

BUSINESS LAW

Company law I

General part

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Legal persons (repetition)

- are regulated in the Civil Code of Hungary (in some other countries a separate company law)
- are established with instrument of incorporation
- come into existence upon their registration by the court
- members and the founders of a legal person shall not derogate from the provisions of the Civil Code if the derogation
 - is prohibited
 - violates the rights of the creditors, employees or minority members of the legal person

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

COMPANIES

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

Instrument of incorporation

Contain:

- a) the name of the legal person
- b) the seat 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, and their place of domicile or seat
- e) the monetary or in-kind contributions to be made to the legal person and the value of the contributions, as well as the mode and time of making the assets available
- f) the first executive officer of the legal person

Formal requirements of instruments of constitution

- signed by all founder members (or representative with authorization)
- shall be drawn up
 - in a notarial document or
 - in a private document countersigned by a lawyer or a legal counsel

Name, seat, activity

- **name** shall differ from that of other previously registered legal persons to such an extent that they cannot be confused
- name of a legal person may not give an impression contradicting reality
- name of a legal person shall indicate the type or form of that legal person (e.g. Ltd.)
- **seat** of a legal person shall be at its registered office (keeping documents, receiving mail)
- legal persons may engage in any **activity** not prohibited or restricted by law

Contribution

- founders and the members of a legal person shall provide
 - **cash** or
 - **in-kind** contributions (tangible or intangible assets)
- work is not accepted
- members who were knowledgeable about and consented to an in-kind contribution that a member has provided at a value higher than what it was worth at the time when provided are subject to joint and several liability toward the company

Pre-company

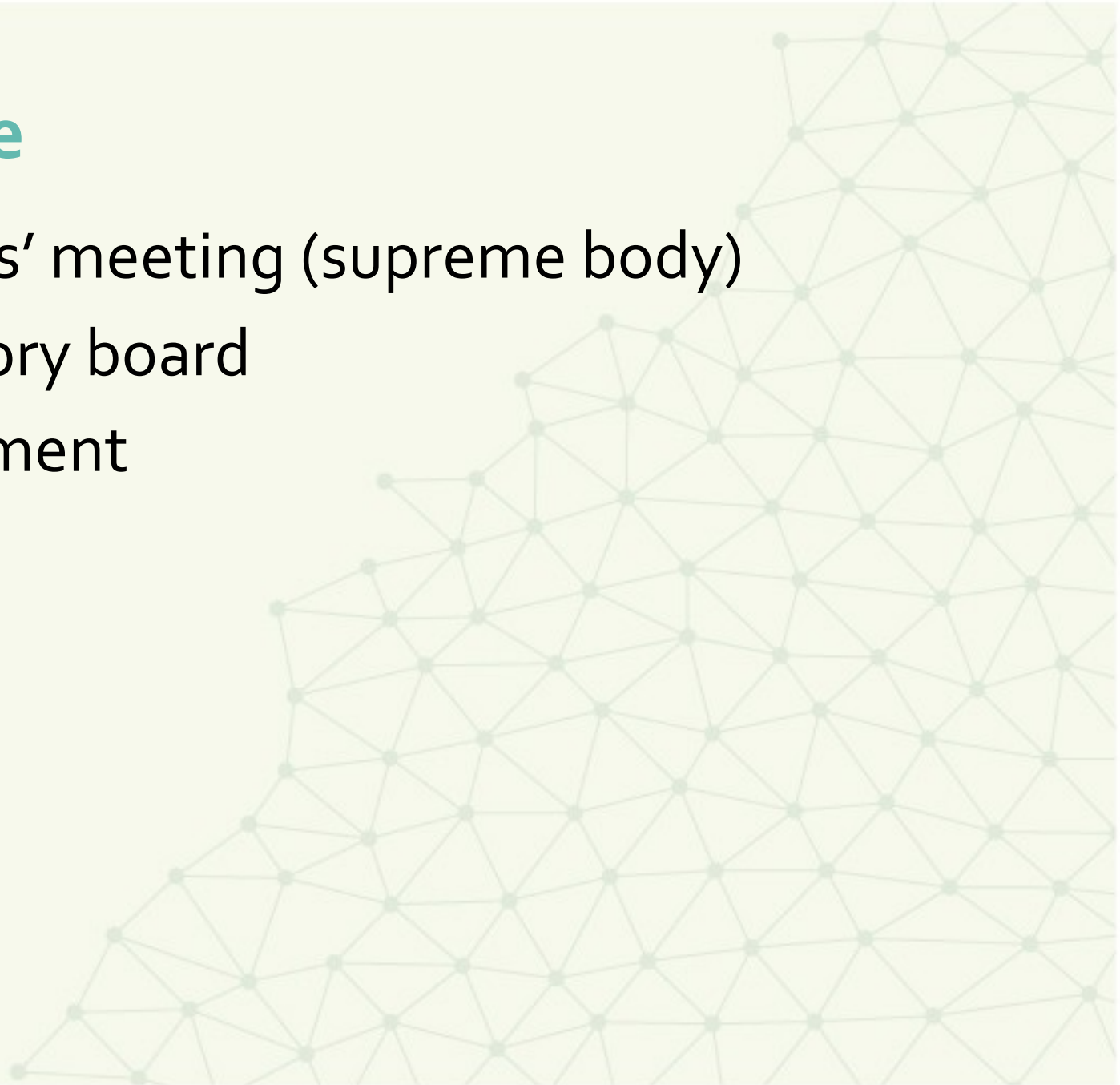
- the company may operate as such as of the date when the instrument of constitution is executed in a notarized document or countersigned by a lawyer or legal counsel
- may take up the pursuit of business operations only after having submitted the application for the registration
- „pre-company“ should be indicated on the company's documents
- in the absence thereof, any legal statement taken by the pre-company shall be treated as a legal statement taken by the **founders collectively** (joint and several liability) if the court of registry refuses to register the company, or it turns out that the company's registration is null and void
- upon registration by final decision of registry the business association ceases to function as a pre-company, and all transactions concluded in that capacity are treated as if they were concluded by the company

