

Bird & Bird

Doing Business

in Hungary

2024



Contents

Market entry	3
Corporate law	6
Employment law	7
Intellectual property	9
Privacy and Data	11
E-commerce and social media	13
General prohibitions/restrictions on advertising and unfair commercial practices	15
Competition law	16
Dispute resolution	17
Tax	18
Your contacts	19

Market entry

Potential restrictions

Generally, entities wishing to enter the Hungarian market are not subject to any restrictions. If a foreign entity/franchisor engages in the pursuit of economic activity in Hungary, it might be required to set up a local company under sector-specific laws. The setting up of such a company follows the general rules applicable to company formation. There is no general restriction on foreign entities owning equity in a local business. However, the acquisition of shares in a Hungarian company pursuing certain 'strategic' activities is only valid if approval has been obtained from the minister responsible (FDI approval). In addition, other regulatory clearance processes (e.g., competition clearance, banking regulatory clearance, etc.) may apply, depending on sector and deal size.

EU- and EEA-based individuals and entities, and entities that enjoy the same treatment under an international treaty, can acquire title to Hungarian non-agricultural real estate on the same terms as Hungarian nationals. Other foreign individuals or entities may acquire Hungarian non-agricultural real estate if they obtain a permit granted at the level of the county or metropolitan government office. However, no foreign person, whether a private individual or company, may acquire title or any other right to Hungarian agricultural land or protected natural areas. The same restriction applies to acquisitions on the part of Hungarian subsidiaries owned by foreign investors.

There is no general restriction on a foreign entity granting development rights to a local entity, although the parties to such agreements must comply with competition law provisions, and some specific sectoral rules may also affect the relationship.

Registration

There are no specific registration requirements for foreign entities or franchises. There are certain general registration requirements that can be relevant:

- i In order to engage in economic activity in Hungary, anyone is free to establish a company or a branch office (please see below). Companies and branch offices are registered by registry courts;
- ii Before a newly established company or branch office can be registered by a registry court and its tax number issued, a preliminary tax registration procedure needs to be completed by the tax authority;
- iii Once registered with a registry court, companies and branch offices are obliged to apply for registration with the competent chamber of commerce and industry within 15 days;
- iv Companies must also open a bank account at a financial institution (although branch offices are exempt from this requirement). The financial institution will perform a KYC screening process and will report data on the ultimate beneficial owner of the company to the Hungarian UBO system for anti-money laundering purposes;
- v If the company pursues a specific activity, additional registration (e.g., with chambers or authorities) may be required.

Choice of legal entity

A foreign entity can carry on business in Hungary either by incorporating a Hungarian subsidiary or by establishing a Hungarian branch office. Please find below a brief overview of the main differences and similarities.

Company	Branch
<p>Recommended options:</p> <ul style="list-style-type: none"> limited liability company (Hungarian: “Korlátolt Felelősségű Társaság” or “Kft.”) or private company limited by shares (Hungarian: “Zártkörűen Működő Részvénytársaság” or “Zrt.”). <p>The two company forms are very similar in terms of privacy, internal organizational structure and operation.</p> <p>The key difference, in addition to different capital requirements, is that the registered capital of a Kft. is divided into quotas, while the registered capital of a Zrt. is divided into shares. Essentially, the difference between shares and quotas is that shares are materialized either physically (printed shares) or via a securities account (dematerialized shares), whereas quotas are not.</p> <p>A quota is recorded in the member’s list managed by the managing director of a Kft. One quotaholder may hold several quotas, which can represent various quotaholder rights (including preferential rights).</p> <p>A shareholder of a Zrt. can hold multiple shares of different types (e.g., non-voting shares, various preferential shares, etc.). Because shares, either printed or dematerialized, must be created at the Hungarian Central Clearing House and Depository (in Hungarian: “KELER”), the establishment of a Zrt. takes somewhat longer than that of a Kft., although the registry court will register a Zrt. by the same deadline as in the case of a Kft.</p>	<p>Options:</p> <ul style="list-style-type: none"> branch office or commercial representation.
<p>Limited liability at subsidiary level.</p>	<p>Parent company retains direct liability.</p>
<p>Separate legal entity to contract.</p>	<p>No separate legal entity. Parent accounts disclose Hungarian revenue.</p>
<p>Minimum registered capital:</p> <ul style="list-style-type: none"> HUF 3 million (approx. EUR 7,800) in the case of a Kft. HUF 5 million (approx. EUR 13,000) in the case of a Zrt. 	<p>There is no minimum registered capital requirement, but the parent company must provide the branch office with sufficient capital for its operations, and this should be indicated in the accounts and in the company register. The branch office is also under an obligation to report changes in its initial capital each year (irrespective of the number of times changes that occur in a given year).</p>
<p>General meetings do not need to be held in Hungary and can be held by electronic means, and decisions can be adopted in writing.</p>	<p>N/A</p>
<p>Managing directors or a board of directors must be appointed. Directors do not need to be Hungarian nationals.</p>	<p>Branches are represented by branch managers. In the case of branch offices founded by foreign companies established in a non-EEA state, the branch manager must be (i) a person employed by or assigned to the branch, or (ii) a Hungarian resident appointed under a long-term service contract.</p>
<p>Hungarian company accounts need to be filed and may need to be audited (exceptions may apply).</p>	<p>Only parent company accounts need to be filed, if the parent company is registered in an EU member state or in a non-EU country with accounting rules that conform to EU standards.</p>

Company	Branch
Higher operating costs.	Lower operating costs.
Corporate income tax rate is 9%.	A branch office is obliged to pay 9% corporate income tax on income deriving from business activities conducted in Hungary.
Can benefit from double tax treaties.	
Tax losses can be carried forward, subject to certain limitations.	



