

Corporate and M&A alert

Restrictions on foreign investments in Hungary in response to the COVID-19 emergency

Update of June 2, 2020

As part of various measures aimed at countering the effects of the COVID-19 pandemic, the Hungarian Government recently introduced restrictions on certain transactions involving foreign investors (Government Decree No. 227/2020 (V.25.), the “Decree”).

In the following, we aim to summarize the key provisions of the Decree, which came into effect on May 26, 2020, and highlight certain key factors which should be taken into consideration.

In essence, the Decree subjects certain transactions affecting so-called strategic companies to notification requirements and the acknowledgment of the Minister for Innovation and Technology (the “Minister”).¹

The key factors to consider are:

1. Whether the company is a strategic company;
2. Whether a party qualifies as a foreign investor; and
3. Whether the transaction is of a type covered by the Decree.

1 What are “strategic companies”?

The Decree lists 21 business sectors that are considered to be strategically important for the purposes of the restrictions. These sectors include the energy, transportation, health care, information technology, and tourism sectors among others.

Any limited liability company, or a public or private company limited by shares registered in Hungary, which conducts its business in the listed sectors, is to be considered a “strategic company” for the purposes of the Decree.

Due to the broad definition of “strategic company”, numerous companies may fall within the scope of the Decree.

2 Who qualify as “foreign investors”?

Under the Decree, a ‘foreign investor’ means:

- (i) Any private individual who is not a citizen of the EU, the EEA, or Switzerland;
- (ii) Any legal entity registered outside of the EU, the EEA, or Switzerland; or
- (iii) Any legal entity registered within the EU (including Hungary), the EEA, or Switzerland, but under the direct or indirect majority control of persons falling under (i) or (ii) above.

¹ Certain concepts of the Decree raise interpretational questions and certain provisions may be interpreted in different ways. To date, no official interpretation, nor jurisprudence is available to provide guidance with respect to such ambiguities. The Decree will likely be subject to amendments and/or clarifications going forward. The newsletter is intended to provide a high level summary of the main concepts set out by the Decree, as interpreted by us to date.

Majority control is generally defined to exist where a legal or natural person directly or indirectly holds a majority of the votes in, or otherwise holds a significant influence over, a legal entity. In this context, significant influence relates to the direct or indirect (i.e. through intermediary entities) power to appoint and recall the majority of the executive officers or supervisory board members of a legal entity, and includes circumstances where holding the majority of the votes is achieved by way of an agreement with, or a right to exercise the votes of, other shareholders or members of the legal entity (provided that the relevant legal or natural person and such other shareholders or members together hold a majority of the votes).

In addition, there are instances where the restrictions under the Decree will apply to persons who are not “foreign investors”.

3 What kind of transactions are affected?

The following types of transactions are subject to the requirements of the Decree:

1. Transfers of ownership interest;
2. Capital increases;
3. Mergers, transformations or demergers;
4. Issuances of convertible or subscription bonds; and
5. Establishment of usufruct rights over shares or business quotas.

4 Thresholds

The notification obligation is triggered if any of the above transactions is implemented directly with respect to a *strategic company* and such transaction results, whether directly or indirectly, in:

- (a) The acquisition of majority control over a strategic company;
- (b) The acquisition of a stake of at least 10% in a strategic company, if the transaction value exceeds HUF 350,000,000 (approximately €1,000,000);
- (c) The acquisition of a stake of at least 15%, 20% or 50%, or if, as a result of the acquisition, the stakes jointly owned by foreign investors would exceed 25% in the strategic company, regardless of transaction value; or
- (d) The acquisition of the ownership or operational rights of the essential infrastructure or equipment of a strategic company.

Point (a) is applicable if majority control is acquired by a foreign investor defined under point (iii) above, or by any legal entity registered in a country within the EU, the ECC or Switzerland.

Points (b) – (c) above are applicable if such a stake is acquired by any foreign investor.

Point (d) above is applicable if the ownership or operational rights are acquired by a foreign investor or a company in which a foreign investor directly or indirectly holds a majority stake.

5 Main rules of the procedure for notification and acknowledgement

The foreign investor (in the case of point (d) above, jointly with the company acquiring the ownership or operational rights of the equipment or infrastructure) must notify the Minister within 10 days from entering into of the relevant transaction documents.

The Minister must examine, among other criteria, whether:

- (a) The transaction actually or potentially violates or endangers the national interest, public safety or public order in Hungary;
- (b) The foreign investor is under the direct or indirect supervision of a governmental authority of any state other than EU member states;
- (c) The foreign investor had previously been engaged in activities jeopardizing the public safety or public order of another member state of the EU; or
- (d) There is a significant risk that the foreign investor will be engaged in illegal or criminal activities.

If any of these criteria arises, the transaction will be prohibited.

If none of the above criteria arises, the Minister must approve the transaction within 45 days. On an exceptional and justified basis, the Minister may extend the deadline by an additional period of 15 days. During the notification procedure, legal representation is mandatory.

6 Legal consequences

- (a) Violation of these rules will result in the underlying transaction documents being null and void and the Minister may impose a fine of up to double the amount of the transaction value.
- (b) Unless an acknowledgement is obtained from the Minister, relevant entries in the share register or the members' list of a strategic company are prohibited, related ownership rights may not be exercised, and the court of registration is entitled to delete from the company registry any data registered in the lack of an acknowledgement or contrary to the prohibition of the Minister. In the company registry procedure, the acknowledgement of the Minister and a declaration by the strategic company that it qualifies as a strategic company must also be submitted to confirm that the transaction underlying the relevant registration was completed in compliance with the Decree.
- (c) The management of a strategic company is under a general obligation to ensure that the company is operated in accordance with applicable law. Taking into consideration the restrictions set out in (b) above, the court of registration may initiate judicial oversight proceedings, and potentially find the management liable for the violation of the restrictions.

7 Other legislation on foreign investment control

The Decree does not affect earlier enacted regulations on foreign investment control, i.e. the regime established by Act LVII of 2018, which will continue to be applicable to the foreign investments there specified. Accordingly, foreign investors should carefully assess whether a contemplated transaction triggers notification obligations under either (or both) the Decree and the Act.

One of the advantages of being a client of a global law firm is that you have access to our '**COVID-19 (Coronavirus) Hub**'. It has a range of articles and other information written by Dentons lawyers all over the world, which will be of interest, especially should you have operations in other parts of the globe. You can find the Hub [here](#).

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