

István Alattyányi  
**BUSINESS STUDIES FOR VOCATIONAL  
AND ADULT EDUCATION TRAINERS II**



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**BUSINESS STUDIES FOR VOCATIONAL  
AND ADULT EDUCATION TRAINERS II**

**An Introduction  
to Hungarian Business,  
Civil and Budgetary Organizations**

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## 1. INTRODUCTION

The aim of publishing the series of BUSINESS STUDIES FOR VOCATIONAL AND ADULT EDUCATION TRAINERS is to provide such a stop-gap educational material for students, trainers and prospective employees of the field of vocational and adult education and training that gives a concise and brief presentation on the current Hungarian educational, organizational, economic and management structure of VET and adult education.

The first volume of the series, the BUSINESS STUDIES FOR VOCATIONAL AND ADULT EDUCATION TRAINERS I, deals with the basic economic and management knowledge of organizations. The book presents the management functions, i.e. planning, coordination, leadership and control with regard to the VET and adult education organizations.

The volume BUSINESS STUDIES FOR VOCATIONAL AND ADULT EDUCATION TRAINERS II introduces those organizations to which the processes elaborated on in the first volume refer and apply. This book aims to offer an easily adaptable basic knowledge for readers from establishing an organization through the operation and legal scope of decision making to the termination by presenting the most authentic sources, following the content and logic of the relevant legal and statutory background documents in a simplified form.

The first chapter presents the common economic regulation of the for-profit company types in the currently operating Hungarian business sector as well as the most relevant features of the economic enterprises (e.g. sole trader, unlimited partnership, cooperative society, share holding company, private limited-liability company).

The second chapter is about the concept of public service or public benefit and the most typical nonprofit (and public benefit) organizations (i.e. civil organizations, associations, public bodies, foundations, public foundations and other public benefit or charitable organizations). The third chapter offers an overview on the budgetary organs.

We must point out that the operation of the organizations presented in this book takes place in an environment that is under the influence of permanently changing legal and economic processes, therefore, they also change respectively. The best and most reliable sources for looking at the structure and operation of organizations are the acts and decrees in all instances. Therefore, for those who wish to learn more about the topic we recommend the chapter on LEGAL REFERENCES of this book, which is a collection of the relevant legislation and regulations.

As an author, I would like to thank consultant Dr Tamás Bene who has given a valuable help in writing this educational material with his up-to-date professional knowledge and critical remarks.

*István Alattyányi*



## 2. THE COMMON RULES OF BUSINESS ASSOCIATIONS<sup>1</sup>

The first chapter aims to give an overview on the general and common regulations characteristic to Hungarian business associations. The first and most important fact is that in Hungary the establishment of the business associations is regulated by law. The relevant rules currently in force are included in the ACT IV OF 2006 ON BUSINESS ASSOCIATIONS according to which the state, legal persons, business entities without a legal personality and natural persons may set up a **business association** under an own corporate name for pursuing or promoting common economic and business activities.

By ensuring a modern legal framework, the aim of the act on business associations is to support the strengthening of the Hungarian market economy, the development of profit producing ability of the national economy and the success of business enterprises, *based on the legal harmonization with the company law of the European Union, taking the common features of the development of the Member States' company law into consideration, utilizing the results of judicial practice, and relying on the enhanced company law culture of the actors of business life.* It is also the aim of the act for the operation of the business associations to promote fair competition, not to create economic superiority of strength, to be in harmony with the creditors' reasonable interests and also with public interests.

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<sup>1</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 1.§–10.§

**BUSINESS ASSOCIATIONS** may pursue any such economic activities that are not prohibited or limited by law. The basic function of business associations is to enter the economic blood cycle with a long lasting business activity, thus **by a business association we mean such an association or organizational entity that is set up by a natural, legal person or a business association lacking legal personality for pursuing joint business activities in a mode and form complying with the relevant laws.**

A business association may be established by a **MEMORANDUM OF ASSOCIATION**<sup>2</sup> (also called charter document, articles of association) that must meet some formal and content requirements.

**The formal requirement of the foundation** is that the memorandum of association must take the form of an authentic instrument, prepared by a notary public, or in a private document countersigned by a lawyer or the legal counsel of the founder. The memorandum of association shall be signed by all members (founders). The memorandum of association may be signed on behalf of a member by his representative holding an authorization fixed in an authentic instrument.

**The content requirement of the foundation** is that the memorandum of association shall include the following elements:<sup>3</sup>

- the corporate name;
- the registered office of the business association;
- members of the business association, indicating their name and address (registered office), name of their company, company seat and registration number;
- the business association’s main business activity and all other activities which the company intends to indicate in the register of companies (TEÁOR);
- the subscribed capital of the business association, the financial contribution of each member as well as how and when the subscribed capital is made available;

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<sup>2</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 11.§

<sup>3</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 12.§

- the mode of representation and the method of signing for the company;
- the name and address of the first executive officers;
- the duration of the business association, if established for a limited period of time; and
- any other information required by the act for the various forms of business associations concerning other conditions and time restrictions.

## **The Corporate Name**

The corporate name must include the title of the chosen **association form** and at least a **'keyword'**.

**The keyword helps the identification of the company**, or differentiating it from other companies pursuing similar activities. The keyword in the corporate name stands in the first place. The keyword may be a foreign word, an abbreviation and an acronym that must be written with Latin letters. Apart from the keyword, only Hungarian words may be included in the corporate name according to the Hungarian spelling rules. Abbreviation in the corporate name is only allowed in the case of the keyword.

**The company's abbreviated name** is made up of only **the keyword and the abbreviated version of the company's form** (e.g. Father and Son Co.). The keyword may equally be a single word with an independent meaning or may be made up of fantasy elements, or an acronym. The corporate name (keyword) may also comprise the owner's or the members' name.

**The name of a prominent historic personality may only be used in a corporate name upon the permission of the Hungarian Academy of Sciences**, and such names to which others may associate legal interest may only be used **upon the approval of the holder of the entitlement**.

During the procedure of registration the corporate name must be supplemented with the appendage "b.a." meaning that **registration in progress**, during the liquidation with "f.a." meaning that **liquidation in progress**, or the final **dissolution of the association** "v.a." meaning that dissolution in progress (according to the Hungarian terms).

**The corporate name must clearly differ from the name of other business associations in the country indicating the same activity in their name.** Additionally to the literally identical names, even the similarity of the corporate names may breach the requirement of the exclusivity of the business associations if the difference between two or more corporate names is not unambiguous enough, since the distinctiveness must exclude mistakability.

### **Registered Office (Seat)**

The **registered office** of a business association is generally the venue of **the central administration, the company's office where the company's documents are received, recorded, saved and archived, and where the fulfilment of obligations concerning the headquarters and determined by the relevant regulations.** The corporate seat must be indicated by a **corporate name-board.**

Provided that the registered office of the company is not the same as the central administration, the place of the central administration must be indicated in the memorandum of association and in the register of companies, and provided that the company has also places of business or branches outside its principal place of business, it must be indicated in the register of companies as well. It is not compulsory for the business associations to have places of business or branches outside their principal place of business.

### **Place of Business**

The company's place of business is a venue of such a **permanent and long lasting settlement (plant) of business activities** that are determined in the memorandum of association (foundation document) **outside of the registered office of the company but in the same settlement.**

### **Branch**

The company's branch is such a place of business operation **that is outside the company's registered office and located in another settlement** or another country in the case of a Hungarian company's branch. The same rule prevails in the case of a non-resident business association's Hungarian branch and the direct commercial

representation of foreigners as well. The registered office, place of business and branch of a company may be such a realty that comprises the property of the company or to the use of which the company is entitled (e.g. based on an agreement of a lease).

## **Members**

Business associations may be founded by **non-resident and resident natural persons, legal persons and business associations lacking the legal status of a legal person.**

## **Scope of Activities (according to the TEÁOR)**

The scope of activities intended to conduct by business associations must be determined according to the TEÁOR – '*Nomenclature générale des activités économiques dans les Communautés Européennes*' (**NACE**). In the case of certain activities – **free activities**, business associations may be founded without any restrictions; meanwhile, other activities may be pursued only upon the fulfilment of certain requirements, which are the **restricted activities**. Activities requiring official approval, registration, a certain company form and a specific qualification as well as concession activities belong to the latter.

**Activities subject to qualification** may be pursued by business associations only if there is at least one person among its participating members, employees, or among the persons working to the benefit of the company under a long-term civil relationship concluded with the business association, who satisfies the qualification requirements set forth in legal regulations. Therefore, indicating one main activity, that is, at least one activity is compulsory, whereas, designating other activities is optional.

## **Subscribed Capital**

The subscribed capital of a business association means the total amount of the founding members' financial contribution. In the case of "közkereseti társaság" (general partnership – kkt.) and "betéti társaság" (limited partnership – bt.), there is no minimum requirement in this respect. The **minimum value of the subscribed capital** in the case of a "korlátolt felelősségű társaság" (**private limited-liability company** – kft.) is **HUF 500 thousand**, and in case of a "részvénytársaság" (**limited company** – rt.) is **HUF 20 million**.

**The make-up of financial contribution may be:**

- **financial,**
- **non-cash capital contribution (in kind):** in the case of all company forms, the in kind contribution may be any assets having property value, or any other rights to intellectual property, or any other rights having property value.

### **Company Representation**

By the official representation of a business association we mean **the placement of a signature on the company's written documents on behalf of the company, by the officers with entitlement and in a manner prescribed by law.**

**The following persons are entitled to represent the company:**

- first executive officer(s),
- company manager(s),
- employee(s).

**The mode of representation may be:**

- individual (several individual representatives), or
- joint.

### **Executive Officers<sup>4</sup>**

The management of a business association may be exercised by **the executive officers or a management board made up of executive officers.** Management is regarded as making all those decisions related to managing the company that fall outside the scope of authority of the principal board or other company bodies.

**Except for the general partnership and limited partnership, a first executive officer may be only a natural person.** Executive officers must discharge their duties relating to the company's internal affairs and its bodies and other officers in person; no representation is allowed.

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<sup>4</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 21.§–32.§

The provisions of the Civil Code relating to personal service contracts shall apply for the rights and duties of the executive officer in this capacity. The executive officer may not serve in this position under contract of employment in case if he is a member of a single-member business association or the only member of a general partnership and limited partnership entitled to managing the association, unless the memorandum of association regulates it otherwise.

**The persons may not be the first executive officers of business associations:**

- who have been sentenced to imprisonment by final verdict for the commission of a crime until relieved from the detrimental legal consequences related to his criminal record;
- who have been banned by a standing court verdict from accepting an executive office may not serve as an executive officer under the duration of such ban;
- who have been banned by a standing court verdict from any profession may not serve as an executive officer in a business association whose main business activity covers such profession.

Such a person may not be an executive officer of another business association for a period of five years after **cancellation of a business association from the register of companies based on winding-up proceedings** who during the calendar year preceding such cancellation served as an executive officer of the terminated business association, or had shares ensuring exclusive or majority influence in it.

Such a person **may not be an executive officer of another business association** whose liability – as the executive officer of the business association wound up without succession, and as the owner of shares ensuring exclusive or majority influence – for the unsatisfied obligations in the proceeding resulting in a winding up without succession was established by a final court decision, and who has not met his payment obligations according to the final court resolution.

Such a person **may not be an executive officer of a business association** who has been obliged by the court of registry to pay fine in legality supervision proceedings, and who has not met his payment obligation according to the final court resolution.

**The appointment of the executive officer** is concluded by the acceptance of the concerned person. The executive officer may be re-elected by the principal body of the association and may be freely removed by the business association's supreme body at any time. The executive officer must notify in writing any other company in which he already serves as an executive officer or a supervisory board member **within fifteen days of accepting a new executive office.** Unless otherwise prescribed in the memorandum of association, executive officers are usually elected for a fixed term of maximum five years, or designated in the memorandum of association. Naturally, the memorandum of association may also prescribe an unlimited term for executive officers.

It is among the duties of an executive officer to report on the foundation of the business association and any amendments of its memorandum of association, on data and their change relating to rights entered in the registration of companies and any other facts to the court of company registry via electronic channels.

**Executive officers shall bear joint and several liability toward the business association for any damage** resulting from the incorrectness of the data, rights or facts notified, or from any delay in filing or failure to file the notification, including any instance if the report required by the Accounting Act, or the structure and publication of a business report are not carried out as prescribed in the ACCOUNTING ACT. The company is made liable for the damage that caused by its executive officer to a third person in his capacity of an executive officer.

Unless the memorandum of association provides otherwise, the **employer's rights are exercised by the executive officer** over the employees of the business association. Provided that a management board is in place at the company, the distributed exercise of the employer's rights must be provided for in the memorandum of association, or in the case of the absence of such provisions of the memorandum of association, in the rule of procedures of the management body. The memorandum of association or the resolution of the supreme decision making body of the company may dispose the exercise of employer's right to a single executive officer, or to another person employed by the business association in the case of more than one executive officer.



**As legal representatives, executive officers shall represent the business association before a third person,** courts and other authorities. The memorandum of association may restrict the statutory right of representation of executive officers, or may distribute it among several executive officers. Any restriction or division of the right of representation shall be null and void vis-À-vis third parties.

Executive officers must conduct **the management of the business association** with due care and diligence as generally expected from persons in such positions and – unless otherwise provided in this Act – give priority to the interests of the business association. Executive officers shall be liable to the business association in accordance with the general rules of civil law for damages caused by any infringement of the law or any breach of the memorandum of association, the resolutions of the business association’s supreme body, or their management obligations.

In the event of any imminent threat for the business association’s insolvency, the executive officers must conduct the management of the business association giving priority to the company’s creditors. In the event that non-compliance with this obligation is verified and if the business association is deemed to be insolvent, the executive officers affected may be subject to financial liability under specific other legislation toward the company’s creditors.

### **Business associations may exclusively be established in four forms prescribed by law:**

1. Private limited-liability company
2. Limited company (public or private)
3. General partnership
4. Limited partnership

The first two are business associations with legal person status, whereas the latter ones are business association forms lacking a legal person.

Despite the fact that an association lacks a legal person status, a business association may acquire rights under its name, may assume obligations, and thus may function as a legal entity.

## The Foundation Procedure of Business Associations

- The foundation of a business association must be notified to the competent court of registry within thirty days after conclusion of the memorandum of association.
- If a foundation permit is required for the establishment of the business association, such notification to the court of registry must be made within fifteen days upon receipt of the permit.
- The notification means the submission of the company registration application by a legal representative, which is a form signed by the representative of the business association in accordance with the specific company form.
- Specific obligatory appendices as well as receipts certifying the payment of fees and cost of publication (its rate is regulated by a separate regulation) must be enclosed to the company registration application.
- At the court of registry, it is studied whether the documents are submitted by the authorized person, filled in properly, and then the company's name and registered office are entered in the registry.
- The prospective association is given a 10-digit company registration number that serves as the identification number of the company.

### The court of registry issues a certificate with the following content:

- corporate name,
- registered office,
- company registration number,
- tax number, and
- statistical number.

The intended business association may operate as a **pre-company**<sup>5</sup> (with some restrictions) as of the date when the memorandum of association is countersigned or executed in an authentic instrument. However, during the period of registration, the disposition of the pre-company must be indicated with the appendage "bejegyzés alatt" ("**registration in progress**") ("b.a.") on the business association's

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<sup>5</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 15.§–16.§

documents and in the course of its legal transactions. The business association under registration shall be considered to have legal capacity in the phase of existence as a pre-company. Its legal entity shall commence on the day when it is given a company registration number. The pre-company is only allowed to pursue any business activity upon receiving a company tax number, and it may not engage in any activity that is subject to prior official authorization. The business association ceases to function as a pre-company upon registration by final decision of the court of registry, and all transactions concluded in that phase will be treated as if they were concluded by the business association. Following the registration, the pre-company starts operating automatically, without legal succession, as a final company, thus its rights and obligations become those of the registered business association.

**Within eight days as of the submission of the company registration application<sup>6</sup>** (in a simplified procedure within one hour following the tax registration), the court of registry shall study the application. **If the court discovers any faults, it shall send the application back** to the legal representative **for completion**. The court **may also refuse the application** if such document is missing that is identified in the supplement of the company act whose absence leads to immediate refusal (e.g. lawyer's authorization), or the company fails the completion of the documents, or repeatedly submits the application with faults.

If the company registration application is in compliance with the requirement and the deadlines are observed, **the court of registry shall register the business association in the form of a final decision**. They inform the applicant on the final decision and undertake the publication of the registration in the Company Bulletin.

### **Conversion of Business Associations<sup>7</sup>**

In a basic case, one company form may be converted into another company form, or a company ceases to exist and another one, a legal successor, is established.

