

HUNGARY



Hungary

PART I: CONTRACTUAL

A. Direct sale:

A.1 Without written agreement – general terms

What are the formalities a foreign seller must complete in your jurisdiction in order to make sure that its terms and conditions of sale are binding and enforceable towards local purchasers? Are these conditions enforceable towards non commercial parties?

There are no special formalities under Hungarian law that a foreign seller must complete in this respect (i.e. no distinction is made between foreign and Hungarian sellers).

Pursuant to the Hungarian Civil Code, any term or condition that was drafted in advance by one of the parties with the aim of using such a term or condition in several agreements, the content of which could not be influenced by the other party and which has not been individually negotiated between the parties, shall qualify as general terms and conditions.

Hungarian law allows the application of the general terms and conditions of a party in contractual relationships, provided that such general terms and conditions shall only become part of the agreement if they have previously been made available to the other party for perusal and if such terms have been accepted (explicitly or through conduct that implies acceptance) by the other party.

The other party shall be explicitly informed on any general terms and conditions that substantially differ from standard practice, regulations applicable to contracts or any stipulation previously applied by the same parties. Such conditions shall only become part of the agreement if, upon receiving the above mentioned special notification, the other party has explicitly accepted them.

Please note that there are special, rather strict rules that apply to contracts made with consumers. For example, an unfair contractual term that has been drafted in advance by the party entering into a consumer contract with a consumer, and which has not been individually negotiated with the consumer but is incorporated into the contract as a standard contractual condition, shall be null and void.

A.2 Written agreement:

What are the clauses a foreign seller must integrate in a written sales agreement (or in his general terms and conditions) and the reasons why?

Again, no distinction is made between foreign and Hungarian sellers in this respect; general contract rules apply.

Retention of title: Is this provided for in your jurisdiction? What are the conditions to make it enforceable towards local purchasers and third parties?

Yes, Hungarian law provides for the possibility of the retention of title, but the seller is only entitled to retain title of ownership simultaneously with the conclusion of the agreement, in writing and only until the purchase price is paid in full. During the term of the title retention, the buyer is not allowed to alienate and/or encumber the subject matter of the contract.

Interest and penalty clause: Are these clauses enforceable in your jurisdiction? Can they be reduced or annulled? What are the consequences if this clause is not integrated in the agreement? What is the legal rate in your jurisdiction?

Interest and penalty clauses are, subject to the below caveats/requirements, enforceable under Hungarian law.

(a) Penalty clauses

Penalty clauses shall only be valid if made in writing. Any interest attached to a penalty shall be null and void. A penalty is not enforceable through a court if it has been stipulated for securing a claim that cannot be judicially enforced.

(b) Interest clauses

Contractual relations, unless otherwise provided for by laws and regulations, shall entail interest. Interest shall only be applicable in the case of agreements between private individuals if so stipulated.

The rate of interest can be freely agreed between the parties, but any interest, stipulated between private individuals that is increased above the base interest rate of the Hungarian National Bank by more than 24%, shall be null and void. In the lack of an agreement on the interest rate, the legal rate is - unless otherwise provided for by laws and regulations - equal to the base interest rate of the Hungarian National

Bank (which is - as of 31 October 2012 - 6.25% p.a.).

Both the excessive penalty and the excessive interest may be reduced by court.

Applicable law and competent jurisdiction: Are these clauses enforceable in your jurisdiction? What are the consequences if this clause is not integrated in the agreement?

The parties are free to stipulate the applicable law and the competent jurisdiction in their agreement, unless special (exclusive or precluded) jurisdictions apply.

As a general rule, Hungarian courts have jurisdiction if a jurisdiction clause is not stipulated by the parties. In agreements where the governing law is not stipulated, Hungarian law is applicable if Hungary is the most closely connected jurisdiction to the circumstances of the case / to the contract.

Special rules apply for consumer and employment contracts (please see Council Regulation (EC) No 44/2001 of 22 December 2000).

As of 2011, in agreements concerning national assets, only Hungarian law and the jurisdiction of Hungarian courts may be stipulated (no arbitration is allowed). The governing language of such contracts has to be Hungarian.

B Commercial Intermediaries

What types of distribution agreements do exist in your jurisdiction?

As a general rule under the Hungarian Civil Code, the parties are free to agree on the form and content of their contract. The most common legal instruments that are used in the context of distribution are agency, franchising and concessionaire.

