

PAPP TEKLA<sup>1</sup>

## The Status of the Limited Liability Company since the New Hungarian Civil Code Came into Effect

- **ABSTRACT:** *Historically, the form of the limited liability company was first introduced in Hungary by Act V of 1930. This type of company, which is equipped with all the advantages of members in a limited liability, was born out of the relevant necessity in the economy. However, it is quite flexible in its nature, could be established easily and demonstrates a simpler organizational structure than a company limited by shares. Therefore, the limited liability company fits within the general frame of small and medium enterprises, and is the main and most popular form of a company in Hungary. This paper gives an overview of the characteristics, regulations, foundation, organization, minority rights, business share, members and managing directors' liabilities in Hungarian limited liability companies from a regulatory and practical perspective.*
- **KEYWORDS:** characteristics, regulation, foundation, organization, minority rights, business share, member's and managing director's liabilities of the Hungarian limited liability company.

### 1. Introduction

#### ■ 1.1. The regulation

Before the new Hungarian Civil Code – which came into effect on the 15th of March, 2014 – a two (duplex)-law model was applied in Hungary, and included the Company Act alongside the Civil Code. The separate regulation on economic companies began with Act VI of 1988 and lasted until Act IV of 2006. Today, it is Act V of 2013 – the new Hungarian Civil Code – that implies company law (in Book 3) on the basis of the monistic principle of codification.

The new Hungarian Civil Code is comprised of three levels in Book 3: general and common provisions of legal persons related to business associations, cooperatives,

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groupings, funds and society; general and common rules of business associations (dealing with general partnerships, limited partnerships, limited liability companies and stock companies); and the special rules of each company. Furthermore, company law is affected by the Firm Act, the Accounting Act, the Bankruptcy Act, the Act on Capital Market, the Competition Act (Act LVII of 1996), the Act on Civil Procedural Law, the Act on the Investment of Foreigners in Hungary (Act XXIV of 1988), the Act on the Branches and the Commercial Representation of Foreign Undertakings (Act CXXXII of 1997), the Act on Private Entrepreneurs and Private Enterprise (Act CXV of 2009), the Act on the European Economic Interest Grouping (Act XLIX of 2003), the Act on the *Societas Europaea* (Act XLV of 2004) and the Act on the European Cooperative Society (Act LXIX of 2006).

On this basis, regulations in Hungary appear both complicated and complex. For example, the regulation of company law is divided into norms of private and public law (whereas only the private law rules can be found in the Hungarian Civil Code), and there are three levels of regulations in the Civil Code, ranging from general to special rules for each business association. Furthermore, the regulation of company law in Hungary is not an independent branch of law, but an independent field of law within civil law. As such, Hungary has a peculiar, rather imperfect type of single-law model (system). For example,

### ■ 1.2. *Business association forms*

There are two basic principles in Hungarian private law: (a) the cogency of the forms of legal persons,<sup>2</sup> and (b) the formula of the prescribed forms in company law;<sup>3</sup> the latter principle means that the establishers of a company can only choose these forms, and not any other (new) forms like a silent company (*stille Gesellschaft*). Furthermore, they can neither mix these forms into partnerships limited by shares (*Kommanditgesellschaft auf Aktien*), nor can they combine these forms with any other forms of legal persons, like a cooperative limited by shares (*Genossenschaft auf Aktien*).

'*Gazdasági társaság*' means an economic company like in German company law (*Handelsgesellschaft*); similarly, partnerships in Hungary are also referred to as companies.

### ■ 1.3. *The default rule of business associations*

In the articles of incorporation, members may diverge from the prescriptions of the Hungarian Civil Code on legal persons when regulating their relations with one another and the legal person, as well as when regulating the organisational structure and

2 Section 3:1 HCC [Legal capacity of legal persons] (4) Such types of legal persons may be established as defined by law, including the association, the business association, the cooperative society, the grouping and the foundation (as well as the state).

3 Section 3:89 HCC [The constraint of form] (1) A business association may operate in the form of a general partnership, limited partnership, limited-liability company or joint stock company. The last one has two sub-types: a private company limited by shares or a public company limited by shares.

operation of the legal person. The first exception to this is in the case where divergence is prohibited by the Civil Code, whereby the members of a legal person shall not diverge from the prescriptions; the second exception is if it manifestly violates the rights of the creditors, the employees or a minority of the members of the legal person, or in the case where it undermines the efficient supervision of the lawful operation of legal persons.<sup>4</sup>

This particular Hungarian regulation is extremely complicated, as the starting point is the freedom of the formation of legal persons and the general principle of default regulation, which can only prevail based on the following steps (whereby meeting the criteria of one step means passing to the next step). The first step is to examine the nature of the legal relationship: does this legal relation exist among the members of the legal person or between the legal person and the member; the second step is to determine whether this legal relation concerns the organizational structure or the operation of the legal person; the third step is to explore whether there is any respective prohibition in the Civil Code in terms of the legal relation. If there isn't any prohibiting rule, the fourth step will be to examine the violation of the rights of the creditors', the employees' and the minority members' to the legal person; following this, the final step is to determine if this legal relation hinders the efficient supervision on the lawful operation of the legal person; if the answer to this last question is "no", then we may derogate from the prescriptions of the Civil Code. This conditional default rule is conspicuously controversial in Hungarian legal literature, as well as in the related court decisions that have been delivered based on it.<sup>5</sup>

## 2. The characteristics of the Hungarian limited liability company<sup>6</sup>

Historically, the form of a limited liability company was first introduced in Hungary by Act V of 1930. This type of a company, which is equipped with all the advantages of members in a limited liability company, was born out of relevant necessity in the economy; however, it is quite flexible in its nature, can be established easily and demonstrates a simpler organizational structure than a company limited by shares. Therefore, the limited liability company fits within the general frame of small and medium enterprises,<sup>7</sup> and is the main and most popular form of a company in Hungary.

This form of a business association has a mixed character. The legal act to create a limited liability company is based on the legal entities agreeing on what is necessary. The legal relationship, which results from the incorporation, has not lost its contractual relationship entirely. For example, the business shares of the

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4 Section 3:4 (1) – (3) HCC.

5 See also: Veress, 2019a, pp. 96–97.; Veress, 2018, pp. 22–23.

6 Papp, 2015, pp. 189–190.

7 Auer et al., 2011, p. 20.

members can only be transferred to third persons provided that this is not precluded or restricted by the memorandum of association; additionally, the administration of the affairs of the company and the representation of the company can be exercised by one or more managing directors elected by the members. The limited liability company is both a capital and a personal association that is suitable for a family business or a large enterprise. The basic characteristic of a limited liability company is that its members are bound by trust,<sup>8</sup> and it can either be founded by a single member or multiple members. The limited liability company may also be established by both non-resident and resident natural and legal persons to jointly engage in business operations or for objectives other than making profit (non-profit LLCs). Although the limited liability company may be incorporated under the general registration proceedings, as well as the simplified registration proceedings (by utilizing a standard form of a contract), it can only be done through the designated electronic registration platform.<sup>9</sup>

The limited liability company is a complete legal person, meaning that it is a separate legal entity that possesses its own property, liability, organization and corporate name.<sup>10</sup> The limited liability company shall bear its legal capacity under its corporate name, and may gain rights or undertake commitments such as acquiring property, concluding contracts, and suing or being sued.

From this it follows that the term 'limited liability company' (korlátolt felelősségű társaság) is misleading, as it is not the liability of the company that is limited, but the liability of its member.

### **3. The impact of the default rule on the legal practice of the limited liability company**

#### **■ 3.1. General bans on the prevalence of the default rules in company law**

The cogency of the forms of legal persons, the formula of the prescribed forms in company law<sup>11</sup> and the definitions on the characteristics of the companies<sup>12</sup> shall block the prevailing default rules related to business associations. The cogent and imperative nature of the Firm Act,<sup>13</sup> the standard form of the memorandum of asso-

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8 Veress, 2019b, p. 121.

9 Papp, 2015. pp. 46–48, pp. 348–349.

10 Section 3:1 (1) HCC.

11 2977 general partnerships, 116629 limited partnerships, 343948 limited liability companies and 6433 joint stock companies existed in the Firm Registry (Registrar of Companies), effective on the 1st of July 2018 (Cleghorne 2018/8., pp. 8–9).

12 ÍH 2018. 116.: The limits of derogating from the Civil Code are such rules that constitute the definitive essence of creating norms in terms of the characteristics of business associations, and also such provisions that affect third persons.

13 Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings

ciation<sup>14</sup> and the simplified e-registration process<sup>15</sup> exclude the possibility of applying the default rules to company law.

### ■ 3.2. *The judicial decisions*

A decision of the High Court of Appeal<sup>16</sup> declared that, according to the default rule, the founders/members of a business association may only derogate from the rules on business associations in the memorandum of association.