Corporate law

Because the Kft. is the corporate form most commonly used for business purposes, partly because it can be incorporated quickly and cost-efficiently, this brochure focuses on the incorporation and characteristics of a Kft. The Hungarian Civil Code¹ governs the most important aspects of Hungarian corporate law.

Corporate governance: A Kft. can be established by a single founder in which case the founder/sole quotaholder passes corporate resolutions in writing and has the right to instruct the company's directors to implement them. A multiple member Kft. must hold general meetings and its directors cannot be instructed by the quotaholders, but the directors must comply with general meeting resolutions.

A Kft. is managed by one or more managing directors who, as a rule, do not form a body or a board and act individually and independently from one another. However, it is possible to confer joint representation (and signing) rights to the managing directors, which means that one director needs at least one other director to act on behalf of the company. The quotaholders may decide, however, to establish a board of directors instead of having managing directors. Also, a managing director of a Kft. can either be a private individual or a legal entity. If the managing directors or board members are foreign persons, they occasionally need to travel and pass decisions in Hungary to prevent/mitigate tax domicile issues. Managing directors or board members are subject to a special liability regime.

Managing directors or the board may appoint one or more holders of a commercial power of attorney (Hungarian: *cégvezető*) who are employees of the Kft. and whose task is to support the directors in carrying out their duties (including representing the company or signing on behalf of the company).

The quotaholders may appoint a supervisory board consisting of at least three members tasked with overseeing the actions of management. The appointment of a supervisory Board is only mandatory if the annual average number of full-time employees employed by a company exceeds 200 and the right of supervisory board employee participation has not been waived by employees.

Capital requirements: The registered capital of a Kft. can consist of: (i) cash and/or (ii) in-kind contributions. There are no limitations as to the ratio of cash and in-kind contributions. Founders can pay their cash contributions at a later stage, i.e., there is no need to pay in the cash contribution at incorporation. The deadline to provide the cash contribution is three months from the approval of the annual accounts of the second complete financial year from the date of the registration of the Kft. The registered capital of a Kft. can be denominated in HUF as well as in EUR or USD. If the registered capital is denominated in a foreign currency, the company must keep its books and prepare its financial statements in the currency of its registered capital.

Auditor: The appointment of an auditor is mandatory for companies using double-entry bookkeeping. However, appointment of an auditor is not mandatory if the following two conditions are met: (i) the company's annual net sales (calculated for the period of one year) did not exceed HUF 300 million (approx. EUR 740,000) on average for the two financial years preceding the financial year under review, and (ii) the average number of employees of the company for the two financial years preceding the financial year under review did not exceed 50 persons.

Registered seat: Having a registered seat is obligatory for the incorporation of a Kft. The registered seat of a company is the office registered in the company register, where the official documents and correspondence addressed to it are received and the documents specified by law are accessible to the authorities concerned. The easiest and quickest way to arrange for a registered seat in Hungary is to mandate a registered seat service provider. In the latter case, further additional services may be required by the seat service provider, such as accounting or delivery agency services.

Time of registration: Unless a supplementary filing is requested by the registry court, a Kft. is usually registered within one week (from the date on which a tax number is issued by the tax authority). If the articles of association are prepared using a standardised form, the registry court must register the Kft. on the working day that follows the issuance of the tax number. The Kft. can start operating (with certain limitations) as soon as the articles are executed and can launch commercial activities once incorporation documents have been submitted to the court.

Registration fees: For a Kft., the registration is free of charge and there is a EUR 7 publication fee.

¹ Act V of 2013 on the Civil Code.

