

## Summary of rules governing foreign acquisitions in strategic companies

During the state of emergency in the spring Gov. Decree no. 227/2020 (“Gov. Decree”) was introduced to require the notification to the Minister of Innovation and Technology (“Minister”) and the acknowledgment by the Minister as a condition to certain foreign investments in Hungarian-based companies. Following the end of the state of emergency subchapter 85 of Act LVIII of 2020 (“Vmtv.”) prescribes the rules applicable to foreign investments which are mostly similar to the rules established by the Gov. Decree. However, in some matters the Vmtv. prescribes different rules. Now, certain provisions of the Vmtv. have been amended and supplemented by Act CIV of 2020 and the amendments have entered into force on 30 October, 2020.

### DEFINITION OF THE FOREIGN INVESTOR

According to the Vmtv., the followings will qualify as a foreign investor:

- a) a legal person or other entity - acquiring ownership or control in a business association seated in Hungary and carrying out the activities defined in Section 277(2) of the Vmtv. - registered in Hungary, in another Member State of the European Union, in another Member State of the European Economic Area or in the Swiss Confederation, if they are under the majority control of natural or legal persons or other entities resident or registered in a country which is outside of the European Union, the European Economic Area or the Swiss Confederation,
- b) natural or legal persons or other entities resident or registered in a country which is outside of the European Union, the European Economic Area or the Swiss Confederation.

### DEFINITION OF THE STRATEGIC COMPANY

Pursuant to the Vmtv., a strategic company is any limited liability company, private limited company or public limited company based in Hungary, registered main activity or ancillary activities are listed in the relevant Gov. Decree [Gov. Decree no. 289/2020] and this activity is

- a) pursued in the energy, transport, communications sectors,
- b) falls within a sector of strategic importance within the meaning of Article 4 (1) (a) to (e) of the EU Regulation No. 2019/452, excluding financial infrastructure.

## SCOPE OF TRANSACTIONS COVERED BY THE NOTIFICATION

In connection with the following transactions, the notification to the Minister is required:

- a) acquisition of ownership interest in a strategic company,
- b) capital increase in a strategic company,
- c) merger, demerger and transformation of a strategic company,
- d) issuance of bonds which are convertible, or provide subscription rights or convert to equity by a strategic company,
- e) establishing usufruct over the share of the quota of a strategic company,
- f) the acquisition of the right to operate the infrastructure, equipment and facilities essential for carrying out activities in strategic sectors.

A legal person or other entity established in another Member State of the European Union, another Member State of the European Economic Area or the Swiss Confederation, or a national thereof, shall only be required to notify the Minister about a transaction concerning the acquisition of ownership, bond ownership or usufruct if:

- a) the total value of the investment reaches or exceeds HUF 350 million; and
- b) the foreign investor acquires, directly or indirectly, a majority control in a strategic company as a result of the transaction.

In addition to the provisions of the preceding paragraph, a foreign investor shall also notify the Minister if, as a result of the acquisition of ownership, the acquisition of bond ownership or the acquisition of a right of usufruct

- a) directly or indirectly acquires a share of at least 10 % in the strategic company and the total value of the investment reaches or exceeds HUF 350 million;
- b) acquires a share of 15 %, 20 % or 50 % in a strategic company in a sector of strategic importance;
- c) the combined shares of foreign investors in a strategic company belonging to the strategic sector, with the exception of a public limited company, exceeds 25 %..

## EXEMPTIONS FROM THE NOTIFICATION OBLIGATION

Pursuant to Section 277 (5) of the Vmtv., legal transactions that result in a change only in the indirect owner of a strategic company registered in Hungary as a result of legal transactions specified in the Vmtv. are not subject to notification if the direct owner of the strategic company registered in Hungary remains unchanged.

A new exemption from the notification obligation from 30 October, 2020 is that when the transaction concluded with respect to a foreign based legal person or other entity is established between affiliated companies defined by Act C of 2000 on Accounting ("Accounting Act").

Affiliated companies defined by the Accounting Act are the parent company defined by the Accounting Act and the subsidiary company and jointly controlled entity, which are also defined by the Accounting Act.

Pursuant to the Accounting Act parent company shall mean a company that effectively exercises a dominant influence over another company (hereinafter referred to as "subsidiary company"), either directly or through its subsidiary company, because it meets at least one of the following conditions:

- a) based on its ownership percentage in the share capital, it solely controls the majority (in excess of 50 per cent) of the votes of the owners (shareholders), or
- b) it solely controls the majority of votes based on agreement with the other owners (shareholders), or
- c) in its capacity as an owner (shareholder) of the company, it is entitled to elect or dismiss the majority of executive employees or members of the supervisory board, or based on a contract concluded with the owners (shareholders), or a provision of the
- d) instrument of constitution, it exercises dominant supervision and control, irrespective of its percentage in the share capital, voting ratio and the right to elect and dismiss executive employees.

