing this method of dispute resolution. If the parties submit to arbitration, the arbitral tribunal becomes the only forum for resolving the given dispute and no party can turn to ordinary courts. Parties are generally permitted to choose arbitration institutions as their forum or seek resolution by ad hoc arbitral tribunals. The parties are free to agree on the rules of procedure, although most arbitral institutions accept disputes only if conducted under their own rules.

According to the most commonly used procedural rules in Hungary, arbitration starts with a party submitting a statement of claim to the arbitral institution or panel agreed earlier in an arbitration agreement (either as part of the original commercial transaction or afterwards). It is common that the arbitration agreement calls for a three-member tribunal to resolve the dispute in which case one party nominates one member, the other party another member and the two members agree on the person of the chairman of the tribunal. This way, each party takes part in setting up the tribunal. It is important to note, however, that even party appointed members are required to be impartial adjudicators throughout the proceedings. Arbitration is private and neither the procedure nor the award is made public without the parties' consent.

The arbitral tribunal usually receives written legal briefs from the parties and holds at least one hearing where further evidence may be taken (including documentary evidence, witness and expert statements) and, after giving ample opportunity for each side to present their case, the tribunal renders its arbitral award. Arbitral awards rendered in Hungary or foreign arbitral awards recognized by Hungarian courts have the same legal effect as a court judgment and may be enforced essentially the same way. It is worth noting in this respect that Hungary is a party to the New York Convention on the Recognition and Enforcement of Arbitral Awards. Under Hungarian law, arbitral awards cannot be appealed but may be annulled by ordinary courts on extremely limited grounds.

### **(ii) Mediation**

Mediation is an alternative dispute resolution method, where the negotiating parties aim to resolve their dispute by mutual agreement. For this reason, parties involve a neutral, unbiased third party (the mediator), for the purpose of facilitating their negotiations. The result of mediation is usually a written agreement which, however, does not preclude the parties from enforcing their claims in court. Mediation is considered quicker and more flexible than litigation. This kind of proceeding is not public and the involved mediator is bound by a confidentiality clause. Mediation is considered cheaper than virtually all other form of dispute resolution. Business entities are free to commence mediation in connection with disputes with other companies, or in connection with employment disputes.

### **(iii) Consumer Protection Procedure**

The consumer has the right to submit its dispute with the vendor of the product or service to the mediation boards operating attached to the regional chambers of commerce and the vendor is under a legal obligation to respond. A special mediation board is available for consumer finance disputes. The result of the procedures of these mediation boards may either be a non-binding recommendation or (if the vendor submitted itself to the binding ruling of the mediation board) a binding ruling. A binding resolution may be challenged in court and a non-binding recommendation does not preclude the parties from resolving their dispute in court.

## **b. Bodies of Dispute Resolution**

### **a) National Courts**

The Hungarian court system has two levels, however, in some very specific cases a third court level might come into play at the Curia. According to the subject matter or the value of the claim a district court, a court of public administration and labor, or a general court proceeds in the first instance. In case of an appeal the general court or a high court of appeal proceeds in the second instance. The Curia is the highest court in Hungary.

#### **(i) District Courts (járásbíróság)**

District courts proceed in every kind case in the first instance except those, which are delegated to the general court or the courts of public administration and labor.

#### **(ii) Courts of Public Administration and Labor (közigazgatási- és munkaügyi bíróság)**

Administrative resolutions of administrative bodies may also be challenged in court. These actions fall within



the jurisdiction of Courts of public administration and iii. The Court is also competent in legal actions arising from employment and other employment related matters.

(iii) General Courts/Regional Court (törvényszék)

General courts proceed in the first instance when a) the subject matter is valued over thirty million forints (approx. USD 100.000), b) the case relates to contracts for the international carriage of goods and forwarding contracts, c) corporate actions, d) actions in connection with the legal relationship arising from securities, and e) other specific cases.

General courts proceed in the second instance when the case was adjudicated by a district court in the first instance.

(iv) High Courts of Appeal (ítélőtábla)

High courts of appeal proceed in the second instance in connection with appeals submitted against the general courts' first instance judgements.

(v) Curia (Kúria)

The Curia may proceed in the extraordinary revision of the second instance judgment if the very limited grounds are met.