The civil divisional court session, held between the 21<sup>st</sup> and the 23<sup>rd</sup> of May, 2014, concluded that the judges of the registry court were unable to evaluate the situation at the time of forming the business association, particularly in terms of any derogations clearly violating the interests of the creditors, employees and minority members to the legal person, or to judge the likelihood of this hindering the efficient supervision of legal persons.

We can find contradicting court decisions drawn, as follows; (a) in connection with the initial capital, the core deposit and the business shares of a limited liability company<sup>17</sup> (i.e. how many core deposits and business shares is a member of a limited liability company entitled to own: one<sup>18</sup> or more?<sup>19</sup>). Before the new Hungarian Civil Code, the judicial decisions declared that each member was only entitled to one core deposit and one business share.<sup>20</sup> Nowadays, such court decisions and opinions<sup>21</sup> are encountered, according to which one member of the limited liability company may

14 General partnerships, limited partnerships, private limited liability companies and private companies limited by shares may utilize this standard form (a model is provided by the Appendix to Firm Act in order to establish their memorandum of association). In this case, the memorandum of association may only contain what is set by given standard form. The forms of the documents are also applicable to any memorandum of association to be established in the given standard form.

15 Aside from redress procedures, company registration proceedings are non-judicial proceedings carried out electronically, to which the provisions of Act III of 1952 on the Code of Civil Procedure shall be duly applicable, unless otherwise provided for in the Firm Act. If the partnerships, the limited liability companies and the private company limited by shares will be based on a model of contract (i.e. a memorandum of association determined by the Civil Code and the Firm Act), then these business associations shall become registered in a simplified, electronic way.

16 ÍH 2017. 65.

17 Section 3:161 [Definition and scaling of the initial capital and the core deposit] (1) The core deposit is the capital contribution of the member. The core deposits of members may be of different degrees, whilst the degree of each contribution may not be less than one hundred thousand Forints. (2) Each member may have one single core deposit. (3) If several persons have jointly undertaken the provision of one single core deposit, their liability for providing the core deposit shall be joint and several. (4) The amounts of all core deposits provided added up shall constitute the initial capital, which may not be less than three million Forints. Section 3:165 [Common property over business shares] (1) One business share may form the rights of several legal entities.

18 Civil divisional court session on 21-23 May 2014.

19 ÍH 2017. 30.

20 BDT 2004. 939.; 3/2009. (VI. 24.) PK vélemény; Veress, 2019a, p. 119.

21 Vékás, 2018, p. 391.; Dzsula, 2014, p. 5.; Veress, 2019a, p. 120.

own more core deposits and more business shares. In accordance with the view of Veress Emőd,<sup>22</sup> the principle of ‘one member – one core deposit – one business share’ is a determining and substantive attribute of a limited liability company. (b) Regarding the rule on the amount of the initial capital and the core deposit allowed to be held by one member of a limited liability company, is this provision cogent or not?<sup>23</sup>

The following rules are considered as default rules in the interpretation of the courts: (a) the executive officer(s)<sup>24</sup> may also be a member(s) of the board of directors in the case of a limited liability company;<sup>25</sup> (b) the regulation on the fulfilment of the contribution in cash<sup>26</sup> in the case of the limited liability company;<sup>27</sup> (c) the auxiliary service may only be performed personally,<sup>28</sup> however, this auxiliary service can be a contribution fulfilled in cash (over the core deposit), and the term for the fulfilment of this obligation may be limited,<sup>29</sup> or the auxiliary service may be performed not only on the grounds of a membership relation, but also within the framework of an employment relation.<sup>30</sup> (d) The Hungarian Civil Code also provides the definition of the business share,<sup>31</sup> yet it fails to specify the special-right business share: the creation of a special-right business share is only possible if there is no respective legal norm prohibiting it.<sup>32</sup>

22 Veress, 2019a, p. 120.

23 Section 3:161.

24 Section 3:196 [The management of the company] (1) The management of the company shall be exercised by one or more managing directors.

25 BDT 2015. 30.

26 Section 3:162 [Provision of capital contribution in cash] (1) Where according to the memorandum of association a member is required to provide less than half of the respective cash contribution before the application for registration is submitted, or if the memorandum of association provides a time limit of over one year from the time of registration of the company to make available the part of the cash contribution that was not paid before the application for registration was submitted, the company shall not be allowed to pay any dividend insofar as the unpaid profit calculated with respect to the members’ core deposits (according to the provisions on the payment of dividends) reaches the initial capital together with the cash contributions that the members have already paid. (2) As in the case provided in Subsection (1), members shall bear liability for the company’s debts up to the unpaid part of their cash contribution.

27 FÍT 10. Cgf. 47021/2015/2.

28 Section 3:182 [Auxiliary services] (1) In the absence of a particular legal relationship that covers this, if the member performs any action of personal involvement in the company’s activities, any compensation in return for such action may be requested in accordance with the respective provisions of the company’s memorandum of association. The company may be entitled to enforce demands against its member for failing to perform such actions of personal involvement, on the condition that it is ensured by the memorandum of association.

29 BDT 2019. 4057.

30 Kúria Mfv. 10.362/2017/3.; EBH2018. M.22.

31 Section 3:164 [Concept of business share] (1) A business share shall be the entirety of all rights and obligations relating to capital contributions. Business shares shall come into existence upon the registration of the company. (2) The rates of business shares shall align with the capital contributions of the members. The business shares of identical rates shall grant identical membership rights.

32 PÍT Gf. 40.015/2016/6.; PJD 2017. 8.

The rule of selling the business share<sup>33</sup> is considered cogent by the judicial practice<sup>34</sup> from the perspective of protecting the creditors.

- 33 Section 3:177 [The selling of business shares] (1) If a member is excluded from the company by order of the court, or if his/her membership is terminated due to the member's failure to provide the capital contribution or supplementary payment, the business share of this member must be disposed of. (2) The former member and the company shall agree the conditions and the mode of selling within fifteen days from the date of termination of his/her membership. The agreement shall fix the time limit within which the business share must be disposed of – which may not exceed three months –, and the minimum selling price, which may not be less than the total of the capital contribution and supplementary payment that the former member had failed to provide. If no agreement is reached within the prescribed time, or if the business share is not disposed of within the time limit fixed in the agreement, the company shall dispose of the share in question by way of public auction within forty-five days following the deadline prescribed for the agreement or for the sale. (3) In the interest of carrying out the selling procedure, the company shall be entitled to introduce measures and make statements as deemed necessary.
- Section 3:178 [Auction notice] (1) If the business share is sold by way of an auction, the company shall publish an auction notice at least eight days before the scheduled date of the auction. (2) The auction notice shall contain: a) the company's name and its registered office; b) the place and time of the auction; c) important particular details of the business share offered; d) the reserve price; and e) the terms and conditions of the payment of the purchasing price. (3) The reserve price may not be lower than the sum the former member still owes the company due to his/her failure to provide the capital contribution and supplementary payment.
- Section 3:179 [Implementation of the auction] (1) Auctions shall be held in the presence of a notary public. The notary shall record the auction report minutes in the form of an authentic public instrument. (2) Apart from the former member, any person may bid to purchase the business share. The price offered may not be lower than the reserve price. The binding period of the highest bidder shall cover the time period, during which the acceptance could normally be expected, also considering any right for pre-emption that may exist for the business share in question. (3) Based on the highest bid, a member of the company, the company itself and a third person designated by the company may exercise the right to acquire the business share with priority over others in accordance with the provisions on the transfer of business shares to third persons. If the entitled persons did not exercise such right, the highest bid made in the auction shall be accepted. (4) In the event where a business share is sold in an auction, the buyer shall pay the purchasing price to the company, and the company shall conduct the final settlement with the former member.
- Section 3:180 [Allocation of the purchasing price received] (1) From the purchasing price, the company is entitled to lay claim to the capital contribution and supplementary payment that the former member had failed to provide. If the purchasing price exceeds that amount, the company is entitled to cover the costs of the selling procedure, and the remaining sum is due to the former member. (2) If the purchasing price received is insufficient in terms of covering the costs of the selling in accordance with Subsection (1), the former member shall reimburse the company of the sum that the company was unable to recover from the purchasing price.
- Section 3:181 [Unsuccessful auction] (1) If no bid is received in the auction covering at least the reserve price, the auction shall be declared unsuccessful. (2) Within the period of six months from the date of exclusion of a member or from the termination of his/her membership, the business share may be offered in a public auction anytime and without any limitation. (3) If either of the auctions fail, the company shall be entitled to withdraw the business share within thirty days. (4) If the business share of a former member is not sold within the period of six months from the date of exclusion of the member or from the termination of his/her membership, the company shall withdraw the business share. If the business share is withdrawn, the former member shall be entitled to lay claim for his/her portion out of the company's capital, according to the provisions on the allocation of the purchasing price received from the selling of the business share.

