

HUNGARY



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1.	Relevant legislation (foreign investment legislation in force)
<p>Hungary has currently two separate FDI regimes in force.</p> <p>The first regime ("General FDI Regime") was introduced on January 1, 2019 to implement EU Regulation no. 2019/452. The regime was established by Act no. LVII of 2018 on the Control of Investments Detrimental to the Interests of Hungarian National Security.</p> <p>The second FDI regime in effect is the "Special FDI Regime", which was introduced in connection with the COVID-19 pandemic. The relevant legislation is Act no. LVIII of 2020 on the Provisional Rules of State of Emergency, Government Decree no. 289/2020 and Government Decree no. 561/2022.</p> <p>Hyperlink to Act no. LVIII of 2020 on the Provisional Rules of State of Emergency: https://njt.hu/jogszabaly/2020-58-00-00 (Hungarian only).</p> <p>Hyperlink to Government Decree no. 289/2020 and Government Decree no. 561/2022: https://njt.hu/jogszabaly/2022-561-20-22 (Hungarian only).</p>	
2.	Relevant authority (foreign investment regulator)
<p>The competent authorities are: (i) the Minister leading the Prime Minister's Cabinet Office for the General FDI Regime and (ii) the Minister of the Economic Development under the Special FDI Regime.</p>	
3.	Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)
<p>Under the General FDI Regime those sectors are covered, which are deemed sensitive for national security. These activities include activities that:</p> <ul style="list-style-type: none"> • are traditionally considered sensitive, e.g. manufacturing of arms, dual-use items and secret service equipment; • fall under the Hungarian Gas Act, Water Supply Act, Electricity Act, Credit Institutions Act or the Electronic Communications Services Act; and • involve the creation, development or operation of communication systems of the Hungarian State and Hungarian municipalities. <p>The Special FDI Regime operates with a broader and more material scope, covering companies engaged in an activity listed in the Annex of the Government Decree, that falls within the energy, transport or communication sectors, or within one of the strategic sectors: the manufacturing of medicines, medical devices or other chemicals; fuel production;</p>	

telecommunications; retail and wholesale; manufacturing of electronic devices, machinery, steel and vehicles; defence industry; power generation and distribution; services connected to the state of emergency; financial services; processing of food (including meat, milk, grains, tobacco, fruits and vegetables); agriculture; transport and storage; construction (including the production of building materials); healthcare; hospitality and cafeteria services; and others.

4.

Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)

Transaction types under the General FDI Regime:

- (i) a foreign investor establishes a new Hungarian company or acquires an existing Hungarian company (solely or together with other foreign investor(s)) equity exceeding 25 percent (for privately held companies) or 10 percent (in publicly listed companies); or acquires a "dominant influence" in such company,
- (ii) foreign investor(s) acquire(s) equity of less than 25 percent in a privately held company registered in Hungary, but the total equity held by foreign investor(s) exceeds 25 percent as a result,
- (iii) a foreign investor registers a branch office in Hungary for the purpose of carrying out listed strategic activities,
- (iv) a foreign investor acquires a right to operate or use infrastructure or assets that are indispensable for carrying out listed strategic activities, or
- (v) a company registered in Hungary in which foreign investor(s) hold equity equivalent to that in (i) or (ii) above takes up a listed strategic activity.

Transaction types under the Special FDI Regime:

- acquisition of ownership interest,
- capital increase,
- mergers, demergers, transformations to another company form,
- issuance of bonds that are convertible or convert to equity or provide preferential subscription rights,
- establishing usufruct right over equity provided that, as a result of such transaction, the foreign investor would acquire,
- majority control (by way of ownership, voting rights, appointing management or otherwise) if the investment reaches or exceeds HUF 350 million (approx. EUR 880,000), or
- at least 5 percent ownership interest (or 3 percent ownership interest in case of public companies), if the investment reaches or exceeds HUF 350 million (approx. EUR 880,000), or
- an ownership interest reaching 10 percent, 20 percent or 50 percent in a strategic company or any level of interest which, if computed together with any other foreign investors' interest, exceeds 25 percent.

