

HUNGARY

Investment rules of the world

About

At DLA Piper, we have one of the largest finance and projects teams in the world with more than 600 dedicated lawyers and an established local law firm network. We share knowledge and skills in debt instruments, debt securities, funds, derivatives and portfolios, as well as energy, infrastructure and other projects, across Europe, the Middle East, Africa, Asia Pacific and the Americas.

When and wherever we work for you on finance and investment deals and projects, you can rely on our international platform; we are backed by the network and resources of one the largest and most-connected business law firms in the world.

We enjoy being part of your team, bringing experience across sectors, borders and financial products, supporting you on first-of-a-kind deals, in new markets and to grow.

With global perspective, we can help you to realize your financial strategy in whichever markets you do business.

Investment Rules of the World

With input from across our global network, this guide covers key legal topics for different financial activities and projects and gives you an overview of the points you may consider when initially looking at financing or investing in particular jurisdictions. Please [contact us](#) if you would like to discuss any legal issues or solutions for your business. We also welcome your feedback about this guide via investmentrules@dlapiper.com.



Hungary

Last modified 20 October 2017

Capital markets and structured investments

Issuing and investing in debt securities

Are there any restrictions on issuing debt securities?

There are restrictions on offering and selling debt securities under both Hungarian and EU law.

Unless certain exclusions or exemptions apply, it is unlawful to offer debt securities to the public in Hungary or to request that they are admitted to trading on a regulated market operating in Hungary unless an approved prospectus has been made available to the public.

Last modified 20 Oct 2017

What are common issuing methods and types of debt securities?

The most common types of debt securities issued in Hungary are bonds issued on a stand-alone basis or under a program.

The private offering of debt securities must take place through an investment firm or credit institution which is authorized to provide those services, with the exception of:

- a credit institution or investment firm offering its own securities;
- a non-resident credit institution or a non-resident investment firm offering its own securities through a branch; or
- an investment fund manager offering the investment units of the investment fund it manages.

Similar rules apply to public offerings. The issuer or the offeror shall procure the services of an investment service provider for organizing and conducting the procedure for the public offering of securities, unless:

- the provisions of the [Act CXX of 2001 on the Capital Market](#) (Capital Markets Act) pertaining to public offering applies (in the case of admission to trading on a regulated market);
- the government securities are offered by the issuer itself;
- an investment fund manager offers the investment units of an investment fund it manages;
- a credit institution or investment firm offers to issue its own securities;
- a non-resident credit institution or a non-resident investment firm offers its own securities through a branch;
- the provisions of the Capital Markets Act pertaining to public offering apply (only in the case of registration in a multilateral trading facility), and shares of the same class and type have already been registered previously in the same multilateral trading facility; or

- the provisions of the Capital Markets Act pertaining to public offering apply (only in the case of registration in a multilateral trading facility), and the securities to be registered, issued as part of a series have already been admitted to trading on a regulated market or on a stock exchange established in an OECD member state.

The different types of debt securities offered in Hungary include:

- debt securities characterized by the type of interest or payment such as fixed-rate securities, floating-rate securities, variable-rate securities, zero-coupon securities and high-yield bonds;
- guaranteed securities, subordinated securities, perpetual debt securities (ie debt securities that have no specified redemption date);
- asset-backed securities;
- derivative securities such as securities linked to the value of one or more reference asset including shares, commodities, interest rate, currency rate or index, and credit-linked notes;
- hybrid securities (securities with both debt and equity features);
- equity-linked securities such as convertible bonds (debt securities convertible into the equity of the issuer);
- exchangeable bonds (debt securities convertible into the equity of a third party);
- depositary receipts (a security issued by a depositary conferring on the holders beneficial ownership of certain underlying assets held by the depositary for the holders); and
- warrants (securities giving the holders the option to purchase the equity of the issuer or a related company).

Last modified 20 Oct 2017

What are the differences between offering debt securities to institutional / professional or other investors?

The [Prospectus Directive](#) does not make a distinction between professional and other investors for the purposes of its disclosure requirements but does include different disclosure regimes by reference to the minimum denomination of a single security.

If the denomination of the securities is equal to or above €100,000 (or the equivalent in another currency), the 'wholesale' rules apply. If the denomination is under €100,000, the 'retail' rules apply. Additional disclosure requirements apply for retail securities.

Last modified 20 Oct 2017

When is it necessary to prepare a prospectus?

Under the [Prospectus Directive](#), unless an exemption applies, it is necessary to publish a prospectus where there is an offer of securities to the public or an application for the securities to be admitted to trading on a regulated market.

An offer is deemed not to have been made to the public if:

- securities are offered only to qualified investors;
- securities are offered to less than 150 persons in each EU member state who are not considered to be qualified investors;
- securities are offered to investors who each purchase securities for a total consideration of at least €100,000, or its equivalent in any other currency;
- the face value of the securities offered is at least €100,000, or its equivalent in any other currency;
- the total consideration for all securities in the EU included in the offer shall not exceed €100,000, or its equivalent in any other currency, within twelve months from the date of announcement of the offer; and/or
- a limited company is created by the transformation of a cooperative society and its shares are offered only to the members and shareholders of the predecessor.

Even if the offer is deemed not to be made to the public, a Prospectus Directive compliant prospectus may still be required if an application is made for the securities to be admitted to trading on a regulated market. An exemption from both the offer to the public and the admission to trading on a regulated market is required in order to avoid having to publish a prospectus.

Last modified 20 Oct 2017

What are the main exchanges available?

The Budapest Stock Exchange has two principal sections on which debt securities are traded:

- debt securities section (cash market); and
- futures and options section (derivatives market).

Debt securities section

Debt securities represented in the debt securities section of the Budapest Stock Exchange include government debt securities (treasury bills and government bonds), corporate bonds and mortgage bonds.

Derivatives section

The derivatives section of the Budapest Stock Exchange consists of futures and options contracts based on single stocks, equity indices, FX and interest rate.

Last modified 20 Oct 2017

Is there a private placement market?

Hungary has a relatively active private placement market but there is no dominant standard for documentation.

Last modified 20 Oct 2017

Are there any other notable risks or issues around issuing or investing in debt securities?

Issuing debt securities

Issuers, offerors and distributors are required to take responsibility for prospectuses for debt securities. Misleading statements in, or omissions from, any applicable offering document can give rise to (joint and several) civil liability under Hungarian law.

Investing in debt securities

If the prospectus has been supplemented during the public offering of securities any investor who has subscribed for securities or entered into an agreement to purchase securities before the supplement was made available to the public shall be entitled to cancel his declaration of subscription or withdraw from the agreement. The investor may exercise the right of withdrawal within two working days from the date when the supplement was published.

Last modified 20 Oct 2017

Establishing and investing in debt / hedge funds

Are there any restrictions on establishing a fund?

Generally

Establishing a fund, offering fund securities and operating a fund, among other things, are regulated activities under the Act XVI of 2014 on Collective Investment Trusts and Their Managers, and on the Amendment of Financial Regulations and is therefore subject to regulation by the National Bank of Hungary.

Collective Investment Trusts

The regulations apply to activities undertaken in relation to 'Collective Investment Trusts' which means any form of collective investment which raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors.

Last modified 20 Oct 2017

What are common fund structures?

An investment fund may be established:

- in the form of private or public investment funds, depending on the mode of placing investment units on the market (form of operation);
- based on the sphere of potential investors, in the form of an investment fund offered to professional or retail investors (mode of marketing);
- in the form of open-ended or closed-ended investment funds, according to the type of redemption of their investment units (type of investment fund);
- for a fixed or unfixed term (maturity of the investment fund);
- in the form of securities fund, real estate fund, venture capital fund or private equity fund, based on the primary assets in which the investment fund may invest (type of primary category of assets); and
- on the basis of harmonization as Undertakings for Collective Investment in Transferable Securities (UCITS) or Alternative Investment Fund (AIF) (type of harmonization).