34 BDT 2016. 3568.

### ■ 3.3. *Conclusions*

We can draw the following conclusions: (a) some questions do not have clearly defined answers, for example, the amount of the initial capital and the quantity of the core deposits and the business shares; (b) there is a great deal of legal uncertainty due partly to the formulation of the norms of company law (many semi-mandatory rules and default phrases apply the expressions of “must”, “not allowed”, “prohibited”, “obliged”),<sup>35</sup> and partly to the controversial court decisions and opinions disclosed in the legal literature; (c) the syndicate contract comes into the spotlight, as its increased role can be grasped in the background of the operation of the business associations, which is the opposite to the legislator’s intention;<sup>36</sup> (d) the form of the limited liability company becomes transformed into a private company limited by shares, whereby the Hungarian company law shall become deprived of a particular, and widely popular, type of company; (e) the application of the statutory instruments of company law shall become even more challenging.

## 4. The formation of a limited liability company<sup>37</sup>

### ■ 4.1. *General intrinsic validity requirements*

The limit of the freedom of enterprise and association is prescribed in the Fundamental Law of Hungary,<sup>38</sup> which recognizes and supports the right of establishing business enterprises, and also declares that everybody has the right to form any organization with others or to join any organization for the purpose of protecting their economic and social interests. Yet, this constitutional principle shall not prevail without any limitations, as not everybody is allowed to establish a company for any purpose in any way.

With the exception of the limited liability company (and the public or the private company limited by shares), at least two members are required for the foundation of a business association. The Hungarian branch of a foreign company does not have the right to found a company or participate in its operation.<sup>39</sup> As the direct commercial representation office of foreigners shall bear no legal capacity, it may not pursue any business activities. The civil association and the condominium – legal capability/ legal subject status restricted to a specific purpose – may not form a company. The pre-company may neither establish an economic company nor function as a member,<sup>40</sup> because only a registered company with a full legal subject status can meet the

35 Miskolczi-Bodnár, 2019, p. 9.

36 Kommentár, 2014, p. 214.

37 Using of Auer et al., 2011, pp. 27–29.; Papp, 2015, pp. 141–142.; Lexikon, 2019, pp. 307–308.

38 Hungary shall recognize the fundamental human rights exercised individually, and also as part of a community. Everyone shall have the right to establish or join organizations (Articles I. and VIII. to the Fundamental Law of Hungary).

39 EBH 2003. 887; BH 2003. 420.

40 Section 3:101 (2) c) HCC.



requirements of the foundation of a company.<sup>41</sup> The cooperative, the budgetary agency or the local government can only become a member in a company with limited liability. If the registry court interdicts a person, then the person is prohibited from becoming a member of any business association.<sup>42</sup>

The limited liability company must have a defined objective that is lawfully permitted, and can either be established to engage in joint business operations with the objective of making profit or with a non-profit character. Certain specific economic activities shall be restricted by law, in order to only be pursued by specific company forms; for example, the activity of a patent agent may only be carried out by a limited liability company in the form of a joint business enterprise. Similarly, certain economic activities may only be exercised in the possession of a respective permit (activity-specific permit), for example in the case of telecommunications. A business association may engage in the pursuit of an activity that is ordered by law to be conditional on a specific qualification, so long as a member of the company who has personal involvement in that activity, or at least one person who is contracted to work for the company by means of employment or any other civil law relationship, shall meet said qualification requirements.<sup>43</sup>

The limited liability company may only be implemented by firm registration proceedings according to Act V of 2006 (on Public Company Information, Company Registration and Winding-up Proceedings).

If the legal conditions (legal subject status, defined objective and method of establishment) shall fail to be realized by the founders of the limited liability company, the company will not come into existence.

#### ■ 4.2. *Particular intrinsic validity requirements*

In addition to the general provisions,<sup>44</sup> the amount of the capital contribution provided by each member in the form of the core deposit<sup>45</sup> shall also be defined in the memorandum of association. Furthermore, the name ‘korlátolt felelősségű társaság’, or its equivalent abbreviation ‘KFT’, must be applied in the corporate name of the limited liability company.

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41 EBH 2003. 883; BH 2003. 471.

42 Section 3:90 (3) HCC; Section 9/B Firm Act.

43 Section 3:97 (2) HCC.

44 Section 3:5 [Content of the instrument of incorporation] Beyond the founders’ intention to establish a legal person, the instrument of incorporation of a legal person shall specify a) the name of the legal person; b) the position of the legal person; c) the objective or main activity pursued by the legal person; d) the names of the founders of the legal person, including their residence or seat; e) the monetary or asset contributions to be made to the legal person and the value of the contributions, as well as the method and the time of their completion; and f) the first executive officer of the legal person.

45 Section 3:161 (1) HCC.

### ■ 4.3. *The initial capital of the limited liability company*<sup>46</sup>

The limited liability company is founded with an initial capital, consisting of the capital contributions adding up to a pre-determined amount. The initial capital of the company consists of individual members' capital contributions. Monetary and asset contributions are the contributions of financial value provided by the members of a company. Although the capital contributions may be of various amounts, the amount of each capital contribution provided must not be less than one hundred thousand Forints.<sup>47</sup>

As a result of this, the liability of the members is generally limited to their individual contributions, whilst the claims of the creditors towards the limited liability company will be made against the company's property. The fixed minimum value of the assets must be raised initially, and it must also be consciously retained from the business. Firstly, this condition serves to protect the creditors, and secondly, for the protection of the members against any such actions of the managing directors, which could reduce the value of their business shares as long-term investments. The entirety of all capital contributions shall be the initial capital of the company, which shall not be less than three million Forints.<sup>48</sup>

Following the registration of the company, the rights and obligations of the members, and their shares from the assets of the limited liability company, become embodied by their business shares; a business share refers to the entirety of the rights and obligations related to the core deposit.<sup>49</sup> A member's business share also manifests his/her interests in the company, and is thereby qualified as a valuable and transferable right, including a group of rights on membership and capital shares. The business shares of the members shall be consistent with their respective capital contributions.<sup>50</sup>

## 5. The organization of the limited liability company<sup>51</sup>

### ■ 5.1. *The corporate hierarchy of the companies under the effect of the general and common rules on legal persons and the companies decreed in the Hungarian Civil Code*

#### 5.1.1. *The supreme body of the company*<sup>52</sup>

The supreme body of the company is the decision-making body. The members and the founders shall exercise their decision-making capacity under the effect of the Civil

46 Using of Auer et al., 2011, p. 398.; Papp, 2015, p. 119.; Lexikon, 2019, p. 166.

47 Section 3:161 (1) HCC.

48 Section 3:161 (4) HCC.

49 Section 3:164 HCC.

50 ÍH 2009. 174.; PJD 2017. 8. I.

51 Using of Auer et al., 2011, pp. 431–439.; Papp, 2015, pp. 81–95., 173–177.; Lexikon, 2019, pp. 168., 183–185., 122–124., 291–292.

52 Section 3:16 (1) HCC.

Code or the instrument of constitution, in the form of a body comprised of its members (as selected by all of the members). The company's supreme body in general and limited partnerships is the assembly of members, whereas in limited liability companies and groupings it is the meeting of the members (or the members' meeting), and in stock companies it is the general assembly.

The supreme body's main duty to a company is to adopt decisions on fundamental and strategic issues; the matters rendered under the exclusive competence of the supreme body are defined by the provisions pertaining to the company's specific form.

Supreme body meetings may be attended by the members of a company, as well as any person invited according to the rule of law or the memorandum of association, albeit without voting rights; therefore, all members of the company shall have the right to partake in the supreme body's activities.

The competence of the supreme body are the following: (a) Resolutions on personal matters; after the foundation of the company, the executive officers, the members of the supervisory board and the auditor shall be elected by the supreme body. However, additional competencies can be granted; for example, the articles of association of the companies limited by shares, or the memorandum of association of the limited liability companies, may contain provisions to assign the right for the appointment and removal of the members to the management board and the managing directors, as well as the right to establish their remuneration with the supervisory board;<sup>53</sup> (b) Resolutions on economic policy matters: the annual report of the company, as prescribed by the decrees of the Accounting Act, and the allocation of taxed profits pertain to the competence of the supreme body to the company;<sup>54</sup> (c) The amendments to the memorandum of association;<sup>55</sup> (d) Resolutions on the termination of the company with or without succession.<sup>56</sup>

The supreme body shall draw its decisions in held sessions or without held sessions.<sup>57</sup> The supreme body shall be summoned by invitation,<sup>58</sup> usually by an executive officer, and this invitation must include the name of the company, the registered seat address, the date and the place of the meeting, as well as the agenda. The supreme body shall hold its meeting session at the venue of the registered seat. In case the session of the supreme body was not summoned in accordance with these rules, it can only be held on the condition that all of the persons entitled to partake are present, and with that they also unanimously agree to hold the meeting. Decisions in the meeting may only be drawn upon the points of the agenda, on the condition that it was announced in congruence with the respective rules, unless all of the entitled participants are present and they unanimously agree to deal with the issues that are not on the agenda.