In addition, irrespective of ownership thresholds or transaction sizes, the transfer of using/operational rights of infrastructures and assets that are "indispensable for the operation of strategic companies" (including the pledging of these assets and infrastructures) require both notification to and acknowledgement by the competent minister.

In relation to transactions caught by the Special FDI Regime, indirect acquisitions and higher level intragroup restructurings fall outside its scope provided that there is no direct ownership change in relation to the Hungarian target company.	
5.	Parties to be included in the foreign investment assessment (notifying parties and protected entities)
<p>In case of both regimes, the foreign investor shall make the FDI notification to the competent minister. The foreign investor definitions under the regimes differ as follows.</p> <p><u>General FDI Regime</u></p> <p>Under the General FDI Regime, any natural person or legal entity qualifies as a foreign investor if it is (i) a citizen of/registered in a country outside of the EU, EEA or Switzerland or (ii) a legal entity registered in the EU, EEA or Switzerland but controlled by a non-EU/EEA/Swiss person/entity (EU entity controlled by a non-EU investor).</p> <p><u>Special FDI Regime</u></p> <p>Foreign investors are those (natural or legal) persons or organisations which are (i) citizens of/registered in a country which is outside of the EU, EEA or Switzerland; or (ii) legal entities registered in the EU, EEA or Switzerland, if they are under the majority control of (natural or legal) persons or organisations citizens of/registered in a country which is outside of the EU, EEA or Switzerland (EU entity controlled by non-EU investor). The Special FDI Regime also applies to EU/EEA/Swiss investors (natural and legal persons) if they acquire majority control and the investment exceeds HUF 350,000,000.</p>	
6.	Exceptions
N/A.	
7.	Notification / review type (e.g. mandatory, pre-closing, suspensory)
Filing is mandatory in all cases.	
8.	Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)
Third parties may not be involved in the review process.	
9.	Filing fee
No filing fee is applicable.	
10.	Submission deadline / stand-still obligation
<p><u>General FDI Regime</u></p> <p>The foreign investor must make a notification to the Minister leading the Prime Minister's Cabinet Office before implementation and within ten days of:</p> <ul style="list-style-type: none"> • Signing the contract, in the event of equity acquisitions and operation right acquisitions • The registration of the newly subscribed strategic activity in the company registry, for strategic activities <p>The deadline for review by the minister is 60 days (extendable by 60 days) from the</p>	

date of filing.	
<u>Special FDI Regime</u>	
<p>The foreign investor shall make a notification to the Minister of Economic within ten days from signing the transaction documents.</p> <p>The minister has 30 business days to decide on the transaction, which deadline may be extended by 15 business days.</p> <p>No standstill obligation.</p>	
11.	Availability of pre-notification / informal consultation
Pre-notification and informal consultation are unavailable.	
12.	Scope of information / documents required for filing
<p>The foreign investor must provide the following information in the FDI procedures:</p> <ul style="list-style-type: none"> • information regarding the foreign investor: <ul style="list-style-type: none"> ✓ personal data of the foreign investor, e.g.: name; Hungarian or foreign address; nationality; and mailing address; ✓ data of the legal person, e.g.: name; registered seat; registering country; and mailing address; and ✓ data of the foreign investor's representative, e.g.: name; address; and mailing address; • description of the foreign investor's existing business activities; • description of the transaction/investment presenting its effects; • description of the ownership structure of the foreign investor and its shareholders, and, in relation to this, any document which proves and demonstrates the ownership structure (which must be attached to the filing); and • data of the ultimate beneficial owner of the foreign investor, and, in relation to this, any document which proves and demonstrates the ultimate beneficial owner (which must be attached to the filing). <p>The foreign investor must attach to the filing the original or certified copies of the required documents; e.g., a signed contract, agreement, preliminary agreement or any other undertakings for the conclusion of such agreements, and a certified translation of such documents if these documents were not issued in the Hungarian language</p>	
13.	Proceedings timetable (timing for review)
See point 10 above.	
14.	Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)
<u>General FDI Regime</u>	
<p>Under the General FDI Regime, the minister either issues a clearance decision or a veto decision, the latter if the triggering event "harms Hungary's security interests." In the case of an EU entity controlled by a non-EU investor, a veto decision can only be made in the case of circumvention, i.e., if it can be established that the EU entity's involvement in the transaction is for the purpose of circumventing the FDI screening rules. This could be the case, in particular, if the EU entity controlled by a non-EU investor does not carry out any actual economic activities or has no real presence in the EU Member States.</p>	

