

Hungary

Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests (2018)

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Act LVII of 2018 on Controlling Foreign Investments Violating Hungary's Security Interests

(unofficial translation)

1. Interpretative provisions

Section 1

For the purposes of this act

1. foreign investor shall mean:

- a) a national of a state outside the European Union, the European Economic Area and the Swiss Confederation or a legal entity or other organization registered in such a state,
 - b) a legal entity registered domestically, in another Member State of the European Union, another member state of the European Economic Area or the Swiss Confederation acquiring ownership or interest as specified under Section 2 (1) in an economic entity registered in Hungary, with activities laid down under Section 2 (4), if the person with controlling interest in the legal entity as specified in the Act on the Civil Code (hereinafter: ACC) is a national of a state outside the European Union, the European Economic Area or the Swiss Confederation, or a legal entity or other organization registered in such a state;
2. acquisition of ownership shall mean the acquisition of ownership share or interest as specified under Sections 2 (1) and (2) in an economic entity registered in Hungary with activities laid down under Section 2 (4), by establishing an economic entity or by acquisition, as well as establishing a branch as specified under Section 2 (3).

2. Foreign investors' notification obligations

Section 2

(1) Foreign investors may acquire, in an economic entity registered in Hungary with activities specified under (4), by establishing an economic entity or by acquisition

- a) directly or indirectly ownership share beyond 25% - in the case of public limited companies, ownership share beyond 10% - or
- b) controlling interest as specified in the ACC

after notifying the minister designated in the Government decree (hereinafter: Minister) and receiving confirmation of the acknowledgement of this notification.

(2) The notification obligation under (1) holds also where the foreign investor's acquisition of under 25% would result in the total share of foreign investors in an economic entity registered in Hungary and with activities specified under (4) – with the exception of public limited companies – exceeding 25% altogether.

(3) Foreign investors may establish a branch in Hungary for activities specified under (4) provided that the foreign investors

- a) comply with the conditions required for establishing a branch in Hungary laid down under the law and
- b) have met the notification obligation specified under (1) and received the minister's confirmation of acknowledging the notification.

(4) The activities subject to the notification obligation as specified under (1)-(3) are the following:

- a) manufacture of weapons and ammunition as well as of military equipment and devices subject to licence,
 - b) manufacture of dual use products,
 - c) manufacture of intelligence devices and equipment specified in the government decree on the detailed rules of obtaining a licence for military activity and certifying businesses,
 - d) provision of financial services specified in the act on credit institutions and financial enterprises and from among auxiliary financial services, the operation of a payment system,
 - e) services governed by the act on electricity,
 - f) services governed by the act on natural gas supply,
 - g) services governed by the act on water public utility services,
 - h) services governed by the act on electronic communications,
 - i) the set-up, development and operation of electronic information systems governed by the act on the electronic information security of central and local government agencies.
- (5) By virtue of (4) (e)-(h) the Government may specify in its decree issued based on authorization by this act the activity directly affecting a system element of national or European importance specified on the basis of the act on the identification, designation and protection of systems and facilities of vital importance.

Section 3

The foreign investor may acquire the right of use or operation of infrastructures, facilities and assets essential for the activity specified under Section 2 (4) (hereinafter together: right of operation) after the notification of the minister and the confirmation of the acknowledgement of the notification.

Section 4

- (1) The economic entity operating with the foreign investor's share of the percentage specified under Section 2 (1) (a) or 2 (2) or interest specified under Section 2 (1) (b) may start conducting the activities specified under Section 2 (4) (hereinafter: newly adopted activities) after notifying the minister and receiving the confirmation of the acknowledgement of the notification.
- (2) The obligation under (1) arises by the registration of the activity specified under Section 2 (4) as the main activity or further scope of activity of the economic entity in the company registry.

Section 5

- (1) The foreign investor shall notify the minister of the completion of the legal transaction targeting the acquisition of ownership or the right of operation as well as of the registration of the newly adopted activities in the company registry in writing, within the deadline set in the government decree.

(2) In the notification the foreign investor shall outline their business activity so far and enclose all documents on the basis of which the ownership structure of the foreign investor and the legal entities having a share therein, as well as the beneficial owner as specified in the act on the prevention and combating of money laundering and terrorist financing can be established.

(3) The foreign investor shall notify the minister of any changes in the data subject to notification obligation within the deadline set by the government decree.

(4) The detailed rules on the notification and thus specifically the obligatory content elements of the notification, its annexes, the deadline of notification, as well as the detailed rules related to the data provision obligation laid down under (3) shall be established by the Government in a decree.

3. The ministerial procedure

Section 6

(1) The detailed rules on the ministerial procedure not settled in this act – thus specifically the procedural deadlines – shall be established by the Government in a decree.

(2) The minister shall inform the foreign investor of receiving the notification without delay, within a maximum of 8 days.