Last modified 20 Oct 2017

What are the differences between offering fund securities to professional / institutional or other investors?

Retail funds

The investment units of securities funds and real estate funds may be offered to professional and retail investors alike.

Institutional/professional funds

Venture capital funds and private equity funds may be established for fixed periods by the private offering of non-redeemable investment units to professional investors exclusively.

Last modified 20 Oct 2017

Are there any other notable risks or issues around establishing and investing in funds?

Establishing funds

There are no other specific issues to mention here for the purposes of this site.

Investing in funds

There are no other specific issues to mention here for the purposes of this site.

Last modified 20 Oct 2017

Managing and marketing debt / hedge funds

Are there any restrictions on marketing a fund?

Undertakings for Collective Investments in Transferable Securities (UCITS)

UCITS, including those established in Hungary, have an EU passport which enables fund promoters to create a single product for marketing in all EU member states and on the completion of the appropriate notification procedure, a UCITS established in one member state can be sold in any other.

A UCITS intending to market in another member state must complete and submit to its home regulator a notification including certain specified information, including copies of key investor documents. The home regulator then completes a notification file which is sent in a regulator-to-regulator transmission, following which the UCITS can be sold in the other member state.

Alternative Investment Funds (AIFs)

Under the [Alternative Investment Fund Managers Directive](#), marketing is defined as: a direct or indirect offering or placement at the initiative of the Alternative Investment Fund Manager (AIFM) or on behalf of the AIFM of units or shares in an AIF it manages to or with investors domiciled or with a registered office in the EU.

An AIFM may only market an AIF to EU investors if it is authorized by a relevant EU regulator – registration with one EU regulator opens access, subject to certain further limited conditions, to marketing to professional investors across the EU under an EU passport or if it complies with national private placement regimes (where available).

Reverse solicitation and the definition of ‘marketing’

The [Alternative Investment Fund Managers Directive](#) generally continues to permit professional investors who wish to invest in AIFs based on their own initiative (reverse solicitation); however, the EU is currently reviewing this area during 2017 and may impose more stringent requirements.

Specifically in Hungary, [Act XVI of 2014 on Collective Investment Trusts and Their Managers, and on the Amendment of Financial Regulations](#) defines marketing as a direct or indirect offering or placement at the initiative of the investment fund manager or on behalf of the investment fund manager of collective investment instruments of a collective investment trust it manages for investors domiciled, or with a registered office, in the EU.

Last modified 20 Oct 2017

Are there any restrictions on managing a fund?

Fund management in Hungary is regulated under [Act XVI of 2014 on Collective Investment Trusts and Their Managers, and on the Amendment of Financial Regulations](#). The National Bank of Hungary is responsible for regulating funds, fund managers and those marketing funds and any legal or natural person is prohibited from carrying on regulated activities, such as fund management, without authorization.

Alternative Investment Fund Managers (AIFMs) are also subject to regulation under the [Alternative Investment Fund Managers Directive](#) (as implemented in Hungary) and managers of Undertakings for Collective Investments in Transferable Securities (UCITS) are subject to certain requirements under the [Undertakings for Collective Investment in Transferable Securities Directive](#). Full National Bank of Hungary registration involves a significant authorization process which among others must include information on senior personnel (must be suitable persons etc), organizational structure, policies and procedures and remuneration practices.

However, AIFMs based in Hungary can be exempted from full regulation on certain grounds, including managing assets under €500 million where assets are not leveraged and investors have no redemption rights for five years, and managing assets under €100 million including assets acquired through leverage. Exempted managers must still register with the regulator.

Last modified 20 Oct 2017

Entering into derivatives contracts

Are there any restrictions on entering into derivatives contracts?

Unless an exemption or exclusion applies, a person entering into a derivatives contract by way of business in Hungary (such as a dealer) will ordinarily have to be authorized by the National Bank of Hungary if the transaction is one of the specified activities set out in the applicable legislation such as:

- options;
- futures;
- contracts for difference; or
- rights to or interests in investments.

The [European Market Infrastructure Regulation](#) applies to all derivative transactions and requires transactions to be reported to regulators and for transactions between dealers to be cleared or subject to other risk mitigation techniques such as initial margin and variation margin requirements.

Last modified 20 Oct 2017

What are common types of derivatives?

Derivative contracts are entered into in Hungary for a range of reasons including hedging, trading and speculation.

Derivatives may be traded over-the-counter or on an organized exchange.

All of the main types of derivative contract are widely used in Hungary:

- forwards;
- futures;
- swaps (such as interest rate or currency swaps); and
- options (call options and put options).

The value of the derivative contracts is based on the value of the underlying assets. The main classes of underlying asset seen in Hungary are:

- foreign currency;
- equity;
- fixed income instruments; and
- commodities.

Last modified 20 Oct 2017

Are there any other notable risks or issues around entering into derivatives contracts?

Since the global financial crisis in 2007 and 2008, derivatives and particularly over-the-counter derivatives have attracted significant regulatory attention. The European Commission has sought, in particular, to:

- enhance transparency by requiring the provision of comprehensive information on over-the-counter derivative position;
- reduce counterparty risk by increasing the use of central counterparty clearing; and

- improve the management of operational risk by increasing the standardization of derivatives contracts.

As a result, the derivatives market has seen and continues to see the introduction of a significant amount of new regulation and this has led to substantial compliance costs for market participants.

Last modified 20 Oct 2017

Debt finance

Lending and borrowing

Are there any restrictions on lending and borrowing?

Lending

Lending in a business-like manner is a regulated activity in Hungary, therefore a lender will need to be authorized by the National Bank of Hungary to conduct such business.

Mortgage and consumer loans are subject to a range of regulatory requirements that do not apply to unregulated loans. For example, for regulated mortgage contracts, there are particular restrictions around how:

- the loans are marketed, originated and sold;
- lenders administer the loans on an ongoing basis; and
- to deal with borrowers who fall behind with their payments.

Regulated credit agreements on the other hand have specific requirements regarding how the agreement is drafted and formatted and what information must be included.

There are no additional restrictions that apply to foreign lenders making loans to Hungarian borrowers.

Borrowing

While borrowers are generally not regulated, it is advisable for borrowers to consider whether either the mortgage or consumer lending regimes apply to their activities, in which case they will benefit from the protections mentioned above.

Last modified 20 Oct 2017

What are common lending structures?

Lending in Hungary can be structured in a number of different ways to include a variety of features depending on the commercial needs of the parties.

A loan can either be provided on a bilateral basis (a single lender providing the entire facility) or syndicated basis (multiple lenders each providing parts of the overall facility).

Syndicated facilities by their nature involve more parties (such as agents which fulfil certain roles for the finance parties), are more highly structured and involve more complex documentation. Larger financings will typically be done on a syndicated basis with one of the syndicate members taking the lead in coordinating and arranging the financing.

Loans will be structured to achieve specific objectives, eg term loans, working capital loans, equity bridge facilities, project facilities and letter of credit facilities.

Loan durations

The duration of a loan can also vary between:

- a term loan, provided for an agreed period of time but with a short availability period;
- a revolving loan, provided for an agreed period of time with an availability period that extends nearer to maturity of the loan and which may be redrawn if repaid;
- an overdraft, provided on a short-term basis to solve short-term cash flow issues; or
- a standby or a bridging loan, intended to be used in exceptional circumstances when other forms of finance are unavailable and often attracting a higher margin.

Loan security

A loan can either be secured, unsecured or guaranteed. For more information, see [Giving and taking guarantees and security](#).

Loan commitment

A loan can also be:

- committed, meaning that the lender is obliged to provide the loan if certain conditions are fulfilled; or
- uncommitted, meaning that the lender has discretion whether or not to provide the loan.