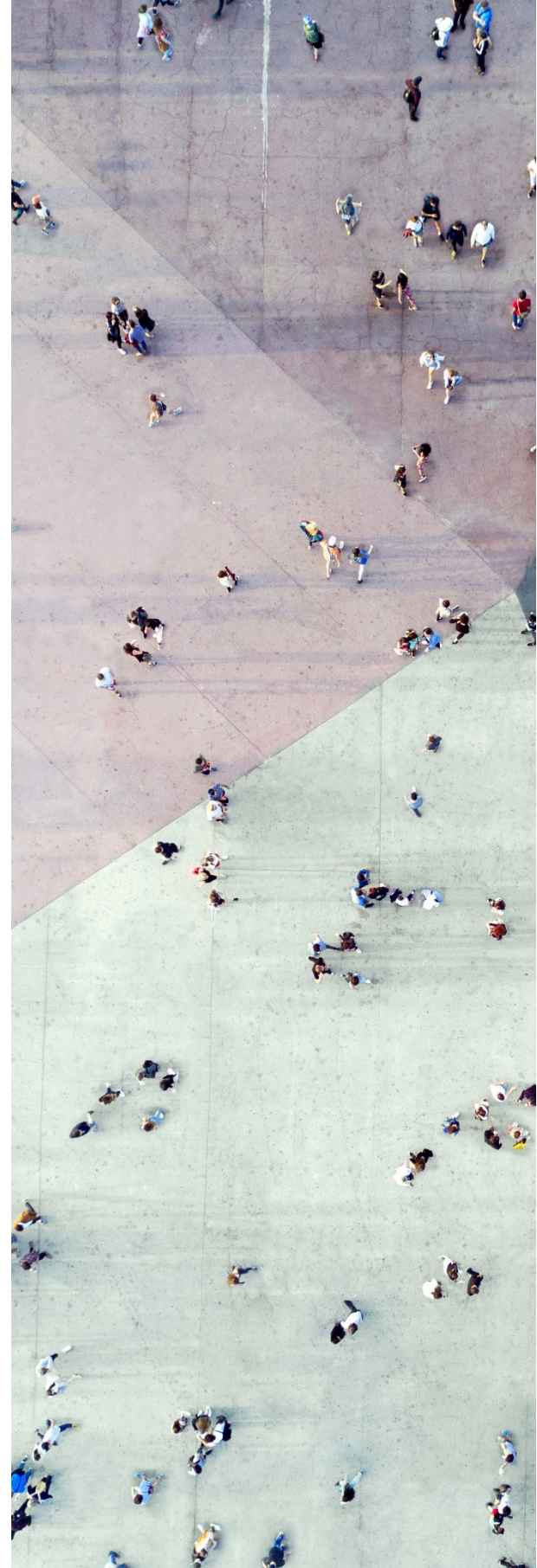
Employment law

Regulatory overview: Hungary has a rather more employer-friendly legislative framework than that typically found in the European Union. This approach is somewhat counterbalanced by the Hungarian labour courts, which tend to lean more towards the side of employees. The most important labour law rules are set out in the Hungarian Labour Code, which applies if an employee habitually works in Hungary.

Basic considerations: Basic employment conditions must be agreed in a written employment agreement. Further, a job description and an obligatory information notice containing certain elements required by statute must be provided to employees. In addition, it is customary for there to also be various employer internal policies regulating employment conditions (e.g., code of conduct, bonus policy, remote working policy, etc.), which should be communicated in an appropriate manner to employees. Employers and employees can also agree on special forms of employment, such as telework, remote work, fixed term employment, part-time employment, etc.

Employees are protected by mandatory provisions of the Hungarian Labour Code in many respects (such as, for example, lawful termination of employment by an employer, the scheduling of employee working time, maximum overtime levels, minimum annual leave entitlements, etc.) and which should be respected by employers. Employers may otherwise be subject to adverse legal consequences (including fines) in the event of a labour inspection procedure. In particular, the rules around termination of employment have become more complex in recent years and so termination matters entail more legal risk. Therefore, it is advisable to seek legal advice before terminating employment relationships.

Working time, minimum wage: Employers have discretion in determining employee working hours subject to the limitations set forth in the Hungarian Labour Code. The duration of normal daily working time is eight hours, while that of normal weekly working time is 40 hours with a two-day or 48-hour weekly rest period and, according to the general work schedule, daily working hours are normally scheduled evenly for five working days from Monday to Friday. Many employers, in, for example, production and manufacturing as well as in the retail & consumer sector, apply reference periods (Hungarian: *munkaidőkeret*), instead of the general work schedule outlined above, allowing them to schedule daily working time and weekly rest periods unevenly so as to ensure greater working time flexibility. Regarding the allocation of working time, the Hungarian Labour Code also lays down complex salary supplement rules that apply if, for example, an employee is scheduled to work overtime, in shifts, at night, during weekly rest periods, on Sundays and on public holidays. Generally, it is advisable to engage payroll specialists who will keep track of workforce working schedules, salary supplements and leave entitlements. In 2024, the gross mandatory monthly minimum wage is HUF 266,800 (approx. EUR 700), while the guaranteed minimum wage (minimum wage for graduates) is HUF 326,000 (approx. EUR 850).



Executive employees: Employers should always consider whether a newly hired employee qualifies or should qualify as an executive employee under the Hungarian Labour Code, since special rules apply to such employment relationships.

Remote working: Teleworking rules in Hungary have been updated significantly during the last couple of years. There are special health and safety as well as cost reimbursement requirements that apply to employees working remotely. In the case of teleworking, certain specific issues must be covered by an employment contract and it is advisable to adopt a remote working policy as well. If an employer allows an employee to work from abroad, then applicable employment law, tax and social security-related implications must be carefully considered.

Business immigration: A long-coveted overhaul of the Hungarian foreigner policing laws is set to enter into force gradually and starting on 1 January 2024. The new legislation introduces various new visa and permit categories, including a “golden visa” for certain foreign investors. Nevertheless, the general principle that the employment of third-country nationals (i.e., except EU/EEA citizens) typically requires a work permit and/or residence permit will continue to apply. In recent years, there has been a significant increase in the employment of third-country nationals, particularly blue-collar workers from the southeastern regions of Asia.

