

bpv | Jádi Németh Attorneys at Law

The bulk of capital investments in Hungary are traditionally originating from multinational companies based in Germany, Austria, the Netherlands, Japan and the USA. This trend is expected by many to continue, with the ongoing shift between the industry sectors concerned by such investments: from the manufacturing sector (heavy industry, construction, automotive, white appliances) to the financial and other service providing sectors. The volume of outsourcing to Hungary has also increased in the last years – Hungarian businesses are interested in gaining a foothold in neighbouring CEE countries as well as in farther countries of the CEE region as these markets are relatively easier to enter than the already consolidated Western European markets. The drawbacks of these markets can be associated with their untested nature characterised by imprecise regulatory systems and, in certain cases, unstable economic backgrounds.

Based in Budapest, bpv | Jádi Németh Attorneys at Law offers a comprehensive range of M&A services accompanied by a business-minded approach and transactional orientation. Lead partner Dr. Andrea Jádi Németh, LL.M. explained: "These motives, firmly underpinned by a profound M&A experience, drive and enable us to provide advice during the entire course of an M&A transaction from initial visibility studies and letters of intent through legal due diligences, transactional tax structuring and contractual negotiations to post-acquisition enforcement of warranties." According to Dr. Németh, the firm's sector-specific practice has been fine-tuned via its experience advising on transactions involving such industry sectors as building and construction, defence, pharmaceuticals, energy, white appliances and automotive.

The firm's client base presently includes ORCO Property Group, Lekerland Group, Wayzata Group, Carrier Group, OTIS Kft, Raiffeisen Ware Austria AG, Bauhaus AG and Anton Schlecker GmbH. Recent case studies include the full scale legal due diligence of the Hungarian subsidiaries of a US target company to be acquired in the frame of a bankruptcy procedure, as well as providing continuous legal assistance in the conclusion and implementation of the deal, and continuous general legal counselling provided to a regional airport in Hungary and its Irish investors with regard to the sale of the airport as well as general legal matters (commercial, corporate, energy, environmental etc).

When asked to describe the business environment in Hungary at present, Dr. Németh commented: "The economic setback caused by the credit crunch overshadows the once optimistic business environment. This economic setback is envisaged to be resolved by the benefits that Hungary's legislation and economy endeavour to offer to investors, such as tax cuts, EU-compatible state incentives, a quickly developing transportation and IT infrastructure as well as an evolving knowledge-based society." Dr. Németh said that the successful completion of these targets, hopefully in the medium term, is expected to contribute to the recreation of the confidence in Hungary's business environment. "Notwithstanding the above," she said, "the most stabilising thrust to Hungary's business environment is expected to be generated within some years by the introduction of the Euro as currency."

In regards to overcoming the key legal challenges associated with acquiring businesses in Hungary, Dr. Németh explained that recent amendments of transfer tax regulations will soon put the creativity of legal advisers to test. "Currently, the vast majority of real estate acquirers opt for a share deal and acquire the target through an SPV

(Special Purpose Vehicle)," she noted. "The underlying reason for this preference is that the acquisition of shareholdings is not subject to transfer tax payment obligation, whereas the direct acquisition of real estate triggers transfer payment amounting to 10% of the acquired property's market value (preferred rate applies to real estate trading companies). However, as of the 1st of January 2010, the acquisition of shareholdings in excess of 75% in the target company will also fall under transfer tax payment obligation. Although this extension of the scope of transfer tax payment will be to some extent counterbalanced by the decrease of transfer tax rates, this change will compel legal advisers of companies embarking on large-scale M&A deals to reconsider their long-established and well-placed acquisition structures."

According to Dr. Németh, other, more traditional challenges facing companies carrying out M&A transactions in Hungary include: finding suitable tools to assist with the implementation of corporate mergers; the intricate and lengthy competition clearance procedures that requires burdensome preparations; and intensive data-mining on the prospective market and its players. "Yet, all of these issues can be optimally addressed by a legal representative already in the pre-implementation phase of the transaction," said Dr. Németh.

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