Loan repayment

A loan can also be repayable on demand, on an amortizing basis (in instalments over the life of the loan) or scheduled (usually meaning the loan is repayable in full at maturity).

Last modified 20 Oct 2017

What are the differences between lending to institutional / professional or other borrowers?

Lending to institutional/professional borrowers (as opposed to consumer borrowers) is subject to less regulatory oversight and is therefore less burdensome from a compliance perspective.

By contrast, stricter rules shall apply in case of lending in the context of mortgages and to consumers. For more information, see [Lending and borrowing – restrictions](#).

Last modified 20 Oct 2017

Do the laws recognize the principles of agency and trusts?

Yes, as of 2013 both principles are recognized as a matter of Hungarian law, however, no significant court practice has been established yet regarding these legal instruments.

For instance, it is possible to appoint an agent to act on behalf of other parties and a trustee to hold rights and other assets on trust for the lenders or secured parties.

Last modified 20 Oct 2017

Are there any other notable risks or issues around lending?

Generally

Loan agreements and other finance documents are subject to general contractual principles. For example, Hungarian courts will not enforce an excessive penalty and so lenders have to be careful about the rate of default interest charged on a loan. Lenders therefore tend to opt for a modest uplift of around 2% above the usual rate.

Specific types of lending

Specific to the area of mortgage lending is the issue of whether a lender falls within the Hungarian mortgage regime. The [Mortgage Credit Directive](#), as implemented in Hungary, aims to prevent the irresponsible lending and borrowing practices that were exposed during the global financial crisis. It imposes a number of requirements on lenders including the need to:

- conduct affordability tests before lending;
- provide standard information about the mortgage to enable borrowers to compare products; and
- ensure that staff are suitably trained.

Standard form documentation

Major syndicated finance transactions under the laws of Hungary are governed by documentation based on recommended forms published by the [Loan Market Association](#) (LMA). Bilateral finance transactions are more likely to be documented on bank standard form documentation prepared in-house.

Last modified 20 Oct 2017

Are there any other notable risks or issues around borrowing?

Borrowers should be aware of the potential implications of the EU's [Bank Recovery and Resolution Directive](#) (BRRD), which outlines certain measures for dealing with failing financial institutions.

The BRRD applies to financial institutions incorporated in the European Economic Area (EEA), but does not apply to EEA branches of non-EEA incorporated entities.

Article 55 of the BRRD gives authorities the power to 'bail in' obligations of failed EEA financial institutions and also postpone the enforcement of early termination rights against the affected institution. 'Bail in' describes a variety of write down and conversion powers, such as the power to convert certain liabilities into shares or cancel debt instruments. In the case of Hungarian or other EEA law contracts, such powers override what the contracts says. In the case of non-EEA law contracts, there are requirements to incorporate such provisions into the contract.

Last modified 20 Oct 2017

Giving and taking guarantees and security

Are there any restrictions on giving and taking guarantees and security?

Some of the key areas affecting the giving of guarantees and security are as follows.

Capacity

It is important to check the constitutional documents of a company giving a guarantee or security to ensure it has an express or ancillary power to do so and that there are no restrictions on the directors' powers that would be preventative.

Insolvency

Guarantees and security may be at risk of being set aside under the insolvency laws of Hungary if the guarantee or security was granted by a company within a certain period of time prior to the onset of insolvency.

Under Hungarian law, the creditor, and on behalf of the debtor, the liquidator may file for legal action before the court within 90 days from the time of gaining knowledge or within a one-year limitation period from the date of publication of the notice of liquidation to contest certain contracts entered into by the debtor prior to the onset of insolvency.

Financial assistance

Public companies limited by shares may provide financial assistance to third parties for the acquisition of shares issued by the public company limited by shares only under market conditions, from the assets available for the payment of dividends and provided that the general meeting has approved such decision by at least a three-quarters majority upon recommendation by the management board. No financial assistance restrictions apply for other corporate forms.

Last modified 20 Oct 2017

What are common types of guarantees and security?

Common forms of guarantees

Unless the parties agree otherwise, under the general rules of the Hungarian Civil Code the guarantee contract, and the statement of guarantee means a guarantor's commitment under which payment is to be made to the creditor subject to the conditions laid down in the statement. The obligation of the guarantor set out in the statement of guarantee is independent of the underlying obligation of the debtor. The guarantor may not raise the same objections that can be made by the debtor against the creditor. The guarantor is liable to make payment under the guarantee if the creditor requested payment in writing, strictly abiding by the requirements specified in the statement of guarantee.

Common forms of security

There are three basic types of security interest that can be created under the laws of Hungary:

- a pledge;
- a charge; and
- a mortgage.

Different types of security are suitable for securing different types of assets.

Under Hungarian law it is possible to grant security over all of the assets of a Hungarian company or over individual assets. Granting security over all of a company's assets will tend to be achieved by way of a pledge agreement which will include:

- a mortgage over real estate;
- a pledge over assets which are identifiable and can be controlled by the creditors (such as equipment);
- a pledge over assets identified by detailed description (such as stock); and
- an assignment or pledge over receivables and rights.

Last modified 20 Oct 2017

Are there any other notable risks or issues around giving and taking guarantees and security?

Giving or taking guarantees

To be valid, a guarantee needs to be in writing and signed by the guarantor.

Consideration for a guarantee is subject to general contractual principles. In the case of a guarantee, the underlying obligations will usually be the consideration for the guarantee and so it is advisable to execute the guarantee at the same time as executing the underlying obligations to avoid any suggestion of past consideration. Often the guarantee is included in the loan agreement and so this should not be an issue. It can also be difficult to establish consideration for a guarantee as the primary obligations are between the underlying obligor and beneficiary, for example between the borrower and lender.

Giving or taking security

Once granted, certain forms of security need to be properly perfected before they are valid against third parties. Perfection formalities can range from having the secured asset delivered to the security holder, registration of the security and notice being given to third parties. Most charges created by a Hungarian company must be registered at the public registry within 15 days of its creation.

Like guarantees, for a period after a new security interest has been granted (known as the hardening period), it is at risk of being set aside in certain circumstances under Hungarian insolvency laws. Reviewable transactions include those conducted at an undervalue or preferences.

Last modified 20 Oct 2017

Financial regulation

Law and regulation

What are the main laws and regulations that apply to entities that are involved in finance and investments generally?

Generally

Act CXXXIX of 2013 on the National Bank of Hungary (*2013. évi CXXXIX. törvény a Magyar Nemzeti Bankról*) (regulates the primary objectives, basic tasks and responsibilities of the National Bank of Hungary)

Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (*2013. évi CCXXXVII. törvény a hitelintézetekről és a pénzügyi vállalkozásokról*) (regulates the obligations of credit institutions and financial enterprises regarding their establishment and operation)

Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (*2007. évi CXXXVIII. törvény a befektetési vállalkozásokról és az árutőzsdei szolgáltatókról, valamint az általuk végezhető tevékenységek szabályairól*) (regulates the obligations of investment firms and commodity dealers regarding their establishment and operation)

Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (*2007. évi CXXXVI. törvény a pénzmosás és a terrorizmus finanszírozása megelőzéséről és megakadályozásáról*) (combating money laundering and terrorist financing)

Act CXX of 2001 on the Capital Market (*2001. évi CXX. törvény a tőkepiacról*) (regulates the capital markets and the obligations of the market participants thereof)

Act XXXVII of 2014 on the further development of the system of institutions strengthening the security of the individual players of the financial intermediary system (*2014. évi XXXVII. törvény a pénzügyi közvetítérendszer egyes szereplőinek biztonságát erősítő intézményrendszer továbbfejlesztéséről*) (stipulates provisions regarding the financial stability of the financial sector and establishes the framework for the administrative restructuring of financial institutions)

Consumer credit

Act CLXII of 2009 on Consumer Credit (*2009. évi CLXII. törvény a fogyasztónak nyújtott hitelről*) (consumer lending and the rights and obligations of the lenders and consumers)