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<sup>6</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS

<sup>7</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 69.§–87.§

**However, specific forms of conversion may also exist:**

- **Conversion: One legal successor company is established from two or more associations.**
  - **Merger:** The companies combine as one legal entity without legal succession of the companies.
  - **Acquisition:** One acquiring company is extended by a merging business association.
- **Demerger: One company splits in two or more companies.**
  - **Division:** The business association from which the separation takes place continues to operate in an unchanged company form upon the alteration of its memorandum of association, and by the contribution of the separated members (shareholders) and the use of the company's assets, a new business association or associations will be founded. Division may take place also in a manner that the member leaving the company joins an already operating company as a recipient company with some of the company's assets.
  - **Separation:** By the winding up, legal predecessor business associations, independent companies are founded.

## **The Organizational Structure of a Business Association**

### **1. The Supreme Body<sup>8</sup>**

The supreme body of an association is the principal decision making and strategy shaping body in which all members of the association take part. The executive officer initiates its convention, but in exceptional cases, the Supervisory Board or the auditor may also do so. The meeting of the supreme body may be held also without appropriately calling it, or such a decision may be made if all members are present and consent to holding its meeting.

### **Its name differs according to the company forms:**

- in case of general and limited partnerships: meeting of members,
- in case of private limited-liability companies: members' meeting,
- for (public or private) limited companies: general meeting.

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<sup>8</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 19.§–20.§

At the foundation of the business association, the executive officers, members of the Supervisory Board and the auditor must be elected and designated in the memorandum of association.

## 2. The Operative Body<sup>9</sup>

By the operative body we mean **the internal and external management bodies**, thus the principal executive officer(s) performing the business administration and representation functions (see more details above).

### Nomenclature

- In general partnerships and limited partnerships: the member or members entitled in the capacity of executive officers;
- in private limited-liability companies: managing director(s);
- in private limited companies: management board or board of directors;
- in public limited companies: board of directors or chief executive officer.

## 3. The Supervisory Board<sup>10</sup>

The Supervisory Board is a 3-15-member internal controlling body, supervising the operative body upon the authorization of the supreme body. Provided that the first executive officers are elected for an unlimited term, the members of the SB must be appointed for an unlimited period as well. **Though setting it up is not mandatory in all cases** (but setting up an SB refers to nonprofit organizations as well), it is reasonable in some cases if the number of members justifies it, or the business activity is subject to an official permit, or the type of association necessitates it, or it is necessary otherwise. The company act lists all those cases when setting up a SB is compulsory. Regarding its duties, the SB primarily fulfils an internal supervisory function, i.e. it controls the management and reviews reports concerning business and economic matters associated with the company.

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<sup>9</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 21.§-32.§

<sup>10</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 33.§-39.§

#### 4. The Auditor<sup>11</sup>

The auditor, who may be a natural person or a business association, is an agent fulfilling controlling functions as prescribed by the ACCOUNTING ACT – THE ACT LXXV OF 2007 ON THE CHAMBER OF HUNGARIAN AUDITORS, THE ACTIVITIES OF AUDITORS, AND ON THE PUBLIC OVERSIGHT OF AUDITORS. The auditor appointed by the supreme body of the business association shall be responsible for carrying out the audits of accounting documents to determine as to whether the annual report that the business association has filed as prescribed in the ACCOUNTING ACT is in conformity with legal requirements, and whether it provides a true and fair view of the company's assets and liabilities, financial position and profit or loss.

Additionally, he reviews the essential business reports, and acting in his capacity of prevention of any misconduct, he may initiate the meeting of the supreme body or a legality supervision and control at the court of registry. The auditor shall act objectively and independently for the protection of public interest, exclusively subjected to the statutory requirements.

The supreme body shall appoint the auditor of the business association for a fixed term of maximum five years. The term for which the auditor is appointed may not be less than the period commencing at the time of the members' meeting (general meeting) when the auditor is appointed and ending at the time of the members' meeting (general meeting) for adopting the annual report for the financial year for which period the accounting records are to be audited.

#### Termination and Winding Up of Business Associations<sup>12</sup>

Business associations shall be deemed terminated **upon cancellation from the register of companies**. The legal basis of termination may lay on the members' **voluntary decision, official decree or statutory regulation**. **Regarding the mode of termination, a business association may terminate without succession or with succession.**

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<sup>11</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 40.§-44.§

<sup>12</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 65.§-68.§

### **Cases of termination**

- the fixed term is over;
- a specific requirement is fulfilled;
- members decided on termination without succession;
- members decided on termination with succession;
- the number of members has fallen to one (except for the private limited-liability and limited company, but in case of general partnership and limited partnership, six months are allowed for finding a new member);
- the court of registry cancels it;
- if a regulation prescribes so; and
- specific cases of conversion (types of merging, demerging).

The main rule in case of a termination is that a **final settlement** takes place, but this can take the form of a **liquidation procedure**, or a **forced liquidation** as well.





## 3. PRIVATE ENTREPRENEURS AND SINGLE-MEMBER COMPANIES

A natural person in the area of Hungary may pursue business activities regularly and for the purpose of profit and raising funds, on his own risk as a private entrepreneur (sole trader).

**The provisions of the ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS shall apply for activities of<sup>13</sup>:**

- farmers practising farming as their main occupation as per the act on personal income tax,
- veterinary service providers,
- lawyers,
- private patent agents,
- public notaries, and
- private bailiffs.

### 3.1. Private Enterprises<sup>14</sup>

**Private entrepreneurs may be**

- **Hungarian nationals;**
- nationals of **any Member State of the European Union** or any State that is a party to the Agreement on the European Economic

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<sup>13</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS

<sup>14</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 2.§-3.§

Area, and persons enjoying the same treatment as nationals of States who are parties to the Agreement on the European Economic Area by virtue of an agreement between the **European Community and its Member States and a State that is not a party to the Agreement on the European Economic Area with respect to establishment;**

- **persons** – other than those mentioned in Paragraph b) – **exercising the right of free movement and residence in the territory of Hungary** in accordance with the ACT ON THE ADMISSION AND RESIDENCE OF PERSONS WITH THE RIGHT OF FREE MOVEMENT AND RESIDENCE;
- persons who have been granted immigrant or permanent resident status under the ACT ON THE ADMISSION AND RESIDENCE OF THIRD-COUNTRY NATIONALS, **persons holding a residence permit for the purpose of gainful employment, family reunification or for the pursuit of studies, as well as exiles and stateless persons holding a residence permit granted on humanitarian grounds.**

**The following persons may not be private entrepreneurs:**

- persons lacking legal capacity or having diminished capacity;
  - **”Diminished capacity”**: persons who are above the age of 14 but under the age of 18, but not incapacitated, and majors who have been placed under guardianship limiting legal capacity by court.
  - **”Legal incapacity”**: minors under the legal age of 14, and minors older than 14 but under the legal age, and majors above the age of 18 who have been placed under guardianship excluding legal capacity by court shall be considered incapable.
- any person who has been sentenced to imprisonment by final court verdict without probation under the ACT IV OF 1978 ON THE CRIMINAL CODE in force until 30 June 2013 (hereinafter referred to as ”ACT IV/1978”), for any crime against the integrity of public life (ACT IV/1978, CHAPTER XV, TITLE VII), any crime against international justice (ACT IV/1978, CHAPTER XV, TITLE VIII), any economic crime (ACT IV/1978, CHAPTER XVII) or for any crime against property (ACT IV/1978, CHAPTER XVIII), until relieved from the detrimental consequences attached to prior convictions;

- any person who has been sentenced to imprisonment by final court verdict without probation of any crime of corruption under the ACT C OF 2012 ON THE CRIMINAL CODE (hereinafter referred to as "CRIMINAL CODE"), CHAPTER XXVII, any violent crime against property (CRIMINAL CODE, CHAPTER XXXV), any crime against property (CRIMINAL CODE, CHAPTER XXXVI), any crime against intellectual property rights (CRIMINAL CODE, CHAPTER XXXVII), any crime relating to counterfeiting currencies and philatelic forgeries (CRIMINAL CODE, CHAPTER XXXVIII), any crime against public finances (CRIMINAL CODE, CHAPTER XXXIX), money laundering (CRIMINAL CODE, CHAPTER XL), any economic and business crime (CRIMINAL CODE, CHAPTER XLI), any crime against consumer rights and any violation of competition laws (CRIMINAL CODE, CHAPTER XLII), illicit access to data and any crime against information systems (CRIMINAL CODE, CHAPTER XLIII), until relieved from the detrimental consequences attached to prior convictions;
- any person who has been sentenced to imprisonment for a term of over one year without probation for a premeditated crime, until relieved from the detrimental consequences attached to prior convictions;
- who is the member of a single-member company or an unlimitedly liable member of a business association.

### **Foundation, Starting and Costs of a Private Enterprise**

In order to start a private entrepreneurial activity, it is a requirement for the natural person to submit an application to the office in charge of registration, which can take place in person directly at the authority or via the citizen's portal in a standard form worked out for such purpose.

The simplest and fastest way to initiate a private entrepreneur's status is the citizen's portal. The private entrepreneurial activity may commence on the day of registration. If the private entrepreneur requests it, **the authority shall issue an entrepreneurial certificate the cost of which is HUF 10,000**; however, it is not compulsory to hold one.

If the applicant filled the form in appropriately, the office of registry acquires the private entrepreneur's tax number and statistical

identity number immediately and automatically via an electronic system developed for this purpose. Following this, the office of registry registers the private entrepreneur upon issuing a registration number suitable for identification; and either sends or transfers the certificate of registration to the applicant.<sup>15</sup>

Upon receiving the certificate permitting the start of the business activity, he must start paying social security contributions, regardless of whether he has actually started the activity and generated income. **He may be exempt from paying contributions only if** he has a registered employment somewhere else exceeding 36 hours a week. In such a case, he has to pay contribution only after the income constituting the base of the contribution.

**Neither fee for publication associated with starting a private entrepreneurial activity, nor legal counsel's fee shall be paid.**

**Some activities are subject to permission**, on which the citizen's service of the Office of Records gives more information. It is advisable to discuss what should be done and what kind of taxation form should be chosen with an accountant prior to applying for the private entrepreneur status.

## **Rights and obligations**

A private entrepreneur is made liable with his entire property for any obligations attributable to his private entrepreneurial activities. A private entrepreneur may pursue more than one activity, at more than one place or unit of business. If any of the business activities is subject to an official permission, a private entrepreneur may start or pursue the concerned activity upon acquiring the relevant permit. A private entrepreneur may employ workers, outworkers as prescribed in a separate regulation, helping family members, and students taking part in vocational training.

A private entrepreneur may pursue such an activity that is subject to a specific qualification if he meets the requirements prescribed by the regulations. In case of lacking such provisions, the private entrepreneur may also pursue an activity subject to qualification

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<sup>15</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 4.§-9.§

even if himself does not fulfil the requirements but there is a person among the workers employed by him for an unlimited period of time who pursues the activity and holds the prescribed qualification.<sup>16</sup>

Additionally to the specific basic activity, a **private entrepreneur's personal contribution** may involve **the organization and management of the enterprise**, as well as **its bookkeeping**, etc. Employing a **helping family member** is advantageous because of the favourable social insurance rules. A helping family member may be the following: the private entrepreneur's close relative, the unmarried partner, the spouse of a lineal relative, his spouse's lineal relative and his sibling's spouse.

### **Termination of Private Enterprises<sup>17</sup>**

If a private entrepreneur makes the decision on terminating its business activity for any reasons, he must report this fact to the **Office of Records having territorial authority over the registered seat of the enterprise**.

Termination of the entrepreneurial activity may take place electronically via the **citizen's portal** ([WWW.MAGYARORSZAG.HU](http://WWW.MAGYARORSZAG.HU)). However, the confirmation on the request for **termination** from the citizen's portal does not imply that further actions should not be taken: the citizen's portal's confirmation must be followed up because the submission is valid only if the private entrepreneur receives the confirmation on the registration of the request for termination, and this will be the proof that he has been cancelled from the records.

#### **The right to pursuing a private entrepreneurial activity ceases if**

- the private entrepreneur reports the termination of his enterprise to the authorities or to the office of registry, on the day of submitting the request;
- the private entrepreneur founds a single-member company or becomes a member of a single-member company, on the day prior to the day when the company registration decision enters

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<sup>16</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 15.§–16.§

<sup>17</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 19.§

into effect; or if the private entrepreneur takes possession of the financial contribution of the single-member company by transfer, on the day of the transfer;

- the private entrepreneur dies, on the day of his death;
- the court decision on the limitation or exclusion of the private entrepreneur's ability to act enters into effect, the same day;
- the tax office has cancelled the private entrepreneur's tax number; on the day when the decision on the cancellation enters into effect; and if
- any other reasons of exclusion arise.<sup>18</sup>

### **Discontinuance of the Private Entrepreneurial Activity<sup>19</sup>**

According to the ACT CXV OF 2009, a private entrepreneur may not pursue any business activity during the discontinuance, may not acquire new rights and may not undertake new obligations associated with the private entrepreneurial activity. A private entrepreneur must fulfil his outstanding obligations arising before and under the discontinuance even in the period of the discontinuance.

### **The conditions are the following**

- Its duration must be at least 1 month at minimum and 5 years at maximum.
- Only the private entrepreneur may request for the discontinuance, which starts on the day following the submission of request for the discontinuance.
- The private entrepreneurial card must be handed in the Office of Records.
- During the discontinuance, the entrepreneur does not have entitlement to social insurance. If he does not have another employment, he must inform the Tax Office, after which he becomes obliged to pay some monthly health insurance contribution. He does not have to open a bank account, but if he does not cancel it, he must inform the bank about the discontinuance.

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<sup>18</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 19.§

<sup>19</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 18.§

- He is not allowed to pursue any business activities. Thus he may not issue any invoices and charge any costs. Should he issue an invoice, the discontinuance becomes null, and he must pay all the contributions retrospectively.
- He may not ask for reimbursement of tax overpayment.

**A private entrepreneur's liability is unlimited, that is, he is liable to the extent of his entire property.**

## 3.2. Single-member Companies

**The single-member company is a legal entity without legal personality founded by a natural person registered as a private entrepreneur, and is established upon registering it in the company registry.<sup>20</sup>**

A single-member company has a legal capacity, **it may acquire rights and undertake obligations**, and thus it may acquire assets in particular, conclude agreements, sue and be sued.

A single-member company is under the legal force of the **ACT V OF 2006 ON PUBLIC COMPANY INFORMATION, COMPANY REGISTRATION AND WINDING UP PROCEEDINGS** the provisions of which shall be applied taking the different rules into consideration as specified in the **ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS**. A single-member company may have only one member (founder). One natural person may be exclusively the member (founder) of one single-member company. A single-member company and its member may not be an unlimitedly liable member of a business association. Where the regulation pertaining to the single-member company mentions the supreme body, this implies the member of the single-member company.

In matters not regulated in the **ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS** the general provisions of the **COMPANY ACT** concerning the common rules on business associations and the relevant provisions of the Civil Code shall be applied respectively.

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<sup>20</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 20.§

The persons **may not establish** a private company and may not be the executive officer of a private company whose liability – as the executive officer of the business association terminated without succession and as the owner of shares ensuring exclusive or majority influence – for not performing outstanding obligations was established by a final decision of the court in a proceeding resulting a termination without succession, conducted based on the act on bankruptcy and liquidation proceedings or the act on public company information, registration and winding up proceedings, and who has failed to perform his payment obligations based on the liability as established by the final court decision.

The force of the prohibition is the duration of the execution procedure conducted against him and plus five years following its failure.

### **The Foundation of a Single-member Company<sup>21</sup>**

- For the foundation of a single-member company, a **memorandum of association** is required, which must take the form of **an authentic instrument, prepared by a notary public, or a private document countersigned by a lawyer**. The memorandum of association shall be signed by the founding member. The earliest day of signing the memorandum of association is the day following the registration as a sole proprietor.
- The memorandum of association may be concluded by the filling in the sample agreement appropriately. In this case, the content of the memorandum of association may only be constituted of the provisions included in the filled in sample of agreement.
- **The memorandum of association is the fundamental charter document of the operation and management of the single-member company**, the member may determine its content freely within the relevant legal framework.
- The founder may include **any business activity that is not prohibited or restricted by law**. The single-member company is allowed to pursue those activities that he reports to the Tax Office as either a principal or any other activities.

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<sup>21</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 21.§–25.§



- The private entrepreneur may not found a single-member company during the discontinuance of his enterprise.

**In the memorandum of association the following must be included:**

- the corporate name and seat of the single-member company;
- **the founder of the single-member company**, his first name and surname, mother's name, address **together with his private entrepreneur's registration number**;
- those **activities** of the single-member company that the founder intends to include in the company registration;
- **the subscribed capital** of the single-member company, the financial contribution of the member, **as well as how and when the subscribed capital is made available**;
- the duration of the single-member company if it is founded for a limited period of time;
- if the single-member company appoints an auditor, the auditor's name (company's name) and residence (seat); and
- **the manner of paying the dividend.**

### **The Operation of a Single-member Company<sup>22</sup>**

In compliance with the law

- The member of a single-member company decides on all those matters that the regulation pertaining to the single-member company renders into the legal scope of the supreme body.
- The management of a single-member company is performed by the executive officer or by the member in the capacity of his membership in the single-member company.
- If the management of a single-member company is done by the member, the member shall represent the company before a third person, the court and other authorities. In this case, the member represents the single-member company via the company registration in a written form.