Health and safety: Hungarian health and safety regulations prescribe various employer obligations employers, including the provision of information on health and safety to employees, ensuring a healthy and safe work environment, conducting work fitness checks in certain cases and conducting risk assessments.

Confidentiality and restrictive covenants: In Hungary, employees bear general obligations to protect an employer’s confidential information under the Hungarian Labour Code. Where confidential information and trade secrets are important assets for the employer, it is advisable to include sophisticated confidentiality clauses in the employment agreement. In addition, an employer’s business can be further protected by non-compete, non-solicitation and no-poach agreements subject to certain conditions.

Whistleblowing: Hungary has recently updated its whistleblowing regulations to bring them into line with the relevant EU Directive. The Whistleblowing Act primarily affects companies with 50 or more employees and companies that decide to set up a whistleblowing system voluntarily. Rules on required whistleblowing channels, the investigation of complaints, the rights of whistleblowers and persons concerned in connection with a report as well as confidentiality and data protection must be carefully considered. In the case of larger companies (employing 250 or more employees) in particular, operating global whistleblowing systems alone might not be sufficient and the establishment of a local speak-up system must be considered.

Alternative working arrangements: Employers may also engage employees via temporary work agencies which provide a certain amount of workforce management flexibility. In some sectors, it is common practice to engage consultants, self-employed freelancers or employees via ‘employer of records’ service providers. These alternative arrangements require a thorough case-by-case legal assessment to evaluate and, if necessary, to mitigate potential legal risks of reclassification as employment or temporary agency work-type relationships.

Collective bargaining and employee representation: Employees are entitled to form trade unions or works councils. Trade unions and employers may conclude collective bargaining agreements. Employees rarely take advantage of these possibilities.

Intellectual property

Hungarian law protects all traditional types of intellectual property, such as copyright, trademarks, designs, patents and trade secrets, and this area of law is largely harmonized with EU legislation.

Brand search: The Hungarian Intellectual Property Office (HIPO) – as well as the European Union Intellectual Property Office (EUIPO)² – maintains an online database of all Hungarian and EU-registered intellectual property (IP) rights, such as trademarks, patents and design rights. The HIPO also operates a voluntary register for copyrighted works.

Before considering the use of a sign or device as a brand identifier, it is advisable to conduct a search in the HIPO and EUIPO databases. The search should cover not only identical, but also possible similar versions of the proposed sign to avoid any potential conflict with rights registered earlier and the cancellation of the chosen trademark.

Although the existence of a company name does not hinder the registration of a similar or identical sign as a trademark, a preliminary assessment should include a search of the company register for any commercial and company names that have been on the market for a long time and may cause problems in the future. Evidently identical company names will not be registered in the company register, which is why a search is also essential before deciding on a company name. The principal data on Hungarian companies, including company names, is freely accessible through the online company register.

Any conflicting or earlier online presence can be identified by searching in the official .hu (dot hu) domain registry operated by the Council of Hungarian Internet Providers. As the Hungarian language uses accented letterforms (á, é, í, ó, ö, ő, ú, ü, ű) and such use is also allowed in domain names, a search for variations is strongly recommended to avoid cybersquatting.

Brand protection: A *Hungarian trademark* is obtained through registration with the HIPO. A sign can be registered as a Hungarian trademark, a European Union trademark or as an international trademark designating Hungary under the Madrid Agreement of 1891 Concerning the International Registration of Marks and the Madrid Protocol of 1989.

The use of a sign does not create trademark protection in Hungary; a trademark must be registered. The procedure for registering a trademark begins with filing a trademark application with the HIPO or the EUIPO. As a general note, all signs that are devoid of distinctive character are excluded from trademark protection and the HIPO has a rather strict practice when assessing descriptiveness. Thus, choosing the right brand or name is crucial for securing IP protection. Registration is granted for 10 years and may be renewed without limitation.

Design protection grants legal protection for the appearance of a product. Design protection is granted for any design that is new on a worldwide level and has individual character, and for which there are no grounds for refusal that would exclude it from protection. Design protection is obtained by filing a design application with the HIPO, with the EUIPO or by filing an international application under the Hague Agreement Concerning the International Deposit of Industrial Designs. The term of design protection is five years, which can be renewed four times for an additional five-year period each time (i.e., for 25 years altogether).

² <https://euipo.europa.eu/eSearch/> - The European Union Intellectual Property Office maintains a register only on European Union trademarks and registered community designs.

A licence for the use of a trademark or design must be given in writing, and to have effect in relation to third parties, it must be registered with the relevant registry (i.e., the HIPO or the EUIPO).

To complete an online presence in Hungary, *domain names* under the Hungarian .hu top-level domain can be registered according to the Domain Registration Rules and Procedures of the Council of Hungarian Internet Providers.