Mortgages

Mortgage Credit Directive (2014/17/EU) (mortgage credit)

Act XXX of 1997 on Mortgage Loan Companies and on Mortgage Bonds (*1997. évi XXX. törvény a jelzálog-hitelintézetekről és a jelzáloglevélről*) (regulates the establishment and operation of mortgage loan companies and the use of mortgage bonds)

Corporations

Act V of 2013 on Civil Code (*2013. évi V. törvény a Polgári Törvénykönyvről*) (body of rules regulating the core areas of private law)

Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (2006. évi V. törvény a cégnyilvánosságról, a bírósági cégeljárásról és a végelszámolásról) (establishes the legal framework regarding the foundation and registration of companies and for providing full public access to information from registers of official company records)

Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign Companies (1997. évi CXXXII. törvény a külföldi székhely vállalkozások magyarországi fióktelepeiről és kereskedelmi képviselőteiről) (business establishment for foreign companies)

Act XLIX of 1991 on Bankruptcy Proceedings and Liquidation Proceedings (1991. évi XLIX. törvény a csdeljárásról és a felszámolási eljárásról) (bankruptcy and liquidation proceedings)

Funds and platforms

Alternative Investment Fund Managers Directive (2011/61/EU) (fund managers)

Undertakings for Collective Investment in Transferable Securities Directive (2009/65/EC) (mutual funds)

Other key market legislation

Bank Recovery and Resolution Directive (2014/59/EU) (recovery and resolution)

Capital Requirements Regulation (Regulation (EU) 575/2013) (capital requirements)

European Market Infrastructure Regulation (Regulation (EU) 648/2012) (derivatives)

Market Abuse Regulation (Regulation (EU) 596/2014) (market abuse)

Markets in Financial Instruments Directive (2004/39/EC) (financial instruments)

Last modified 20 Oct 2017

Regulatory authorization

Who are the regulators?

The [National Bank of Hungary](#) is the conduct regulator for firms providing financial products and services in both retail and wholesale markets, and also the prudential regulator for many firms. It is also responsible for enforcing the market abuse and listing regimes.

The [National Bank of Hungary](#) is also responsible for the prudential regulation of systemically important financial institutions, including banks, building societies, insurers and major investment firms.

Last modified 20 Oct 2017

What are the authorization requirements and process?

All financial institutions/investors must apply to the National Bank of Hungary for authorization.

According to the general rule, the regulators must assess whether the application meets the required threshold conditions within three months of the submission of the completed application, however, in certain circumstances the three-month period might be extended on one occasion by up to a further three months

The regulator will also approve key individuals (eg senior management) in their roles.

Authorized firms and individuals are listed on the [Registry of the National Bank of Hungary](#).

Last modified 20 Oct 2017

What are the main ongoing compliance requirements?

Threshold conditions (such as having adequate financial resources and compliance arrangements in place) are an ongoing compliance requirement for authorized firms.

Failure to comply with the threshold conditions and more detailed regulatory rules can result in sanctions for firms and regulated individuals, and a loss of regulated status.

Last modified 20 Oct 2017

What are the penalties for failure to be authorized?

A person undertaking a regulated activity without being authorized or exempt, commits a criminal offence and is liable to imprisonment.

Last modified 20 Oct 2017

Regulated activities

What finance and investment activities require authorization?

Generally

Under Hungarian law, carrying on finance and investment activities by way of business is subject to government authorization. By way of business shall mean gainful (for-profit) economic activities performed on a regular basis for compensation, involving the conclusion of deals which have not been individually negotiated.

The following financial and investment activities are subject to authorization:

- financial services and financial auxiliary services (such as taking deposits and receiving other repayable funds from the public, credit and loan operations, financial leasing, money transmission services or the issuance of electronic money);
- investment services, investment ancillary services and commodity exchange services (such as dealing on own account, portfolio management, granting credits and loans to investors or investment research and financial analysis); and
- services provided under the Act CXX of 2001 on the Capital Market (such as the activities of any stock exchange, central securities depository, clearing house, central counterparty established in Hungary)

Consumer credit

Consumer credit activities, including credit broking, operating an electronic system in relation to lending and entering into a regulated credit agreement as lender are regulated activities.

Last modified 20 Oct 2017

Are there any possible exemptions?

As a general rule, every person carrying out finance and/or investment activities must apply for authorization, however, certain entities, such as the European Investment Fund or European Investment Bank are exempt from this obligation.

Last modified 20 Oct 2017

Do any exchange controls or other restrictions on payments apply?

Hungary does not operate any foreign currency controls.

For cases of money transferring from non-EU member states, imports of foreign currency may need to be declared in the custom declarations, but there is no legal restriction on moving money in and out of the country.

Compliance with the EU rules on payments (EU Payments Regulation and the Transfer of Funds Regulations) must be ensured.

There may also be anti-money laundering and tax considerations to take into account.

Last modified 20 Oct 2017

What are the rules around financial promotions?

Under Hungarian law, the communications by financial institutions are subject to special consumer protection provisions governing the form and content of financial promotions. These provisions stipulate that financial promotions shall be clear about the key conditions, shall not be misleading and shall not create unrealistic expectations.

Last modified 20 Oct 2017

Entity establishment

What types of legal entity are generally used to undertake financial or investment activity?

Generally

The most common types of legal entities are companies limited by shares and limited-liability companies, both of which are body corporates with separate legal personality that limit the liability of their members.

Companies limited by shares can either be private (denoted by the suffix 'Zrt.') or public (denoted by the suffix 'Nyrt.') depending on whether their shares are offered to the public. Some activities require a particular type of legal entity to be used, for example banks and specialized credit institutions may only operate in the form of companies limited by shares or as branches.

The liability of a company's shareholder is limited by shares, in which case they are only liable to pay for their shares and not the company's debts.

Limited-liability companies (or 'Kft.') are similar to companies limited by shares in many ways. The main difference is that they require a lower minimum initial capital contribution.

Funds

Investment funds are recognized as legal entities, and shall be deemed established when registered by the National Bank of Hungary, and shall be deemed terminated when removed from the register. In its capacity as the investment fund's lawful representative, an investment fund manager may act in the name of the investment fund.

Investment fund managers (with certain exceptions) typically operate in the form of companies limited by shares.

Last modified 20 Oct 2017

Is it possible to conduct lending or investment business through a branch or establishment?

Yes.

A company can conduct lending or investment business in Hungary through an establishment (also known as a 'branch') but this does not create a separate legal entity.

Overseas companies having an establishment in Hungary need to comply with the Act CXXXII of 1997 on Hungarian Branch Offices and Commercial Representative Offices of Foreign Companies.

Overseas companies carrying on a trade in Hungary through a 'permanent establishment' will be subject to Hungarian corporation tax.

Last modified 20 Oct 2017

FinTech

FinTech products and uses

What are the most common technology products and FinTech applications used or being developed in the finance and investment marketplace?

Peer-to-peer funding platforms and marketplace lending

There is no strict definition for marketplace lending given the wide variety of entrants and financing techniques involved. The principal characteristics of new marketplace lenders, however, would include:

- operating from or through a non-bank lending platform established as a specialist corporate or special purpose vehicle (SPV) based structure;
- applying technology to leverage and optimize the lending platform and user experience; and
- connecting borrowers and lenders through the platform rather than applying funding arising from a wider deposit-based relationship.

Marketplace lending is available to address most forms of traditional bank funding products. Recently products have included:

- virtual credit cards;
- consumer loans;
- student lending products;
- small and medium-sized enterprises (SME) lending; and
- residential property and commercial property mortgage lending.

It is likely that the volume of lending in these product areas as well as further and additional product areas will significantly increase over the coming years, as financing becomes more readily available to support the marketplace lending sector.