**b) Arbitral Institutions**

(i) Hungarian Chamber of Commerce and Industry

The biggest arbitral institution in Hungary operates within the framework of the Hungarian Chamber of Commerce and Industry. The Court of Arbitration is entitled to proceed in international disputes too. This court of arbitration proceeds with its own rules, which fit in the general procedure principles of international treaties and model laws.

(ii) Permanent Court of Arbitration on Money and Capital Markets

The Permanent Court of Arbitration on Money and Capital Markets is located in Budapest and handles only banking and investment matters.

(iii) Ad Hoc Tribunals

In case of an ad hoc tribunal, the proceeding is administered independently of any organization.

The parties are free to agree with the members of the tribunal about the rules of procedure, costs, fees and honorarium and other procedural matters.

**B. Application of Laws**

Generally, contracting parties in Hungary are free to stipulate the application of any laws to their contract. If no law is stipulated in a transaction with international elements, Hungarian courts look at the EU and Hungarian rules of international private law to determine the applicable law.

If Hungarian law applies, this primarily entails that courts will first look at the statutory law. There are multiple levels of legislation in Hungary with higher levels prevailing over lower level legislation in the case of a conflict. The highest level is represented by Acts of Parliament. Courts tend to look at various forms of earlier court judgments for further guidance. It must be noted, however, that previous court judgments in individual cases are not binding on courts in subsequent cases; there is no rule of precedent in Hungary. However, the Supreme Court has the power to issue binding interpretations that lower courts are obliged to follow.

**VIII. Others**

**A. Anti-commercial Bribery**

Hungary is signatory to the OECD Anti-Bribery Convention, so the international anti-bribery tools and tasks are valid for Hungary, too. Anti-bribery provisions relevant to investors are laid down in the Hungarian Criminal Code (Act C of 2012) and relate to both the public and the private sector and both the offeror and the recipient. Hungarian law does not differentiate between bribery and facilitation payments or bribery and anti-commercial briber. The law specifies anti-commercial bribery as one type of the criminalised corruption crimes.

**a. Brief Introduction of Anti-commercial Bribery Laws and Regulations**

The Hungarian Criminal Code in its corruption related chapter prohibits extortion, abuse of office, fraud, trading in influence and money laundering. It is illegal to give or receive a bribe in both the public or the private sectors. Bribing a foreign public official and failure to report bribery are also criminalised.

In line with the international tendencies, bribes do not have to be monetary, even gifts and hospitality may be considered illegal depending on the parties' intent and the benefit obtained or aimed to achieve.

According to the law, in case of an active bribery a person gives or promises an unlawful advantage to another



person for the purpose of breaching the person's duties within the economic organisation the person acts for. The result of the bribery, so the fact the advantage is finally given or not, is unimportant. The promise has to be actual and specific, thus a simple business meal does not count as unlawful advantage.

Passive bribery always lays with the person requesting or receiving the unlawful advantage. The fact that the request for or the acceptance of unlawful advantage was for self-interest or for a third party, is an unimportant factor at the examination of the merits.

#### **b. Department Supervising Anti-commercial Bribery**

Local police have competence for tasks related to the prevention and discovery of bribery. The National Police Headquarters Department for Anti-Bribery is the national organisation of expert professionals for the fight against bribery. The criminal procedure starts with the police investigation procedure and after its termination it is the public prosecutor who decides about the initiation of a criminal court procedure or terminate the investigation.

#### **c. Punitive Actions**

Penalties for breach of Hungarian bribery laws include imprisonment, in some cases up to 10 years, financial penalties or confiscation of moneys or other material type of unlawful advantage obtained from the bribe.

If the bribery is committed in a criminal organisation, the perpetrator is subject to severe punishment.

The Hungarian Criminal Code automatically applies if the bribery is committed in the territory of Hungary, but it may also regulate offences committed abroad.

Companies have to note that the law explicitly prohibits every type of bribes as business expenses and/or a crime, and every authority is obliged to report suspicions of bribery to the police. Therefore, penalty can be completely waived or reduced with no limitation if the giver or the receiver of the bribery notifies immediately the authorities, surrenders the received unlawful financial advantage in any form and unveils the circumstances of bribery.