Use of certain names, landmarks and copyright protected works: Use of city names, such as Budapest, are usually subject to the granting of permission by the appropriate local municipality and the possible levying of a fee. For landmarks or buildings, the use of outlines or pictures are in principle subject to the consent of the copyright holder. Certain exemptions may apply (e.g., panorama exemption). However, the conduct of due diligence is recommended prior to any commercial use. For some specific landmarks, e.g., the Parliament Building, special consent is a must, and it can be obtained from the Office of the Hungarian Parliament. A fee is charged for such request.



Privacy and Data

General rules: The rules of the EU General Data Protection Regulation (GDPR) apply to the processing of personal data by data controllers or processors, if any of these have a presence in the EU, regardless of whether the processing takes place in the EU. Moreover, the GDPR applies to the processing of personal data of data subjects in the EU even if the controllers or processors are not established in the EU, but their processing activities are related to: (1) offering goods or services, irrespective of whether or not connected to payment; or (2) monitoring the behaviour of such data subjects, as far as their behaviour takes place within the EU. The GDPR rules are complemented by the Info Act and several sectorial laws in Hungary.

Typical obligations under the GDPR include complying with privacy principles such as purpose limitation and data minimization, providing appropriate information to data subjects on the data processing activities (providing privacy notices), maintaining records of processing activities and concluding data processing agreements or joint controllership agreements with subcontractors, vendors and other partners.

If a company fails to comply with the GDPR, the authorities can impose extraordinarily high fines (up to EUR 20 million or up to 4% of the total global annual turnover for the preceding financial year, whichever is the higher).

International data transfers: Pursuant to the GDPR, any transfer of personal data to a country outside the European Economic Area or an international organisation can only take place if: (1) an adequacy decision adopted by the European Commission is in place for the third country; or (2) the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available. If these conditions are not met, the transfer of personal data to a country outside the European Economic Area or to an international organisation can only take place subject to one of the special conditions set forth in the GDPR.

Employment related data processing: The Hungarian Labour Code provides that an employer may only require an employee to provide personal data if it is relevant to the establishment, performance, termination of the employment.

- **Employee Monitoring:** With respect to camera surveillance (CCTV) and device monitoring at the workplace, the Hungarian data protection authority (National Data Protection- and Freedom of Information Authority; the "NAIH") has issued strict guidelines that need to be followed by employers in Hungary.
- **Criminal Background Checks:** Due to its sensitive nature, the processing of data related to criminal convictions is subject to strict rules. In the employment context, employers must respect the provisions of the Hungarian Labour Code and NAIH guidelines.



- **Identification with Biometric Data:** In the employment context, processing biometric data is significantly restricted by the Hungarian Labour Code.
- **D&I Initiatives:** More and more companies plan to implement diversity and inclusion projects. The lack of legal authorization for employers to process special categories of personal data of employees in relation to D&I may cause difficulties in Hungary.

E-commerce service providers: The provider of information society services may only process personal data collected from users of a service for purposes that are technically necessary for the provision of those services. Other uses that are not technically necessary for the provision of such services (e.g., increasing service efficiency, delivering electronic advertising or other content addressed to the user, and market research) can only be performed with a prior definition of the purpose of data processing and with the consent of the user.

Direct Marketing and Electronic Advertisement: Advertising may be communicated to an individual by means of direct marketing only if the individual, as the recipient of the advertising, has given prior, clear and express consent. There are very few limited exceptions to this rule.

Limitations of the processing of health data: The processing of health-related data is regulated by the Hungarian Health Data Act. It includes various limitations and derogations from the GDPR which must be taken into account when providing med-tech solutions in Hungary.

Limitations of commercial data use: The recently adopted EU Data Act will extend the rights of the users of connected products or services to obtain their data from service providers, will establish clear rules for data holders on the permissible use of data and associated contractual conditions (including the prohibition of certain unfair practices) and establishes a framework for customers to switch between different providers of cloud data-processing services. The consequences of the Data Act are particularly relevant for IoT services providers. The Data Act entered into force in January 2024 and will become applicable in September 2025.

Limitations of the use of Artificial Intelligence (AI): The EU AI Act will regulate artificial intelligence using a risk-based approach. Certain AI systems will be banned (e.g., social scoring services, real-time and remote biometric identification systems, such as facial recognition). High risk applications (e.g., certain uses of AI systems in areas such as recruitment, biometric identification, employment, education and vocational training etc.) must comply with a set of transparency, risk management and accountability obligations. The proposal also covers general purpose AI solutions like ChatGPT or Microsoft Bing. The adoption of the final text of the proposal is expected to take place in Q2 2024. The AI Act is expected to take effect gradually over the coming year(s).

E-commerce and social media

This area is primarily regulated by the general provisions of civil law as well as by the E-Commerce Act³, the Advertising Act⁴, the Unfair Commercial Practices Act⁵ and the EU's Digital Services Act⁶. The E-Commerce Act and the Unfair Commercial Practices Act are fully harmonized with the related EU laws, while the Digital Services Act is an EU level regulation.

Contracting by Electronic Means: Providers of information society services are obliged to disclose certain items of information to business partners when concluding agreements online. If a service provider deals with consumers, more extensive disclosure obligations apply.