53 Sections 3:21 (3), 3:109 (3) HCC.

54 Auer et al, 2011, p. 135., 3:109 (2) HCC.

55 Section 3:102 (1) HCC.

56 Sections 3:39, 3:48 HCC.

57 Sections 3:16 (2), 3:17 (1), 3:18-3:20, 3:111 HCC.

58 Zala Megyei Bíróság I. Gf. 20-99-040006/5.

The session of the supreme body is not public. The executive officers and the members of the supervisory board to the company can partake in the sessions of the supreme body only in the function of advisors.

A member may exercise his/her membership rights in the meeting of the supreme body through an application on electronic telecommunication devices instead of personal participation, on the condition that such devices, along with the requirements of and instructions for their utilization have been specified by the instrument of constitution, so that both the identification of each member, as well as the interactive and unrestricted communication between members is ensured. Any resolution adopted at a meeting that was not summoned or held as per the rules shall for this reason be declared invalid, but it can become made valid retroactively from the date of the meeting, on the condition that all of the members unanimously approve it accordingly within thirty days from the date of the meeting. In the meeting of the supreme body, the quorum exists when more than half of the members possessing the voting right are present; the quorum must be verified for each decision-making event.

In the meetings of the supreme body, the members make decisions on the matters by voting. In the process of adopting a resolution, the following persons are prohibited from voting: (a) those for whom the resolution contains any exemption from any obligation or responsibility; (b) those who shall be advantaged otherwise, by the encumbrance of the company; (c) those with a family member that has a vested interest in the decision, and who is neither a member nor a founder of the company; (d) those who maintain any relation based on majority control with another organization to have a vested interest in the decision; (e) those who have a vested interest in the decision. The member of a limited liability company is excluded from the passing of a resolution if the supreme body has decided that the member is to be elected as the managing director.<sup>59</sup>

The members pass the resolutions with the majority of the votes verified for the keeping of the quorum. When a simple or a qualified majority of the votes is prescribed under the decrees of the Civil Code to pass a resolution, any clauses in the instrument of constitution enabling a lower voting rate is declared null and void. When unanimity is prescribed under the effect of the Civil Code to pass a resolution, any different clause in the instrument of constitution shall be null and void.

In a case where the instrument of constitution allows resolutions to be adopted without holding a session, management shall initiate the respective process by sending the draft of the resolution to its members. Members shall be given the period of at least eight days from the date of the draft's delivery to hand, in order to send their votes to management. In the process of adopting a resolution without a held session, the respective provisions of the Civil Code on the quorum and the voting shall apply unless the decision-making process may be declared sufficient (i.e. when the number of votes sent to management equals at least the number of the members possessing the voting

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59 BDT 2019. 3980.

right, who would be required to attend in order to reach the quorum if the meeting was conducted in a held session). When it is requested by a member, the management shall summon a meeting of the supreme body. Management shall determine the result of the vote within three days from the deadline of the vote, or if all the members' votes are received earlier, then the result will be determined within three days of the date when the last vote was received; furthermore, management shall provide the result to the members in a written format, within an additional three days. The date of the resolution must be the last day of the deadline for voting, unless the votes of all of the members were received earlier, in which case it will be the day when the last vote was received.

#### 5.1.2. *The operative organ (management) of the company*<sup>60</sup>

The executive officers or the board of the executive officers shall exercise the management of the company in accordance with the respective provisions governing the specific forms of companies. The executive officers must perform their management duties by representing the interests of the company. The 'management' activity means passing the decisions other than those conferred by the memorandum of association onto the competence of the supreme body, or another organ of the company, and which are required to be passed in relation to the operation of the company.

The management of general and limited partnerships shall be exercised by one or more managing directors that are appointed or elected by the members; if no managing director has been appointed or elected, each member shall function as that. The management of limited liability companies shall be exercised by at least one managing director, whereas the management of stock companies shall be exercised by the management board, unless the competence of the management board has been conferred to a single executive officer (general director) by the articles of association of the private limited companies.<sup>61</sup> The articles of association of public companies that are limited by shares may also contain provisions to designate management and supervisory functions upon the board of directors (the one-tier system); in the case of a public company limited by shares, there is no supervisory board and the executive officers shall be recognized as the members of the board of directors.

The legal status of the executive officer:<sup>62</sup> the executive officer is entitled to manage the operations of the business association under the effect of a personal services agreement, or a contract of employment, as agreed with the company. The executive officers are elected for a term of five years, yet for business associations that have been established for a shorter period, they are only elected for that particular period. The mandate of the executive officer takes effect from the time when the entitled person has accepted it; the executive officer may be re-elected, and may also be recalled by the supreme body of the company at their will at any time.

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60 Sections 3:21 (2), 3:112 (2) HCC.

61 Sections 3:282 81), 3:283 HCC.

62 Sections 3:112, 3:114, 3:115 (1) HCC.

The executive officer is entitled to independently managing the operation of the business association, based on the priority of the interests of the business association. In this capacity, the executive officer must exert his/her duties in due compliance with the respective statutes of law, the instrument of constitution and the resolutions drawn by the supreme body of the company. The executive officer may not be instructed by the members of the business association, and his/her competence may not be denied by the supreme body. In regards to a single-member company, the single member may instruct management, and the executive officer will thus be required to act accordingly.

The general duties of the executive officer:<sup>63</sup> the executive officer is responsible for the representation of the company<sup>64</sup> and for reporting to the registry court – through electronic channels – on the foundation of the company, any amendments to the memorandum of association, the rights, facts, and data included therein, and also on the changes of these, as well as any other data required by law. The executive officers must treat all business secrets of the company as strictly confidential. Upon the request of the members, the executive officers shall provide information on the situation of the company, and the access to any such information within the documents, records and the registers of the company. The executive officer is entitled to demand a written declaration of confidentiality before providing information or granting access to information. The executive officers exercise the employer's rights over the employees of the company. The executive officer shall manage the operation of the business association independently, based on the priority of the interests of the business association.

### *5.1.3. Supervision of the operation of the companies by the owners: the supervisory board*

For the purpose of inspecting the management of the company, and in order to protect the interests of the business association, the members can effectively prescribe the establishment of the supervisory board (comprised of three persons) in the memorandum of association.<sup>65</sup> The establishment of the supervisory board is mandatory, (a) if the number of full-time employees of the business association shall exceed two hundred on an annual average, and the working council did not waive the participation of employees in the supervisory board, either; (b) in public companies limited by shares, even if the company does not apply the one-tier system; (c) in private companies limited by shares, if it is requested by a group of shareholders that together possess at least 5% of the total voting rights.

In case the annual average number of the full-time employees employed by the business association exceeds two hundred, one-third of the supervisory board must be created with the representatives of the employees. Within the supervisory board, the representatives of the employees must have the same rights and obligations as all the other members. In case the opinion of the representatives of the employees shall unanimously differ from the majority opinion of the supervisory board, the minority

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63 Sections 3:22, 3:23 HCC.

64 Auer et al., 2011, pp. 152–153.; EBH 2002. 780.

65 Sections 3:26 (1), 3:119, 3:290 (1), (3), 3:124-3:128 HCC.

opinion of the employees must be exposed at the next meeting of the supreme body. The representatives of the employees that are members of the supervisory board shall inform the employees of the activities of the supervisory board.

The members of the supervisory board are independent from the management of the business association; thus they shall not be bound by any instructions when pursuing their duties. In this capacity, the member of the supervisory board may not be instructed by either the members of the company or the employer.

As previously mentioned, the members of the supervisory board are elected for a term of five years, except in the case of a business association that is established for a shorter period, in which case they are elected for that particular period.<sup>66</sup> The mandate of a member to the supervisory board shall take effect from the time when the entitled person accepts it; the members of the supervisory board may be re-elected and recalled by the supreme body of the company at their will at any time. The regulations governing the personal services agreement relation are also applicable to the members of the supervisory board.

The supervisory board shall assess all propositions brought before the supreme body, and present its opinion thereof at the meeting of the supreme body. The supervisory board shall have access to the documents, accounting records and books of the business association; furthermore, they shall also be entitled to demand information from the executive officers and the employees of the company, and to inspect the company's finance accounts, petty cash, securities portfolio, inventories and contracts, or to have them inspected by a competent expert.

If the company has a supervisory board, then the supreme body of the company may adopt a decision on the financial report, having previously obtained the written report of the supervisory board thereof.<sup>67</sup> If the supervisory board declares that the activity of management is against the law, the memorandum of association or the resolutions of the supreme body of the company, or that it hinders the interests of the company or its members, the supervisory board has the right to convoke the meeting of the supreme body of the company to deal with that issue and to take the necessary decision.<sup>68</sup>

The peremptory supervisory board: in case the instrument of constitution transfers the responsibility onto the supervisory board for taking and approving such decisions, which should otherwise fall under the competence of the supreme body or the management, the members of the supervisory board are held liable for the damages that they have caused to the business association while acting in that capacity, in accordance with the provisions on the liability for damages caused by breaching a contractual obligation.