Subsidiary company shall mean the business association over which the parent company defined above exercises a dominant influence.

Jointly controlled entity shall mean a business association in which, on the one hand, the parent company (or the consolidated subsidiary of the parent company), and on the other hand, one (or several) other enterprise(s), have the rights defined in the definition of parent company on an equal basis, with at least 33 per cent voting rights. A jointly controlled entity is managed jointly by the owners.

## CONTENT OF THE NOTIFICATION

The notification shall be submitted within 10 days after the conclusion of the legal transaction, the notification shall be submitted in Hungarian or a certified Hungarian translation shall be submitted. Legal representation shall be mandatory. The notification signed by the foreign investor and affixed with an electronic signature of the legal representative shall be submitted electronically to the Minister.

The notification shall contain:

- a) if the foreign investor is a natural person:
  - i. natural identification data and address data,
  - ii. nationality, and
  - iii. contact details for electronic communication or communication by mail,
- b) if the foreign investor is a legal person or other entity:
  - i. name, seat and the Hungarian branch's address (if any),
  - ii. the designation of the state performing the tasks relating to official registration,
  - iii. contact details for electronic communication or communication by mail, and
- c) data of the legal representative.

The following shall be attached to the notification in an electronic form:

- a) detailed description of the transaction,
- b) detailed description of the transaction aimed at acquiring ownership, acquiring ownership of a bond, acquiring a right to usufruct, acquiring a right to operate and of the relevant and substantial circumstances therefor,
- c) documents created in connection with the transaction and serving as the basis of the

## THE MINISTER'S DECISION

The Minister shall send a written notice in an electronic form of the receipt of the notification without delay, but no later than within 8 days of receipt.

The Minister examines whether any of the circumstances set out in the Vmtv., due to which the acquisition of a share may be refused, exists, such as violating or endangering the state interest, public security, public order of Hungary in the case of acquisition by a foreign investor.

No later than within 30 working days of the receipt of the notification, the Minister

- a) shall confirm the acknowledgement of the notification, or
- b) shall prohibit acquiring ownership, acquiring ownership of a bond, acquiring a right to usufruct, acquiring a right to operate.

The Minister shall provide reasons for a prohibiting decision. The notifier may challenge the prohibiting decision in a non-contentious administrative proceeding.

## TIMING AND EU RULES

The notification obligation applies to Transactions concluded until 30 June, 2021.

The fulfilment of the notification obligation is monitored by the Minister; in the event of non-compliance with the notification obligation, the notifier may be subject to an administrative fine of the amount specified in the Vmtv.

An application for registration in the register of shareholders or register of members of a strategic company may be submitted only after acquiring the confirmation of the acknowledgement.

A contract, unilateral declaration or adopted resolution,

- a) which is in violation of the provisions of subchapter 85 of the Vmtv. or
- b) in respect of which the Minister has issued a prohibition decision shall be null and void.

In March 2019, the EU adopted Regulation No. 2019/452 on establishing a framework for the screening of foreign direct investments into the Union ("Regulation"). Under the Regulation, EU member states might uphold their existing screening mechanisms for foreign direct investments and they might introduce new mechanisms as well. The Regulation only establishes the main requirements of the screening mechanisms, e.g. the rules and the procedures shall be transparent and there shall be no discrimination among foreign investors. The Regulation shall be applied from 11 October, 2020.

Member states had to notify the European Commission of their existing screening mechanisms by 10 May, 2019. Member states shall also notify the Commission about their newly adopted screening mechanisms and about the amendment of the existing mechanisms as well.

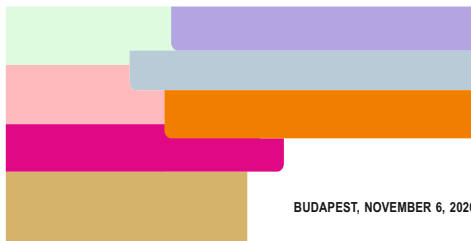
The first screening mechanism for foreign investments has been introduced in Hungary by Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests and by

Gov. Decree No. 246/2018. (XII. 17.) on the execution of Act LVII of 2018, which entered into force on 1 January, 2019. The Act lists those activities, which are restricted for foreign investors, e.g. the manufacture of arms and ammunition and the manufacture of military equipment subject to authorization; or services covered by the Act on Electricity.

For the time being Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests; Gov. Decree No. 246/2018. (XII. 17.) on the execution of Act LVII of 2018 and the Vmtv. regulates the screening mechanisms for foreign investments in Hungary.

The above summary is for general information purposes only.

Its content is not fully comprehensive, it does not constitute and shall not be interpreted as legal advice. The above summary is not a substitute for seeking legal counsel.



BUDAPEST, NOVEMBER 6, 2020

# NAGY & TRÓCSÁNYI

the premier independent law firm in Hungary

visit our website: [www.nt.hu](http://www.nt.hu)