

EXPATLAND LEGAL

KCG Partners Law Firm



If you are planning to move to Hungary, there are a number of key issues that you should be aware of before your arrival.

In this chapter, we outline some of the most important aspects of the Hungarian legal system and give you a basic insight into the legal matters that might be relevant for you during your time in Hungary.

Key features of the Hungarian legal system

Hungary is a civil law jurisdiction, as is almost the whole Europe. Accordingly, unlike common law countries (such as the USA or the UK), the legal system is based on Acts adopted by the Hungarian Parliament, and not on court precedents. However, judicial practices serve as guideline for the courts.

Hungary is a member of the European Union (EU) and the European Economic Area (EEA). The EU is a political and economic union formed, currently, by 28 Member States. The internal market of the EU is a single market where the free movement of goods, services, capital and persons is ensured.

The most important organisations of the EU are the European Council, the European Commission, the European Parliament and the Court of Justice of the European Union. If you are an EU citizen, you can exercise your voting rights in Hungary for the elections of the European Parliament.



The two main types of legal Acts of the EU are 'regulations' and 'directives'.

Regulations are legal Acts that must be applied automatically and uniformly in all Member States, without needing to be transposed into national law. Regulations are binding in their entirety on all Member States. Directives require a Member States to achieve a certain result, but leave national authorities with the choice of form and methods.

In order to achieve the objectives set out in the Directive, Member States must adopt legal measures to transpose the Directive into national law. The above-mentioned EU laws are also sources of Hungarian law and they are at the top of the hierarchy of legislation, including international law, followed by the Hungarian Constitution. Following the Constitution, there are Acts, and at the lowest level there are Decrees. The basis of the Hungarian national legal system is the Constitution (Fundamental Law) adopted by the Hungarian Parliament in 2011, which outlines the main characteristics of the Hungarian State.

The Constitution lays down basic provisions in relation to human rights, the most important state institution and the basic principles governing their relations, such as the "rule of law" or "checks and balances". The most important sources of law are Acts that are adopted by the Hungarian Parliament after a long preparation and acceptance process. The lower level Decrees set out more specific rules and technical details in relation to the regulation. They are issued either by a minister or the Government.

The Hungarian court system consists of district courts, regional courts, courts of appeal and the Supreme Court (Curia). Apart from these ordinary courts, there are administrative courts that hear administrative disputes only.

The hierarchy of the court system means that the courts at higher level may overrule the lower court's judgements or may direct a new procedure.

In Hungary, the judge issues a judgment based on the existing laws in force, but the previous judicial practice is also taken into account.

Hungary consists of 19 counties that have their own administration. Despite this, Hungary is a unitary state. Unlike federated states, counties in Hungary do not have their own legislation, judicial system or particular laws.

In Hungary municipal (local) governments are set up for the administration of public affairs locally and for exercising local public authority. In relation to local public affairs the municipal government is entitled to adopt decrees.

Immigration Law

Hungary is a member of the Schengen Area, which is an area comprising of 26 European states that have abolished passport and all other types of border control at their internal borders in order to ensure the free movement of people. Practically, this means that the citizens of Schengen member countries are entitled to travel within the Schengen zone freely, without passport and border control.

As a general rule, third country nationals must apply for a visa when crossing the external borders of the Schengen countries. A Schengen visa enables them to stay in Schengen member states, such as Hungary, for up to 90 days. For instance, citizens of India, Russia or Turkey must apply for visa before travelling to Hungary. However, the nationals of those countries which have reached an agreement with the Schengen member states do not need to obtain visa prior to their arrival at Europe.

The list of countries whose citizens are not required to obtain a Schengen visa in order to enter any member country of the Schengen Area, such as Hungary, can be found in Annex II of Council Regulation (EC) No 539/2001.

For instance, the citizens of United States of America, Canada or Australia are entitled to travel to Hungary and stay there for up to 90 days without any visa.

If a third country national would like to stay in Hungary for a period exceeding 90 days, he/she must apply for a residence permit. The type of the residence permit depends on the purpose of stay in Hungary.

It is possible to apply for a residence permit for the purpose of employment, pursuit of gainful activity, study or family reunification. For the residence permit application, one is required to submit the completed form and the required annexures, as well as to pay the administration fee. In Hungary the Immigration and Asylum Office issues the residence permits.