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66 Sections 3:26 (4), 3:27 (1), (2), 3:121 (2), (3), 3:120 (2), (3), 3:123 HCC.

67 Section 3:120 (2) HCC.

68 Section 3.120 (3) HCC.

The operation of the supervisory board:<sup>69</sup> the supervisory board shall act as an independent body that consists of its members. The supervisory board shall elect a chairman from among its members. The members of the supervisory board shall act in person, in that any representation of the supervisory board is prohibited. The supervisory board shall establish its own rules of operation, which are subject to the approval of the supreme body of the company. The supervisory board shall reach the quorum if at least two-thirds of its members, or at least three members, are present. The supervisory board shall pass its resolutions with a simple majority of votes.

The members of the supervisory board are liable for the damages caused to the company by failing to meet their responsibilities, in accordance with the provisions on the liability for damages caused by the breaching a contractual obligation.<sup>70</sup>

*5.1.4. The supervision of the operation of the companies from the public interest: the statutory auditor<sup>71</sup>*

On the condition that a company is obliged by the Civil Code, as well as by the Accounting Act, to employ a statutory auditor, or in case it is thus prescribed in the memorandum of association of the company, the supreme body of the company shall elect the statutory auditor for the company and shall determine the essential details of the contract to be made and implemented with the auditor.

The supreme body of the company shall appoint the statutory auditor for a fixed term, with a maximum of five years. The term of appointment of the statutory auditor may not be less than the period between the time of the (general) meeting held by the members when the appointment was made, and the time of the (general) meeting held by the members for the passing of the actual annual report.

The statutory auditor must have access to the documents, accounting records and books of the business association in order to be able to complete his/her duties, and is also entitled to request information from the executive officers, the members of the supervisory board and the employees; furthermore, he/she is entitled to inspect the finance accounts, the cash accounts, the securities portfolio, the inventories and the contracts of the company, as well. Moreover, the auditor is also entitled to attend the supervisory board's meetings as an advisor (whenever it is applicable), and he/she must attend the relevant meetings upon the supervisory board's request. The supervisory board shall include the points proposed by the auditor in the agenda.

The statutory auditor is prohibited from providing any services to a business association, and is also prohibited from collaborating with management in a manner that would, in any way, hinder his/her ability to carry out his/her professional duties objectively and independently.

The statutory auditor appointed by the supreme body of the company shall be responsible for conducting the audits of the accounting documents of the company

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69 Sections 3:121 (1), 3:122 HCC.

70 Section 3:28 HCC.

71 Sections 3:38, 3:129-3:131 HCC.



according to the relevant regulations, as well as for providing an independent audit report to determine if the annual accounting of the business association is congruent with the legal requirements, and if it reflects a true and fair assessment of the assets and liabilities of the company, its financial position and the loss of its profits. The statutory auditor must treat all of the business secrets relating to the operation of the company as strictly confidential. The statutory auditor is to be invited to the sessions of the supreme body of the company when they shall deal with the financial report of the company. The auditor must attend these meetings, although if he/she should fail to appear, the meeting will still be held. Should the statutory auditor detect any changes regarding the assets of the company that are likely to hinder its capability to suffice any claims against the company, or if he/she should encounter any circumstance that shall affect the liability of the executive officers or the members of the supervisory board with respect to the activities exercised in those capacities, he/she must promptly call upon the management to take immediate action, in order to enable the members to make the necessary decisions. In the case of any compliance issues regarding this notification, the auditor shall proceed to inform the registry court, as this is the organ exercising judicial control over the company involved in such an incident.

#### *5.1.5. Other bodies of the companies<sup>72</sup>*

On the basis of the instrument of constitution or its equivalent authorization, the supreme body shall prescribe the operation of any further organs in addition to the organs and the officials defined by the Civil Code; such prescriptions must not affect the competence and the responsibilities of the organs and the officials defined by the Civil Code.

### **■ 5.2. The organizational structure of a limited liability company**

#### *5.2.1. The meeting of the members*

The supreme body of the limited liability company is the meeting of its members. The meeting of the members shall bear the exclusive right for the approval to make and enter contracts by and between the company and its members, its managing director, its supervisory board member, its auditor or their close relatives.<sup>73</sup> The following cases fall under the competence of the meeting of members: (a) regarding the form of the company's organization: both the election and the recalling of the managing director, the supervisory board members, the auditor and the allocation of their remuneration; (b) in connection with the fundamental decisions on the permanent operation of the limited liability company, the approval of the annual report prepared in congruence with the Accounting Act, as well as the decision upon the payment of the interim dividends; (c) in membership-related cases like the order and the returning of the supplementary capital contributions, exercising pre-emption rights on behalf of the company,

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<sup>72</sup> Section 3:132 HCC.

<sup>73</sup> Section 3:188 (2) HCC.

granting consent to transfer any business shares to a third person, granting consent for the division of business shares, the order on the withdrawal of the business shares, the resolution on initiating the exclusion of a member; (d) with regards to the strategic resolutions, it is the decision on the termination of the company without either succession or transformation, the adoption of a decision on the increasing or the decreasing of the initial capital, the adoption of a decision on the creation of a recognized group of companies and also on the contents of the draft controlling agreement and the approval of the draft controlling agreement; (e) ordering the examination of the annual report, the management and the financial operations of the company by an auditor; (f) the enforcement of claims towards the members, managing directors, supervisory board members and/ or the auditor; (g) any amendment of the memorandum of association; (h) all the issues assigned exclusively to the competence of the meeting of the members by force of law or by the memorandum of association.

The meeting of the members shall be convoked by the managing director. These meetings shall be convoked to take place at the seat of the company. In addition to the cases defined in the Civil Code or in the memorandum of association, the meeting of the members shall be summoned if it is deemed necessary in the interest of the limited liability company. The managing director must either summon the meeting of the members with no delay, or initiate its decision-making process without holding a meeting, in order to ensure that the necessary measures are taken if it should come into his/her knowledge that (a) the equity of the company has decreased down to half of the initial capital due to losses; (b) the equity of the company has decreased below the limit that is prescribed by the law; (c) the limited liability company is about to undergo insolvency or if it has already stopped making any payments; or (d) if its assets can no longer cover its debts.<sup>74</sup>

The invitation of the members to the meeting must include the agenda of the meeting, and must be sent at least fifteen days in advance. The memorandum of association must not specify a deadline of less than three days. When the member shall propose certain additions to the agenda in accordance with the provisions on setting the items of the agenda, the matter proposed shall be considered to have been placed on the agenda, on the condition that such a proposal gets delivered to the members and the managing director at least three days before the meeting.<sup>75</sup>

If the meeting of the members should fail to reach the quorum, the reconvened meeting shall reach the quorum for the issues of the original agenda, irrespective of the voting rights represented by the present members, on the condition that it has been reconvened by between three and fifteen days from the original date. Any provisions in the memorandum of association on setting the reconvening date as by less than within three days is null and void. The meeting of the members reconvened due to the

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74 Section 3:189 HCC.

75 Section 3:190 HCC.

missed quorum may be reconvened, and are subjected to the same conditions (i.e. in accordance with the rules in the invitation for the original meeting).<sup>76</sup>

The discussion of the meeting of the members held by electronic means of communication, and also the resolutions adopted thereby, shall be recorded, so that they can be retrieved at any time in the future. In case a resolution that was adopted by the meeting of the members shall have to be submitted to the registry court, the minutes of the meeting must be prepared, and signed by the managing director.<sup>77</sup>

The managing director must always ensure that the minutes of the members' meeting is duly recorded, except for meetings held electronically. This recording must also include the place and the time of the members' meeting, the people present, the percentage of the voting rights represented by these people, the significant events, the statements and resolutions discussed during the meeting, the number of votes for and against the resolutions and the those refraining from, or those non-partaking in, the vote. The minutes must then be signed by the managing director and a member that is present at the meeting who is elected as the witness of the meeting's minutes.<sup>78</sup>

Following this, the managing director must enter all the resolutions adopted by the members into the book of resolutions with no delay.<sup>79</sup>

All of the members shall have access to the minutes of the members' meetings, and the recordings of the members' meetings will be held in electronic means of communication, as well as in the book of resolutions; members may also request copies of the contents thereof. Aside from these, any provisions in the memorandum of association are declared null and void.<sup>80</sup>

### 5.2.2. *The managing director*

The administration of the company's business and the representation of the limited liability company are to be exercised by one or more managing directors elected by the members or third persons. The memorandum of association may determine that all of the members are entitled to exercise management and the representation of the company, whereby the members are considered to have recognized all of the general provisions on the executive officers as applicable to them.

