

COMPANY LAW

Business law



BME
Gazdaság- és
Társadalomtudományi Kar

Readings (not obligatory)

Accace consultancy: <https://accace.com/company-formation-in-hungary/>

RSM Hungary: <https://doingbusinessinhungary.com/some-important-laws-applicable-to-business-associations>

Introduction

Subjects of law

- state
- natural persons (humans)
- legal persons (organizations)

In business life entrepreneurs (natural persons) and companies (legal persons) play an important role, however, there are also other players, like cooperatives for example.

It is usually regulated more or less in every legal system who and under what terms can pursue business activity.

Taxation is one of the most important aspects when you have to decide in what form to pursue (enterprise, limited liability company, share company, etc.) business activity.

Introduction

Why is **company form** chosen more often than entrepreneurship?

There are two main reasons:

- limited liability
- it is easier to collect capital

In market economies, there is **freedom of enterprise** and association

However, there are **limitations** to this, primarily in the public interest (mandatory rules). For example, the protection of creditors, minority shareholders, employees.

Regulation of companies

In some legal systems (countries) there are commercial codes or separate company laws which contain the materia (legal sources) on companies. In Hungary companies are regulated in the **Civil Code**:

1. general rules on legal persons also apply to companies
2. general rules on companies: apply to all company forms
3. in addition there are special rules on individual company forms

Company law lectures are based on the Hungarian legal system, but it is similar to other European systems

GENERAL RULES WHICH APPLY TO ALL COMPANY FORMS

Definition of a company

Companies are *legal persons*

established by the monetary or in-kind *contributions* of their members

for the pursuit of their common businesslike *economic activities*, where members are jointly entitled to a *share in the profit and obliged to bear the losses*.

A company may be established in the form of a

- general partnership
- limited partnership
- limited liability company
- company limited by shares (stock corporation)

Company assets (contributions)

should be provided by the members, however, it is separated from their assets

- all members should contribute
- however, for partnerships there is no minimal requirement by the law
- minimal requirements:
 - LLC (Ltd.) 3,0 M HUF
 - „closed” (private) company limited by shares 5 M HUF
 - „open” (public) company limited by shares 20 M HUF
- contribution can be:
 - monetary
 - in-kind (not monetary) (cannot be work)
 - tangible asset
 - intellectual property (e.g. patent)
 - property right (e.g. the right to use, lease, etc. something)
 - claim
- the value of in-kind assets is determined by auditor

Legal personality

legal personality: legal personality separate from its members

- ❑ in all forms of company, but in the case of general partnerships and limited partnerships, the members have unlimited secondary liability
- ❑ mandatory form: the limitation of company forms: company can only be established in the forms regulated by the Civil Code
- ❑ forms cannot be mixed, and a form not regulated by the Civil Code (Ptk.) is not permissible

joint profit sharing and joint bearing of losses

as a main rule: in proportion to the financial contribution

- exception: provision to the contrary in the articles of assoc.
- however, no member may be excluded totally from profit/loss

Company name, contractual nature

❑ company name

- company name, company form, activity
- short name: name, company form
- the name should differ from other companies' names registered in Hungary
- the principle of company authenticity

❑ contractual nature – except single member companies

- general rule: at least two members
- except: limited liability company, company limited by shares: can be formed by only one member

Seat, activity

❑ seat

- registered seat: company documents kept there, post received
- you might have also registered branch office

❑ activity: you may do everything that is not prohibited or restricted by law

- however, you should register one main activity
- + an operating license is required for carrying out activities that are subject to an operating license
- + activity subject to qualification: if at least one member or employee meets the requirement it is OK

Company registry

- ❑ **company registry:** publicity and authenticity
 - the company register maintained by the county company courts:
 - publicity: anyone can check the data
 - authenticity: it must be presumed that the content is true
 - basic company information from the company register is freely accessible
 - publication of specified data in the official gazette called the Company Bulletin

Formation of the company

Stages of formation:

1. conclusion of the articles of association (pre-company)
2. signature of the articles of association by a lawyer (or drafting it into a notarial deed)
3. registration of the company with the company court, conducting the registration procedure, and entry of the company into the company register

the company comes into being with the registration

Organs of the company

- **highest organ** (members' meeting)
- **management**
- **supervisory board**
- **auditor**



Highest organ (members' meeting)

includes all the members

- strategic decision making body: most important issues: election of the management, supervisory board, auditor, long term business plan, amending the articles of assoc., decision on dividend, etc.
- does not deal with operative issues
- on the meeting members have the right to:
 - be present
 - address the meeting
 - vote
- single member company: no meeting, decision of the single member in writing

Management

- natural person(s) should personally represent the company, except: partnerships: legal person member may represent
- members' meeting elects
- fixed term, max. 5 years
- may not be member of the management who:
 - committed a serious crime
 - is banned from profession
- based on a contract for services
 - the legal relationship comes into existence by election and accepting
 - termination: recall, resignation
- may be converted to employment relationship (in this case, the Labour Code applies)

Management

- the manager cannot be instructed by individual members or the employer
- represents the company towards third parties
- due diligence is expected, the primacy of the company's economic interests
- liable for damages wrongfully caused to the company
- liable together with (joint and several liability) the company for damages caused to third parties
- a topical issue is „corporate governance“ (the liability of the managers). The problem is that the members (shareholders) of the company and the management have different interests (shareholders long term profit – management short term profit (due to the bonus system))

Supervisory board

- controlling body of the members, has insight to each and every document
- reports to the members
- board:
 - min. 3 pax, elected by the members' meeting (does not have to be member of the company)
- any company may have it, however, it is
 - obligatory for:
 - public company limited by shares
 - „closed” (private) company limited by shares if at least 5 % of shareholders want
 - any company employing in average 200 pax per year (1/3 nominated by the workers' council)
- members: joint and several liability

Auditor

- based on a contract for services
- elected by the members' meeting
- task: auditing the balance sheet (annual financial report)
- obligatory to have it if prescribed by the law (e.g. public company)

SPECIFIC COMPANY FORMS

A company may be established in the form of a

- general partnership
- limited partnership
- limited liability company
- company limited by shares (stock corporation)

General partnership **RISKY!**

- **def.:** members of the partnership shall undertake to make monetary or in-kind contributions to the partnership for the purposes of its economic activities, and to bear unlimited, and joint and several liability for the obligations of the partnership not covered by its assets
- members have **joint and several liability** for the obligations of the partnership not covered by its assets
- members may be sued in court together with the partnership
- if there is judgement, first enforced against the partnership, and only if not successful, enforced against the members

General partnership

- **supreme body of the general partnership is the meeting of members**
- **each member has an equal vote when adopting resolutions**
- meeting of the members adopts its resolutions by a majority of all votes that can be cast
- unanimous vote of all members required for resolutions amending the memorandum of association, and resolutions on transformation, merger, division or termination without succession

General partnership

Management is performed by one or more managing directors appointed or elected from among the members

- if not elected, all members act as managing directors
- each managing director may act independently (in urgent measures)
- managing directors may object to the measures planned or taken by other managing directors >> meeting of the members may overrule the measure concerned
- planned measures should be approved by the meeting of members in advance

General partnership

Termination of the membership (in addition to the cases determined among the common rules):

- a) upon the mutual agreement of the members
- b) upon its unilateral termination by the member
- c) upon the transfer of the partnership share
- d) upon the death or termination of the member
- e) upon the occurrence of any grounds for exclusion or conflict of interests
- when settling accounts, the commercial value of his share should be paid to the former partner within three months from the date of termination of the membership
- the former member is liable within a term of preclusion of five years following termination, for the debts of the partnership incurred prior to termination of membership in the same manner as the member during his membership