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<sup>22</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 30.§

- The member shall conduct the management of the single-member company with due care and diligence as generally expected from persons in such positions, giving priority to the interests of the single-member company.
- In the event of any imminent threat for the single-member company's insolvency, the member shall conduct the management of the company giving priority to the company's creditors.
- If the member of a single-member company did not meet the requirements pertaining to a private entrepreneur, he must be regarded as one who does not observe the provisions relevant to his organization and operation.
- The financial contribution of a single-member company may exclusively be transferred to the private entrepreneur.

### **The Conversion and Termination of a Single-member Company<sup>23</sup>**

By applying the relevant provisions of the Company Act, a single-member company may convert into a business association, during which it must appropriately apply the provisions of the ACCOUNTING ACT pertaining to the conversion of companies.

#### **According to the law, a single-member company is terminated if**

- "the period of time specified in the memorandum of association is over or other termination reasons arise,
- it decides on its termination without a legal succession,
- it decides on its termination (or conversion) with a legal succession,
- the Court of Registry declares it terminated,
- the Court of Registry orders its termination ex officio, and
- the court terminates it in a liquidation proceeding."

**The rules of liquidation, winding up and the bankruptcy proceeding shall apply for single-member companies as well.**

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<sup>23</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 33.§-34.§

### **The Assets and Liability of a Single-member Company<sup>24</sup>**

A single-member company is founded with a subscribed capital as specified in the memorandum of association. If the subscribed capital of a single-member company exceeds HUF 200 thousand, the subscribed capital may be made up of financial and non-financial (in kind) contributions. The financial and non-financial contributions must be available at the moment of foundation. For the obligations of a single-member company, the single-member company shall be made liable to the extent of its assets. Provided that the assets of a single-member company are not sufficient enough to cover the outstanding obligations, the member has an unlimited liability for all liabilities of the company.

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<sup>24</sup> ACT CXV OF 2009 ON PRIVATE ENTREPRENEURS AND SOLE PROPRIETORSHIPS 26.§-59.§



## 4. GENERAL PARTNERSHIPS

The ACT IV OF 2006 ON BUSINESS ASSOCIATIONS (hereinafter: the COMPANY ACT – CA) regulates the foundation, structure and operation of business associations having their registered office in Hungary, as well as the rights, obligations and liabilities of the founders and members (shareholders), as well as the business associations' conversion, merger, demerger and termination without succession.

Based on the act, the **közkereseti társaság (kkt) – general partnership** (later referred to as partnership) is such a business association that lacks a legal personality and in which the members undertake to jointly engage in business operations with unlimited and joint and several liability, and to make available to the partnership the capital contribution necessary for such activities. The designation "közkereseti társaság" (general partnership), or its abbreviation "kkt.", has to be indicated in the corporate name of the partnership. The partnership is the typical association form of **family-owned or small enterprises**.

### The Foundation of General Partnerships

- At least **2 members** are needed.
- **No minimum subscription capital is prescribed**, but each member **has to contribute** to the registered capital. This can take the form of a financial and/or in-kind contribution.
- Provided that the partnership's assets are not enough, each member **may be made liable** for the partnership's **obligations** even with his **private assets**.

The partnership's supreme body is the **meeting of members** where everybody has the right to vote (unless otherwise provided by the memorandum of association). **None of the members may be the member of another partnership (kkt.), general partner of a limited partnership (bt.), or may not be a sole proprietor.**

By signing the memorandum of association, the members undertake **to jointly engage in business operations with unlimited and joint and several liability, and to make available to the partnership the capital contribution** necessary for such activities.

The general partnership is a legal entity without legal personality where the lack of a legal person does not imply the limitation of legal capacity, but only the manifestation of that the general partnership is primarily an **association of persons**, and an **association of assets** only secondarily.

**The partnership is a legal entity separated from the member's person, and under the name of the company:**

- it can acquire rights and undertake obligations, conclude contracts, can sue and can be sued;
- the members contribute the assets needed for the joint business activity.

A partnership shall be (primarily) **liable for its obligations with its assets** (unlimited). If the assets of the partnership do not cover the creditors' needs, the members shall bear unlimited and joint and several liability **with their private assets** for the obligations of the partnership (secondary liability). Due to the lack of a legal personality, it may happen that a partnership is not allowed to pursue a specific activity because this is only made possible in a specific association form as provided by law (e.g. banking may only be conducted in a holding company form).

A partnership **may only be founded by a memorandum of association** whose **mandatory content elements are prescribed by law**. In the company name of the partnership, the form of the company must be designated; in the short version, the abbreviated form, kkt., must be included.

According to the CA, in the memorandum of association establishing the partnership, the **subscribed capital** must be determined, as well as **when and how the subscribed capital has to be made available**. The founding members' contribution to the assets may comprise of **financial and non-cash contribution**, and there is no such provision that would prescribe the minimum amount of the financial and non-cash contribution. Thus a partnership may be established by only non-cash (in kind) contribution, and there is no any limitation on the initial asset.

**The partnership members may take part in the association's activities personally: the mode and scope must be regulated in the memorandum of association.**

No member can be required to increase his capital contribution in excess of the amount set forth in the memorandum of association, or to supplement such contribution in the event of loss. No member may reclaim his capital contribution during the existence of the partnership or his membership. Unless otherwise provided by the memorandum of association, **profits and losses are distributed among the members in proportion to their capital contributions**. An agreement for the exclusion of any member from the profits or from the bearing of losses is void.<sup>25</sup>

Unless otherwise provided by the members, any member has the right to exercise the **management of the partnership** either personally or jointly. Members entitled to management may raise an objection against the planned actions of another member who is also entitled to management. In such cases, the meeting of members (the supreme body) has powers to override the action in question. All members take part in the meeting of members in person. The meeting of members resolves all matters which the law or the memorandum of association confers under the competence of the partnership's supreme body, or in matters that do not belong to the regular business activity of the partnership.

**It is the responsibility of the executive officer(s) to make decisions in the matters conferred under the competence of**

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<sup>25</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 92.8-93.8

**the management.** At the meeting of members, all members have equal right to vote in the process of adopting resolutions. The memorandum of association may contain provision on the contrary, but **each member has at least one vote**<sup>26</sup>.

**The meeting of members adopts its resolutions by simple majority of the votes** except for the issues where **a three-quarters majority of the votes or a unanimous vote is required by the CA.** The unanimous vote of all members is required for any amendment of the memorandum of association, and for the transformation or termination without succession of the partnership.

A partnership shall be **primarily liable for its obligations with its assets.** If the assets of the partnership do not cover an obligation, the members shall bear unlimited and joint and several liability with their private assets for the obligations of the partnership. Without prejudice to their subsidiary liability, members may also be sued together with the partnership. Decisions in favour of the plaintiff may be passed and enforcement may be carried out in connection with the assets of the partnership without the members being involved in the proceedings, however, such decision may be passed concerning the private assets of members only with their involvement in the proceedings.

The **liability of a new member for the external obligations** to a third person originating prior to his admission to the partnership **may be excluded** in the memorandum of association. If the members do not provide otherwise in the memorandum of association, the liability of a new member for the obligations originating prior to his admission to the partnership shall be identical to that of all other members.

#### **Membership shall terminate<sup>27</sup>:**

- if the member failed to provide his capital contribution specified in the memorandum of association despite an order to this effect;
- upon mutual agreement of the members;

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<sup>26</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 94.§-99.§

<sup>27</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 99.§-104.§



- upon expulsion of the member;
- by ordinary notice;
- upon termination with immediate effect;
- upon transfer of partnership share;
- upon death or termination of the member;
- if continued existence is deemed unlawful.

Members may terminate their membership in writing with a notice period of three months (ordinary notice). Members may terminate their membership in writing with immediate effect, indicating the reason, if any other member of the partnership is engaged in a grave breach of the memorandum of association or in any conduct which seriously endangers cooperation with such member or the achievement of the purpose of the partnership.

Any member of a partnership may assign his participation (rights and obligations) in the partnership, either to another member or to a third party by way of a contract fixed in writing. The assignment shall take effect upon the amendment of the memorandum of association.

Accounts shall be rendered with members withdrawing from the partnership, not including the assignment of a member's participation, according to the situation existing at the time of termination of membership. A member withdrawing from the partnership is entitled for a share from the partnership's capital consistent with his original contribution to the partnership's subscribed capital.

Unless the partnership and the member agree otherwise, **the claim of a member withdrawing from the partnership shall be satisfied in cash within a period of three months after termination of membership.** Any member withdrawing from the partnership shall remain liable for the partnership's liabilities originating from prior to the termination of his membership within a forfeit deadline of five years in the same way as before the termination of his membership.

## **Termination of Partnerships<sup>28</sup>**

The **termination without succession** and the decision on the **conversion of the partnership** require the **members' unanimous resolution. Final liquidation** may be conducted in a simplified form if the partnership finishes the final liquidation within 150 days from the commencement of the final liquidation. In this case the court of registry cancels the partnership from the registration of companies. **In the event of termination of a partnership without succession**, unless otherwise provided by the memorandum of association, assets remaining after settlement of all debts shall be distributed among the members in proportion to their capital contribution.

## **The Conversion of a General Partnership into a Limited Partnership**

**The conversion of a general partnership is subject to the simple amendment of the memorandum of association. There is no need to apply the provisions of the act containing the general rules of the conversion.**

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<sup>28</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 105.§–107.§

## 5. LIMITED PARTNERSHIPS<sup>29</sup>

The **members of the partnership** shall undertake to jointly engage in business operations, where **the liability of at least one member (general partner) for the obligations not covered by the assets of the partnership is unlimited**, and is joint and several with all other general partners, while at least **one other member (limited partner) is only obliged to provide the capital contribution undertaken in the memorandum of association**, but is not liable for the obligations of the partnership.

### The Foundation of a Limited Partnership<sup>30</sup>

The **subscribed capital** implies the **initial assets** of the partnership, that is, the sum of the founding members' financial contribution. **In the case of a limited partnership, there is no provision for a minimum amount.**

The **memorandum of association** may be done by using a standard form. Of course **all members have to sign** such a form as well, which must take the form of **an authentic instrument, prepared by a notary public**, or in a private document **countersigned by a lawyer or the legal counsel.**

The **betéti társaság (limited partnership)** must be designated in the **corporate name**, or in case of a short version, the abbreviation, **bt.**, must be included.

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<sup>29</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 108.§-110.§

<sup>30</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 108.§

It is sufficient enough to indicate **the main business activity** of the limited partnership in the memorandum of association; however, additional activities may also be included. **The limited partnership may conduct any activities that are not banned or restricted by law** (except activities subject to permit).

No member can be required to increase his **capital contribution** in excess determined in the memorandum of association, or to supplement it in the event of loss. No member may reclaim his capital contribution during his membership. Unless otherwise provided by the memorandum of association, **profits and losses are distributed among the members in proportion to their capital contributions**. An agreement for the exclusion of any member from the profits or from the bearing of losses is void. Obligation may be apportioned in case of a limited partnership as well.

The **limited member is entitled to exercise the management and representation of the partnership** upon the authorisation of the memorandum of association. Unless the members provide otherwise, **all members are entitled to the management of the partnership** who may act **personally** or **jointly**. The member having the right to management may raise an objection against the planned actions of another member who is also entitled to management. In order to take measures, the resolution of the partnership's supreme body, the meeting of members, is required.<sup>31</sup>

The **supreme body of a limited partnership is the meeting of members**, where all members participate personally. The meeting of members **may adopt resolutions in all matters** that law or the memorandum of association confer to the authority of the supreme body, or in matters that fall outside the regular business operation of the partnership. The executive officer(s) have the right to making decisions in matters conferred to the management.

At the meeting of members, all members **have equal right to vote** in the process of adopting resolutions. The memorandum of association may contain provisions on the contrary, but each member has at least one vote. The meeting of members adopts its

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<sup>31</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 109.8

resolutions by simple majority of the votes except for the issues where a three-quarters majority of the votes or a unanimous vote is required by the CA.

The amendment of the memorandum of association, the decision on the **conversion of the partnership as well as the termination without succession** shall require the **members' unanimous resolution**.

**A limited partnership shall be primarily liable for its obligations with its assets.** If the assets of the partnership do not cover an obligation, the general members shall bear unlimited and joint and several liability with their private assets for the obligations of the partnership. The liability of a new general member for the external obligations to a third person originating prior to his admission to the partnership may be excluded in the memorandum of association. If the members do not provide otherwise in the memorandum of association, the liability of a new general member for the obligations originating prior to his admission to the partnership shall be identical to that of all other general members.

### **Termination of Membership<sup>32</sup>**

- if the member has failed to provide his capital contribution specified in the memorandum of association despite an order to this effect;
- upon mutual agreement of the members;
- upon expulsion of the member;
- by ordinary notice;
- upon termination with immediate effect;
- upon transfer of partnership share;
- upon death or termination of the member; and
- if continued existence is deemed unlawful.

Unless the partnership and the member agree otherwise, **the claim of a member withdrawing from the partnership** shall be satisfied in cash within a period of three months after termination of membership.

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<sup>32</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 99.§-104.§

Any member withdrawing from the partnership **shall remain liable for the partnership's liabilities** originating from prior to the termination of his membership within a forfeit deadline of five years **in the same way as before the termination of his membership.**

**If all general partners withdraw from the partnership,** the partnership shall cease to exist, except if the admission of a new general partner is reported to the court of registry within six months from the last general partner's withdrawal, or if the limited partners decide on continuing the limited partnership in the form of a general partnership, which can be done by a simple amendment of the memorandum of association.

**If all limited partners withdraw from the partnership,** the partnership shall cease to exist, except if the admission of a new limited partner is reported to the court of registry within six months from the last limited partner's withdrawal, or if the general partners decide on continuing the limited partnership in the form of a general partnership.

### **The Termination of a Limited Partnership<sup>33</sup>**

The **termination without succession** as well as the decision on the **conversion of the partnership** requires the members' unanimous resolution. Final liquidation may be conducted in a simplified form if the partnership finishes the final liquidation within 150 days from the commencement of the final liquidation.

In the event of a termination without succession, the court of registry cancels the partnership from the registration of companies. In the event of termination of a partnership without succession, unless otherwise provided by the memorandum of association, assets remaining after settlement of all debts shall be distributed among the members in proportion to their capital contribution.

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<sup>33</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 110.§

## 6. PRIVATE LIMITED-LIABILITY COMPANIES

**Private limited-liability companies**<sup>34</sup> are business associations founded with **an initial capital** (subscribed capital) **consisting of capital contributions of a pre-determined amount**, in the case of which the **liability of members to the company extends only to the provision of their capital contributions**, and to other possible contributions as set forth in the memorandum of association. With the exceptions set out in the COMPANY ACT, **members shall not be liable for the liabilities of the company**. The company form must be designated in the corporate name, or in its shorter version, the abbreviation, kft. (Ltd.), must be included.

### **Foundation of a Private Limited-liability Company**

For the foundation of a **private limited-liability company**, **HUF 500,000 initial capital is required**. Members may be adult private persons, or another business association or legal person. **Members may not be solicited by public invitation.**<sup>35</sup>

The **members' liability is limited from business point of view**, since it is only pursuant to the provision of subscription capital contribution, the stipulated ancillary services and the provision of supplementary capital contribution. Members shall not be made liable to the creditors of the company; their liability is limited to the amount of their subscription capital.