HOW ARE MARKETPLACE LENDING PLATFORMS FUNDING THEMSELVES?

Marketplace lending includes peer-to-peer (P2P) type structures often operated through an electronic platform provider as well as crowdfunding and also direct-to-retail financing mechanisms. The increase in demand for credit through these marketplace platforms has also been appealing to larger pools of available capital, such as private equity and venture capital funds as well as institutional sponsors. Funding platforms will now often be backed by institutional finance in addition to, or rather than, individual investors on a traditional P2P basis.

ISSUES FOR STARTUP MARKETPLACE LENDERS

Following the initial incorporation and startup funding for a new marketplace lending business, there will be a need to establish funding lines which can accommodate growth of the ongoing lending activities of the platform. As the startup lender will not have an established track record, deposit base or asset pools, the funding structure will often follow the format of a warehouse securitization structure.

Blockchain, smart contracts and cryptocurrencies

WHAT IS BLOCKCHAIN?

Blockchain provides a new approach to holding and authenticating data. It is a database operating through distributed ledger technology in which data is recorded on computers, by way of a P2P mechanism, based on pre-agreed consensus algorithms in the applicable participating network. It is a form of database where data is stored in the chain in either fixed structures called 'blocks' or algorithm functions called 'hashes'.

Each block includes unique features such as its unique block reference number, the time the block was created and a link back to the previous block. Each block is reviewed by a number of nodes and the block is only added to the database if the node reaches consensus that the block only contains valid transactions. Content includes digital assets and instructions which reflect the transactions and parties to those transactions. The ability to track previous blocks in the chain makes it possible to identify transactions back to the first ever transaction completed, enabling parties to verify and establish the authenticity of the assets in the latest block. This makes blockchain exceptionally accurate and secure. This process requires vast amounts of computing power, making it practically impossible to insert fake transactions into a block.

Specialist users on the system apply advanced computing software to identify time stamped blocks, verify the accuracy of the blocks using sophisticated algorithms and add the verified blocks to the chain. As the number of participants increases, the replication of the data over a wider base makes it harder for any person to alter the data in the chain. Any attempted addition or modification to the information on a block needs to be approved by all users in the network and verification of any block can only happen through a 'proof of work' process.

As a result, the data is identified and authenticated in near real-time, providing a permanent and incorruptible database sufficiently robust to operate as a store of value (eg in the case of cryptocurrencies such as bitcoin) or providing an indisputable record for example relating to securities transfer.

Blockchain is a decentralized system, created and maintained by users of the network rather than being dependent on any central or third party intermediary. It may be public and open ('permissionless' or 'unpermissioned') or structured within a private group ('permissioned').

Permissionless blockchains include bitcoin and ethereum, in which anyone can set up a node that once authorized, can validate, observe and submit transactions. The identities of the participants are not known (other than the unique and random identities known as an 'address'). Permissioned ledgers restrict participation in the network and only the specific participants are given access and are known within the network. The network is private, and only organizations that have been authorized can participate and view transactions.

WHAT ARE SMART CONTRACTS AND DECENTRALIZED AUTONOMOUS ORGANIZATIONS (DAOS)?

Developments in blockchain are also providing an ability to transfer and rely on instructions verified within the electronic system in the form of so called 'smart contracts'. These contracts have been converted into code and are then executed and enforced by the blockchain network on the occurrence of an event. This reduces the need for intermediaries to collect, store and act on communicated information.

Smart contracts are essentially pre-written computer codes which are stored and replicated on distributed ledger platforms such as blockchain. Execution takes place over the network, eliminating the need for intermediary parties to confirm the transaction, leading to self-executing contractual provisions. These contracts can be as simple as moving a balance from one account to another or advanced, more-complex interactions with the outside world using so called 'Oracles'. With Oracles, the contract code consults with a service outside of the blockchain network to make a decision. This may entail receiving a confirmation that an event has occurred, such as payment, which automatically executes a further step in the contract, such as the transfer of an asset, which might be in digital form or by delivering instructions to a person or warehouse to release the asset for delivery.

DAOs are essentially online, digital entities that operate through the implementation of pre-coded rules. These entities often need minimal to zero input into their operation and they are used to execute smart contracts, recording activity on the blockchain. DAOs can be particularly challenging to regulate depending on their software engine, the nature of transactions they are completing or other unique features. Questions of ownership and responsibility for resulting acts of DAOs can also be brought to question if any technical issues arise with their operation.

WHAT IS A CRYPTOCURRENCY?

The European Central Bank definition of a cryptocurrency is that it is a digital representation of value that is neither issued by a central bank or public authority nor necessarily attached to a fiat currency, but is issued by natural or legal persons as a means of exchange and can be transferred, shared or traded economically. The oldest and best-known cryptocurrency is bitcoin (itself based on the bitcoin platform) although many other cryptocurrencies now exist. For example the most widely-known alternatives to bitcoin being ether based on the ethereum platform and litecoin (these cryptocurrencies are now actively traded with a large developing infrastructure for holding, pricing and exchanging currency).

Initial coin offerings and token-based products

WHAT IS AN INITIAL COIN OFFERING (ICO)?

ICOs are a form of digital currency or token using blockchain technology. ICOs are often a means by which funds are raised for a new blockchain or cryptocurrency venture (the market for ICOs is currently booming). ICOs come in a wide variety of forms and may be used for a wide range of purposes. Some forms of ICOs may be directed at customers or suppliers as a form of loyalty program or a form of access or purchasing power (preferential or otherwise) in respect of assets of the issuer's business. Other forms may be more focused on raising initial funding. It is essential to examine the legal and regulatory basis for any ICO as an unauthorized offering of securities is illegal and may result in criminal sanctions in a number of jurisdictions. Legal analysis of the underlying token will determine if it should be treated as a specified investment or form of regulated security or is more appropriately a form of asset that is not itself subject to the regulatory regime.

Typical attributes provided by tokens will include:

- access to the assets or features of a particular project;
- the ability to earn rewards for various forms of participation on the platform; and
- prospective return on the investment.

Key aspects to consider will include the:

- availability and limitations on the total amount of the tokens;
- decision-making process in relation to the rules or ability to change the rules of the scheme;
- nature of the project to which the tokens relate;
- technical milestones applicable to the project;
- basis and security of underlying technology;
- amount of coin or token that is reserved or available to the issuer and its sponsors and the basis of existing rights;
- quality and experience of management; and
- compliance with law and all regulatory requirements.

The nature of the business and the purpose and structure of the token offering will typically be set out in a white paper available to potential purchasers.

Artificial intelligence and robo advisory systems

Automated financial advice tools, also known as 'robo advisors' are software tools driven by artificial intelligence (AI) that provide a variety of investment advice services from portfolio selection to personal finance planning. The systems are generally operated on a platform /personal dashboard basis; a user can input a set of personalized data to be processed by the AI algorithms which produce optimized outcomes around specified parameters. Although generally of application in the asset management sector, AI and automated advice tools also impact in the banking and private wealth advisor sectors; the implications include decreased human involvement, although recent trends have included a growth in popularity of hybrid structures which combine AI and human inputs.

Data analysis and cloud computing

Cloud computing enables delivery of IT services through internet-based tools and applications, rather than direct connection to a physical server. Cloud-based storage makes it possible to save masses of data to remote servers, accessible through the internet rather than by way of a physical connection. With the vast data processing and storage capabilities offered by cloud computing technology and virtually no infrastructure barriers to entry, there are a number of applications in building and running FinTech businesses and the technology has had a significant impact in recent years.

Last modified 20 Oct 2017

Are there any restrictions, specific laws, regulations or procedures that apply to FinTech products?

General financial regulatory regime

The National Bank of Hungary (National Bank) is the conduct regulator for firms providing financial products and services in both retail and wholesale markets, and also the prudential regulator for many firms. It is also responsible for enforcing the market abuse and listing regimes.