The duties of the managing director are as follows: representing the company; administrative tasks (e.g., to convoke a members' meeting); exercising the employer's rights; informing the members; keeping the business secrets; preparing minutes; taking care of the book of resolutions; keeping the register of members; organizing the sale of members' business shares.<sup>81</sup>

The managing director maintains a register of the members of the limited liability company (register of members). The following shall be included in the register of

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76 Section 3:191 HCC.

77 Section 3:192 HCC.

78 Section 3:193 HCC.

79 Section 3:194 HCC.

80 Section 3:195 (1) HCC.

81 Auer et al., 2011, pp. 385–386.

the members: (a) the name (corporate or business name), the address (registered office) and the capital contributions of each member; (b) in connection with the jointly owned business shares, the name (corporate or business name) and the address (registered office) of the owners and their joint representative, and the amount of capital contributions; (c) the amount of the initial capital; (d) the provisions of the memorandum of association on any supplementary capital contribution or auxiliary service, as well as the restrictions or prohibitions on the transfer of the business shares.

Any changes to the person or the business share of the members (more precisely, the transfer or the division, the acquisition or the withdrawal of business shares or the acquisition of the business shares by the limited liability company) must be entered into the register of the members by the managing director. The managing director shall submit the register of the members or, if any of the data included therein has changed, the updated version of the register of the members to the registry court.<sup>82</sup>

The duty of the managing director is to organize the sale of a member's business shares in the following cases: if the member failed to complete his/her capital contribution in spite of receiving the relevant request; if the member did not fulfil his/her obligation on the supplementary capital contribution as ordered by the members' meeting, in spite of the relevant warning received; if the member was excluded from the company by virtue of a court decision with binding force.<sup>83</sup>

### 5.2.3. *The supervisory board and the auditor*

With respect to the election, the competence, the liability and the termination of the legal relationship of the supervisory board (and its members), as well as the auditor, the general provisions on the legal persons, as well as the common rules of the business association, are applicable where appropriate.

## 6. The rights of the minority of members<sup>84</sup>

### ■ 6.1. *The general rules of minority rights*<sup>85</sup>

The members that together possess at least 5% of the total voting right may request to either convoke the supreme body of the company at any time (they are also required to cite the reason and the purpose thereof) or the passing of a decision without a held session. In case the management should fail to complete such a request within eight days from the date of its receipt to convoke a meeting of the supreme body at the earliest date possible, or to pass a decision without a held session, the registry court shall convoke the meeting of the company's supreme body upon the request of the

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82 Section 3:197 HCC.

83 Auer et al., 2011, p. 387.

84 Using of Auer et al., 2011, pp. 243–249.; Papp, 2015, pp. 103–104., 173–177.; Lexikon, 2019, pp. 161–162.

85 Section 3:103 HCC.

relevant members, or it shall entitle such members to either convoke the meeting or carry out the procedure for the passing of a decision without a held session. The costs that are thereby incurred shall be borne by the requesting members. The decision on whether the costs incurred are to be borne by the company or by the persons that convoked such meeting will be taken by the business association's supreme body in the meeting convoked upon the request of the minority stakeholders or by force of a decision adopted without a held session.

### ■ 6.2. *The special rules of minority rights*<sup>86</sup>

In case the company's supreme body rejects or does not present a decision on the proposal of the latest financial report, any economic event that has occurred in connection with the activities of the management during the last two years or any undertaken contractual obligation to be examined by an auditor engaged specifically for this particular purpose, such examination must be ordered, and the auditor shall be appointed at the expense of the company by the registry court upon the request of any member or members possessing at least 5% of the total votes, submitted within a thirty-day period calculated from the date of the meeting of the supreme body. The costs of the audit shall be both advanced and borne by the company; the company shall be able to charge the costs to the involved members in case the request for the audit that they placed proved to be groundless.

If the company's supreme body rejected – or did not present a decision on – the request to enforce a claim against the members, the executive officers, the supervisory board members or the auditor of the company, any member or members possessing at least 5% of the total votes may proceed with the enforcement of the claim themselves, in representation of the company and for its benefit, within thirty days starting from the date of the supreme body's meeting on the matter.

Further minority rights are provided at the stock company, as per the relevant decrees of the Hungarian Civil Code.<sup>87</sup>

## 7. The business share<sup>88</sup>

The business share refers to the entirety of the rights and obligations that originate from a connection with the core deposit.<sup>89</sup> The business shares shall come into existence upon the registration of the company, and they cease to exist at the termination of the company.<sup>90</sup> The business shares of the members shall be consistent with their respective capital contributions. Identical membership rights shall be assigned to equivalent

<sup>86</sup> Sections 3:104, 3:105 HCC; Balásházy, 2007.

<sup>87</sup> Sections 3:259 (1), (2), 3:261 (4), 3:266, 3:290 (3) HCC.

<sup>88</sup> Using of Auer et al., 2011, pp. 404–419.; Papp, 2015, pp. 199–204.; Lexikon, 2019, pp. 293–299.

<sup>89</sup> About the lawsuits relating to the business share see more in: Mika, 2018, p. 3., 7.

<sup>90</sup> BDT 2019. 4029.

business shares.<sup>91</sup> One business share may be owned by several persons, in which case these persons shall be treated as a single member from the aspect of the company; their rights may only be exercised by their joint representative, and each member shall bear joint and several liability for the obligations of all the members.<sup>92</sup>

### ■ 7.1. *The transfer of business shares*<sup>93</sup>

The business share is transferable,<sup>94</sup> and can be subject to the related transactions. The business share may be freely transferred among the members of the limited liability company, except for the company's own business share. The members may grant each other pre-emption rights in the memorandum of association, and they may also define restrictions on, or conditions to, the transfer of business shares to third persons through other instruments.

An independent business share or a property rate may also be transferred. The transfer of an independent business share increases the value of the business share of the new owner (merger of business shares), and the transfer of an ownership interest in a business share creates joint ownership of the affected business share (non-merger) of the business share owned by the acquirer.<sup>95</sup>

The members may conclude the transfer of business shares to non-members, although this is subject to the consent of the limited liability company (the members' meeting decides on this). The conditions for the consent being granted or rejected shall be provided for in the memorandum of association.

The transfer of business shares based on legal grounds other than a contract of sale (e.g., donation, exchange, contribution in kind, contract of inheritance, life-annuity contract, maintenance support agreement, etc.)<sup>96</sup> may, however, be excluded from, or restricted by, the memorandum of association.

The business shares may be transferred to third persons only if the member concerned has paid up his/her capital contribution in full. The member concerned, the limited liability company or the person designated by the members' meeting shall have, in this fixed order, the pre-emption right to the business shares being transferred by means of a sales contract, provided that this is not excluded from, or restricted by, the memorandum of association. If the member concerned, the company or the person appointed by the company fails to take his/her pre-emption position within fifteen days from the date that the purchasing offer was announced, he/she is to be declared as not having executed his/her pre-emption right; any transfer of the pre-emption right will thus be declared null and void.

In the event of transferring the business shares, the rights and obligations of the transferrer linked with his/her membership, all of the transferred entitlements shall

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91 Section 3:164 HCC.

92 Section 3:165 (1) HCC.

93 Sections 3:166-3:169 HCC; Gál, 2013, pp. 5–8.

94 See more in: Veress, 2019b, pp. 121–126.

95 BDT 2019. 3995.

96 ÍH 2004. 71.

become passed on to the party acquiring the business shares. The business shares may only be transferred under the effect of a written agreement. The memorandum of association is not required to be amended as a result of any transfer of business shares. In regards to any changes made to the ownership and date thereof in the register of members, the party acquiring the business share must notify the limited liability company within eight days of when the relevant details of such a change were shared. The notification must be issued in the form of an authentic public or private document, and the sales agreement on the business share must also be attached. In addition to the fact of acquiring the business share, the notification shall also include a statement on the fact that the party acquiring the business share has acknowledged all of the provisions in the memorandum of association as binding.<sup>97</sup>

### ■ 7.2. *The devolution of business shares*<sup>98</sup>

The devolution of business shares is the change in the member, but not in the legal title of the transaction.<sup>99</sup> In case a member has deceased or terminated membership, his/her business share shall be passed on to his/her legal successor. The memorandum of association may prohibit the transfer in the case where the memorandum of association allows for the redemption of the business share by the members or the company.

If a member is deceased, then his/her heirs (or if the member is a legal person, then upon the transformation), the merger or the division of such legal person, or in the event of a succession of its business shares based on acts of law, then its successor may request that the managing director enter him/her into the register of the members upon providing valid proof of the inheritance or succession.

The managing director may decline to register the heir or the successor on the basis that the persons authorized accordingly under the memorandum of association should provide a statement on the acquisition of the business shares in congruence with the relevant prescriptions detailed in the memorandum of association, within a term of preclusion of thirty days starting from the date on which the heir or the successor submitted the request for his/her registration effectively, and provided that the market value of the business share has also been paid up to the heir or the successor by authorized persons.