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<sup>34</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 111.§

<sup>35</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 112.§–118.§

## Documents Required for the Foundation of a Limited-liability Company (KFT./LTD.)

- **articles of association** countersigned by a lawyer (in the case of a one-person limited liability company or a **memorandum of association**;
- **members' list** that contains the members' name, address, the amount of their subscribed capital contribution (cash, in-kind), in case of a joint subscribed capital, the name of the joint representative (company's name) and address (registered seat), provisions pursuant to the limitation or exclusion of transfer of business share, and provisions pursuant to the supplementary capital contribution;
- **the executive officer's declaration of acceptance** that also refers to incompatibility;
- **a declaration** according to which **the executive officer** is not subject to any provisions of SECTION 23 OF THE CA, that is, **to any court verdict prohibiting him from accepting an executive office**;
- a legal document determining the duration of the executive officer's mandate;
- **a bank receipt about the capital contributions**, or if the memorandum of association provides so, a management's declaration countersigned by a lawyer on making the financial and/or non-cash contribution available;
- lawyer's authorisation;
- a receipt of paying all fees and duties (currently it is HUF 50,000 in a simplified proceeding and HUF 100,000 in a regular proceeding);
- in a non-simplified proceeding, **the receipt of paying the publication cost** (HUF 5,000);
- **the application for registration** that contains the most important data relevant to the registration;
- **possibly a list of apportionment**;
- **in the case of some specific activities, foundation permit** (e.g. private investigator, security services, funeral services, etc.);
- **in the case of some specific activities, chamber declaration** (e.g. private investigator, security services);



- **owner’s approval to the use of estates for the function of a registered office, business unit, branch** (though these do not have to be submitted to the court of registry, they are subject to the lawyer’s inspection); and
- **authorized signatures.**

#### **Data Required for the Foundation of a Limited-liability Company (LTD.)**

- **members’ data** (place and date of birth, maiden name, mother’s name, tax ID number, residence);
- **the address of the registered office** of the company;
- **the address of business operation** of the company;
- **the corporate name** (it must be distinguished for the already existing companies, therefore, it is advisable to choose several names);
- **the main and other business activities** of the company (it is sufficient to describe the activity);
- the name of the **general manager** (the representative of the company), his place and date of birth, maiden name, mother’s name, ID number, residence card number, tax ID number, address – it is advisable but not compulsory to elect the general manager from the members.

**In case of the foundation of an Ltd., it is not required to hire a statutory auditor.** Appointing an auditor is not required either in cases when instead of the financial contribution, the initial capital is made available for the foundation of an Ltd. in the form of a property, obligations (debts) or any other assets. **Appointing an auditor** is needed only in cases prescribed by the Accounting Act, thus in the instance when the income exceeds HUF 200 million, or above 50 employees.

#### **The Foundation of an LTD. and Required Permits**

The executive officers must pay sufficient attention to the acquisition of the required official permits concerning the company’s **branch and business operation**. Certain activities may only be conducted with the **required qualifications**. The executive officers do not have to hold such qualifications themselves, it is sufficient enough if a suitable person has an employment contract with the company.

**Additionally, other information and data are required** (branch office, appointed delivery agent, auditor, etc.) to draw up the necessary documents, and according to the provisions of the ACT IV OF 2006 ON BUSINESS ASSOCIATIONS entering into force on 1<sup>st</sup> July 2006, in order to register the company, **the entitlement to the use of the registered seat, the branch office and other units must be verified.**

**At the foundation of a private limited liability company** (just like in case of any other business associations), such a **corporate name must be chosen that is not used by others, and can clearly be distinguished from any other registered companies' name.** The unambiguous distinctiveness may only be achieved if mistakability can unambiguously be excluded at first sight or hearing even besides common and regular attention.

The **private limited liability company designation** must be included in the name, or in the short version, its abbreviation, Kft. (Ltd.).

**It is sufficient enough to determine the main activity in the memorandum of association.**<sup>36</sup> However, all intended activities must be listed and included in the company registration. The **TEÁOR 08** document ('Nomenclature générale des activités économiques dans les Communautés Européennes' (**NACE**)) contains the sectoral TEÁOR codes that may be included in the memorandum of association. The number of activities is not limited, however, it is not advisable to include too many.

The **memorandum of association** may be concluded by using a sample form that must be signed by all members. Exceptionally, an authorized person may sign it instead of the member provided that his authorization has the form of a notarial document or a private instrument. The form must be countersigned.

**The supreme body of the company is the members' meeting**<sup>37</sup>. The members' meeting shall be convened at least once every year.

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<sup>36</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 119.§-140.§

<sup>37</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 141.§-148.§

Administration of the company's affairs and representation of the company shall be carried out by one or more **managing directors**<sup>38</sup>. If the number of the members falls to one person, the company does not cease to exist, but it converts into a single-person company and continues to operate, applying the relevant rules.

It is relevant to multi and single-member Ltds that **the company may pay dividend or partial dividend for the members from its own capital only if the payment complies with the relevant provisions of the ACCOUNTING ACT**. Unless the memorandum of association provides otherwise, a member is entitled to receiving a dividend only if he was listed as a member at the time of the members' meeting. The dividend for the members may take the form of a non-cash benefit having property value if the memorandum of association allows so. **One of the disadvantages of companies founded by a simplified proceeding is that partial dividend may not be paid**. Partial dividend may only be paid if the members undertake to pay it back if later it reveals from the report complying with the ACCOUNTING ACT that paying dividend is not possible because of the capital protection rules.

### **The Single-member LTD.**<sup>39</sup>

**A single-member company** may be founded by **one member** and a **single-member Ltd.** as well. In such cases, not a memorandum of association but a charter document is made. It may be established in a way that one member acquires all the business shares of an already operating company.

**If the number of members of an Ltd. falls to one person, the company does not cease to exist, but continues to operate as a single-member company. If the company does not report a new member to the court of registry, the memorandum of association must be amended to a charter document.**

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<sup>38</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 149.§-151.§

<sup>39</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 167.§-170.§

**In case of the foundation of a single-member Ltd.,** before registering at the court of registry, **it is enough to contribute only HUF 100,000** capital, meanwhile, **the rest** (i.e. HUF 400,000) **must be contributed within a year.** For the single-member Ltds, with some statutory exceptions, the regulations and provisions pursuant to the multi-member business associations shall be applied. According to the act in force since July 2006, appointing an auditor in case of a single-member Ltd. is not mandatory. The member and executive officer of a single-member company has only limited liability for the obligations of the company. The **owner** (or its usufructuary if there is any) **of the estate to be used as a registered office** must issue **a statement of consent.**

### **Foundation of an LTD. Having Several Owners**

**A multi-owner Ltd. may be founded by a subscribed capital** (HUF 500,000 at minimum) **consisting of predetermined amount of capital contributions,** and the **members' obligations** is limited to the **contribution of their initial capital or to other non-cash contributions** as prescribed in the **memorandum of association.** The member shall not be liable for the company's liabilities with the exceptions set forth by law.

### **The Owners, Company's Assets and Capital Contributions**

At the foundation of a multi-member company, first of all, it has to be decided what amount of capital contribution the members wish to pay into the company. **A member's capital contribution may not be less than HUF 100,000, or the contribution has to be divisible by HUF 10,000.** The capital contribution does not necessarily reflect the voting right, or the share from the profit (since in the memorandum of association an agreement may be made that in the above matters they would deviate from the proportion of the capital contribution).

It is important to found the company in a **50-50% proportion of ownership,** which implies that almost in all cases members can only make resolutions unanimously (i.e. the company may not be terminated without the consent of the other member).

Upon the registration of the company, the members' rights and their share of the company's assets is embodied in the **business share. Identical membership rights shall be attached to equivalent business shares. Each member may only have one business share.** The business share may be transferred by a written agreement, though this may be restricted in the memorandum of association or may be made subject to certain conditions.

The **company's initial capital** consists of the totality of the members' capital contributions that are provided by the members in cash and in kind. The amount of the initial capital may not be less than HUF 500,000. According to the new regulation, **the mandatory rate of cash contribution ceased to exist**, thus an Ltd. may be founded exclusively by apportion, which can be any in kind, marketable object having property value, or intellectual property, or a right of property value.

**Members have to pay at least 50% of their capital contribution prior to the submission of the company registration application.** All cash contributions shall be paid up within a period of one year following registration of the company; the method and due date of the payment of the remaining amounts shall be specified in the memorandum of association.

**It is compulsory to make the whole apportion available at the foundation of an Ltd.** if its value amounts to at least half of the initial capital. In any other cases, it must be provided within 3 years from the registration of the company.

Those members who made a member's non-cash contribution accepted by the company at a value exceeding the value at the time of providing it to the contrary of their knowledge, or those who acted fraudulently during the foundation of the Ltd. shall have **unlimited and several liability** for any consequential loss.

Personal participation implies some kind of legal relationship with the company: as a primary rule, **the members of an Ltd. are only obliged to provide capital contribution.** The company **may not operate without a managing director.** The management task may be fulfilled **on the basis of a commission** or in the form of an **employment contract.** The managing director **may be the member of the company as well.**

If a company has **several managing directors**, each of them may represent the company individually as well. **Joint representation** is also possible when any statement on behalf of the company shall be valid only upon being signed by the managing director.<sup>40</sup>

### **The Termination of an LTD.<sup>41</sup>**

A resolution of the members' meeting passed by at least **a three-quarter majority** of the votes shall be required to resolve termination of the company. In the event of **termination of a company without succession**, from the assets remaining after the satisfaction of creditors, **the remaining assets may be distributed among the members of the company.**

It is an important rule that if the number of members of an Ltd. falls to one person, the company does not cease to exist, but continues to operate as a single-member company. However, if the company does not report a new member to the court of registry, the memorandum of association must be amended to a charter document.

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<sup>40</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 119.§–140.§

<sup>41</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 165.§–166.§

## 7. COMPANIES LIMITED BY SHARES<sup>42</sup>

Public limited companies are business associations founded with a share capital (subscribed capital) consisting of shares of a pre-determined number and face value, in the case of which the obligation of members (shareholders) to the public limited company extends to the provision of the face value or the issue price of shares. With the exceptions defined in the Company Act, shareholders shall not bear liability for the obligations of a public limited company.

Limited companies may be established **privately** or **open to the public** and, consequently, they may operate in the form of public or private limited companies.

Limited companies – operating in public or private limited company forms – may be established by transformation according to the CA.<sup>43</sup>

### Private Limited Companies

'Private limited company' shall mean a company **whose shares are not offered to the public**, also any limited company **whose shares were originally offered to the public** and are no longer available to the general public, or that **were removed from trading on a regulated market** shall also be considered a private company.

**It is not allowed** to solicit shareholders or to collect capital for a private limited liability company by way of public invitation. The articles of association may restrict the acquisition of shares by means of transfer (i.e. it may determine to whom the shares can be sold).

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<sup>42</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 171.§–176.§

<sup>43</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 172.§

**The designation "részvénytársaság" (limited company) must reflect its mode of operation:** it is a private limited company, which is abbreviated as "zrt" (in Hungarian).

### **Public Limited Companies**

'Public limited company' shall mean any company **whose shares (all or some) are traded publicly in accordance with the conditions set out in the act governing securities.** This practically means that shares are offered for sale in the printed media, and anybody **can subscribe or buy them at the place and time designated there.**

**The designation "részvénytársaság" (limited company) must reflect its mode of operation:** it is a public limited company, which is abbreviated as "nyrt" (in Hungarian).

The shareholders of a limited company shall not be liable to creditors; therefore, it can only be established with considerable initial capital. The **initial capital**, indeed, is the **sum total of the face value of all shares.** The amount of the initial capital in the case of a **public limited company** may not be less than HUF 20 million, in the case of a **private limited company**, may not be less than **HUF 5 million.**

**A limited company may be established without a financial contribution but with non-cash contributions (apportation) as well.** The non-cash contribution, i.e. the apportation, may be anything having property value (both movable and immovable), intellectual property (e.g. technical, economic, organizational knowledge, that is, know-how), right with property value (e.g. the reputation of the company, that is, its goodwill), and the contribution may be any claim acknowledged by the borrower, or based on a court resolution in force. **The member's labour or any other personal participation, or obligation for any service provision may not be considered as non-cash (in kind) capital contribution.**

The creditors of a limited company are protected by the rule according to which, in case of provision of a non-cash contribution, with the exceptions set out by law, the auditor's or other expert's (hereinafter: auditor) report must be enclosed to the articles of



association which contains the description and evaluation of the non-cash contribution, and in relation to this, the auditor's statement on whether the value of the non-cash contribution previously set by the founders is in balance with the number and the face value of shares to be given for it, and the description of the applied evaluation aspects.

The appointed **auditor** of the limited company does not have the right to the preliminary inspection of the value of the non-cash contribution.

**No auditor's report required** if the shareholder providing a non-cash contribution holds a report drawn up according to the accounting act and not older than three months, which contains the value of the contribution, or if the non-cash contribution consists of such securities whose market value may be identified. **The board publishes the auditor's report together with the submission of the application for registration in the Company Bulletin.**

**The following shall be included in the article of associations:**

- the **corporate name** and **registered office** of the company;
- the **members** of the company, unless the law prescribes it otherwise, their **name** (company's name) and **residence** (seat) with the indication of the company registry number (record number) of the company with a legal personality or without a legal personality;
- the **activities** of the business association that **the company intends to list in the company registry**;
- the company's subscribed capital, the members' capital contribution, and **how and when the subscribed capital is made available**;
- the mode of **representation** of the company, including **signing for the company**;
- the name (residence, seat) of **the primary executive officers** appointed by the members (shareholders), **the primary supervisory board members and the primary auditor**, provided that there is a supervisory board or an auditor at the company; and the registry number (record number) of the company with a legal personality or without a legal personality;

- if **the company is founded for a fixed term, the duration** of the company's operation;
- anything that is prescribed as mandatory by SUBSECTION 1, SECTION 12 OF THE ACT IV OF 2006 ON BUSINESS ASSOCIATIONS.

The activity belonging to the **main profile** of the company is the company's main activity. In the articles of association and data of the company **only one main activity may be designated**. Additionally to the main activity, the company may engage in activities that are not banned by law.

**If the conduct of any of the business activities is made to be subject to an official permit** by law, not including the municipal decree here, the business association **may only start and conduct** the activity in holding such permit.

**Activities subject to qualification** – unless it is not provided otherwise by statutory regulations, not including the municipal decree here – may be pursued by business associations only if there is at least one person among its participating members, employees, or among the persons working to the benefit of the company under a long-term civil relationship concluded with the business association, who satisfies the qualification requirements set out in legal regulations.

**The supreme body of a limited company is the general meeting.** The right to vote is attached to the face value. Unless otherwise provided by the CA, the general meeting shall be called by the **management board**.<sup>44</sup>

**The following shall fall within the exclusive competence of the general meeting:**

- decisions to approve and amend the articles of association;
- decisions on changing the operating form of the limited company;
- decisions on transformation or termination of the company without succession;

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<sup>44</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 231.§–242.§, ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 302.§–307.§

- the election and removal of the members of the management board or the general director, members of the supervisory board and the auditor, and establishing their remuneration;
- approval of the annual report;
- decisions to pay interim dividends;
- decisions to increase and to reduce the share capital;
- decisions on all issues which are assigned to the competence of the general meeting by law or the articles of association.

Similarly to the private limited-liability company (Ltd.), the 'zrt', i.e. private limited company, may also operate as a single-member company.

The administrative duties of a limited company are carried out by the **management board**.<sup>45</sup> The management board consists of minimum three and maximum eleven members who are all natural persons, it elects its chairman from among its members. The office of the **chairman of the management board** and of the members may not be exercised in the framework of an employment relation. The management board shall exercise its rights and perform its duties as an independent body. The rules of procedure approved by the management board shall provide for the division of tasks and competence among the members of the management board. **The members of the management board may attend sessions of the general meeting of the company in an advisory capacity.** The responsibility for presenting the annual report of the private limited company prepared pursuant to the Accounting Act to the general meeting lies with the management board. The management board shall prepare a report on the management, the financial situation and the business policy of the company at the intervals set out in the articles of association, or at least once every year for the general meeting, and at least once every three months for the supervisory board.

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<sup>45</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 243.§–247.§, ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 308.§–312/A.§

## Types of Shares, Classes of Shares<sup>46</sup>

In a limited company the members' rights are embodied by the **types of shares and the classes of shares. Printed share certificates are negotiated** by means of the full or empty endorsement drawn up on the reverse side of the share or the sheet (allonge) attached to the share.

By the development of technology, the printed shares are being taken over by the so called **dematerialized shares**, which shall mean an electronic instrument that has no serial number and identifiably contains all the material information of securities, which are created, recorded, transmitted and registered electronically as defined in specific separate legislation.

In connection with dematerialized shares, **the shareholder's name and other data required for identification** are contained **in the securities account maintained by a securities broker on behalf of the shareholder. Title to dematerialized shares is transferred** through the **securities account, with credit and debit recorded as appropriate.** The person on whose securities account the share is recorded shall be considered the rightful owner of such securities.

Those shares that **do not differ from the general shares**, and **offer shareholders rights proportionately to the face value of the shares** are called **ordinary shares**. Other shares are more or less different from them, and they are called preference shares, employee shares, interest-bearing shares and redeemable shares.

The **preference share** means that in comparison to the owners of ordinary shares, the owners of preference shares hold more rights. The article of association within the class of preference shares may prescribe the following:

- dividend preference;
- in case of termination without succession, priority for a share from the assets to be distributed (preferential right to any liquidation surplus);

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<sup>46</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 177.§-183.§, ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 198.§-201.§

- preferential voting rights;
- priority to appoint executive officers or members of the supervisory board;
- the right of pre-emption;
- other classes of shares carrying preference rights as provided by other laws.

The article of association may contain provisions on issuing such preference shares that **embody several of these preferential rights at the same time.**

From after-tax profits to be distributed among shareholders, **shares carrying dividend preference** shall entitle their holders to dividends prior to or to a preferential degree over shares belonging to other categories or classes of shares.