A veto decision can be challenged by the foreign investor or by the affected company only on a procedural basis (i.e., if the procedural rules of FDI screening have been materially breached). The only exception is that a veto decision can be challenged on a substantive legal basis concerning the ministry's opinion on whether or not the EU entity controlled by a non-EU investor carries out actual economic activities or has real presence in the EU Member States.

Special FDI Regime

If the minister finds that any of the conditions for a veto decision, it shall issue a decision that forbids the completion of the contemplated transaction; otherwise the Minister shall acknowledge the notification.

The minister is obliged to set out the reasons for any veto decision. In practice, the vagueness of the terms of relevant laws allows the minister to deliver decisions in a discretionary or arbitrary manner.

15.	Publicity of the decision and confidentiality of the information provided
<p>The procedures are not public. There are no official publications during or after the screenings. Regarding commercial information, the relevant minister must ensure that business secrets are not disclosed. The relevant minister may process only the data that is necessary for its procedure.</p>	
16.	Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)
<p>Yes, the prohibition decisions are subject to limited judicial review.</p> <p>In both cases, the foreign investor has only a limited right to appeal against the decision of the minister to the Metropolitan Court of Budapest (in Hungarian: Fővárosi Törvényszék), but not under the same kind of procedure.</p> <p>Under the General FDI Regime, an appeal may be submitted against the qualification of the transaction as “harming the national interest of Hungary” and/or infringement of essential procedural requirements. In such cases, the Metropolitan Court of Budapest delivers a judgment in a simplified procedure.</p> <p>Under the Special FDI Regime, an appeal may be submitted only against the reasoning of the prohibition decision, and the Metropolitan Court of Budapest will review it only in a non-contentious proceeding (i.e. there is no place for hearings in such case).</p> <p>The Metropolitan Court of Budapest delivers its judgment within 30 days from the receipt of the appeal. If the Metropolitan Court of Budapest concludes that the screening procedure or the qualification was unlawful, it repeals the decision of the respective minister and orders for a new procedure before him.</p> <p>Interim measures or immediate actions are not permitted in the above procedures. Furthermore, an appeal against the judgment of the court is also excluded.</p>	
17.	Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)

In the case of a failure to notify, the foreign investor may not be registered as a shareholder in the list of shareholders or the book of shares, and the foreign investor may not exercise its rights in the company. The right to own, operate or use the infrastructure, equipment and facilities necessary for the company's activities may be granted only after obtaining the approval.

Without the filing, the underlying agreement on: (i) the right to operate or use the sensitive infrastructure will be unenforceable; and (ii) the acquisition of the respective interest or right to own, operate or use the strategic infrastructure will be null and void.

Under the General FDI Regime, the minister may also impose a maximum fine of EUR 2,900 on a natural person, and EUR 29,000 on a legal entity due to lack of filing.

Similar fines also apply under the Special FDI Regime: the minister may impose a fine of up to twice the value of the proposed transaction but at least EUR 290 on a natural person; and 1% of the net turnover achieved by the affected strategic company in its last financial year.

The transactions and investments may be reviewed ex officio and retroactively.

18.	Other national security review distinct from FDI rules
N/A.	
19.	Significant legislative/regulatory developments in the past year and possible proposals for reform
The most recent legislative developments is Government Decree no. 561/2022, which decree slightly extended the scope of the notifiable transactions under the New FDI regime (already set out in this summary).	
20.	Helpful links
N/A.	