GENERAL

Under Hungarian law, carrying on finance and investment activities by way of business is subject to government authorization. All financial institutions/investors must apply to the National Bank for authorization. The National Bank will also approve key individuals (eg senior management) in their roles. Authorized firms and individuals are listed on the Registry of the National Bank. Where FinTech products and/or applications involve financial activity which requires regulatory authorization, the firms providing such products and/or applications must be authorized by the National Bank.

REGULATORY DEVELOPMENTS ON INVESTMENT PLATFORMS

The Hungarian regulatory framework on investment platforms follows the direction of European Union developments.

Electronic payments platforms and regulation of peer-to-peer lenders

ELECTRONIC PAYMENT PLATFORMS

Act CCXXXV of 2013 on Payment Service Providers (Payment Service Act) regulates the establishment and the operation of electronic payment platforms. A number of FinTech businesses are offering electronic payment platforms to rival the traditional payment systems. The Payment Service Act and Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (Financial Institutions Act) contain a number of electronic money (e-money)-related rules, aimed at businesses that are issuing or considering the issuance of e-money. E-money is defined by the Financial Institutions Act as electronically, including magnetically, stored monetary value as represented by a claim on the issuer of the e-money which is issued on receipt of funds for the purpose of making payment transactions, and which is accepted by a natural or legal person, unincorporated business association or private entrepreneur other than the e-money issuer. Generally, firms issuing e-money must be authorized or registered with the National Bank.

PEER-TO-PEER LENDERS

A person carries out a regulated activity (requiring authorization by the National Bank) if they facilitate lending and borrowing on a commercial scale.

Regulation of payment services

Under Hungarian law, carrying on finance and investment activities by way of business is subject to authorization. By way of business means gainful (for-profit) economic activities performed on a regular basis for compensation, involving the conclusion of deals which have not been individually negotiated. In order to become authorized by the National Bank, a payment services business needs to meet certain criteria, including in relation to its business plan, initial capital, processes and procedures in place for safeguarding relevant funds, sensitive payment data and money laundering and other financial crime controls.

Application of data protection and consumer laws

The Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (Data Protection Act) regulates the processing of personal data within Hungary. The Data Protection Act implements the European Data Protection Directive. Where a business determines the purposes and manner in which any personal data is processed, it will be regulated by the Data Protection Act and have certain notification and compliance obligations. In addition, Act CVIII of 2001 on Electronic Commerce and on Information Society Services stipulates further data protection provision related to transactions made through electronic commerce.

The European General Data Protection Regulation (GDPR) is set to come into effect on 25 May 2018. The GDPR is more prescriptive and restrictive compared to the Data Protection Act, including mandatory notifications where a breach occurs and provides for severe monetary sanctions for breach.

Money laundering regulations

Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing gives the National Bank responsibility for supervising the anti-money laundering controls of businesses that offer certain services, such as lending, providing payment services and issuing and administering other means of payment. These regulations implement the European Union's Fourth Money Laundering Directive.

Generally, where a firm is authorized and supervised by the National Bank it will also be authorized and supervised by the National Bank for complying with anti-money laundering requirements. Electronic currencies such as bitcoin and cryptocurrencies tend to represent a higher money-laundering risk.

Last modified 20 Oct 2017

What type of funding arrangements and incentives are available to FinTech businesses?

Early stage

SEED INVESTMENT

Initial investment in FinTech businesses may be provided by family and friends of the founders and other high-net-worth individuals (often known as business angels) in return for an equity stake. Such seed investment is often used to fund the establishment and early growth of the business before larger investment is available. The investing individuals may also provide know-how and expertise to assist in the company's development. The seed investors would typically not require the same controls over the business as, for example, venture capital providers.

CROWDFUNDING

The crowdfunding sector may be appropriate for a FinTech business in the early stages. It involves members of the public investing in a business by pooling their resources through an intermediary platform.

There are two main types of crowdfunding: equity and reward-based.

- Equity crowdfunding involves company shares being given in exchange for investment in the business.
- Reward-based crowdfunding provides investors with a tangible benefit, such as early access to a platform or application that the business is developing.

Crowdfunding offers a large number of private investors an opportunity to make small-scale investments in early-stage businesses to which they may otherwise not have had access.

ACCELERATORS

There are various incubators or accelerators in the Hungarian market which offer support, facilities and funding for startups, often in return for an equity stake.

Venture capital and debt

Venture capital (VC) funding is a type of equity investment usually targeted at early stage FinTech companies with an established business and some trading history. VC provides a viable alternative to traditional lending given that the business is unlikely to have the tangible asset base or long track record needed to attract traditional debt funding from financial institutions.

Corporate venture capital (CVC) is a type of VC and involves an equity investment by a corporate fund. The benefit of having a CVC as an investor for a FinTech startup is that the fund is able to share its knowledge and expertise of the FinTech sector with the company and act as an advisor.

An additional funding option is venture debt, which is typically structured as a loan (or series of loans) secured against a company's assets and includes an equity element allowing the debt provider to purchase shares in the company. However, venture debt providers will usually only invest into companies that have already received investment through venture capital.

Warehouse and platform funding

Warehouse financing may be suitable for FinTech companies which own a portfolio of assets. Funding is often provided by way of a loan from a small number of lenders to a special purpose vehicle (SPV). The loan is secured on the assets acquired by the SPV from the originator. The lenders will only fund a portion of the assets, with the remainder being financed by way of subordinated lending from the originator.

Another alternative form of funding is by way of peer-to-peer (P2P) lending platforms, which bring individual borrowers and lenders together without the involvement of traditional banks.

Senior bank debt and capital markets funding

SENIOR BANK DEBT

Once a FinTech company is established and has a track record, bank debt becomes a more viable source of funding, either on a secured or unsecured basis depending on the creditworthiness and asset base of the business. In contrast to capital markets funding which is often covenant-lite, bank funding will generally involve the imposition of financial covenants and controls that will apply over the life of the facility. Bank finance may be particularly important for working capital, overdraft, accounts management and general liquidity purposes.

CAPITAL MARKETS FUNDING

Raising finance by way of an Initial Public Offering (IPO) is a possible funding arrangement for FinTech companies that have grown to a certain size. An IPO is the initial sale of company shares on a public exchange, such as the Budapest Stock Exchange.

CONVERTIBLE BONDS/LOAN NOTES

A popular funding tool for fast-growing FinTech businesses is to issue convertible bonds or loan notes which are essentially a hybrid between debt and equity. Convertible instruments begin as a loan accruing interest and are convertible into shares in the issuing company at prescribed prices in certain circumstances.

Incentives and reliefs

As of 1 January 2017, the Act LXXXI of 1996 on Corporate Tax and Dividend Tax offers a corporate tax relief for businesses who invest in the shares of qualifying startups, up to a maximum amount of HUF 20 million per year for three years, following the acquisition of the shares.

Last modified 20 Oct 2017

Portfolio sales

Loan transfers and portfolio sales

What are common ways of buying and selling loans?

Buying and selling loans is not very common in Hungary.

A loan can be sold on an individual basis or packaged up with other loans and sold as a portfolio pursuant to overarching terms.

The most common ways of selling loans are:

- **Transfer of contract** – The transfer of the contract is a full legal transfer of the party's rights and obligations. It is a tripartite arrangement between the existing parties and the transferee and results in the transfer of the contract between the continuing party and the transferee and the transferor being released from its obligations. The debtor can grant a prior approval to such transfer.
- **Sub-participation** – A sub-participation is a transfer of the economic interest in a loan without changing the legal relationship between the existing parties. Sub-participations involve the buyer taking on double credit risk, both on the seller as well as the borrower.

For more complex transactions, a more bespoke form of sale and purchase agreement would tend to be used. The form and content of the transfer documentation will depend on the nature of the loan assets being sold.