What are the clauses a foreign seller should integrate in to a distribution agreement and the reasons why?

Pursuant to Hungarian law, there are no special clauses that a foreign seller must integrate in to a distribution agreement (i.e. no distinction is made between foreign and Hungarian sellers).

Is there any specific legislation in your jurisdiction with regard to the above mentioned types of distribution agreements?

Hungarian law is silent on franchising arrangements, thus the parties are free to agree on the contents of their agreement.

Although the same “free to agree” principle applies to the concessionaire agreements, this legal instrument is regulated in the Hungarian Civil Code.

In the case of commercial agents, special, detailed rules apply.

Specific legislation exists with respect to the IP and competition law aspects of distribution agreements.

PART II: OFFICE IN THE TARGET COUNTRY (BUT NO LEGAL PERSONALITY)

There are different ways how a foreign company can start doing business in Hungary, by establishing:

- (a) a local subsidiary (having legal personality);
- (b) a branch office (having legal personality); or
- (c) a commercial representative office (with no legal personality).

As branch offices and commercial representative offices are regulated by the same act – the Act on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies – they will be discussed in this Part II, while the requirements for establishing a local subsidiary will be presented in Part III below.

What are in general terms in your jurisdiction the legal consequences of the absence of legal personality of a branch, as opposed to the setting up of a local company (in terms of applicable legislation, legal representation, publication formalities etc)?

As mentioned above, pursuant to the Act on Hungarian Branch Offices and Commercial Representative Offices of Foreign-Registered Companies, there are two ways of establishing a foreign company in Hungary, with the following main differences:

FORM	Branch office	Representative office
Legal personality	Legal personality (acts under its own name)	No legal personality (acts under the company's name)
Establishment	Both the branch office and the representative office have to be registered in the Company Registry. They are regarded as established upon having been registered and may commence entrepreneurial activities following such registration.	

Functions	Concluding contracts, acting in front of courts, acquiring assets - but only in favor of the company.	Helping the company in commercial activities, like preparing and negotiating contracts, informing the clients, but all legal acts have to be done by the company itself.
Main restrictions	No representation activities on behalf of the company; the company and the branch office shall be subject to unlimited joint and several liability for the debt of the branch office.	No entrepreneurial activity or providing legal services in its own name.

Please note that special rules apply for companies in the financial sector (e.g. banks, insurance companies).

Why would you rather advise a foreign seller to set up a branch rather than a company in your country, or vice versa?

Unless otherwise provided for by law (e.g. in relation to the acquisition of real estates), a foreign company shall, in respect of the establishment and operation of its branch office, receive the same treatment as a domestic economic organization; however, this business form (i.e. branch office) does not have limited liability.

Establishing a company in Hungary requires the fulfilment of several other conditions (e.g. a minimal amount of capital), but a subsidiary can benefit from tax advantages.

How is a branch legally represented in your jurisdiction (contractual engagements; towards public authorities, in court)?

A person who is an employee or a person with a domestic residence who is under a long-term service contract may represent both the branch office and the commercial representative office.

Is there an automatic liability of the head office or legal representative of the branch for the operations or acts of the branch?

As a general rule, the head office is liable for all obligations of its branch office.

There are no special liability rules for representatives of a branch office; general rules applicable to managing directors shall apply.

Are there imperative linguistic requirements to be respected (in official publications; employment relations)?

Yes, as a general rule, dealing with courts or public authorities requires the use of the Hungarian language (official language).

PART III: LOCAL COMPANY IN THE TARGET COUNTRY WITH LEGAL PERSONALITY

COMPANY FORM	General partnership (közkereseti társaság)	Limited partnership (betéti társaság)	Limited liability company (korlátolt felelősségű társaság)	Public or private company limited by shares (részvénytársaság)
Limited liability	No	For the general partner no, for the limited partner yes.	Yes	Yes
Free transferability of the shares	Yes, but the members may stipulate restrictions in the deed of foundation.	Yes, but the partners may stipulate restrictions in the deed of foundation.	Yes, but the members may stipulate restrictions in the deed of foundation.	Yes, but the shareholders may stipulate restrictions in the deed of foundation.
Fixed or variable capital	Variable	Variable	Fixed	Fixed
Minimum capital	-	-	HUF 500,000 (approx. EUR 1,800)	HUF 5,000,000 (approx. EUR 18,000) for private companies; HUF 20,000,000 (approx. EUR 70,000) for public companies.
Number of founders	Minimum of 2	Minimum of 2 (at least 1 general partner and 1 limited partner).	Minimum of 2, but it is also possible to found a single member company.	Minimum of 2, but it is also possible to found a single member company.
Notarial deed	The deed of foundation has to be made either in the form of a notarial deed or in the form of a private deed countersigned by a lawyer or legal counsel.			