Validity of Electronic Documents. The eIDAS Regulation is directly applicable in Hungary. Further detailed rules regarding the validity of the different types of electronic signatures are laid out in the Act of Civil Procedure and Act CCXXII of 2015 on Trust Services and Electronic Transactions (last amended as of 1 January 2024). As of 1 January 2024, documents that have an Advanced Electronic Signature (AES) are considered to have been executed in written form. Documents signed with a Simple Electronic Signature (SES) are not considered executed in written form (although businesses overseen by the Hungarian National Bank may rely on documents signed with a SES provided that the signatory was identified in their audited IT environments).

Obligations for Digital Services Providers: The Digital Services Act sets out gradual obligations to intermediary service providers, hosting providers, online platforms and e-commerce online platforms for greater transparency, and accountability in the digital services sector. Among others, online platforms shall publish certain information of the ads they display on their interfaces (e.g., name of the advertiser, its financial background and main parameters for targeting). In case providers use behavioral advertising based on profiling, they cannot use special categories of personal data (e.g., race, religion, sexual orientation) to that end and are prohibited to target minors. In addition, the Digital Services Act establishes the notice-and-action procedure replacing the current notice-and-takedown mechanism. The Act became fully applicable on 17 February 2024.

General Marketing Prohibitions: Advertising is prohibited in Hungary (i) if it contains violence, or if it encourages any conduct that is likely to endanger personal or public safety; (ii) if it encourages any conduct that is likely to endanger the natural or man-made environment; (iii) if it is capable of harming the physical, intellectual or moral development of children and young persons; (iv) if it displays sexuality in a gravely indecent manner (pornographic advertisement); (v) for goods whose production or marketing is illegal; (vi) if it is covert advertising; (vii) for free gifts, discounts, bonuses, financial advantages and draws relating to direct sales of goods.

Direct Marketing and Electronic Advertisement: Advertising may be communicated to an individual by means of direct solicitation (*direct marketing*), via automated or non-automated phone calls, electronic mail, social media or in-app messaging, or other equivalent means of individual communication, only if the individual as the recipient of the advertising has given prior, clear and express consent. There are very few limited exceptions to this rule.

Social Media/Influencer Marketing. The Hungarian Competition Authority has issued basic guidelines on social media content that is sponsored or endorsed in any way, and they serve as a cornerstone for all market participants. The Hungarian Competition Authority strictly assesses and enforces compliance with the guidelines and is not reluctant to impose fines for severe irregularities; in particular, where: (1) the 'paid-for' nature of social media is not communicated simply, clearly and unambiguously (i.e., the sponsored product or company must be clearly indicated as such in the content) and in a way that is emphasised, easily noticeable and understandable by consumers (the *#reklam*, or *#advertisement*, hashtag must preface the

³ Act CVIII of 2001 on certain issues of electronic commerce services and information society services.

⁴ Act XLVIII of 2008 on the basic conditions and certain limits of economic advertising activities.

⁵ Act LVII of 1996 on the prohibition of unfair trading practices and unfair competition.

⁶ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC

content description; or (2) the content is not an independent, neutral opinion or offer, but is in fact also paid for or the result of some other direct economic interest.

Unfair Commercial Practices: A commercial practice is considered unfair if: (i) the person carrying out the commercial practice does not act with reasonable professional knowledge and with due diligence pursuant to the principle of good faith and honest market practice; and (ii) it materially distorts or is likely to materially distort the opportunity of an average consumer to make an informed decision in possession of the necessary information concerning the product and thereby causes or is likely to cause the consumer taking a decision that the consumer would not have taken otherwise. The scope of the unfair commercial practices can be interpreted broadly. The most common forms of unfair commercial practices are misleading advertisement and aggressive commercial communication. A “blacklist” of practices is set out in the Unfair Commercial Practices Act.

Limitations of the use of AI in marketing. In January 2024, the Hungarian Competition Authority launched a market analysis on the impact of the use of artificial intelligence. It investigates the consumer protection aspects of AI, including the use of 'dark patterns' and personalised advertising as well as the significant competitive advantage enjoyed by Big Tech companies on the AI market. The results of the market analysis are expected to be published in the second half of 2024.



General prohibitions/restrictions on advertising and unfair commercial practices

Commercial advertising in this context means any form of communication, information or display aiming or having the direct or indirect effect of promoting the supply of goods. Hungarian law is largely harmonized with EU laws in this area, which is therefore highly regulated.

General prohibitions: advertising is prohibited

- if it contains violence, or if it encourages any conduct that is likely to endanger personal or public safety;
- if it encourages any conduct that is likely to endanger the natural or man-made environment;
- if it is capable of harming the physical, intellectual or moral development of children and young persons;
- if it displays sexuality in a gravely indecent manner (pornographic advertisement);
- for goods whose production or marketing is illegal;
- covert advertising is prohibited;
- for free gifts, discounts, bonuses, financial advantages and draws relating to direct sales of goods.

Unfair commercial practices: A commercial practice is considered unfair if: (i) the person carrying out the commercial practice does not act with reasonable professional knowledge and with due diligence pursuant to the principle of good faith and honest market practice; and (ii) it materially distorts or is likely to materially distort the opportunity of an average consumer to make an informed decision in possession of the necessary information concerning the product and thereby causes or is likely to cause the consumer taking a decision that the consumer would not have taken otherwise.