Last modified 20 Oct 2017

What are the main considerations when transferring a loan and related security?

There are a number of issues to consider before transferring a loan or portfolio of loans. These issues are often covered as part of a due diligence exercise by the seller's legal advisors. Some of the key considerations include:

- **confidentiality** – whether the seller of the loan is allowed to disclose information relating to the loan to a potential purchaser;
- **data protection** – whether there is any personal data or other restricted information in the loan that should not be disclosed to a potential purchaser;
- **lender eligibility** – whether there are any restrictions around the type of entity to which the loan can be transferred;
- **undrawn commitments** – whether there are any continuing obligations for further funding or other material obligations on the part of the lender that may fall on the transferee or reduce claims made by the transferee;
- **transfer mechanics** – whether there are any steps that need to be taken to transfer the loan in accordance with its terms; and
- **consent** – whether a transfer requires the consent or notification of any other parties.

Last modified 20 Oct 2017

Projects

Financing / investing in energy / infrastructure

To what extent are energy and infrastructure assets publicly or privately owned?

Generally

The ownership of energy and infrastructure assets in Hungary varies according to the asset class. The main asset classes are usually considered to be:

- economic infrastructure (energy, aviation, rail, telecommunications, roads and waste); and
- social infrastructure (education, health and justice/prisons and housing).

Key sectors are considered below.

Energy

The liberalization of the Hungarian electricity and natural gas market was completed in 2008, with generation, transmission, distribution and supply services provided by a number of private sector companies. Private sector companies own such generation assets, however, transmission and distribution assets are owned by the state owned MAVIR Hungarian Independent Transmission Operator Company Ltd.

The public sector finances and delivers most of the required infrastructure but there are a number of private sector investments, mainly in connection with the renewable and smaller scale co-generation energy generation technologies.

The Hungarian Energy and Public Utility Regulatory Authority (MEKH) is the principal body with responsibility for regulation of the energy sector in Hungary.

Telecoms infrastructure

The telecommunications networks (fixed and mobile) in Hungary are privately owned by a number of incumbent service providers. A good example is Telekom Hungary which is responsible for most of Hungary's broadband infrastructure but whose work is heavily regulated by government.

The National Media and Infocommunications Authority (NMHH) is the regulator of Hungary's telecommunications sector. It also has responsibilities for television broadcast services and wireless communications services.

Transport infrastructure

LIGHT RAIL

Typically, light rail assets (such as trams and associated track) are owned by local public sector promoting bodies.

HEAVY RAIL

The rail market in Hungary is dominated by the state owned Hungarian State Railways Ltd. (MÁV). The principal elements to the rail sector in Hungary are:

- Hungarian State Railways Ltd. (MÁV), a private limited company, is on the public sector balance sheet and owns or operates and maintains rail tracks, signaling and station infrastructure. It is responsible for operating most of the regulated national rail infrastructure.
- Freight Operating Companies (FOCs) and Rolling Stock Companies (ROSCOs) are mostly owned by the Hungarian State Railways Ltd.

The rail sector is regulated by the National Transport Authority.

ROADS, BRIDGES AND TUNNELS

A government entity, Hungarian Public Road Non-Profit Ltd, operates, maintains and improves the motorways and major roads in Hungary, and receives funding from the government for investment in the strategic road network (including additional road capacity). Local roads in Hungary are the responsibility of local authorities. Construction contracts are generally procured by the National Infrastructure Developing company NIF Zrt. In the case of toll roads, the private sector has taken on roads/crossings on a full concession basis and is therefore responsible for the design, build, financing, operation, maintenance and collection of tolls for a number of years with the main revenue stream being the collection of toll revenues from users (rather than any service payments from the public sector). However, these types of projects are no longer considered viable as the private sector is not willing to take 'demand risk' in order to service the upfront capital costs and associated bank debt.

AVIATION

Aviation in Hungary is (for the most part) privatized. As regards airport infrastructure, there are a number of ownership structures in the Hungarian market, including private ownership and local government ownership. All models are heavily regulated by government and the National Transport Authority is the aviation regulator in Hungary.

Other infrastructure

SOCIAL INFRASTRUCTURE (SCHOOLS, HOSPITALS, EMERGENCY SERVICES CENTERS/PRISONS)

Typically, these are owned by the public sector (eg ownership of hospitals is vested in various public sector bodies). The majority of social infrastructure assets in Hungary are directly financed by the government.

DEFENSE

Typically, defense assets are owned by the public sector.

WASTE

In Hungary waste related services are provided by the public sector, which is responsible for designing, building, operating and maintaining the facilities and the infrastructure.

WATER

In Hungary water and wastewater services are provided by state owned companies.

Last modified 20 Oct 2017

Are there special rules for investing in energy and infrastructure?

Generally

There is no specific regime governing or restricting investment in energy or infrastructure projects in Hungary over and above existing regulation for investors and funders more generally however, a particular proposed investment may be subject to legislative or regulatory control (eg merger control rules). As regards the planning and implementation of the underlying energy or infrastructure project (in which the investment is to be made), the legal/regulatory position relevant to that project must be considered. For example, a project involving development on land will require planning permission or a development consent order; and a project may require environmental authorizations/permits and/or sector specific regulatory consents or licenses. Key sector-specific issues are flagged in the sections below.

Whether an investor can invest will depend on the terms of the procurement of that project if it is a public sector project and whether there are any contractual restrictions on change of control, in respect of an existing/operational project. This is less of a concern for private sector infrastructure although investors would need to consider whether any licenses/consents/permits would be affected by their acquisition of an interest.

Energy

The energy markets in Hungary have a complex system of arrangements between suppliers, generators, transmission and distribution which are heavily regulated. In particular, there are complex arrangements in respect of licensing, subsidies and demand/charging mechanism with suppliers, customers and the MAVIR *Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zrt.* (the Hungarian transmission system operator) which are subject to change/regular updates meaning that investors will need to have a good understanding of the current framework and the potential directions in which the market may move. Investors need to understand how developments in technology may impact on the overarching regulatory framework and vice versa.

Investors should also consider whether the acquisition of any interests in the energy sector (at an entity or asset level) would cause any issues with any license conditions or the granting of specific subsidies. In particular, if a breach of those conditions could lead to the revocation of a license/subsidy that might make the potential target less attractive or viable.

Telecoms infrastructure

There is a complex regulatory environment for this sector including how access and interconnectors (between networks) are regulated under Act C of 2003 on Electronic Communications and other applicable legislation and how The National Media and Infocommunications Authority (NMHH) grants rights to access private or public land in order to install and maintain essential equipment in, over or under that land. This equipment might be cables sunk beneath the ground or a mobile mast sited on the ground.

The industry is largely privatized, therefore investors should consider if any permits/consents/licenses will be affected by their interest.

Transport infrastructure

RAIL

There is an extensive and complex regulatory framework to consider in respect of a practical and operational involvement in this sector. Key areas include understanding the regulatory regime for certification for train use and acceptance and user fare regulation. Depending on how an investor wishes to invest in a project (specifically what type of entity or asset), there is a varying degree of difficulty for investors to enter into an existing project.

ROADS

In order for a private sector partner to carry out its duties on certain types of roads projects, the procuring public sector authority may delegate certain of its statutory duties to the private sector partner. This will be dependent on the project and the specific contractual requirements. Any investor will, therefore, need to understand those duties and whether it is able to subcontract those duties to an appropriate person.

Last modified 20 Oct 2017

What is the applicable procurement process?

Public procurement in Hungary is, in most instances governed by Act CXLIII of 2015 on Public Procurement which is based on EU Directives. There are some sector-specific regulations such as Act XXX of 2016 the Defense and Security Public Procurements, but these are also based on EU Directives.

The key principles are that contracts procured by the public sector are awarded fairly, transparently and without discrimination on the grounds of nationality and that all potential bidders are treated equally.