The instrument of **employee shares** serves the aim that by their attachment to the assets, the employees feel loyal to their employer, the limited company. Employee shares may be issued to full-time or part-time employees free of charge or at a preferential price during their employment. This kind of share has a limited marketability because of the limited group of subjects.

The employee shares may be **ordinary shares**, but limited companies may issue a type of employee shares with entitlement to preferential dividends – after the shares carrying dividend preference – from the after-tax profits to be distributed among shareholders prior to shares belonging to other categories or classes of shares. The articles of association may also provide for the issue of employee shares carrying entitlement to appoint executive officers.

The shares may be **interest-bearing shares** as well, which are the combination of contribution and share. From the taxed profit of the current year supplemented with available profit reserves, holders of interest-bearing shares are entitled to the interest calculated according to the method shown on the shares after the face value.

No interest may be paid to shareholders if, in consequence, the equity capital of the company would drop below the share capital of a private limited company as calculated in accordance with the

legal regulations on accounting. In addition to interest, holders of interest-bearing shares shall be entitled to all rights attached to the shares, including the right to dividends. Interest-bearing shares may be issued only if their proportion does not exceed 10% of the share capital.

According to the rules laid down in the articles of association, in an amount that does not exceed ten per cent of the share capital, such registered shares may also be issued that give the limited company a purchase option or the shareholders a sale option. These are the **redeemable shares**.

The conditions for exercising the purchase option and the sale option shall be fixed in the articles of association of the private limited company before the shares are issued, in which to include a clause restricting the company's right to exercise its purchase option and its obligation arising in connection with the shareholder's sale option of shares for which the shareholder has paid the face value or the issue price in full, and if the shareholder in question has made available his in-kind contribution to the company. In laying down the requirements the provisions contained in the articles of association may deviate from those of **the CIVIL CODE pertaining to purchase options**.

#### **The termination of a limited company:<sup>47</sup>**

- if in case of foundation for a definite period of time, the duration is over;
- if the initial capital falls under the subscribed capital;
- if the company does not have succession;
- if there is a final liquidation, a winding up or a bankruptcy proceeding.

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<sup>47</sup> ACT IV OF 2006 ON BUSINESS ASSOCIATIONS 277.§-278.§

## 8. COOPERATIVES

A **cooperative** is an economic operator with legal personality that is **established with a share capital** whose amount is specified in its statutes; it operates under **the principle of open membership and variable capital** with the objective of lending assistance to its members so as to satisfy their economic and other needs (cultural, educational, social and healthcare).<sup>48</sup>

**A cooperative may be established by not less than seven founding members, subject to the obligation of subscribing shares.**<sup>49</sup> The founding members may be resident and non-resident natural and legal persons and business associations lacking the legal status of a legal person. The number of members comprised of legal persons and business associations lacking the legal status of a legal person may not exceed half of all members on the aggregate. Members of cooperatives who are natural persons must be eighteen years of age; or must be fourteen years of age and in possession of the certificate of consent of their legal representative as a prerequisite for the validity of their statement. Members may not be recruited through public announcements.

**A decision for the formation of a cooperative shall be adopted by the founding members in the inaugural general meeting.** The inaugural general meeting **shall elect the chairman**

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<sup>48</sup> ACT X OF 2006 ON COOPERATIVES 7.§

<sup>49</sup> ACT X OF 2006 ON COOPERATIVES 10.§

**of the general meeting, the keeper of the minutes and the two persons appointed to witness the minutes; declare the foundation of the cooperative; and adopt the statutes of the cooperative; and announce the members' commitment to provide the share capital in the amount prescribed in the statutes.**

They **elect the managing director** of the cooperative or **the chairman and members of its administrative body** (by an open ballot); elect **the chairman and members of the supervisory body** of the cooperative (by a secret ballot). Then they also elect the **cooperative's auditor** whose operation must be in accordance with the provisions of the ACCOUNTING ACT or the statutes. Finally, the general meeting establishes the remuneration of the persons mentioned. The inaugural general meeting shall adopt its resolutions by **simple majority**; however, **the statutes may be approved only if supported by all founding members.**

**The portion of the share capital payable upon foundation** shall be deposited to the appropriate current account, while the remainder may be paid up in cash or deposited into the appropriate current account.

Events of the inaugural general meeting<sup>50</sup> shall be recorded in **minutes**, and it shall be signed by the chairman, **the keeper of the minutes** and the **two witnesses**. The statutes adopted in the inaugural general meeting must be signed by all members. The statutes and any amendments shall be drawn up in an authentic instrument or in a document in due legal form that is signed by an attorney. This provision shall also apply to amendments of the statutes recorded in the minutes.

The **statutes**<sup>51</sup> are the charter document governing the organizational structure and operation. It must contain the following:

- the objective of the cooperative;
- the cooperative's corporate name;

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<sup>50</sup> ACT X OF 2006 ON COOPERATIVES 11.§–13.§

<sup>51</sup> ACT X OF 2006 ON COOPERATIVES 14.§



- registered office;
- main activity, and all other activities for which authorization from the competent authority is required;
- the face value of shares, the number of shares that may be held by any one member and the amount of share capital;
- the regulation concerning the rights and obligations of members;
- the regulations concerning the cooperative’s organizational structure and the fellowship fund;
- the competence of the general meeting, the procedure for calling general meetings;
- the conditions and method of exercising voting rights;
- the number of members and the competence of the administrative body;
- name and address of the chairman and members of the first administrative body;
- name and address of the chairman and members of the first supervisory body;
- the duration of the cooperative, if established for a limited period of time;
- conditions for withdrawal from the cooperative;
- the mode of representation and the method of signing for the cooperative;
- provisions for the admission and expulsion of members;
- provisions for supplementary payments and member loans;
- provisions for the admission of investor members;
- the conditions for economic cooperation between the cooperative and its members.

**Foundation of a cooperative**<sup>52</sup> shall be notified – for the purpose of registration and publication – within thirty days of the date when the statutes were adopted to the general court of jurisdiction

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<sup>52</sup> ACT X OF 2006 ON COOPERATIVES 15.§

by reference to the registered address of the cooperative, and acting as the court of registry. The cooperative may begin to engage in business operations following submission of the application for registration.

Members shall be required to pay up their respective **portion of the share capital to the extent specified in the statutes**, or at least thirty per cent, within eight days of foundation, whereas in-kind contributions shall be made available in full. **The cooperative may be registered only if the obligation for the payment or provision of capital contributions is satisfied.**<sup>53</sup> Any member who fails to comply with this obligation shall not be admitted into the cooperative. In the process of registration such person shall be disregarded. Cooperatives are deemed established upon registration in the register of companies.

Any cooperative whose **application for registration has been rejected** by a final court decision shall be required **to terminate all economic activities**. The members shall be held liable in accordance with the regulations pertaining to the winding-up of the cooperative without succession. Where authorization by the competent authority (operating permit) is prescribed mandatory by law to engage in a certain economic activity the cooperative may only begin and pursue the activity in question when in possession of such authorization.

**Activities subject to qualification** may be pursued by a cooperative only if there is at least one person among its participating members, employees, or among the persons working to the benefit of the cooperative under a long-term civil relationship concluded with the cooperative, who satisfies the qualification requirements set out in legal regulations.

The persons who have made any commitment in their own name and on behalf of the cooperative prior to registration shall bear unlimited, joint and several liability for such commitments. Any exclusion or limitation of liability vis-À-vis third persons shall be null and void.

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<sup>53</sup> ACT X OF 2006 ON COOPERATIVES 15.§

## **THE BODIES OF COOPERATIVES**

### **1. The supreme body of a cooperative<sup>54</sup>**

The supreme body of a cooperative is the general meeting, which consists of all members which shall be convened at least once a year. General meetings (meeting of delegates) shall be held at the main offices of the cooperative, unless another venue is prescribed in the statutes.

#### **The following shall fall within the competence of the general meeting:**

- amendment of the statutes;
- election and removal of the chairman and members of the administrative body, the chairman and members of the supervisory body, and establishing their remuneration;
- election and removal of the auditor and establishing his remuneration;
- transferring a certain part of the cooperative's assets into the fellowship fund, and decisions on the general principles for the appropriation of the fellowship fund.

#### **The general meeting shall decide on:**

- the approval of the annual report prepared pursuant to the ACCOUNTING ACT;
- the appropriation of taxed profits;
- the expulsion of members in the cases specified in the statutes, or a review of resolutions for expulsion;
- lodging any action for damages against an executive officer of the cooperative;
- the most important issues relating to the cooperative: merger, demerger, transformation into a business association or winding up without legal succession;
- a petition for bankruptcy proceedings, and on the approval of a composition agreement;
- the admission of an investor member, and ordering supplementary payments;
- all other matters referred to the competence of the general meeting by law or the statutes.

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<sup>54</sup> ACT X OF 2006 ON COOPERATIVES 20.§

**Convening of general meetings:**

- general meetings are convened by the administrative body in writing, indicating the agenda at least fifteen days before the date scheduled;
- if permitted by the statutes, the general meeting may be called by way of a posted notice, indicating the place and time of posting;
- the invitation or the posted notice shall contain:
  - the corporate name and registered office of the cooperative;
  - the place and time of the general meeting;
  - reference to holding section meetings, where applicable;
  - the agenda of the general meeting;
  - the place and time of the reconvened general meeting in the event of failure to meet quorum requirements.

**The events of general meetings shall be recorded in minutes, which shall contain the following:**

- the venue and time of the general meeting;
- the names of the chairman of the general meeting, the keeper of the minutes and the members appointed to witness the minutes;
- information for compliance with quorum requirements;
- announcement of the agenda, and records of the issues that were proposed for the agenda and refused, and the decisions adopted by the general meeting;
- the respective vote counts;
- the proposals rejected by the general meeting, and the statements requested to be included in the minutes.

The attendance list and the documents for authorizations for representation shall be annexed to the minutes. The minutes shall be signed by the chairman elected by the procedure prescribed in the statutes, the keeper of the minutes and the two cooperative members appointed to witness the minutes.

## 2. Meetings of Delegates<sup>55</sup>

Where a cooperative has over five hundred members statutes may provide for the meetings of delegates. Accordingly, the statutes shall specify the number of delegates required according to the number of members, the procedure for their election and their term, taking into account that the number of delegates may not be less than fifty. Any member of the cooperative may attend the meeting of delegates.

Furthermore, **the provisions governing general meetings shall also apply to the powers and the procedures of meetings of delegates with the exceptions** that at least two-thirds of the delegates must be present for the meeting to have a quorum; and votes may not be cast in writing; and the meeting of delegates shall reconvene due to lack of a quorum within fifteen days.

## 3. The Executive Officers of Cooperatives<sup>56</sup>

The executive officers of cooperatives are the **charmain and members of the administrative body**, and the **managing director**. The mandate of the executive officers shall take effect upon its acceptance by the person concerned. Executive officers must discharge their duties relating to the cooperative's internal affairs and its bodies and other officers in person; no representation is allowed.

### **No person may be an executive officer who:**

- is not a member of the cooperative;
- not a representative of the legal person;
- has been placed under conservatorship to limit or preclude competency by court order;
- has a prior criminal record;
- has been restrained by court order from exercising a profession;
- has been the executive officer of a cooperative or business association that was cancelled from the register of companies;

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<sup>55</sup> ACT X OF 2006 ON COOPERATIVES 28.§

<sup>56</sup> ACT X OF 2006 ON COOPERATIVES 29.§–34.§

- has been the executive officer of a cooperative or business association that was wound up following liquidation proceedings during a two-year period preceding the date of liquidation, for two years following the date of liquidation;
- is in an executive office in a business association or cooperative whose main business activity is identical to that of the cooperative.

**The chairman and any member of the cooperative’s administrative body, and the managing director may not simultaneously serve as a member of the supervisory body.**

Members of the cooperative’s administrative and supervisory bodies who are close relatives may not serve in these bodies simultaneously. The statutes may define further cases of conflict of interest.

**The appointment of an executive officer shall terminate:**

- upon expiration of the term of appointment; upon the executive officer’s death,
- upon resignation; if recalled by the general meeting,
- upon termination of the executive officer’s membership, (unless membership is not a requisite for the office),
- if he fails to eliminate the cause of incompatibility or conflict of interest within thirty days of their arising.

#### **4. The Administrative Body<sup>57</sup>**

The management and representation of a cooperative shall be carried out by the administrative body consisting of **at least three members**. If the cooperative has less than fifty members, the statutes may provide for the office of managing director in lieu of the administrative body, vested with the same powers as the administrative body. The general meeting shall elect the chairman of the administrative body and its members for a **fixed term** – according to the statutes where **the general meeting shall exercise employer’s rights.**<sup>58</sup>

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<sup>57</sup> ACT X OF 2006 ON COOPERATIVES 35.§–36.§

<sup>58</sup> ACT X OF 2006 ON COOPERATIVES 41.§

The administrative body shall have the **quorum** if two-thirds of the members but at least two members are present. The administrative body shall adopt its resolutions by simple majority of its members present. The sessions of the administrative body shall be called by the chairman or a member of the administrative body appointed by him. The administrative body shall establish its own rules of procedure.

The administrative body shall exercise its rights and perform its duties as a **body**. The administrative body is vested with powers to decide all matters which are not conferred under the competence of the general meeting or the supervisory body by law or the statutes. It is the responsibility of the administrative body to convene the general meeting, including the preparation and execution of decisions. The administrative body **shall give account** concerning its activities, the financial situation and the business policy of the cooperative at the intervals set out in the statutes, or at least once every year for the general meeting, and at least once every three months for the supervisory body. The administrative body shall adopt regulations for the exercise of employer's rights.

## **5. The Chairman of the Administrative Body and Members of the Administrative Body**

The cooperative is represented by the chairman of the administrative body and by members of the administrative body vis-Ä-vis third persons and before the court and other authorities. The right of representation vested upon the chairman (managing director) of the administrative body and upon the members of the administrative body shall be exclusive. The joint signature of two employees so authorized by the administrative body shall be required for the validity of their representation.

In the cases specified in the statutes **the general meeting may adopt a resolution to restrict the right of representation of the administrative body**; such restriction, however, shall not apply against third parties. Members of the administrative body shall be under joint and several liability for damages caused to the cooperative by way of any breach of this restriction.

## 6. Supervisory Body<sup>59</sup>

The general meeting shall set up a supervisory body consisting of at least three members as specified in the statutes for a **fixed period** or for an **indeterminate duration**. If the cooperative has less than twenty members, the statutes may provide to substitute the supervisory body by a member of the cooperative to carry out the duties of the supervisory body.

### The Supervisory Body's Scope of Authority

- it may examine any issue to the extent related to the operations and financial management of the cooperative;
- it may request executive officers, members and employees to provide information on the cooperative's activities, which cannot be refused;
- its members may attend any meetings of any organ of the cooperative in an advisory capacity;
- it shall give account of its activities to the general meeting at least once a year;
- it may inspect the cooperative's documents;
- it may advise the administrative body to abide by the relevant statutory provision, the provisions of the statutes and other regulations;
- it may recommend the recall of the entire administrative body or certain members, or to reprimand them, and to convene the general meeting;
- it may convene the general meeting instead of the administrative body if it fails to comply with its obligation to do so;
- it shall convene the general meeting without delay in the event that the administrative body's actions are found unlawful or gravely injurious to the cooperative's interests.

The supervisory body has a **quorum** if two-thirds of its members or at least two persons are present. **The supervisory body shall adopt its resolutions by simple majority of its members present.** The session of the supervisory body shall be called by the

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<sup>59</sup> ACT X OF 2006 ON COOPERATIVES 37.§–39.§



chairman or a member of the supervisory body he has appointed. The supervisory body shall establish its own rules of procedure. The bodies and executive officers of the cooperative shall be liable to resolve the motions of the supervisory body within the time limit specified in the statutes, or to take a position on them.

## **7. Auditor<sup>60</sup>**

The general meeting of the cooperative shall elect an auditor for a fixed period or for an indeterminate duration. The period for which the auditor is appointed may not be less than the duration remaining until the next general meeting held to address the annual report of the cooperative as prescribed under the ACCOUNTING ACT. Persons included in the register of auditors in accordance with the relevant legal regulations may be elected as an auditor. If the elected auditor is a legal person, this legal person shall be required to designate the person, whether a member, executive officers or employee, who will be personally responsible for carrying out the audits. In the event of any extended absence of the designated auditor, a substitute auditor may be appointed.

The auditor shall be responsible for carrying out the audits of accounting documents as specified in the ACCOUNTING ACT and other regulations pertaining to audit, but first and foremost

- he has to determine as to whether the annual report that the cooperative has filed as prescribed in the ACCOUNTING ACT is in conformity with legal requirements;
- and whether it provides a true and fair view of the cooperative's assets and liabilities, financial position and profit or loss.