If the third country national would like to perform work in Hungary, a work permit must also be obtained. Usually the Immigration and Asylum Office issues the residence permit and the work permit in a unified procedure.

Employment Law

The main source of employment law in Hungary is the Hungarian Labour Code.

The Labour Code covers the minimum term and conditions of the employment relationship; e.g. it contains provisions on the rights and obligation of the parties, the termination of employment relationship, working time, holidays, remuneration of work, privacy, the principle of non discrimination, employers'/employees' liability for damages.

The Labour Code contains the implementation of the respective EU directives and regulations. Unless otherwise provided for, the Labour Code applies to persons who perform work in Hungary.

In line with the provisions of the Labour Code, the parties are entitled to stipulate the terms and conditions of employment in the employment contract; i.e. the position, the basic salary, the amount of vacation days etc. Employers usually regulate specific issues relating to the employment relationship in their internal policies; e.g. the entitlement for a bonus and for other additional benefits, the use of company's IT devices, company cars.

If the employer is subject to a collective agreement, the provisions thereof must also be applied to the employment relationship. Before signing an employment contract, it is highly recommended to ask a Hungarian legal practitioner to review its terms and conditions.

The parties may pursue their claims arising from the employment relationship by initiating litigation before the competent labour court.

Renting a Home in Hungary

As an expat arriving in Expatland, one of the first things that have to be arranged is your accommodation.

In Hungary there are no specific restrictions for expats to rent a real estate. Nevertheless, there are some points to consider before renting a real estate:

- If you have found a suitable accommodation and reached an agreement, a written lease agreement should be signed with the landlord.
- Although no lawyer is needed to draft or counter sign a lease agreement, it is strongly advised to ask for legal assistance to prepare the agreement.
- In practice, fixed term tenancy agreements are for at least 6 or 12 months and may be renewed. Fixed term agreements may not be terminated by either party by ordinary notice, unless agreed otherwise.
- You are entitled to terminate an indefinite term agreement, which will take effect at the end of the following month, unless agreed otherwise.
- Rent is usually payable in advance, monthly.
- In practice the tenant is usually required to provide a security deposit amounting to 1 or 2 months' rent.

Purchasing a Property in Hungary

If you decide to buy a property in Hungary, the process of becoming the owner depends on your country of origin. If you are an EU, EEA (European Economic Area) or Swiss citizen, you are not required to obtain any permit from the Hungarian authorities to purchase an apartment in Hungary.

You are entitled to purchase any real estate, except agricultural and forestry land, where special permits and authorisations are needed. If you come from a non-EU or non-EAA country, you will need to obtain a permit from the competent county's governmental office ("kormányhivatal" in Hungarian).

These permits are usually granted within 1-2 months. You will have to submit an application (this must be drafted in Hungarian language), the required annexes and pay a fixed procedural fee (approx. EUR150). As a general rule, a written sale and purchase agreement must be concluded between the seller and the buyer, and the contract must be counter signed by a Hungarian attorney at law, who is a member of the Hungarian Bar Association.

After concluding the sale and purchase agreement, it needs to be submitted to the competent land registry office that will register the transfer of the ownership in the Hungarian land registry.

Establishing a Company

During your stay in Hungary, you may wish to set up a local company or invest in one of them. There are no specific restrictions for expats to establish or acquire business interests in a company.

The most popular company form under the Hungarian law is the limited liability company "Korlátolt Felelősségű Társaság", "Kft." in Hungarian). The minimum registered capital for a Kft. is HUF 3,000,000 (approx. EUR 10,500).

The articles of association (i.e. the founding document of the company) must be countersigned by an attorney at law. After this step, the application must be submitted to the competent court of registration. If the court finds the application satisfactory, it registers the company in the company register.

The registration may take a few days, provided that the company is formed through a "simplified" procedure by using the statutory templates (where no deviation is possible). The registration may be longer if the company is formed through the "ordinary" registration procedure.

The limited liability company (Kft.) has a separate legal status, thus, the liability of the members towards the company is only to provide their initial contributions and other contributions set out in the articles of association, however, members are not liable for the company's debts.

Power of Attorney

There might be situations when you need to authorize someone to act on your behalf via a power of attorney. If such power of attorney was signed outside of Hungary, it can be used in Hungary only if it was legalized by the Hungarian consulate in your country (i.e. diplomatic legalization) or an Apostille certificate was issued for it (provided that your country of origin is a member of the Apostille Convention).