### **B. Project Contracting**

Project contracting is not a definition with clear meaning under current Hungarian law. Its closest possible interpretation leads to the analysis of the rules on public procurement which provides the applicable measures in case public bodies, such as ministries, municipalities, public authorities and other public organisations procure goods, services or construction works. (It is also referred to as "contract awarding process")

The regulation of public procurements started at the early '90s with the acceptance of the ever first act of this type in Hungary and the establishment of the institutional system. In 2015 the act was thoroughly modernised in line with the relevant EU legislation and the changes of the market situation. Key objectives of the new law are guaranteeing transparency, achieving the best procurement results, simplifying and accelerating procedures, alleviating administrative burdens and increasing the involvement of SME's. This means in practice that the value limit for direct invitation procurement procedures seriously lowered or the selection of the winning bid cannot be based exclusively on pricing factors. The submission of the European Single Procurement Document is to be accepted similarly to other countries and the simplification of the evaluation process helps the contracting authority in shortening the time frame. The introduction of electronic public procurement procedures (late 2016 and early 2017) further paves the floor for equal treatment for SME's and large companies regularly taking part in public procurement processes. Mandatory indication of sub-contractors disappeared from the law.

#### **a. Permission System**

In principle, public procurement procedures are open to any entity of the private sector. No geographical limitations are set up or no priorities are given to national applicants. However, some economic operators might be excluded based on compulsory grounds specified by the law.

#### **b. Prohibited Areas**

The general rules are that public bodies (Contracting Authorities) may only procure goods, services or construction works through transparent and regulated procedures. However, certain types of goods and services are not subject to public procurement process.

These exceptional subjects are – among others – national security and defence procurements (e. g. weapons, special fuel for aircrafts of the National Air Force etc.).

#### **c. Invitation to Bid and Bidding**

The Contracting Authority shall publish the contract notice and the invitation to bid either in the Public Procurement Database edited by the Public Procurement Authority, or in the official journal of the Public Procurement Authority (both accessible online). These documents include all the necessary information regarding the future contract, the mandatory requirements in connection with the bidders and the deadline of submitting a bid.

There are mainly two types of bidding processes. In an open process all economic operators can participate. In case of a negotiated procedure only the invited economic operators have the opportunity to submit their bids.

The same rules apply to foreign economic operators as to national ones. Foreign companies may submit their application without any special requirements.

After the expiry of the deadline, the Contracting Authority studies all the bids and decides whether they are formally in compliance with the laws and the document of the invitation to bid. The Authority automatically excludes the bids that do not comply with the formalities., and notifies the bidders of their exclusion.

The evaluation of the bids is based on several factors that are set out in the documentation of the invitation to bid. These factors can be – among others – the lowest offered price, the lowest cost or the best 'value for money' ratio which is the main criteria of these days.

After the evaluation process is terminated, the Contracting Authority chooses the winner and each bidder is notified of the result and gets a detailed evaluation documentation that provides the reasoning of the final decision. After the announcement of the winner, the procurement contract is to be concluded with the awarded tenderer in accordance with the conditions set out.

If an infringement of any regulations regarding the public procurement during the contract award process or the conclusion of the contract is experienced, a procedure may be initiated before the Public Procurement Arbitration Board (hereinafter referred to as: Arbitration Board). The Arbitration Board – an independent organization with countrywide jurisdiction - completes an administrative procedure in which it can establish the existence of an infringement and null the contract, additionally it might also impose a penalty.

The procedure of the Board can be initiated ex officio or by any bidder or other interested parties whose rights or legitimate interests are threatened or infringed by the unlawful decision or practice of the Contracting Authority.

The Public Procurement Authority is an independent organisation subordinated to the Parliament and its role is the enhancement of the lawful public procurement behaviour in Hungary. It is the competent body for the control of the contractual performance of contracts awarded and the prevention of illegal contract modifications that would lead to breach of contract or delayed performance thereof. The control activity primarily based on checking documents, however, on-the-spot checks can also be performed if they are required. The assessment of the suitability of the measures taken in the context of the self-cleaning process (when an economic operator proves its reliability) is also within its competence.

EU-wide electronic tools of the internal market are available in Hungary as well. The internal market information system (IMI) is the electronic instrument which is the tool for exchanging information among the competent bodies while e-Certis helps the applicant in understanding the certificates and attestations frequently requested in the various EU member states.