### **The Auditor's Scope of Authority**

- he may inspect the books of the cooperative;
- he may request information from the executive officers, members of the supervisory body and employees of the cooperative;
- he may examine the current account, client accounts, securities and goods on stock and the contracts of the cooperative;

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<sup>60</sup> ACT X OF 2006 ON COOPERATIVES 40.§

- he must attend general meetings; and
- he may attend the meetings of the administrative body and supervisory body.

### **Termination of Cooperatives<sup>61</sup>**

Cooperatives shall be deemed terminated upon **cancellation from the register of companies**. Furthermore, **a cooperative shall terminate** if:

- the period of time specified in the statutes expires;
- the general meeting has adopted a decision for the cooperative's termination with or without succession;
- the number of its members falls below the number specified in the act (7 members) and no new members are registered at the court of registry within six months for compliance;
- has been declared terminated by the court of registry;
- has been terminated by court order following liquidation proceedings.

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<sup>61</sup> ACT X OF 2006 ON COOPERATIVES 91.§-94.§

## 9. NONPROFIT ORGANIZATIONS

### 9.1. Societies and Public Corporations

The CIVIL CODE and CIVIL LAW contain detailed provisions pertaining to the foundation and operation of **public corporations**.

#### 9.1.1. Societies<sup>62</sup>

**Societies are legal entities and for their foundation court registration is required.** Societies are voluntarily established self-governing organizations that are formed for the purposes defined in their statutes, have registered membership, and organize their members' activities in order to achieve their objectives. Societies are artificial persons.

At least ten members are needed in order to declare the society's **foundation**, to decide on its statutes, to establish its administrative and representative bodies.

Societies may be founded for conducting any activities that are in harmony with the FUNDAMENTAL LAW and not banned by law. If a society intends to acquire the status of public benefit, it has to consider the relevant provisions of the CTV. in determining its activities. The rule that societies may not be formed with the principal purpose of performing economic activities shall apply, however, in order to achieve its goals and ensure the economic conditions for this, it may engage in business activities.

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<sup>62</sup> ACT IV OF 1959. ON THE CIVIL CODE OF THE REPUBLIC OF HUNGARY 61.§–64.§

In this regard, we must point out that societies shall be liable for their debts only with their own assets. The societies' assets consist of the membership fees paid by the members, donations and contributions of legal entities and private persons. The members, above and beyond the payment of membership dues, shall not be responsible for the liabilities of the society with their own assets. However, at the foundation of societies, the law does not stipulate any requirements concerning assets, thus they do not own such assets that in case of a legal dispute would be available for the fulfilment of their liabilities for their creditors. Therefore, this must be taken into consideration when concluding agreements with societies.

**For the foundation of societies the following things are needed:**

- at least 10 founding members,
- declaration the foundation of the society,
- endorsement of the statutes,
- election of the administrative and representative bodies of the society,
- and establishment of a registered office in Hungary.

Following the foundation of the society, the founders have to apply for its registration. The application for registration may not be refused if the aims and activities included in the statutes of the society are not in conflict with the Fundamental Law and the founders have fulfilled all the requirements set out by laws.<sup>63</sup>

For the foundation of a society, the founding members shall convene a **founders' meeting**, about which they make a **minutes** and during which they approve the **statutes of the society**. The statutes of the society ensure the operation of the organization in accordance with the set goals, and it promotes the enforcement of the members' rights and obligations.

**The statutes shall provide for the following:**

- **Name of the society:** The society's name must be different from the name of those societies that were registered earlier and are engaged in the same activity area.

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<sup>63</sup> MINISTERIAL DECREE NO. 11/2012. (II.29.) KIM

- **Aims of the society:** Exercising the right of association may not be aimed at the violent acquisition and exercise of power, or at its exclusive possession, may not be engaged in crime and may not call on for committing crime, and may not infringe others' rights and freedom. Societies may be founded for conducting any activities that are in compliance with the FUNDAMENTAL LAW and are not banned by law. Societies may not be formed with the principal purpose of performing economic and business activities; furthermore, based on the right of association, no military organizations can be established.
- **Registered seat:** The owner of the property intended to be used as the registered seat must consent to that the society may use the property as a seat.
- **Structure:** The society must have a supreme body, additionally an administrative and a representative body. The statutes must determine what issues belong to the scope of authority of the supreme body. The supreme body of the society is the totality of the members (members' meeting, assembly), or the body elected directly or indirectly as the supreme body by the members as prescribed by the statutes.
- **The mode and conditions of the establishment and termination of membership.**

**The application for registration must be submitted to the court on a standard form to which the following documents must be enclosed:**

- the **minutes** of the founders' meeting of the society;
- the **list of attendance** of the society's founders' meeting with the name, address and signature of the members;
- the society's **statutes**;
- the members' declaration of **the administrative and representative body** complying with the provisions of the regulation for accepting the membership;
- the copy of the document proving the **right to use the property as a registered seat**;

- the members’ declaration of **the supervisory body** complying with the provisions of the regulation for accepting the membership;
- **other enclosed documents;**
- **supplementary documents as required.**

**After the foundation, anybody can join the society** complying with the conditions prescribed in the statutes, and members can freely terminate their membership in the society at any time. **However, the number of members may not fall under 10, the minimum requirement for the foundation.**

### **The Society’s Members**

- may participate in the society’s activities and programmes,
- may elect and be elected into the bodies of the society,
- have to fulfil their obligations prescribed in the statutes,
- may not endanger the achievement of the society’s aims.

**The society’s supreme body shall be convened as necessary, but at least once every year.** The supreme body must also be convened if the court orders so, or if at least one-tenth of the members – or a certain proportion as laid down in the statutes – requests so with the indication of the reason and aim. The supreme body’s meeting may be held via electronic connection by personal participation, provided that the identity of the member can duly be proved and documented via the used electronic device, and such option is included in the statutes.

The society’s administrative and representative organ is **a body** (presidency) **or person elected directly or indirectly by the members** for such purpose as prescribed in the statutes.

### **The society’s supreme body has the authority over:**

- drawing up and amendment of the statutes;
- unless the law provides otherwise, approval of the annual budget, and the accounting report on the former year;
- approval of the administrative and representative body’s annual report;
- declaring the society’s merger or demerger with another society, or its dissolution;

- electing and withdrawing the administrative and representative body's members;
- making decision in all those matters that the statutes confers into the exclusive authority of the supreme body;
- the statutes may confer the acceptance of the society's annual budget and accountancy report as well as the discussion of the administrative and representative body's annual report to another body of the society.

**The administrative and representative body's member may be:**

- who has at least limited capacity with the exception if the court limits one's capacity in cases concerning representation rights; and
- who is not banned from exercising public affairs; and
- who is a Hungarian citizen, or
- who has the right to free movement and residence according to the provisions of the ACT I OF 2007 ON THE ADMISSION AND RESIDENCE OF PERSONS WITH THE RIGHT OF FREE MOVEMENT AND RESIDENCE; or
- who falls under the force of ACT II OF 2007 ON THE ENTRY AND STAY OF THIRD-COUNTRY NATIONALS and has a legal status of an immigrant or permanent resident status, or has a permit of stay.

**The prosecution office exercises the legality supervision and control over societies as civil organizations** in accordance with the relevant provisions of the act on the prosecution service.

**The society ceases to exist:**

- if the society merges with another society;
- if its supreme body decides on its dissolution;
- if the court orders its dissolution;
- if as a result of its legality supervision and control, the court orders or establishes its dissolution;
- if the court dissolves it in a proceeding filed because of its insolvency;
- if the society is cancelled from the registry.

Unless the society's statutes or the law provide otherwise, the National Cooperation Fund gains the entitlement to the remaining assets of the dissolved society's after satisfying the creditors' claim.

## 9.1.2. Public Corporations<sup>64</sup>

Public corporations are self-governing organizations with registered membership whose establishment has been ordered by law. Public corporations are similar to societies in many aspects; **public corporations, however, are such legal entities that may perform public activities and not formed voluntarily but their establishment is ordered by law.** Public corporations are, in particular, the Hungarian Academy of Sciences, the chamber of commerce, and professional associations.

### Types of Public Corporations

- chambers (professional associations, economic chambers);
- the Hungarian Academy of Sciences;
- public corporation of business administration (wine-growing communities, Hungarian Standards Institution, Hungarian Accreditation Board );
- other (voluntary fire brigades, Hungarian Olympic Committee, national sports associations).

## 9.2. Foundations and Public Foundations

### 9.2.1. Foundations<sup>65</sup>

Foundations are legal entities established **for the achievement of the aims set by the founders**, which have assets provided by the founders or by the members joining after the foundation.

After registration, **foundations** as legal entities shall be separated fully from the **founders**, and in this regard, during the registration proceeding, the court especially inspects that the founders should not have considerable influence on the foundation's operation.

**Foundations may be formed either individually or jointly**, by private persons, legal entities or business associations lacking legal personality.

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<sup>64</sup> ACT IV OF 1959. ON THE CIVIL CODE OF THE REPUBLIC OF HUNGARY 65.§

<sup>65</sup> ACT IV OF 1959. ON THE CIVIL CODE OF THE REPUBLIC OF HUNGARY 74/A.§-74/C.§



**The founders shall provide sufficient assets for achieving the foundation's objectives.** The exact amount of the assets must be determined in the charter of a foundation, which currently is **HUF 100,000 at minimum in Hungary**. In case of several founders, the contribution provided by each founder shall be indicated separately. At the foundation, the assets may consist of cash, movables and immovables, or their interest, or rights of property value.

**During the registration proceeding**, the court especially inspects whether the assets ensure the achievement of the long term public goals and whether the assets necessary for achieving the foundation's goals are **made available** at the time of registration.

**The foundation's assets are separated from the founders' assets**, for which the founders shall renounce their claim. The legal entity foundation shall separate from its founders, and shall be fully liable for the obligations undertaken by it with its assets. The founder may not give any instructions to the administrative body of the foundation regarding the use of the assets of the registered foundation.

**A foundation is deemed established once it has been registered by the court.** A foundation is registered by the court of competency in the area of the foundation's registered office. The court cannot refuse the registration if the charter is in conformity with the conditions prescribed in the act. The foundation may start its operation on the day when the resolution on registration enters into force.<sup>66</sup>

**The application for registration shall be submitted to the court by the founder** in the standard form designated for this purpose<sup>67</sup>, to which the members of the administrative body (board of trustees) designated in the charter of foundation are not entitled. In case of several founders, the founders jointly, or one of them by the authorization of the other founders may act as an applicant. The founder or founders, of course, may be represented by an authorized legal counsel (e.g. lawyer) as well. The founder(s) may withdraw the foundation during the registration proceeding; however, this shall not be possible after registration.

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<sup>66</sup> MINISTERIAL DECREE No. 11/2012. (II.29.) KIM

<sup>67</sup> MINISTERIAL DECREE No. 12/1990. (VI. 13.) IM, APPENDIX 3

**The documents below must be enclosed to the application for registration:**

- the charter of foundation;
- the members' declaration of **the representative body** complying with the provisions of the regulation for accepting the membership;
- proof of **making the assets available** for the foundation;
- the copy of the document proving the **right to use the property as a registered seat**;
- if needed, the members' declaration of **the supervisory body** complying with the provisions of the regulation for accepting the membership;
- in case of a **foundation** (public foundation) **established by a state founder** or jointly by a state founder and **a founder outside public finance**, the verified copy of the document on the state founder's nomination for a member in the administrative body.

**The foundation's charter must contain at least the following mandatory content elements:**

- **The foundation's name:** The foundation's name must be different from the name of those foundations that were registered earlier and are engaged in the same activity area.
- **The foundation's aims:** The foundation's aims shall always be long term public interests.
- **The assets and their mode of use for the foundation's:** The charter of foundation does not have to contain detailed regulation on how to use the assets, but the principles must be clearly laid down. The charter of foundation has to show clearly how, with what decisions and via which decision making mechanisms the administrative body can use the assets in order to achieve the foundation's aims.
- **The registered seat:** The owner of the property intended to be used as the registered seat must consent to that the foundation may use the property as a seat.

## **Regarding their type, open and closed foundations can be distinguished:**

- In the case of an **open foundation**, the founder makes it possible that **anybody may join** the foundation in compliance with the law. In this case, it is sufficient enough if the founder only provides the contribution needed for starting the operation, trusting that the new entrants will increase the foundation's assets, thus the foundation will be able to realize its public objectives.
- In the case of a **closed foundation**, the founder provides his contribution for the foundation in a manner that the amount, i.e. **the assets, may not be increased by joining**. In this case, the assets may be increased only by the proceeds of the assets, or the profit stemming from the business activity. The CIVIL CODE considers the closed foundation as the primary form; therefore, **if the founder intends to establish an open foundation, he has to stipulate it in the charter document.**

**In justified cases, the founder shall be entitled to amend the charter**, without causing any injury to the foundation's name, purpose, or assets, but shall not otherwise interfere with the foundation's operation. The founder shall not decide on such significant amendment that would withdraw the foundation's assets, would change or limit its original purpose, or would terminate the foundation earlier or against the original founders' aims.

**The public prosecutor's office shall exercise legal supervision and control over the foundation's activities as a civil organization in accordance with the relevant regulations.**

**The foundation is represented by its management body.** The management body is the foundation's supreme administrative, management and representative organ that manages the foundation's assets and represents the foundation before the authorities and against third persons. **The founder** shall be entitled to designate a **managing body** in the charter. If the founder creates a separate organization – **board of trustees** – for managing the foundation, he must provide for its composition and designate a person for its

representation in the charter, and respectively the manner and extent of exercising the right to representation if more persons are entitled to represent the foundation. **The appointment of the trustees may be for both indefinite and definite period of time, or for a term lasting until the occurrence of some specific conditions.**

A managing body in which the founder is directly or indirectly entitled to assert any controlling influence regarding the utilization of the foundation's assets may not be appointed or established. However, there is no restriction on that the founder be one of the trustees or the president. The court shall order the appointment of a managing body if the founder has failed to provide for one.

**The foundation does not cease to exist by the founder's death, but continues to operate as a legal entity. The foundation becomes terminated only upon being removed from the registry.**

#### **The court removes the foundation from the registry:**

- if the aims defined in the charter of foundation have been achieved, the period of time has been elapsed, and the condition defined in the charter has occurred;
- if the court orders it to be terminated or it merged with another foundation;
- the court shall order the termination of a foundation if it has become impossible to achieve its objective, or if the foundation's registration is refused owing to a change in the law;
- the court shall terminate the foundation upon the founder's request, if it has become impossible to achieve its objective(s);
- the court may terminate a foundation if any of the activities of the managing body jeopardize the objective of the foundation and the founder, despite a court order, fails to dismiss the managing body and appoint another body to replace it.

**In case of a terminated foundation, in the lack of the relevant provisions of the charter, the court renders the terminated foundation's assets for the support of the National Cooperation Fund.**

**The founders may stipulate in the charter that in case of the foundation's termination, for what purpose the remaining assets should be spent.**

Regarding the registration, legal supervision and control, bankruptcy, liquidation and winding up proceedings, the provisions of the ACT CLXXV OF 2011 on the freedom of association, legal status of public benefit organizations, operation and support of civilian organizations, concerning foundations with deviations defined thereof.

### **9.2.2. Public Foundations<sup>68</sup>**

**Public foundations are such special foundations that are established by the Parliament, government, local governments or the assembly of the minority self-government in order to ensure provision of public tasks.**

Organisations entitled to establish public foundations may only establish foundations in the form of a public foundation. Public duties can be state or municipal duties that the obligants shall deliver without intending to acquire proceeds in conformity of the requirements and conditions set out in regulations, including the provision of public utilities for the citizens as well as the assurance of the infrastructure needed for the provision of such duties.

**Public foundations may also be established** so that the foundation offers its total assets for the entitled organization upon the consent of its founder. If the organization entitled to the foundation of a public foundation accepts the offer, it establishes the public foundation together with the foundation's founder. By the establishment of the public foundation, the foundation ceases to exist; the public foundation shall be its successor whose founders shall jointly exercise the rights of a founder unless the charter of foundation provides otherwise.

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<sup>68</sup> ACT LXV OF 2006 ON THE AMENDMENT OF ACT XXXVIII OF 1992 ON PUBLIC FINANCES AND CERTAIN RELATED ACTS

Anybody **may join** a public foundation without any conditions unless the law provides otherwise; however, the charter of foundation may prescribe that the management body's approval is needed for the acceptance of admission.

Upon the founder's request, the court shall terminate the public foundation in nonlitigious proceedings, if the need for the public duties stops to exist or the delivery of the public duties can be assured other ways, or can be delivered more efficiently in another organizational framework. When a public foundation is terminated, the foundation's assets shall remain with the founder after satisfying any creditors, who shall use the assets for a purpose similar to that of the terminated public foundation and shall appropriately inform the public thereof.