Unfair commercial practices in general comprise the following:

- misleading advertisement;
- aggressive commercial communication;
- comparative advertisement;
- other type of unfair commercial practices listed under “black list” practices in the Hungarian Consumer Protection Act.⁷

“Green Marketing” as recent focus area: The Hungarian Competition Authority concluded its market study on green claims in 2024, resulting in recommendations addressing market players and proposing criteria for a reliable labelling system to the Hungarian legislator. The findings of the market study together with the guideline on “Green Marketing” published in 2020 aim to assist companies in developing appropriate advertising practices regarding the environmentally friendly and sustainable nature of their products and services. The guideline summarizes the criteria to be kept in mind when designing advertisements and sets out – *inter alia* – the requirements for providing proof of certain typical green claims (e.g. “recyclable”, “bio”, “organic” or “biodegradable”) and the legal framework of using certification marks.

The Hungarian Competition Authority has created a **new online price monitoring database** in the summer of 2023 to monitor pricing behaviours of market players in the food retail sector initially. This tool has received widespread media attention and is being promoted by the authority as an efficient means of tackling food price inflation.

⁷ Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising Activities.

Competition law

General prohibition to restrict competition: The Competition Act is fully harmonised with Article 101 of the TFEU and further related EU regulations. Accordingly, it states that: (1) agreements; (2) concerted practices between undertakings; and (3) decisions by social organisations of undertakings, public corporations, associations or other similar organisations that have as their object or potential or actual effect the prevention, restriction or distortion of competition are prohibited.

Exceptions: An exception to this general prohibition is set out in the EU Vertical Block Exemption Regulation⁸ and its Hungarian equivalent regulation.⁹ This exception applies to vertical agreements concluded between a group of companies and its members, or between such group and its suppliers, if all its members are retailers of goods and if no individual member of the group, together with its affiliated companies, has a total annual turnover exceeding the equivalent in Hungarian forints of EUR 50 million. The exemption, however, applies only if the agreement's aim is not to restrict competition and the parties are not competitors with respect to the production of goods or the provision of services. Finally, to be exempted, the market share of the parties may not exceed 30% on the relevant market.

There are several scenarios where agreements may not be granted an exemption from the prohibition. For example, agreements or practices to fix prices or divide the market are prohibited and cannot be exempted. It is important to note that compliance with competition law must be assessed by the parties themselves. Incorrectly drafted agreements can entail significant legal risks. Therefore, it is highly advisable to seek proper legal advice and prepare an economic analysis on a case-by-case basis.



⁸ Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

⁹ Government decree no. 306/2022. (VIII. 11.) on the exemption of certain groups of vertical agreements from the prohibition of competition restrictions.

Dispute resolution

Commercial disputes are mostly referred to ordinary Hungarian courts. More complex commercial agreements or those that are based on a standard form often contain arbitration tribunals as forums for resolving disputes. While mediation is a recognized form of alternative dispute resolution, it is not mandatory under Hungarian law and parties are usually reluctant to choose this method for resolving their disputes.

Ordinary courts vs arbitration: Under the Hungarian Civil Procedure Code,¹⁰ companies can file claims with ordinary courts without an obligation to attempt resolution by way of mediation. Ordinary court proceedings, including first and second instances, may last several years, although the aim of the Hungarian Civil Procedure Code is to increase the efficiency of civil proceedings. To this end, the Hungarian Civil Procedure Code applies a bifurcated structure (a so-called pre-trial phase and a merits phase) and requires mandatory legal representation before the courts of general jurisdiction and in appellate proceedings to increase professionalism.

As a rule, litigation costs, e.g., filing fees, attorney fees, travel expenses, etc., have to be borne by the losing party to the litigation. These costs are not statutorily capped, albeit excessive attorney fees and court costs can be reduced by the court. Ordinary courts recognize and enforce foreign choice-of-law or jurisdiction clauses if the clauses comply with relevant Hungarian laws and EU laws, especially if these do not conflict with public order or mandatory Hungarian statutes.

Under the Hungarian Arbitration Act,¹¹ parties are free to submit to arbitration almost every type of commercial disputes (one of the exceptions is when a party is a consumer). Parties are entitled to stipulate the jurisdiction of either a domestic or an international arbitral institution (e.g., the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, ICC, LCIA, etc.) or to submit their dispute to an *ad hoc* arbitration. Arbitral awards have the same legal effects as the final decision of ordinary courts. Therefore, the parties have no right to file an appeal against an arbitral award and may only initiate set aside proceedings under extraordinary circumstances (e.g., violation of the right to be heard, etc.). In general, arbitration proceedings are faster and more commercially minded than ordinary court proceedings. However, in most cases, the total costs of arbitration proceedings are significantly higher than those of ordinary court proceedings.