(3) On the basis of the notification the minister shall examine if the acquisition of ownership or the acquisition of the right of operation by the foreign investor or the conduction of newly adopted activities violate Hungary's security interests.

(4) After receiving the notification the minister shall check without delay if the notification complies with the requirements set under Section 5 and examine whether a circumstance outlined under (3) in relation to the foreign investor's acquisition of ownership or acquisition of the right of operation, or in relation to conducting the newly adopted activity exists. The minister shall, within 60 days following the receipt of the notification – or in the case outlined under (5), within the deadline specified therein – and if a circumstance specified under (3)

a) does not exist, confirm the acknowledgement of the notification in writing, or if

b) it exists, the minister shall prohibit the acquisition of ownership, the acquisition of the right of operation or shall prohibit starting the newly adopted activity (hereinafter: prohibiting decision).

(5) In especially justified cases the minister may prolong the term of control specified under (4) by 60 days at the maximum, of which the minister shall notify the foreign investor, before the completion of the 60-day deadline, in writing.

(6) By virtue of Section 1 (1) (b), a prohibiting decision with reference to a foreign investor may be made if it can be reasonably assumed that the legal entity acquiring ownership or interest as specified under Section 2 (1) or (2) in the economic entity registered in Hungary with activities specified under Section 2 (4) was established for or serves the purpose of concealing a circumstance specified under (3), making control difficult and circumventing the procedure laid down in this act. The latter can be assumed especially if the legal entity does not pursue actual economic activity in the state of their registration; there are no verifiable circumstances indicating permanent economic activity such as, specifically, business facilities or employees.

(7) The minister shall communicate their prohibiting decision including a simplified justification to the foreign investor in writing.

(8) The foreign investor may contest the prohibiting decision for the violation of essential procedural rules or in relation to the qualification under (6) in public administration proceedings. Budapest Capital Regional Court shall have exclusive jurisdiction in the case.

(9) The court shall decide on the application in simplified proceedings. If the court establishes that the law was violated, they shall repeal the decision and oblige the minister to launch a new procedure. There is no room for immediate legal protection in the proceedings.

(10) The minister shall manage the foreign investor's personal data in the course of the procedure as well as for the purpose of checking the notification

a) for 5 years after the notification is filed in the case of a prohibiting decision; in the case of appeal proceedings, for 5 years after the final decision made therein,

b) in the case of confirming the acknowledgement of the notification, as long as the ownership share specified under Section 2 (1) (a) or (3), the interest specified under Section 2 (1) (b), the branch specified under Section 2 (3) or the right of operation specified under Section 3 exist or until the newly adopted activities are cancelled from the company registry.

(11) The minister may forward the personal data managed under (10) for the purpose of performing the procedure to organs involved according to the Government decree.

4. The relation of the ministerial procedure to administrative procedures

Section 7

(1) The condition for making a decision in the procedures targeting the acquisition of ownership in relation to activities specified in a government decree as laid down under Section 2 (4), subject to notification by virtue of this act, shall be the confirmation of the acknowledgement of the notification required by this act.

(2) Lacking a procedure specified under (1), the condition for making a decision in the procedures targeting the acquisition of ownership in relation to activities specified in a government decree as laid down under Section 2 (4), subject to notification by virtue of this act, shall be the confirmation of the acknowledgement of the notification by the minister, required by this act.

(3) The Government shall establish in a decree the range of procedures – targeting the licensing of certain activities

– in the case of which the notification laid down in this act shall be required to be made.

(4) The minister shall communicate the prohibiting decision or the decision prolonging the deadline for control to the authority specified in the notification, responsible for administration in the procedure under (1) or (2).

5. Certain legal consequences related to the ministerial procedure

Section 8

- (1) In the case under Section 2, the request for registration in the share register and the register of members of the economic entity registered in Hungary can be filed after the acknowledgement of the notification has been confirmed. In the case under Section 3, the scope of the agreement on the right of operation – unless otherwise provided by the act on the activities subject to notification under this act – shall commence on the day the notification was acknowledged.
- (2) If the foreign investor failed to comply with the notification obligation laid down in this act, the minister failed to confirm the acknowledgement of the notification or the minister made a prohibiting decision, the acquiring party shall not be entered in the share register or the register of members and shall not exercise their rights with reference to their shares against the economic entity.
- (3) If the economic entity registered in Hungary learns about the circumstance laid down in (2) after registration in the share register or register of members, the foreign investor shall be deprived of exercising their membership rights against the economic entity registered in Hungary after the economic entity has learned about the circumstance concerned.
- (4) The legal transaction targeting the acquisition of the right of operation that was made lacking the notification required by this act or lacking the confirmation of the acknowledgement of the notification, or in relation to which the minister made a prohibiting decision, shall be invalid. Civil proceedings related to the invalidity of the legal transaction can be initiated by the minister or a person with legal interest in the case.
- (5) The newly adopted activity of the economic entity affected by the prohibiting decision shall be cancelled from the company registry.