The SECTION 74/G OF THE CIVIL CODE regulated it before 24<sup>th</sup> August 2006, but deregulation (i.e. the reduction of overregulation; it has two types – technical and substantial) took place with temporary and ongoing regulations, implying that the still existing public foundations may function as foundations in conformity with restrictive rules.

Currently the ACT LXV OF 2006 ON THE AMENDMENT OF ACT XXXVIII OF 1992 ON PUBLIC FINANCES AND CERTAIN RELATED ACTS contains these restrictive rules.

### 9.3. Nonprofit Business Associations

**Nonprofit business associations were allowed to be established until 1<sup>st</sup> July 2007 in Hungary.** Registered before or under registration nonprofit business associations on 1<sup>st</sup> July 2007 could operate until 30<sup>th</sup> June 2009 according to the rules pertaining to public benefit companies. A nonprofit business association could decide within two years after the 1<sup>st</sup> July 2007 whether it would continue to operate as **nonprofit limited-liability company upon the amendment of its memorandum of association**, or would convert into another nonprofit business association, or would terminate without succession. If a nonprofit business association failed to report its decision to the court of registry **until 30<sup>th</sup> June 2009, the court was obliged to terminate the nonprofit business association as a legal supervisory measure.**

**According to the COMPANY LAW**, business association may be established for to engage in joint business operations for objectives other than for making profit. **This is the nonprofit business association. The corporate name** of such business association **shall contain the designation "nonprofit" with the corporate form. Nonprofit business associations may be established and operated in any corporate form.** Thus if for example somebody establishes a nonprofit Ltd. then the rules pertaining to the Ltd. shall apply, for example, for convening, operation and the procedure of decision-making of the members' meeting. **The rules of the COMPANY LAW shall apply for the foundation and operation of business associations, which information can be found in the CHAPTER ON BUSINESS ASSOCIATIONS of this manual.**

Nonprofit business associations **may engage in business operations only in the form of ancillary activities;** the **profit** from these operations **may not be distributed among the members** (shareholders) since it shall be retained by the company.

A nonprofit business association may have a public benefit legal status in conformity with the provisions of the CIVIL LAW if it fulfils the requirements and **if the court of registry recorded its public benefit legal status. Nonprofit business associations may initiate the registration of their public benefit legal status even after their foundation, which the court of registry is obliged to register** upon the assessment of the content requirements of the memorandum of association if:

- it concluded a public service agreement, and
- the applicant undertakes to perform the conditions of public benefit in a private instrument in accordance with the CIVIL LAW.

If a nonprofit business association, based on the results of two completed subsequent business years, **does not fulfil the requirements laid down in the CIVIL LAW even despite its undertaking**, respective to these two years, or if **it terminates without succession** within two years after its foundation, for the

whole length of its operation retrospectively, **it will be obliged to pay corporate tax** after the total revenue, considered as the tax base, irrespectively to the source of income. Neither such taxpaying obligation, nor the tax base may be reduced under any legal title (COMPANY LAW).

**Nonprofit business associations** may continue to maintain their public benefit legal status up to 31<sup>st</sup> May 2014. At the latest after this date, they shall meet the requirements laid down in SECTION 32 OF THE CIVIL LAW. In order to maintain their **public benefit status**, they **have to satisfy the requirements set for public benefit organizations by the CIVIL LAW** which are roughly the following:

- public benefit activity,
- double-entry bookkeeping,
- report making,
- suitable resources,
- appropriate social support and
- required supplements included in the charter of foundation.

**A nonprofit business association may not convert into a profit making business association** since by such conversion the essence of a nonprofit business association would be lost, and the provision of the nonprofit tasks would not be ensured. **A nonprofit business association may only merge with another nonprofit business association or split up to form more nonprofit business associations.**

Conversion into a profit-making company is not possible also for the reason that the nonprofit business association has to stipulate in its memorandum of association that for what purpose the assets allocated for the provision of the nonprofit tasks may be used in case of its termination. In the absence of such provisions, the court of registry shall allocate the remaining assets of the nonprofit business association for the support of the National Cooperation Fund.



## 9.4. Other Nonprofit Organizations

According to the provisions of the 'CTV.' (CIVIL LAW) and 'PTK.' (CIVIL CODE), natural persons may set up a civil group without financial contribution to further their non-economic common goals and to harmonize their community-oriented activities without any business interest, and without any financial contribution, they are called **civil associations, or civil groups**, or not-for-profit organizations (NPOs).

In the case of a civil association, the rules pertaining to the civil code associations shall be applied with the deviation that **any member may terminate his membership in the association with immediate effect with the exception of the member appointed for the management in the memorandum of association**, and in the case of a member's death, or his termination, the association shall cease to exist only if the number of members falls to one.

On the one hand, civil groups do not pursue any business activities, on the other hand, they are not legal entities, thus they are not under the obligation (and not able) to acquire a tax number (since due to their status they are not able to conduct any tax due activities). The provisions of the CIVIL LAW concerning the themes of bankruptcy, liquidation, winding up, legal control, records keeping, financing, bookkeeping and reporting shall not apply for the civil associations.

SECTION 69 OF THE ACT CLXXXI OF 2011 ON THE REGISTRATION OF CIVIL SOCIETY ORGANIZATIONS AND ON THE RELATED PROCEDURAL REGULATIONS explains the application of the act in its CHAPTER XXXVI ON OTHER ORGANIZATIONS. Based on this chapter, this act shall only apply if the act prevailing for the respective organisations does not provide otherwise in the case of the *"parties, organizations operating in compliance with the act on sports, mutual insurance associations, trade unions, public bodies, private pension funds, voluntary mutual insurance funds, voluntary deposit insurance and institution protection funds of credit institutions, organizations of Employee Stock Ownership, and European Grouping for Territorial Cooperation founded in compliance with the Act XCIX of 2007 on the European Grouping of Territorial Cooperation."*

## 9.5. Public Benefit Status

**Regarding their type, characteristics and finance, Hungarian nonprofit organizations show a diverse picture.** Countless laws and regulations pertain to their types, establishment, finance, registration and users of their services, etc. This chapter aims to provide general knowledge on the Hungarian nonprofit organizations: foundations, associations, other organizations founded based on the freedom of association, nonprofit Ltd, and other public benefit organizations.

### The Notion of Public Benefit

In order to learn more about the organizations, **the notion of public benefit** must be explained. In the prevailing regulations, we can find a collective and separate use of the following concepts: 'public interest', 'public benefit' and 'public purpose'. These terms together describe the notion itself and the actual activities conducted under this concept. The CIVIL LAW (hereinafter: CTV.) has its effect also over the foundations and associations founded under the CIVIL CODE (hereinafter: PTK.), and additionally over all the civil organizations that have received public benefit status.

**The public benefit status<sup>69</sup> is established by registration as a public benefit organization.** In order to gain a **public benefit status**, the provisions of the CIVIL CODE shall apply. The act lists the additional requirements of gaining a public benefit status.

The CTV. describes **the legal status of public benefit and the conditions of its acquisition**, based on which an organization aiming at public benefit status must meet two requirements together<sup>70</sup>:

- appropriate resources and
- appropriate social support.

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<sup>69</sup> ACT CLXXV OF 2011 31.§

<sup>70</sup> ACT CLXXV OF 2011 32.§

**Organizations only meet the condition of appropriate resources if they comply with at least one from the three conditions below:**

- annual average revenue is over HUF 1 million, or
- the after-tax result for the previous two completed fiscal years cannot be negative, or
- the personnel expenditures – except for the compensation of executive officers – amount to one-fourth of the total expenditures.

In the case of the fulfilment of any of the three conditions, the legislator presumes the availability of the appropriate resources; however, **the appropriate resources must be available with respect to the average of the previous two completed fiscal years.**

**The legislator only presumes the compliance of serving the public good provided that:**

- the amount of 1% tax designations transferred to the organization reaches 2% of the total income, or
- the costs and expenditures arising in the interest of the public benefit activity reach 50% of the total costs and expenditures in the average of two years, or
- at least 10 volunteers are permanently (in the average of two years) supporting the public benefit activity of the organization in accordance with the ACT LXXXVIII OF 2005 ON VOLUNTARY ACTIVITIES OF PUBLIC CONCERN.

**The requirements** in this case as well are alternative, thus it is sufficient enough to fulfil one of them; however, **the organization must fulfil these conditions within the average of the previous two completed fiscal years.**

**The verification of the public benefit status** must be done via the National Office for the Judiciary (OBH) based on the standard document – **Public Benefit Supplement** – submitted together with the annual financial report no later than 31<sup>st</sup> May every year.<sup>71</sup>

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<sup>71</sup> [WWW.BIROSAG.HU/OBH](http://WWW.BIROSAG.HU/OBH), ACT CLXXV OF 2011 27.§–30.§

**In accordance with the new Ctv., which entered into force on 1<sup>st</sup> January 2012, the legal status of the public benefit and prominently public benefit organizations automatically changed to public benefit. The nonprofit business associations shall have the right to receive a public benefit status, but in order to retain their status, they also have to meet the requirements set out by the new Ctv. until no later than 31<sup>st</sup> May 2014. They have to submit their deed of foundation amended according to the new act to the prosecutor's office until no later than the above date and have to apply for the public benefit status as prescribed by the new act.**

The CIVIL LAW<sup>72</sup> **has effect over all public benefit/nonprofit organizations**, as well as over such organizations that were set up based on the freedom of association, for example, the civil association (group) is regulated by the PTK. The trade unions, parties and organizations set up based on the freedom of assembly (e.g. societies) are also such organizations.

The CTV. **has effect over such organizations that are not mentioned in the act by their name, but were founded based on the freedom of association** such as sports clubs and associations, insurance associations, civil guard organizations, association conducting religious activities.

Such organizations that are not foundations or associations may also be public benefit organizations that comply with the compulsory unconditional provisions of the regulation or based on their own decision. The Hungarian Academy of Sciences manifests the former; the latter is represented by the nonprofit business association on which we are further elaborating in the following chapter.

## **Public Benefit Activity**

During learning about the notion of public benefit, it is important to refer to the definition of the act according to which *"private persons, artificial persons and unincorporated business associations shall be entitled to form a foundation in a charter in order to serve a long-term*

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<sup>72</sup> ACT CLXXV OF 2011 1.§

*public interest.*"<sup>73</sup> According to another provision of the same regulation, *"private individuals, artificial persons, and unincorporated economic associations shall be entitled to undertake, in writing, the obligation to provide financial contribution(s) for a specific public purpose without any consideration"*.<sup>74</sup>

Knowing what we mean by **long term public interest** is also important. **Exclusively the assets allocated for long term and public purpose may be regarded as foundation assets**, and only such foundations are entitled to financial and taxation preferences. **A purpose qualifies as a public purpose** primarily if it serves the **public good of the whole society or a broader community**.

The notion of **public purpose**<sup>75</sup> must also be mentioned. The ACT ON PERSONAL INCOME TAX (hereinafter: SZJA-TV.) contains guidance for interpreting **the certificate of public purpose donation** which is issued by the beneficiary of the public purpose donation, and on the basis of which the payable tax of the aggregated tax base can be reduced. According to the provisions of the SZJA-TV., among others, the paid (or donated) amount of money in a given tax year for the implementation of the activities of a public benefit or a prominently public benefit organization, or for any public purpose undertakings may be regarded as **public purpose donation**.

The CIVIL LAW regulates the **public benefit activity** and describes it as a notion as well: *"it is an activity that is conducted by groups of persons in the interest of a community broader than the group without the detriment to other people's interest not belonging to the given community"*.<sup>76</sup>

## **Public Function**

According to the CIVIL LAW, *"a public function is defined as a governmental or local governmental duty set forth in a legal regulation which is undertaken by the legally obliged (assigned)*

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<sup>73</sup> ACT IV OF 1959. ON THE CIVIL CODE OF THE REPUBLIC OF HUNGARY 74/A.§

<sup>74</sup> ACT IV OF 1959. ON THE CIVIL CODE OF THE REPUBLIC OF HUNGARY 593.§

<sup>75</sup> ACT CXVII OF 1995

<sup>76</sup> ACT CLXXV OF 2011 2.§

*provider in the interest of the public, without the aim of profit-making and in conformity with the requirements and conditions set by the law, including the provision of public services to the citizens and the provision of the necessary infrastructure to carry out such services”.*

**It is important that these services are statutory governmental or municipal functions.**

### **Public Utility Activity**

With the view to the CIVIL LAW, public utility activity is defined as an activity that directly or indirectly serves the completion of public (governmental or local governmental) tasks and thereby contributes to the satisfaction of the common needs of society and the individuals.

As it can be seen above, in order to gain public benefit status, the public interest is not sufficient enough, but we should consider all those activities as well that are directly or indirectly associated with governmental or municipal tasks listed in the law and are also included in the deed of foundation.

## 10. BUDGETARY ORGANS

**The ACT CXCV OF 2011 ON PUBLIC FINANCES regulates the legal status of the Hungarian budgetary organs.** The aim of the act is to create the guarantees of the effective and controllable management of public funds in order to ensure proper delivery of public tasks and services.

According to the law, the public finance comprises the sub-systems of the **central government** and **municipalities**.<sup>77</sup>

**The following belong to the central government sub-system:**

- the state,
- central budgetary organs,
- public bodies categorized by law into the central government sub-system, and
- public body budgetary organs managed by public bodies.

**The following belong to the municipal sub-system of public finance:**

- the local municipalities,
- the local minority municipalities and the national minority municipality,
- the grouping,
- the regional development council, and
- the local budgetary organs of the local municipalities, the local minority municipalities and the national minority municipality controlled by the above organs.

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<sup>77</sup> ACT CXCV OF 2011 ON PUBLIC FINANCES 3.8

The **budgetary organ** being part of the public finance is a legal entity registered according to the law that performs governmental or municipal functions (i.e. public tasks) as prescribed by law and set forth in the deed of foundation for public good as a basic function, without aiming at generating profit in compliance with the requirements and conditions stipulated by the relevant regulations, under the management or supervision of an organ or person determined by statutory documents, within the powers identified in the deed of foundation with an obligation of performing public function, from an annual budget or allocated budget.<sup>78</sup>

**We differentiate budgetary organs according to their founders, type of activity and function needed to perform their tasks.**

**According to founders<sup>79</sup>:**

- central budgetary organs,
- local municipality budgetary organs,
- local minority municipality budgetary organs,
- national minority municipality budgetary organs, and
- public body budgetary organs.

**Based on the type of activity**, we can differentiate public authority and public service budgetary organs. According to the **functions needed to performing public tasks**, we can talk about **independently operating and financing**, and **independently operating** budgetary organs.

### **Public Authority Budgetary Organs**

Are such budgetary organs upon which the law confers public authority licences as their main activities or for which the law sets forth public law obligation to exercise such power, or which has to participate in the exercise of public authority according to the law.

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<sup>78</sup> ACT CXCIV OF 2011 ON PUBLIC FINANCES 7.§

<sup>79</sup> ACT CXCIV OF 2011 ON PUBLIC FINANCES 8.§



**The following particularly qualify as exercise of public authority:**

- legislation,
- preparation of legislation,
- constitutional court activity,
- judiciary activity,
- prosecution activity,
- defence activity,
- law enforcement activity,
- national security activity,
- foreign affairs administration,
- judicial administration,
- public administration jurisdiction activity,
- authority and legality supervision and control activity,
- state audit and governmental level internal control activity,
- allocation of public finances,
- allocation of EU and other international funds.

**The budgetary organs and their founding organs can be the following:**

- **central budgetary organs and social insurance budgetary organs** that can be founded by the Parliament, the government or ministers;
- **local municipality budgetary organs** that can be founded by local municipalities, the grouping of local municipalities and the regional development council;
- **local minority municipality budgetary organs** that can be founded by the local minority municipalities or the grouping of the local minority municipalities;
- **national minority municipality budgetary organ** that can be founded by the national minority municipality or the grouping of the national minority municipalities;
- **public body budgetary organ** that can be founded by public bodies according to other laws.

**A budgetary organ deems to be established by a deed of foundation that shall contain the following:**

- its name and registered office;
- reference to the statutory document (resolution) providing for its establishment;
- its public function as prescribed by law;
- its main activity;
- its scope of authority (in case of public authority function) and its scope of activities (in case of public services);
- name and registered office of its administrative organ;
- proceedings of the election and appointment of its executive (supreme body, its members); and
- designation of the employment relations (legal relations) pertaining to its employees.

**The founding organ shall apply for the registration of the budgetary organ within eight days of the issue of the deed of foundation.** The budgetary organ shall deem to be established upon being entered **into the registry of the Hungarian State Treasury.** The Treasury shall register the budgetary organ upon the submission of the deed of foundation by the entitled organ, complying with the founding charter (resolution) and based on supplying the appropriate data provided for in a separate regulation within fifteen days of their reception, or may call the founder or the organ entitled to foundation for completion of documents within a deadline of no more than twenty days.