Limited partnerships

- members of the partnership undertake to make monetary or in-kind contributions to the partnership for its economic activities, and at least one of the partners (**general partner**) assumes joint and several liability together with the other general partners for the obligations of the partnership not covered by the assets of the partnership, while there shall be at least one other partner (**limited partner**) who is not liable for the obligations of the partnership, unless otherwise provided by the law
- rules on general partnerships shall apply accordingly to limited partnerships

Limited liability company

- a limited liability company is a company formed through the provision of an initial capital
- the liability of the members against the company is limited to the provision of their capital contributions and other contributions of pecuniary value specified in the memorandum of association
- unless otherwise provided by the law, members of the company are not liable for the obligations of the company
- it can be established by a single person (single-member company)

Limited liability company

Foundation

- members may not be solicited by public invitation (prohibition of public invitation)
- capital contribution of members is provided in the form of core deposits
- each member has one core deposit
- core deposits together comprise the initial capital, not less than HUF 3 million
- if the value of asset contributions exceeds $\frac{1}{2}$ of the initial capital, it shall be made available before the registration

Limited liability company

Business share: the whole of rights and obligations arising in connection with the core deposit

- consistent with their respective capital contributions
- **may be owned by more than one person** (jointly owned business shares) > appoint their representative
- may be transferred to third persons only if the member has paid up his capital contribution
- **right of pre-emption: before the transfer the share should be offered to:**
 - (1 st) to the members,
 - (2 nd) the company, or
 - (3 rd) a person designated by the company (in this order)
- transfer of business shares is executed in writing; but the memorandum of association need not be amended

Limited liability company

Members' meeting: the supreme body of a limited liability company

- **appoints the management**
- exclusive competence for the approval to conclude contracts which take place between
 - the company and one of its members,
 - its managing director, supervisory board member, auditor, or their close relatives

Limited liability company

Management

- the management of a company is provided for by one or more managing directors
- any restriction or division of the power of representation vested upon the managing director, or rendering such managing director's actions conditional or subject to approval are not be effective as against third parties.

Company limited by shares

- a company, the operations of which is based on share capital consisting of shares of a predetermined number and nominal value, where the obligation of shareholders against the company limited by shares is limited to the provision of the nominal value or issue price of the shares
- shareholders are not liable for the obligations of companies limited by shares

In Hungary two types:

- company limited by shares whose shares are listed on a stock exchange shall > public company limited by shares (20 mil. HUF)
- company limited by shares whose shares are not listed on a stock exchange > private company limited by shares (5 mil. HUF)

Company limited by shares

- on founding a company limited by shares, no shareholders shall be recruited and no share capital shall be raised by means of public offer
- when in-kind contributions are provided, a report by an auditor or expert qualified to appraise the asset in question shall be attached to the articles of association

stocks (shares): equity securities representing membership rights in the issuing company, they 1) are registered, 2) have a nominal value, and 3) tradable

dividend: a share from the limited company's taxed profit that is available and has been ordered for distribution by the general meeting in the percentage consistent with the nominal value of their shares

Company limited by shares

General meeting

- supreme body of the company

Management

- companies limited by shares are managed by boards of directors
- the board of directors it is made up of three natural persons

Company limited by shares

- public companies limited by shares shall establish, beyond the cases specified in the common rules on companies, a **supervisory board**
- in private companies limited by shares, a supervisory board shall be established at the request of a group of shareholders jointly holding at least five per cent of the voting rights.
- public companies limited by shares shall be required to set up **audit committees** to assist the supervisory board or management board in the supervision of the financial reporting regime, selection of the auditor and in its cooperation with the auditor.

Termination

Solvency	Insolvency	
Dissolution	Bankruptcy	Liquidation
no problem with payments	payment failure situation	
the proceedings where the company is wound up without succession, if it is not insolvent opened by decision of the supreme body	the proceedings where the debtor is granted a stay of payment with a view to seeking an arrangement with creditors, or attempts to enter into a compromise / composition arrangement with creditors	the proceedings aimed to provide satisfaction to the creditors of an insolvent debtor upon its winding-up without succession