Preliminary injunction: A request for preliminary injunction/interim relief is available in Hungary under certain circumstances. Such circumstances in which the court may order an injunction are: (1) to prevent a change in the status quo, if subsequent restitution would not be possible; (2) to safeguard the applicant's subsequent exercise of rights; (3) to prevent imminent damages the applicant may be exposed to; or (4) in other exceptional circumstances (especially in case of imminent infringement of an IP right). Regardless of which of these grounds are relied on, there is an additional general precondition: the disadvantages caused by the injunction should not exceed the advantages achieved. A request for an injunction can be filed before a claim is filed with the court. In this case, the applicant must file a claim within a maximum of 45 days after an injunction is granted. Parties can, of course, file a request for a preliminary injunction together or even following the filing of their main claim. The court decides on such request in expedited proceedings and usually issues a ruling within two to three weeks.

Enforcement of decisions: To enforce foreign ordinary court judgments and arbitral awards, the following requirements must be met: (1) a foreign court must have jurisdiction over the subject matter; (2) a court decision must be legally binding or have equivalent effect; and (3) the decision must meet none of the grounds for refusal, such as violation of public order.¹² Hungarian courts readily recognise foreign arbitral awards from other member states of the New York Convention,¹³ although a violation of Hungarian public order may serve, *inter alia*, as grounds for refusal.

¹⁰ Act CXXX of 2016 on the Civil Procedure Code.

¹¹ Act LX of 2017 on Arbitration.

¹² Act XXVIII of 2017 on Private International Law.

¹³ United Nations Convention on the Recognition and Enforcement of Foreign Arbitration Awards, implemented into Hungarian law by Law Decree No. 25 of 1962.

Tax

Corporate income tax (CIT): Companies tax resident in Hungary are subject to 9% CIT on their worldwide income, while non-resident companies are taxed only on their Hungarian source income. A company is resident in Hungary for CIT purposes if it is incorporated under Hungarian law and has its place of management in Hungary.

A foreign company is also deemed to be resident in Hungary if its place of effective management is in Hungary. The taxable income of both resident and non-resident corporate taxpayers is based on the pre-tax profit calculated in the profit and loss statement prepared in accordance with the Hungarian accounting or IFRS rules.

Hungary has tax treaties in place with dozens of countries. So, Hungarian taxpayers can often benefit from tax treaty protection in their cross-border operation.

Withholding tax: By virtue of domestic law, no withholding tax is levied in Hungary on dividends and interest payments made to corporate entities. In certain cases, subject to conditions and limitations, Hungary levies withholding tax on capital gains realized on the sale of shares in companies owning Hungarian real estate property.

Transfer pricing: Transfer pricing regulation in Hungary follows the OECD concept and in certain cases imposes documentation liability on associated enterprises to prove the arm's length nature of their internally applied prices.

Local business tax: In addition to CIT, local business tax (LBT) is imposed by local municipalities where the company has its registered seat or permanent establishment for LBT purposes. The LBT base is net sales revenue adjusted for certain items that decrease the tax base. The LBT rate varies between 0% to 2%, depending on the local regulation of the local municipalities.

Real estate tax: Acquisition of Hungarian real estate properties, or certain utilization rights to Hungarian real estate properties, or shares of companies qualifying as Hungarian real estate holding entities under the Hungarian tax regulation may be subject to 4% or 2% transfer tax (capped at approx. EUR 480k per plot as registered in the land registry).

VAT: The Hungarian value added tax (VAT) regulation is consistent with the EU VAT Directive. The general VAT rate in Hungary is 27%. In addition to this general tax rate, two reduced tax rates (5% and 18%) apply to certain products and services.

Global Minimum Tax: As of 1 January 2024, Global Minimum Tax regulation is effective in Hungary. According to this regulation taxpayers belonging to any multinational group of companies having revenue exceeding EUR 750 million at group level will be liable to pay additional tax if their effective tax burden in Hungary is less than 15%.

When calculating the effective tax burden various domestic tax payment liabilities, including corporate income tax, local business tax, innovation contribution tax, and "Robin Hood Tax" should be taken into account.

Other: Hungary also levies various industry specific or minor taxes, such as the innovation contribution tax, extra profit taxes, environmental tax, etc.

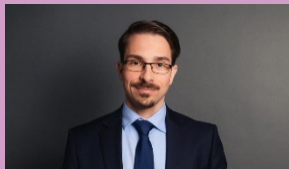
Your contacts



Pál Szabó

Partner

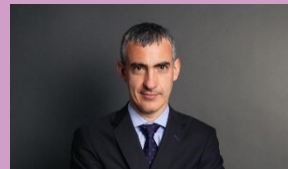
+36 1 301 8900
pal.szabo@twobirds.com



Bálint Halász

Partner

+36 1 301 8900
balint.halasz@twobirds.com



László Nanyista

Partner

+36 1 301 8900
laszlo.nanyista@twobirds.com



Thank you

[twobirds.com](https://www.twobirds.com)

Abu Dhabi • Amsterdam • Beijing • Bratislava • Brussels • Budapest • Casablanca • Copenhagen • Dubai
• Dublin • Dusseldorf • Frankfurt • The Hague • Hamburg • Helsinki • Hong Kong • London
• Luxembourg • Lyon • Madrid • Milan • Munich • Paris • Prague • Rome • San Francisco • Shanghai
• Shenzhen • Singapore • Stockholm • Sydney • Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority (SRA) with SRA ID497264. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.