Investing in energy and infrastructure

Public procurement is relevant where the Hungarian government, or any branch of it as a state-owned company, is seeking to outsource the delivery of a new project. On an infrastructure project, a potential investor would have to bid in its own capacity or as part of a consortium to deliver the overall deal which could include design, build, operation, maintenance and financing of the relevant energy or infrastructure asset. Design, Build, Finance and Operate public-private partnership (DBFO PPP) schemes were popular in Hungary in road, prison, education and sports projects before 2010. Currently, no new DBFO PPP projects are launched and existing DBFO PPP projects are being actively terminated by the state. The relevant procurement legislation applies to certain public bodies including central government departments, local authorities, police and fire authorities and various non-governmental bodies. A regulated procurement is required where certain financial thresholds are met and on most major infrastructure projects (where limited exclusions do not apply), it is likely that those thresholds will be met so a regulated procurement would need to be run.

In most cases, the public sector will need to publish a contract notice in the Office Journal of the European Union (OJEU) and typically run one of the following procedures.

OPEN PROCEDURE

This is suitable for easy-to-evaluate projects and tenderers simply submit a tender in response to the OJEU notice. Change and negotiations to the tender are not permitted.

RESTRICTED PROCEDURE

There is a shortlisting of at least five tenderers following an expression of interest stage and tenderers submit a bid. Again, no negotiation is permitted other than clarification and finalization of the contract terms.

COMPETITIVE DIALOGUE

This is often the most common procedure for complex infrastructure projects and involves a shortlisting of at least three bidders who are invited to discuss with the public sector to develop detailed solutions which are capable of being accepted by the public sector. Clarification and further negotiations are allowed following final tender but only on the basis of confirming the financial and other commitments in a tenderer's bid.

COMPETITIVE PROCEDURE WITH NEGOTIATION

This is sometimes described as a hybrid procedure as it allows dialogue with bidders but also allows the public sector to award a contract on the basis of an initial tender (or further stages) but clarification and negotiation is not allowed following final tender.

Depending on the structure of the deal, any acquisition of an interest or variation to the existing project may have procurement-related considerations that need to be borne in mind.

Financing energy and infrastructure

On a publicly procured contract, the public sector may have prescribed requirements on the funding arrangements. Following entry into the contract, the main tool for controlling the financing is that, typically, on project finance deals, a refinancing of the senior debt will require the consent of the public sector.

Last modified 20 Oct 2017

What are the most common forms of funding / investing in energy and infrastructure?

Funding

Common forms of funding in energy and infrastructure include:

- loans made on a corporate finance basis (balance sheet debt);
- loans made on a project-finance basis (to a special purpose project company) on medium- to long-term bases – such loans may later be syndicated to other funders);
- bond finance;
- refinancing of the debt in operational projects; and
- asset financing (particularly relevant in the rail sector).

Funding/funding products can also, sometimes, be provided by the European Investment Bank and export credit agencies.

Investing

Common forms of investing in energy and infrastructure include:

- 'equity' investment in special purpose vehicles or entities that may have a portfolio of interests, ie share capital and subordinated sponsor loans; and
- secondary market investment in operational projects (acquisition of 'equity').

Last modified 20 Oct 2017

Restructuring

Enforcement and sanctions

When can there be regulatory investigations?

When the National Bank of Hungary considers that an authorized firm or regulated individual may have breached the ongoing compliance requirements, it will launch a formal investigation. This may result in regulatory sanctions.

Last modified 20 Oct 2017

What regulatory penalties may apply?

When a rule breach has taken place, the National Bank of Hungary may impose a financial penalty or censure, or withdraw regulated status against the firm and/or regulated individuals. The regulator will publicize these penalties.

Last modified 20 Oct 2017

What criminal penalties may apply?

Following formal investigation, the criminal courts have the power to impose criminal penalties in certain cases, including:

- insider dealing;
- unlawful disclosure of inside information;
- unlawful market manipulation;
- organization of pyramid schemes;
- money laundering; and
- unauthorized financial activities.

Last modified 20 Oct 2017

Tax

Tax issues

Are stamp, registration, transfer or other similar taxes applicable?

Are there stamp, registration, transfer or other similar taxes payable on the advance, transfer or assignment of a loan?

No stamp, registration, transfer or other similar taxes are payable on the advance, transfer or assignment of a loan.

Are there stamp, registration, transfer or other similar taxes payable on the taking, transfer or assignment of a mortgage, debenture or other security?

Most security interests must be registered with the competent authority to ensure that they are valid against third parties.

The grant of a security interest over Hungarian real estate should be registered at the Land Registry as the competent authority.

Other forms of registration may also be required, depending on the nature of the asset over which the security is taken. In the case of security over shares or business quotas the Court of Registration is the competent authority for registration purposes. Security over certain movable property, rights and claims must be registered on the Collateral Register of which the Hungarian Chamber of Notaries is the competent authority.

Such registration procedures are subject to notional administrative service charges (eg the registration of a mortgage over Hungarian real estate at the Land Registry is subject to a procedural fee of HUF 12,600 (approximately €30) per plot number). Such registrations may also require the payment of notional registration fees.

Are there stamp, registration, transfer or other similar taxes payable on the issue, transfer or assignment of a debt security (eg a bond)?

No stamp, registration, transfer or other similar taxes are payable on the issue, transfer or assignment of a debt security. However, the introduction of securities (issued in a series) to the regulated market or the registration in a multilateral trading system may be subject to administrative service charges.

Last modified 20 Oct 2017

Do tax authorities take priority on enforcement?

On the enforcement of security, do tax authorities take priority over secured lenders or secured debt security holders (eg secured bond holders)?

In the case of an enforcement procedure, a mortgage concerning movable or immovable property takes priority over the claims of the tax authority.

In the case of a liquidation procedure, taxes and social security contributions related to employment and termination of employment take priority over debts secured with a mortgage. Other claims of the tax authority related to taxes and social security contributions are subordinated to a debt secured with a mortgage.

Last modified 20 Oct 2017

Is withholding tax on interest payments applicable?

Is there withholding tax on interest payments under a loan?

No withholding tax applies on outbound interest payments made to a corporate entity which is not resident for tax purposes in Hungary, provided that the recipient does not have a permanent establishment in Hungary.

Interest payments made to an individual who is not resident for tax purposes in Hungary are, in general, subject to withholding tax in Hungary.

If so:

What is the rate of withholding?

Withholding tax is not applicable in the case of interest payments made to a corporate entity which is not resident for tax purposes in Hungary, provided that the recipient does not have a permanent establishment in Hungary.

In general, interest paid to an individual who is not resident for tax purposes in Hungary is subject to 15% withholding tax in Hungary.

What are the key exemptions?

Withholding tax is not applicable in the case of interest payments made to a corporate entity which is not resident for tax purposes in Hungary, provided that the recipient does not have a permanent establishment in Hungary.

Relevant double tax treaty provisions may mitigate or provide protection against taxation of outbound interest payments in Hungary in the case of payments made to an individual who is not resident for tax purposes in Hungary.

Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes, the analysis described above is applicable to both interest payments under a loan or other form of debt security.

Last modified 20 Oct 2017

Are foreign lenders and debt security holders subject to tax on interest payments?

Will the lender be taxed on interest payments under a loan in the jurisdiction of the borrower (other than by way of the application of withholding taxes (if any)), assuming the lender is not otherwise resident in that jurisdiction for tax purposes (eg by virtue of incorporation, residence or local branch)?

No, provided that the lender does not have a permanent establishment in the jurisdiction of the borrower (ie in Hungary).

Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes.

Last modified 20 Oct 2017

Key contacts



Péter Györfi-Tóth

Partner

Horváth & Partners Law Firm

peter.gyorfi-toth@dlapiper.com

T: +36 1 510 1120

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2019 DLA Piper. All rights reserved.