In case there is a special bilateral agreement between Hungary and your country, it may be sufficient if the document is notarized by a public notary in your country.

According to Hungarian law, your partner cannot automatically act on your behalf. This system might be different from what your own legal system provides for, so it is recommended that you ask for legal assistance in this respect.

Inheritance Law

As an expat in Hungary, you should be aware of the fact that in the EU different laws apply to inheritance. If you are a citizen of an EU Member State, the law governing the succession will be the law of the country where you had your "normal residence", i.e. if you stay in Hungary for long enough, the Hungarian law.

The rules governing a will might be different from the rules you have in your country of origin. We recommend that if you want to make a will, you consider asking the assistance of a lawyer or a public notary. If you have drafted your will outside of Hungary, it might be applied in Hungary only if it fulfills certain specific formal requirements. It must either contain an Apostille certificate or diplomatic legalisation.

For further formal requirements of the will, please contact an expert in our E-Team.

Family Law

A foreign marriage is recognized in Hungary only if the marriage was formed according to your home country's laws, i.e. if you got married lawfully in your home country.

You can get married according to Hungarian law, if you and your opposite-sex partner appear in front of a Hungarian registrar, and both of you declare that you want to form a marriage.

Such declarations must be confirmed by two witnesses. Hungary does not recognize same-sex marriage, and same sex marriages entered into outside of Hungary are not recognized in Hungary.

Same-sex couples are recognised officially in Hungary by them entering into a registered partnership through a formal procedure at a Hungarian registrar. Such partnership has almost the same legal effects as marriage with one exception, being couples in a registered partnerships are precluded from to adopting children.

If you are planning to have children during your stay in Hungary, you should be aware of the rules governing the nationality of the newborn. Hungary adopted the principle of 'ius sanguinis' meaning that as a general rule, the child will receive the Hungarian citizenship only if his or her parents are Hungarians.

Accordingly, if the child is born in the territory of Hungary from foreign citizens, he or she does not obtain Hungarian citizenship automatically.

Accordingly, if you come from a country that only grants citizenship to persons who were born at the territory of that country, you might find yourself in a situation where your new born does not get any citizenship. In order to avoid this situation, we recommend you seek advice from a family law expert in Hungary or in your home state.

In the case of a divorce, the personal law of the spouses must be applied in the divorce process. This means that the Hungarian law cannot be applied automatically.

If you have entered into a prenuptial agreement, it will be applicable in Hungary if it is in compliance with the law of the state where it was entered into.

AT A GLANCE

- Hungary has been member of the European Union (EU) since 2004. The EU is a political and economic union formed by 28 Member States.
- Hungary is a member of Schengen Area. The citizens of Schengen member countries are entitled to travel within the Schengen zone freely, without a passport and border control.
- As a general rule, third country nationals must apply for a visa when crossing the external borders of the Schengen countries (e.g. when they enter into Hungary). However, the nationals of those countries, which have reached agreement with the Schengen member states do not need to obtain a visa prior to their arrival in Europe.
- If a third country national would like to stay in Hungary for a period exceeding 90 days, they must apply for a residence permit. The type of residence permit depends on the purpose of stay in Hungary (e.g. employment, pursuit of gainful activity, study or family reunification).
- Before signing an employment contract provided by your future employer in Hungary, we recommend seeking advice from a Hungarian employment law practitioner.

- In Hungary there are no specific restrictions for expats to rent real estate. Although a lawyer is not needed to draft or counter sign a lease agreement, it is strongly advised to ask for legal assistance to prepare such agreement.
- If you are an EU, EEA or Swiss citizen, you are not required to obtain any permit from the Hungarian authorities to purchase an apartment in Hungary. You are entitled to purchase any real estate except agricultural and forestry land, where special permits are needed. However, if you come from non-EU and non-EAA country, you will need a permit from the County's Government Office to purchase an apartment or building lot.
- There are no specific restrictions for expats to establish or acquire interest in a company.
- If your power of attorney was signed outside of Hungary, it can be used in Hungary only if it was legalized by the Hungarian consulate in your country or endorsed with an Apostille. In cases where there is a special agreement between Hungary and your country, it is sufficient if the document is notarized by a public notary in your country.
- If you wish to make a will in Hungary, you should ask for the assistance of a lawyer or a public notary. If you have entered a will outside of Hungary, it may apply in Hungary if it fulfils certain specific legal requirements.