Registration

- notified to the court of registry within 30 days from the date when the instrument of incorporation is executed in a notarized document or countersigned by a lawyer or legal counsel
- upon receipt the court of registry issues a registration number
- examines all registration applications for compliance with formal requirements within 3 working days from the date when received
- within 8 working days examines whether the data, the documents and the application are in compliance with the relevant statutory provisions.
- approves or rejects the application within 15 working days

Structure

- members' meeting (supreme body)
- supervisory board
- management



Members' meeting (supreme body)

- main decision making body
- only in the most important issues concerning the business and personnel of the company
- quorum of a meeting > if more than half of the votes to be cast present (except if the Code does not require higher majority)

Supervisory board

- not obligatory, only if
 - the annual average number of full-time employees employed by the company exceeds two hundred, and the works council did not waive employee participation in the supervisory board
- min. 3 members
- quorum if at least two-thirds of its members but at least three persons are present at the meeting
- members are liable, in accordance with the provisions on liability for damage caused by breach of contract, for the damage caused to the company by their failure to perform their supervising obligation or by performing it in an inadequate manner

Management

- executive officer(s) represents the company manages the company
- their names should be registered in the company registry
- restriction of the ex. officer's rights to represent the company are not effective against third parties unless the third party knew or should have known of the restriction
- executive officer shall be liable to the legal person for the damage caused to it during his management activities according to the rules on liability for damage caused by breach of contract.
- company is liable for any damage caused to a third party by the executive officer acting in his competence
- executive officer and the company are jointly and severally liable if the executive officer caused the damage intentionally

Termination (without succession)

- a) it was established for a definite period, and that period of time expires
- b) its termination was subject to a certain condition, and this condition is met
- c) its members or founders declare its termination
- d) it is terminated by an organ authorised to do so, provided that in each case the legal person is, after completing the appropriate procedure for settling its financial affairs, deleted by the court from the register

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

Thank you!



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