Which of the company forms is used most frequently in your jurisdiction?

Limited liability companies (*korlátolt felelősségű társaság*).

Which company form is used most frequently in case of small or family business?

Limited partnership (*betéti társaság*) or general partnership (*közkereseti társaság*).

PART IV – MISCELLANEOUS

A. Real estate

A.1 Purchase of a real estate

Who do you turn to in order to close a valid purchase agreement?

In order to enter into the purchase agreement, on the basis of which the change of ownership may be registered in the land register, the agreement shall be notarised by a notary public or countersigned by a lawyer.

What are the costs related to the purchase agreement?

The overall cost of a real estate purchase includes the fees of the notary public / lawyer, stamp duty and the fees of the registration.

The fee of the notary public is provided for by law and depends on the value of the transaction. The fee of the lawyer is freely negotiable.

The general rate of the stamp duty for the purchase of a real property is 4% of the value of the real property up to HUF 1,000,000,000 (approx. EUR 3,510,000) and an additional 2% for the value above the HUF 1,000,000,000, but it can be no more than HUF 200,000,000 (approx. EUR 702,000) for one real estate. If the purchased real property is a flat or a residential house, then the duty fee is 2% up to HUF 4,000,000 (approx. EUR 14,000) and an additional 4% for the value above the HUF 4,000,000).

The fee for the registration of the change of ownership with the land registry is HUF 6,600 (approx. EUR 23)

Is there in your jurisdiction legislation that can slow down the purchase process (e.g. environmental legislation requiring preliminary soil examinations)?

Foreign entities or individuals may not acquire ownership of arable land.

In the case of real estates that do not qualify as arable land, foreign purchasers shall acquire the authorisation of the administration office.

A.2 Rent a real estate

Is there imperative law in your jurisdiction with regard to the rent of offices, industrial real estate or commercial real estate? Can you give a summary of the major stipulations of these regulations?

Hungarian tenancy law does not differentiate between the rent of offices, industrial real estates or commercial real estates. However, in the case of the renting of apartments (residential lease) special rules apply. Unless otherwise provided for in legal regulation, the lessor shall guarantee that the real estate is and will be suitable for use as contracted and that no third person has any right to the leased real estate, while the lessee should use it properly and according to the contract. The lessee can sublease the real estate to a third person without the permission of the lessor (unless otherwise provided). The lessee finances minor expenses for the maintenance of the estate, while other expenses (such as public duties, taxes etc) are paid for by the lessor. The lessee should pay the rent in advance of each period and, for any unpaid rent and additional costs, the lessor has lien on the lessee's assets within the real estate.

Are there any formalities to fulfil in order to enforce the lease agreement towards third parties?

No such formalities apply. Although not mandatory, it is possible to register the rental agreement with the land registry.

A.3 *Environmental issues*

For what types of activities is an environmental permit required?

Hungarian environmental law is fully harmonized with the regulations and directives of the European Union. Hungarian law provides different procedures (preliminary assessment, preliminary consultation, environmental impact assessment, integrated pollution prevention control and a "mixed one" that comprises of a consolidation of the last two) for the various industrial activities.

A.4 *Employment*

Hungarian employment law has gone through significant changes this year since a new Labour Code entered into force on July 1, 2012. The main purpose of the introduction of the Labour Code was to create a labour law system which is in line with new market conditions and which has a greater acknowledgement of the needs of the service industry and SMEs.

Are there any specific regulations with regard to outsourcing of employees?

As of 1 January 2013, an employee may only be ordered to perform work on a temporary basis at another employer for a period of no longer than 44 working days in a year.

Applicable legislation according to the type of employment (differences between employment by local company or by head office for the local branch)

There is no difference if the employee is hired by a branch office or by a subsidiary.

Legal engagement and dismissal requirements and formalities

Unless otherwise provided for by law, an employment relationship shall be established by a written employment contract.