In case the member shall be terminated without any succession, and his/her business share was not transferred before its removal from the registry, or in the course of the property distribution proceedings to involve the business share, the company shall either withdraw the business share in question, or it shall distribute the business share among the members in accordance with the percentages of their capital contributions.

The devolution of the business share shall set in ipso iure; thus this is not required to be regulated in the memorandum of association, yet the successor must notify the

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97 ÍH 2018. 74.

98 Sections 3:170, 3.171 CC.

99 Auer et al., 2011, p. 417.

limited liability company owning an interest in such business shares upon the facts of the inheritance or the termination with succession thereof, and the managing director must have the register of the members adjusted accordingly, and therefore initiate the registration at the competent registry court.<sup>100</sup>

### ■ 7.3. *The division of business shares*<sup>101</sup>

The division of the business share is the procedure of forming more business shares from one business share.<sup>102</sup> The division of the business share does not affect the initial capital of the limited liability company, it only changes the number of the members and the business shares.

The business shares may only be divided by the method of transfer, in the event of succession upon the division of a member being a legal person (regarding its business share), inheritance, the division of common marital property or dissolution without succession (i.e. lack of a new entitled owner of the right). The memorandum of association may prohibit the division of business shares if the business share is the object of a joint property relationship (that of contracting parties, successors, heirs, spouses) or is withdrawn by the company.

The decision on the division of the business share shall be subject to the consent of the members' meeting. The consent of the members' meeting is not required for the division of the common marital property. The provisions related to the minimum value (HUF 100,000) of the capital contribution are also applicable to the division of the business share.

### ■ 7.4. *The withdrawal of the business share*

The withdrawal is a specific ipso iure method of acquisition of the business share by the limited liability company, whereby the limited liability company shall eventually get hold of the business share when it is abandoned by the reduction of the initial capital.<sup>103</sup> The subject of the withdrawal may be a singular independent business share, and it is not possible to withdraw any fraction of a jointly owned business share.<sup>104</sup> The withdrawal of the business share may be prescribed by the Civil Code or by the memorandum of association.

The withdrawal of the business share is mandatory as per the Civil Code in the following three cases: (a) if a member is terminated without succession, and its business shares were not transferred either before it was removed from the registry, or under property distribution proceedings to involve the business share, the company shall either withdraw the business shares in question or it shall distribute the business share among the members in accordance with the percentages of their capital

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100 Kisfaludi, 2007, p. 389.

101 Section 3:173 HCC.

102 Kisfaludi, 2007, p. 394.

103 Auer et al, 2011, p. 365.

104 ÍH 2008. 75.



contributions;<sup>105</sup> (b) the limited liability company shall withdraw its own business share (pursuant to the rules of the reduction of the capital) in case the company was unable to alienate its own business share or deliver it to the members in accordance with the proportions of their capital contributions without compensation within one year from the date of the purchase;<sup>106</sup> (c) in case the business share of a former member is not sold in the six month period after the date of the member's exclusion, or the termination of his/her membership, the company must withdraw the business share (alongside the claim submitted by the former member regarding the obtaining of his/her own due portion from the company's capital).<sup>107</sup>

The Civil Code provides for the possibilities of the withdrawal of the business share: in case the member shall fail to complete his/her capital contribution as undertaken in the memorandum of association, and thus his/her membership terminates; in case the member shall become expelled by the order of the court; in both cases the business shares must be sold by means of a public auction in the first place. If the public auction is unsuccessful, the business share may be withdrawn.

The decision on the withdrawal of the business share forms the competence of the supreme body, as a result of which the rights and obligations originating from, or in connection with, the business share shall be terminated, as well as the membership of the owner of such business share.<sup>108</sup> Upon the withdrawal of the business share, the initial capital shall be reduced by the amount of the core deposit behind the affected business shares.<sup>109</sup>

### ■ 7.5. *The limited liability company's acquisition of its own business share*<sup>110</sup>

The limited liability company can acquire its own business share through its operation: this is a special situation, whereby the company disposes of the business share constituting membership rights; the own business share is a transitional distinction drawn by the demarcation between the assets of the company and the property of the member.<sup>111</sup>

Limited liability companies may acquire their own business shares by the method of transfer, based on the decision of the members' meeting. The limited liability company may purchase its own business share from its assets to the extent of the initial capital. Only those business shares may be acquired, with regard to which the capital contributions have been paid in full. The own business share may not be acquired if the company is not authorized to pay out any dividends. The annual report and the interim balance certificate shall be considered for the allocation of funds covering the acquisition of the own business share within a six month period from the date when the balance certificate was issued.

105 Section 3:177 (1) HCC.

106 Section 3:175 (3) HCC.

107 Section 3:181 (4) HCC.

108 Section 3:176 (1) HCC.

109 Section 3:176 (2) HCC.

110 Sections 3:174, 3:175 HCC.

111 Sárközy, 2001, p. 245.

The amount of the capital contributions behind the company's own business shares may not surpass 50% of the initial capital.

The limited liability company may not exercise its membership rights in connection with its own business shares; such business shares shall be disregarded in respect to the rules on the quorum. The company is not entitled to receive dividends for its own business shares. Any dividends payable for the company's own business shares shall thus be distributed among the members entitled to receive dividends according to the percentages of their capital contributions.

Within a one year period from the date of the purchase of the business share, the limited liability company shall alienate the business shares acquired in return for a compensation, or by delivering those to the members according to the percentages of their capital contributions without any compensation, or it shall withdraw such business shares pursuant to the rules of the reduction of the capital. The company shall dispose of the business shares upon the termination of membership as they are considered to have failed to complete the capital contribution, or the exclusion of the member to be ordered by the court, if the membership was terminated due to the member having failed to provide the supplementary payment.

#### ■ 7.6. *Lien on the business share*<sup>112</sup>

A lien on the business share must be registered in or cancelled from the Registrar Of Companies upon the request from the member (obligor) or the lien holder (according to the Appendix to the Firm Act, the documents must be enclosed with the request). The registry court shall examine the contract of lien with respect to the data and the details of the limited liability company, as well as its member (in terms of their compliance with the actual records in the Firm Registry).<sup>113</sup>

The business share may also become sequestered or seized. To sequester means that the business share is restrained from alienation and encumbering, and a seizure means that the right to dispose of the business share has been suspended.<sup>114</sup>

## 8. The questions of liability<sup>115</sup>

### ■ 8.1. *The liability of the member*

With the exceptions set out in the Hungarian Civil Code,<sup>116</sup> the members of a limited liability company shall not be liable for the liabilities of the company. As per the rule, the liability of the members towards the company shall only extend to the submission

112 See more in: Veress, 2019b, p. 125.; Török, 2008, pp. 8–15.

113 Section 61/A FA (Firm Act: Act V of 2006 on public company information, company registration and winding-up proceedings).

114 BDT 2019. 4029.

115 Using of Auer et al., 2011, pp. 354–361.; Papp, 2015, pp. 137–138., 190–191.; Lexikon, 2019, pp. 117–119., 236–237., 315–319.

116 Pázmándi, 2014, pp. 18–23.

of their capital contributions and any other contributions, as set forth in the memorandum of association.<sup>117</sup>

As an exception to the rule, the member of the limited liability company may bear limited liability against the creditors of the company, and an unlimited liability against his/her company or against the creditors of the limited liability company.

The liability of the member of the company is limited in the following cases:

(a) when the members of the pre-company (the form of existence from the date on which the memorandum of association was countersigned or issued as an authentic document, until the decision of the registry court) shall be deemed limited (according to the rates of the assets distributed) in their liability for any debts originating from the commitments entered therein, until the date of the termination of the operation as a pre-company;<sup>118</sup> (b) when any members that provide contribution in kind accept the responsibility towards the limited liability company to the extent that the value marked in the memorandum of association doesn't over exceed the value of the contribution that is effective at the time of submission; if the value of the contribution in kind does not reach the value marked in the instrument of constitution, the company may demand to settle the difference with the person that provided the contribution in kind, within five years from the date of its submission;<sup>119</sup> (c) if the memorandum of the association decrees that the member must submit less than half of his/her monetary contribution before the request for the registration of the company has been filed, or it enables a deadline for the submission of the still unpaid monetary contribution more than one year after the date of the registration of the company, then the company is not allowed to pay any dividends to its members until the unpaid profit (calculated according to the rules on the payment of dividends) has been split equalling in rates the monetary, or asset contributions of each member, and the amount of the monetary contributions already settled by the members shall not reach the amount of the initial capital; in those cases, the members shall bear the responsibility for the debts of the company to the extent of the unsettled parts of their monetary contributions;<sup>120</sup> (d) if the liability of the member was limited to the obligations of the business association during the existence of the limited liability company, the liability of the member for the obligations of the terminated company shall be limited to the rate of the assets having been distributed upon the termination of the business association, which is due to said member.<sup>121</sup>

The member of the limited liability company has unlimited liability against his/her company when the members who were aware of, and consented to, the contribution in kind being valued higher than its actual worth at the time; in this case, they shall bear a joint and several liability towards the company, together with the providing

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117 Section 3:159 HCC.