Section 9

- (1) Compliance with the notification obligation required by this act shall be controlled by the organ designated in the Government decree.
- (2) If it is established during the control under (1) that the foreign investor failed to perform his obligations laid down in this act – including the case that the foreign investor failed to notify about a change in the data required in the notification – the minister shall impose a fine specified under 10, and if
- a) the circumstance specified under Section 6 (3) in relation to the foreign investor's ownership acquisition, acquisition of the right of operation or the performance of the newly adopted activity does not exist, the minister shall confirm the acknowledgement of the notification in writing;
 - b) if the circumstance specified under Section 6 (3) in relation to the foreign investor's ownership acquisition, acquisition of the right of operation or the performance of the newly adopted activity exists and the provision under Section 6 (6) does not exclude this, the minister shall make a prohibiting decision.
- (3) In the case under Section 2 the minister shall give the foreign investor in their decision under (2) (b) a deadline of maximally 3 months for selling their ownership share and ending their interest in the economic entity registered in Hungary, for closing the branch or modifying its scope of activity. In the sale, the Hungarian state shall have pre-emption rights.

(4) If the deadline specified under (3) passes without results, the minister shall designate in a decision the state organ that will take measures instead and on behalf of the foreign investor for selling the foreign investor's share. In the course of the measure the Hungarian state shall have a pre-emption right.

(5) In the case under Section 3, the minister shall, concurrently with their decision made by virtue of 2 (b), launch the legal proceedings targeting the invalidity of the acquisition of operation right.

(6) In the case under Section 4 the minister shall, in their decision specified under (2) (b) give a deadline of 30 days for cancelling from the activities of the economic entity registered in Hungary the range of newly adopted activities affected by the prohibiting decision.

(7) For the deadline of the control according to (1), the provisions of Sections 6 (4) and (5) shall be duly applicable.

(8) No administrative control or proceedings targeting establishing the violation of law may be conducted for failure to comply with the notification under this act if 6 months have passed since the organ authorized for control was notified of

a) the date of acquisition of ownership or operation right,

b) the date the decision on licensing the activity specified in a government decree in compliance with Section 2 (4), subject to notification under this act, became final, or

c) the newly adopted activities were entered in the company registry,

or maximally 5 years have passed since the circumstances laid down under (a) and (b).

(9) In the case outlined in (2) (a) the provision under Section 6 (10) (b) shall be duly applicable and furthermore in the case under (2) (b) the deadline specified under the first part of Section 6 (10) (a) shall be calculated from the date of launching the control.

6. Fine payment obligation

Section 10

(1) The entity who violates their obligation, laid down in this act, of notification or data provision as specified under Section 5 (3) shall be obliged by the Minister – after the due consideration of all circumstances in the case – to pay a fine specified in the Government decree of maximally HUF 1,000,000 if the foreign investor is a natural person and maximally HUF 10,000,000 if the foreign investor is a legal entity.

(2) Fine payment facilities shall not be allowed.

(3) The fine shall constitute public finance revenues.

6/A. Financial commitment by the Government

Section 10/A

For a national of a state in the European Union, the European Economic Area or the Swiss Confederation or a legal entity or other organization registered in such a state, the Government may give authority, in order to facilitate ownership acquisition in an economic entity registered in Hungary with activities specified under Section 2 (4) – especially ownership acquisition by a senior official or employee of such a legal entity or other organization that is direct or indirect or is performed within the framework of employee stock ownership plan – for assuming financial commitment in compliance with state aid rules. Such financial commitment may include specifically state guarantee, warranty, public finance subsidies or cash loan on the Civil Code.

7. Closing provisions

Section 11

This act shall take effect as of 1 January 2019.

Section 12

The Government shall be authorized to specify in a decree

- a) the provisions for designating the minister,
- b) the activities subject to notification obligation under this act, within the scopes of activity listed under Section 2 (4),
- c) the detailed rules on notification about ownership acquisition by the foreign investor, the acquisition of the right of operation by the foreign investor and the newly adopted activity, on the ministerial procedure in relation to the notification, the range of organs to be involved in the procedure and the procedure of the organs involved, on the foreign investor's data provision obligations specified under Section 5 (3) as well as the organs to carry out the control and the detailed rules on the control,
- d) the procedures for licensing the activities in the case of which Section 7 (2) is applicable,
- e) the set of aspects of establishing a fine as specified under Section 10 and the detailed rules on imposing this fine.

Section 13

The provisions of this act shall be applied, after this act has become effective

- a) in the case of concluded legal transactions according to Section 2 (1)-(3) and Section 3,
- b) with reference to economic entities wishing to pursue newly adopted activities, and
- c) in the course of authority proceedings, in the course of control already launched.

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