Invalidity on the grounds of a failure to set the contract in writing may only be cited by the employee within a period of 30 days from the first day on which he commences work.

Legal statements regarding an employment relationship may be issued without particular formal requirements, unless otherwise prescribed by any provisions pertaining to labour relations. Upon the employee's request, the declaration shall be put in writing even if this is otherwise not mandatory.

An employment relationship established for a fixed term may be terminated by mutual consent or by dismissal with immediate effect or, if a trial period applies, with immediate effect and without providing any grounds of dismissal if the termination occurs within the trial period. After the expiry of the trial period, the employer may also terminate the fixed term contract with immediate effect and without providing any grounds for dismissal. However, in such case, the employee shall be paid a 12 months absence fee or his absence fee for the remaining period if it is less than twelve months.

In addition to the above, fixed term contracts can also be terminated by the employer's notice if one of the following reasons exists: (i) the employer is under liquidation or bankruptcy proceedings; (ii) in case of the incapacity of the employee; or (iii) if the employment relationship cannot be maintained due to reasons out of the parties' control. Employees may also terminate fixed term employment contracts by notice if the maintenance of the employment becomes impossible or disproportionately difficult with respect to the employee's circumstances.

Employers must justify their dismissals. The justification shall clearly indicate the cause for the dismissal. In the event of a dispute, the

employer must prove the authenticity and substantiality of the reason for the dismissal.

An employee may be dismissed only for reasons in connection with his ability, his behaviour in relation to the employment relationship or with the employer's operations.

The right of dismissal with immediate effect shall be exercised within a period of 15 days from gaining knowledge of the grounds for dismissal, but within no more than 1 year of the occurrence (or within the period of limitation of accountability in the case of crimes).

Social security regulations

In Hungary, an employee must be registered by his employer in the Social Security Institution. Both the employer and the employee must contribute to the social security system. While the Hungarian laws and regulations are strict, they are harmonised with the respective European regulations and directives.

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EUROJURIS INTERNATIONAL BUSINESS GROUP:

who we are

Eurojuris International

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Eurojuris is now the leading network of law firms in Europe and worldwide with over 600 member firms and approximately 5000 lawyers. In addition Eurojuris can, through its correspondent firms, provide access to local firms in many other countries throughout the world. Members and correspondents are always well established medium sized independent law firms satisfying the Eurojuris criteria.

Eurojuris aims to provide more than just a reliable directory of legal firms. A permanent headquarters with full time staff to manage the organisation was created in 1993 and its responsibilities include co-ordinating numerous national activities, publishing brochures, newsletters and guides, organizing meetings and congresses, promoting specialist groups and setting up an organisation to provide cohesion among different legal systems and business cultures.

The Eurojuris commitment to quality is paramount and is maintained by ensuring that management procedures and work methods are tailored to match the client needs and are dynamic and open to constant improvement. It is also essential that all Eurojuris International members understand and implement approved work methods and that regular internal and external control procedures are reviewed on a systematic basis.

Eurojuris International Business Group

The Eurojuris International Business Group (Eurojuris IBG) is one of a number of the Eurojuris practice groups. Eurojuris IBG is a proactive, business generating group that was formed to enable a small group of Eurojuris members to focus on the needs of business clients. Members of the Eurojuris IBG are experienced in their practice areas and leaders in the international legal and business community.

Eurojuris IBG members aim to provide a Partner level service to clients and, through close co-operation with European colleagues, to provide a consistent and seamless service.

Eurojuris IBG aims to offer a uniform presentation and mutual legal education schemes with common practices and to develop common services for the clients of member firms.

As more and more businesses find that improved communication and access opens the way to more international trade, the need for legal representation throughout a number of jurisdictions becomes essential. Eurojuris IBG provides access to expert local knowledge through a lawyer in the jurisdiction of the client's head office.

The members of Eurojuris IBG maintain close levels of co-operation and knowledge of each other's firms. This is achieved not only via the usual media of email, fax and telephone, but also through regular meetings, some of which take place in the offices of the member firms to enable members to understand the way in which they can better serve their client's needs.

The members of Eurojuris IBG fulfill very strict criteria: they are business minded, they work with business clients across Europe and overseas, they all work in the English language and have some knowledge of other European languages. Importantly they are equipped with the most up to date information technology systems and maintain substantial Professional Indemnity Insurance.

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