118 Section 3.101 (1), (5) HCC.

119 Section 3:10 (3) HCC.

120 Section 3:162 HCC.

121 Section 3:48 (3) HCC.

person, in accordance with the provisions on the liability for damages caused by the breaching of a contractual obligation.<sup>122</sup>

The member of the limited liability company shall bear unlimited liability towards the creditors of the company in the following cases: (a) if a member or a founder to a legal person should abuse his/her limited liability, as a consequence of which they act upon the dissolution of the legal person without succession, there shall be any unsettled claims of the creditors remaining; in this case, the member and the founder in question are obliged to bear unlimited liability for such debts;<sup>123</sup> (b) if the controlled member of the group is under liquidation, then the dominant member must be held liable for the debts of the controlled member; the dominant member shall be acquitted from this liability on the condition that it is capable to prove that the insolvency of the controlled member was not the consequence of the unified business strategy of the group;<sup>124</sup> the rules of the qualified majority control<sup>125</sup> are appropriately applicable to the liability of the singular member of a one-man limited liability company;<sup>126</sup> (c) if the member of the legal person shall cause damages to a third party in a manner that is related to his/her membership capacity, then the legal person shall bear liability for that towards the injured party, but the member and the legal person together share a joint and several liability in case the damage was caused deliberately;<sup>127</sup> (d) in case the registry court removed a limited liability company from the Registrar of Companies by an act of compelled cancellation,<sup>128</sup> the former member of the company – who was registered at the time of the de-registration – shall bear unlimited liability for the remaining unsettled claims of the creditors of the company, if he/she is proved to have abused his/her own limited liability<sup>129</sup> (if there are more members, their liability is joint and several);<sup>130</sup> (e) if the debtor has accumulated debts up to 50% of its equity, it is upon the request from the creditor or the liquidator when the court shall declare the former member with majority control (having transferred his/her share within three years before the start date of the liquidation procedure), to bear unlimited liability for

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122 Section 3:99 (2) HCC.

123 Section 3:2 (2) HCC.

124 Section 3:59 HCC; Section 63 (2) BA (Bankruptcy Act: Act XLIX of 1991 on bankruptcy proceedings and liquidation proceedings).

125 ÍH 2018. 79.; BH 2019. 22.

126 Section 3:208 (3) HCC; ÍH 2019. 31.

127 Section 6:540 (2), (3) HCC.

128 ÍH 2018. 113.: This is a pre-condition of the member's liability.

129 BDT 2018. 3936.: The membership relation has created the possibility of causing damage as well as gaining property to the debit of the creditor.

130 Section 118/A (1) FA; Section 118/A (2), (3) FA: A member is considered to have abused his/her limited liability if they have a history of making unfavourable business decisions, treating the company's assets as their own, or supporting a resolution without taking reasonable care (that he/she knew or should have known), such that the resolution was clearly opposing the significant interests of the company; any former member who transferred his/her share within a period of three years before the opening of the involuntary de-registration shall bear unlimited liability for the thereby unsettled claims of the company's creditors, if found to have abused his/her limited liability or acted in bad faith when transferring his/her share.

the remaining unsettled obligations of the debtor, unless he/she is capable of proving that the debtor was insolvent at the time of the transfer of said share, and that the accumulation of debts only happened thereafter, or that he/she acted in good faith when transferring his/her share despite the fact that the debtor had already been in a situation of potential danger with insolvency (or was already insolvent).<sup>131</sup>

### ■ 8.2. *The liability of the managing director*<sup>132</sup>

The executive officer must be held liable for the damages caused to the business association by his/her management activities, in accordance with the provisions on the liability for damages caused by the breaching of a contractual obligation.<sup>133</sup>

The person appointed to represent the legal person shall be responsible for submitting the request for the registration of the legal person to be established, such that the representative shall be liable to the founders according to the provisions on the liability for damages caused by the breaching of a contractual obligation for the damages caused by his/her failure to either submit the request (or the submission) in due time, or if he/she did it in a deficient or erroneous manner.<sup>134</sup>

If the registration of the business association is rejected by virtue of a decision with binding force, the business association under registration must terminate its operation without delay, once it has gained knowledge about the decision. For the damages caused by the breaching of this obligation, the executive officers of the business association under registration are liable, according to the provisions on the liability for damages caused by the breaching of a contractual obligation.<sup>135</sup> If the operation of the business association under registration is terminated, the obligations undertaken until that time shall be settled from the assets made available to the would-be business association; if the liability of the members of the would-be business association for the obligations of the business association was limited, and if certain claims have still remained unsettled despite the proper fulfilment of the members, then the executive officers of the would-be business association shall bear joint and several unlimited liability against third parties.<sup>136</sup> These provisions are also applicable if the business association withdraws its request for registration.<sup>137</sup>

If the supreme body of the business association grants the managing director a certificate of discharge from the compliance of his/her management activities realized in the previous financial year, at the same time as their approving of the financial report upon the request from the managing director, the business association may only enforce its claim against the executive officer for the damages he/she caused by violating his/her management obligations, if the facts and data that served the basis for

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131 Section 63/A BA.

132 See more in: Nochta, 2019, pp. 15–18.; Török, 2015.

133 Section 3:24 HCC; BDT 2019. 3994.; BDT 2019. 4011.

134 Section 3:12 HCC.

135 Section 3:101 (4) HCC.

136 Section 3:101 (5) HCC.

137 Section 3:101 (6) HCC.

the discharge were false or defective. After the termination of the business association without succession, those who were members at the date of the deletion of the business association may enforce their claim for the damages against the executive officers within a term of preclusion of one year from the date of the deletion of the business association; the members are entitled to lay such claims for such damages to the extent of their rightful share in the assets distributed.<sup>138</sup>

If the business association is terminated without succession, the creditors may enforce their claims for the damages up to the amount of their unsettled claims against the executive officers of the business association, based on the rules on the liability to be borne for the damages caused under extra-contractual obligations, if the executive officer involved failed to take into account the interests of the creditors when the circumstance endangering the business association with insolvency did set in; this provision is non-applicable in the event of termination by winding-up.<sup>139</sup>

In the case where the registry court removed a company from the Registrar of Companies by an act of compelled cancellation, the executive officer of the company is to bear liability for the unsettled demands of the creditors to the company to the extent of the detriment thus created,<sup>140</sup> if he/she pursued his/her duties without considering the interests of the creditors after the occurrence of the situation endangering with insolvency, due to which the property of the company decreased, and the fulfilment of the demands of the creditors became thwarted (if this involves more executive officers their liability is joint and several).<sup>141</sup> The executive officer shall be exempt from the liability if he/she makes it evident that the situation endangering with insolvency did not occur during the effectivity of his/her legal relationship as an executive officer; or in the case that it did not occur due to the practice of his/her management role, and that after the occurrence of the situation endangering with insolvency he/she did execute all of the possible measures generally expected from a person in such a position, to ensure avoiding or decreasing the losses of the creditors, and also that the actions of the supreme body of the company were initiated.<sup>142</sup>

The creditor of the liquidator<sup>143</sup> may file a complaint at the competent court throughout the liquidation procedure for the judicial declaration that<sup>144</sup> those personnel, who were in the company's leadership in the three years preceding the start date of the liquidation, pursued their duties without considering the interests of the creditors after the occurrence of the situation of insolvency,<sup>145</sup> and in a cause and effect relation to this, the property of the company decreased, or the overall fulfilment of the demands

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138 Section 3:117 (1), (3) HCC.

139 Section 3:118 HCC.

140 ÍH 2018. 76.

141 Section 118/B (1) HCC.

142 Section 118/B (4) FA.

143 ÍH 2019. 67.

144 BH 2018. 231.

145 See in: Mika, 2018, p. 7.

of the creditors were thwarted by another cause.<sup>146</sup> This also qualifies as an activity of ignoring the interests of the creditors if the leader failed on his/her obligations ( as defined by acts of law to prevent, stop or justify damaging the environment), and as a result of this, the overall fulfilment of the demands of the creditors were thwarted. If several persons caused the injury together, then their liability is declared joint and several.<sup>147</sup> The leader is also exempt from the liability if he/she makes it evident that he/she did not undertake any unreasonable business risks in the state of the debtor after the occurrence of the situation of insolvency, and also that he/she did execute all of the possible measures generally expected from a person in such a position, to ensure avoiding or decreasing the losses of the creditors, and also that the actions of the supreme body (decision-making body) of the debtor company were initiated.<sup>148</sup>

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146 ÍH 2018. 78.; ÍH 2018. 121.

147 Section 33/A (1) BA; ÍH 2018. 139.: This rule shall be applied and interpreted together with Section 3.118 HCC.

148 Section 33/A (4) BA; See more: Mohai, 2018, pp. 32–41.

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