**In the case of a refusal,** no appeal is possible against the resolution of the Treasury. The founder and the organ entitled to foundation may request a review by the Capital Court upon referring to a breach of law within fifteen days of the receipt of the resolution. During the court proceedings, no suspension and intermission shall be considered. The court shall hear the parties. The court shall decide on the request with a decree in administrative, non-actionable proceedings within thirty days of its receipt.

**The Treasury shall keep a public and authentic record of the budgetary organs**, and it shall make the data provided for in a separate regulation available and accessible via the Internet as well. For the procedures concerning the Treasury's record keeping the provisions of the ACT CXL OF 2004 ON THE GENERAL RULES OF ADMINISTRATIVE PROCEEDINGS AND SERVICES shall prevail taking the statutory provisions of the law and relevant regulations into consideration with the exception that equity and retrial shall be excluded in the procedure.

**The founder shall terminate the budgetary organ** if it is not able to fulfil the functions determined by the founder, or the need for the service has ceased to exist, or the function may be delivered another way or by another organization more effectively.

**The budgetary organ shall be financed by an annual budget, and it shall prepare a financial report every year.** It may only take part in a business entity in which its liability shall not exceed the amount of its financial contribution, and in which it has at least a majority power, however, **this may change according to the deed of foundation provided that this does not endanger its fundamental activity set forth in the deed of foundation and meeting its consequential obligations.**

**It must be stipulated in the deed of foundation what kind of activities the enterprise may embrace.**

### **The Activities of Budgetary Organs**

- **Basic (main) function:** Is a specific public authority or public service activity that determined as the professional basic purpose of the budgetary organ by the legal document (resolution) and the deed of foundation disposing its establishment.
- **Supplementary function:** Is an activity similar to the basic activity with the aim of maximizing the capacity established for the delivery of the basic function, conducted non-obligatorily and not for profit for other legal entities or natural persons from sources outside the amount allocated for its basic function in its budget.
- **Auxiliary function:** Is an activity different from the basic activity with the aim of maximizing the capacity established for the delivery

of the basic function, conducted for non-obligatorily and not for profit for organizations of public finance or natural persons.

- **Business activity:** Is a productive, service or commercial activity different from the basic function, conducted for other legal persons or natural persons non-obligatorily and regularly with the aim for making profit from sources outside the public fund.

The basic function and business activities of budgetary organs must be categorized according to the rules of public finance functions under a public function number and nomenclature.

### **The Structure and Operation of Budgetary Organs<sup>80</sup>**

According to SECTION 10 of the act:

- ”(1) The executive officer of a budgetary organ shall be liable for the appropriate delivery of the public functions set forth in statutory documents, the deed of foundation or internal regulations and for the fulfilment of the obligations prescribed by the regulations for budgetary organs.*
- ”(2) The executive officer – except for substitution – may not be an executive officer at other budgetary organs.*
- ”(3) According to their financial management, budgetary organs are ranked as independently operating or independently operating and financed budgetary organs.*
- ”(4) Budgetary organs determined by the government’s decree may have a financial organization. The financial organization may only be managed by a financial manager with a qualification prescribed by the government’s decree.*
- ”(5) The detailed rules governing the delivery of the budgetary organs’ functions are stipulated in the Organizational and Operational Rules. The rules related to the organizational units shall be determined in the Organizational and Operational Rules of the budgetary organs or the rule of procedure of the organizational units; meanwhile, the detailed order of the financial management shall be provided for in bylaws.”*

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<sup>80</sup> ACT CXCV OF 2011 ON PUBLIC FINANCES 10.§

**The organizational and operational rules of budgetary organs contain stipulations for the following:**

- the organizational structure of the budgetary organ,
- the organizational functions of the budgetary organ, and
- the operational processes of the budgetary organ.

**The organizational and operational rules of budgetary shall contain the following:**

- reference to the law pertaining to the foundation of the budgetary organ;
- the identification number in the registry;
- the date of its deed of foundation;
- the number of its deed of foundation;
- the date of its foundation;
- the basic functions to be provided according to the order of public functions (with the number and nomenclature of the public function);
- regular business activities and the reference to statutory documents pertaining to the basic functions;
- detailed listing of business associations over which the founders or owners of a budgetary organ exercise rights (e.g. membership, shareholder, priority of votes);
- the organizational structure and the order of operation;
- the name, permitted number of employees, functions and the order of maintaining contact between the organizational units (within this the business units);
- the powers of the executive officer of an organizational unit within which he can act in the capacity of the representative of the budgetary organ;
- all duties and scope of authority and the manner of their exercise associated with each job;
- the order of substitution, and the related responsibility rules;
- the organigram of the budgetary unit; and
- except for cases regulated in separate statutory documents, the order of exercising employer’s rights, including the delegated powers as well.

**In their by laws, budgetary organs** regulate all affairs related to their operation and financial management, having financial consequences not regulated by statutory documents, thus particularly:

- internal rules and conditions related to the detailed regulation of financial management, including especially undertaking obligations, counter signature, verification of performance, validation, ways of exercising outpayment, and the procedure of appointing the persons in charge of these tasks, and to performing data provision;
- the procedural order of conducting procurements;
- issues related to permitting, managing and accounting internal and international delegations;
- the issues of material and assets management not regulated by the accountancy policy;
- stipulations related to using and managing premises and equipment;
- rules related to the allocation of representation expenditures, their payment and accounting;
- order related to the entitlement to and use of vehicles;
- rules related to the use of telephones and mobile phones;
- the order pertaining to the administration of the applications for public data and to the manner of obligatory publication of data of public interest.

**Budgetary organs shall include the following in their rules of procedures:**

- the work processes aiming at the delivery of the organizational units' functions;
- scope of duties and authorities of the leaders and employees of the organizational units (job description);
- the order of substitution;
- the rules of procedures of the organizational units comprise the mode and rules of maintaining contact within and outside the organizational units if the Organizational and Operational Rule or other rules of the budgetary organ do not provide for them.

**The management<sup>81</sup> and supervision<sup>82</sup> of a budgetary organ shall mean the right of exercising the following powers according to the act:**

- ”a) issuing the budgetary organ’s deed of foundation, approval, amendment and termination of the Organizational and Operational Rule;*
- b) exercising employer’s rights related to the appointment and dismissal of the executive officer of the budgetary organ, granting and withdrawing his appointment;*
- c) the appointment and dismissal of the financial manager of the budgetary organ, or granting and withdrawing his appointment, and establishing his remuneration;*
- d) regular monitoring the management regarding the estimates of income and expenditure, implementation; or in the case of the danger of the budgetary organ’s failure to perform the public functions, taking the necessary actions set forth in the regulation;*
- e) enforcement, accountability and control of the requirements regarding the provision of the budgetary organ’s public functions and needed for the effective and lawful management;*
- f) preliminary and subsequent approval of the budgetary organ’s decisions in the cases stipulated by law;*
- g) issuing specific orders for performing certain tasks or redeeming failures;*
- h) obliging the budgetary organs for submitting a report; and*
- i) managing public data under the administration of the budgetary organ and data public for public interest, and personal data determined by law, necessary for exercising the powers included under the b), c) and g)–j) points.”*

In accordance with the act, budgetary organs may be transferred under the authority of another managing organ belonging to the same sub-system of public finance if transfer takes place based on an agreement with the recipient organ.

The managing organ shall bear public law liability for implementing the budget. In the case of budgetary organs under the administration or supervision of the government, an act or decree may determine/limit

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<sup>81</sup> ACT CXCV OF 2011 ON PUBLIC FINANCES 9.§ (1)–(6)

<sup>82</sup> ACT CXCV OF 2011 ON PUBLIC FINANCES 9.§ (7)

the scope of administrative authority, and may confer its exercise upon another organ or person. In case of an ambiguous direction, the executive officer of the managing authority shall exercise the management.

If a statutory document refers to the supervision of a budgetary organ<sup>83</sup>, unless the law provides otherwise, we must mean the collection of powers determined in SUBSECTION 1, SECTION 9 OF ACT CXCIV OF 2011 ON PUBLIC FINANCES.

### **Conversion and Termination of Budgetary Organs<sup>84</sup>**

The founder of a budgetary organ has the right to wind up the budgetary organ with or without succession, which can be demerger or merger; and within the latter, it can be amalgamation or fusion. If the budgetary organ is terminated with amalgamation, the successor shall be the recipient budgetary organ; in the case of fusion, the organs are terminated, and their successor shall be the newly established budgetary organ. If demerger takes place, the newly established legal successors shall be the new organs set up by the conversion. Regarding the budgetary organs' transformation, SUB-SECTION 2, SECTION 8 OF THE ACT CXCIV OF 2011 ON PUBLIC FINANCES shall apply with the consideration that besides the founders, the government is also entitled to the transformation of the budgetary organs under its administration or supervision, or that of those organs set up by a minister or ministers.

Provided that the budgetary organ is terminated with succession, its liabilities shall not be annulled but transferred to the legal successor. If the budgetary organ is terminated without succession, then the founder shall undertake its obligations and exercise its rights.

In the case of a budgetary organ set up by a statutory document, termination shall be declared by a statutory document, meanwhile, in the case of a budgetary organ set up by not a legal instrument, its termination shall be declared by a document of termination. SUB-SECTION 4–8, SECTION 8 IN CHAPTER VI of the act shall apply for the issue of a statutory document and the document of termination, for the publication of the document of termination and for the preliminary approval of the minister in charge of public finances.

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<sup>83</sup> ACT CXCIV OF 2011 ON PUBLIC FINANCES 9.§ (7)

<sup>84</sup> ACT CXCIV OF 2011 ON PUBLIC FINANCES 11.§



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Act IV of 2006 on Business Associations

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

Act XLIX of 1991 on Bankruptcy Proceedings, Liquidation Proceedings and Members' Voluntary Dissolution

Act X of 2006 on Cooperatives

Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

Government Decree No. 224/2000 (XII. 19.) on the reporting and bookkeeping obligations of other organizations as provided in the Accounting Act

Act IV of 1959 on the Civil Code of the Republic of Hungary

Act LXXXVIII of 2005 on Voluntary Activities in the Public Interest

Act CXCV of 2011 on Public Finances

Act LXV of 2006 on the Amendment of Act XXXVIII of 1992 on Public Finances and Certain Related Acts

Act CLXXXI of 2011 on Registration of Civil Organisations by Court and the Related Procedural Rules

Act CLXXV of 2011 on Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations

Ministerial Decree No. 11/2012. (II.29.) KIM on the Standard Forms Applicable by Civil Organizations in Court Proceedings

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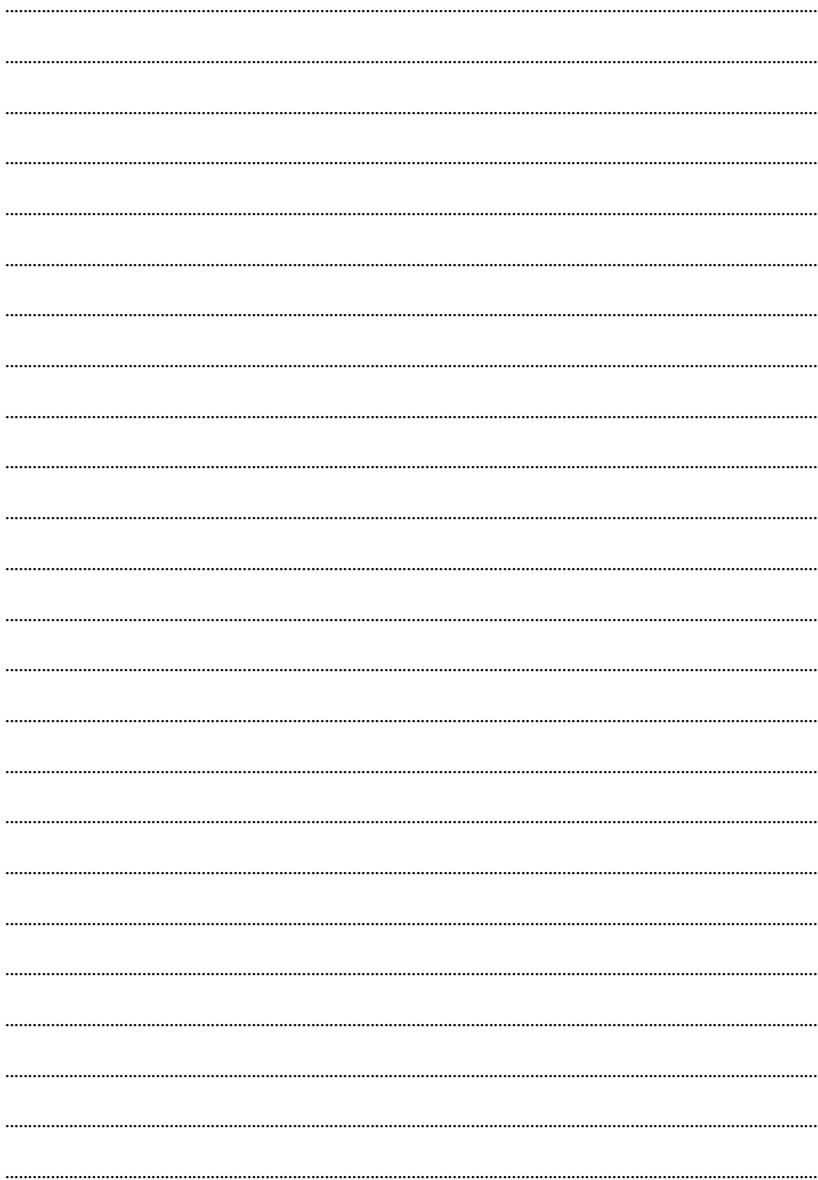
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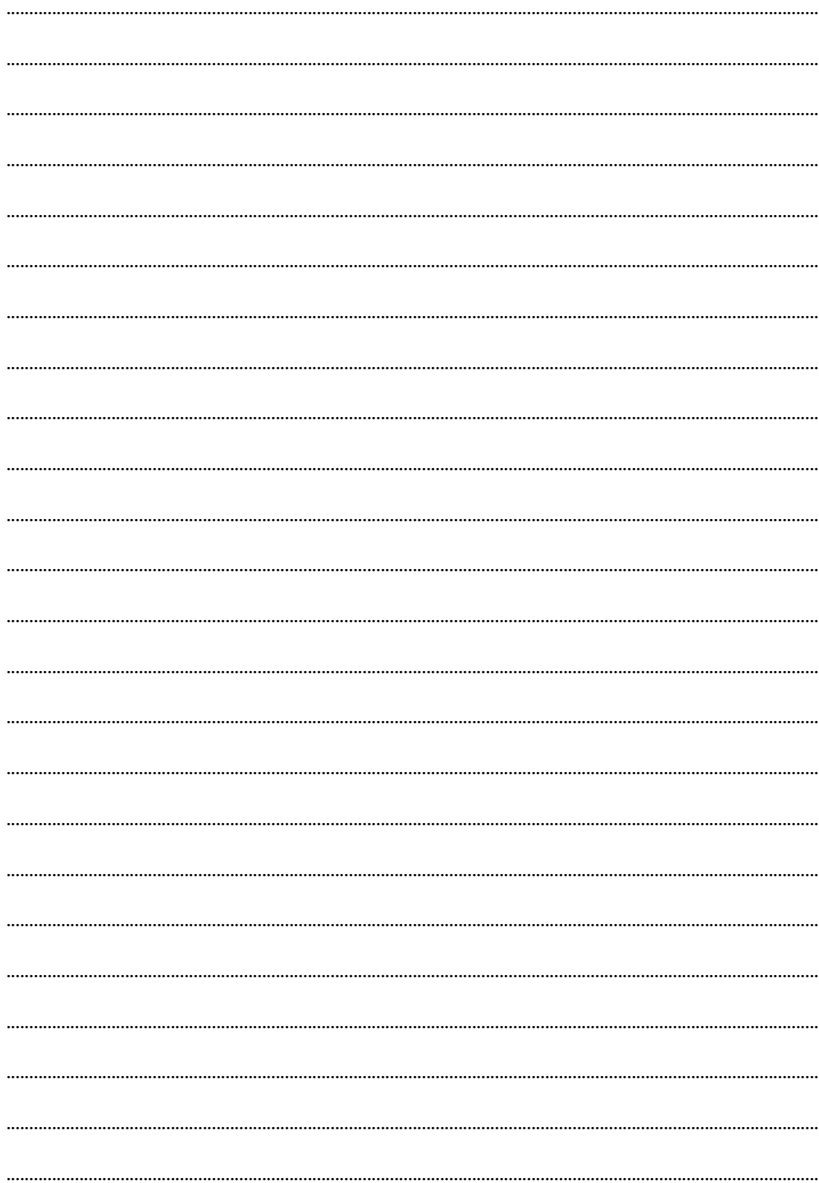
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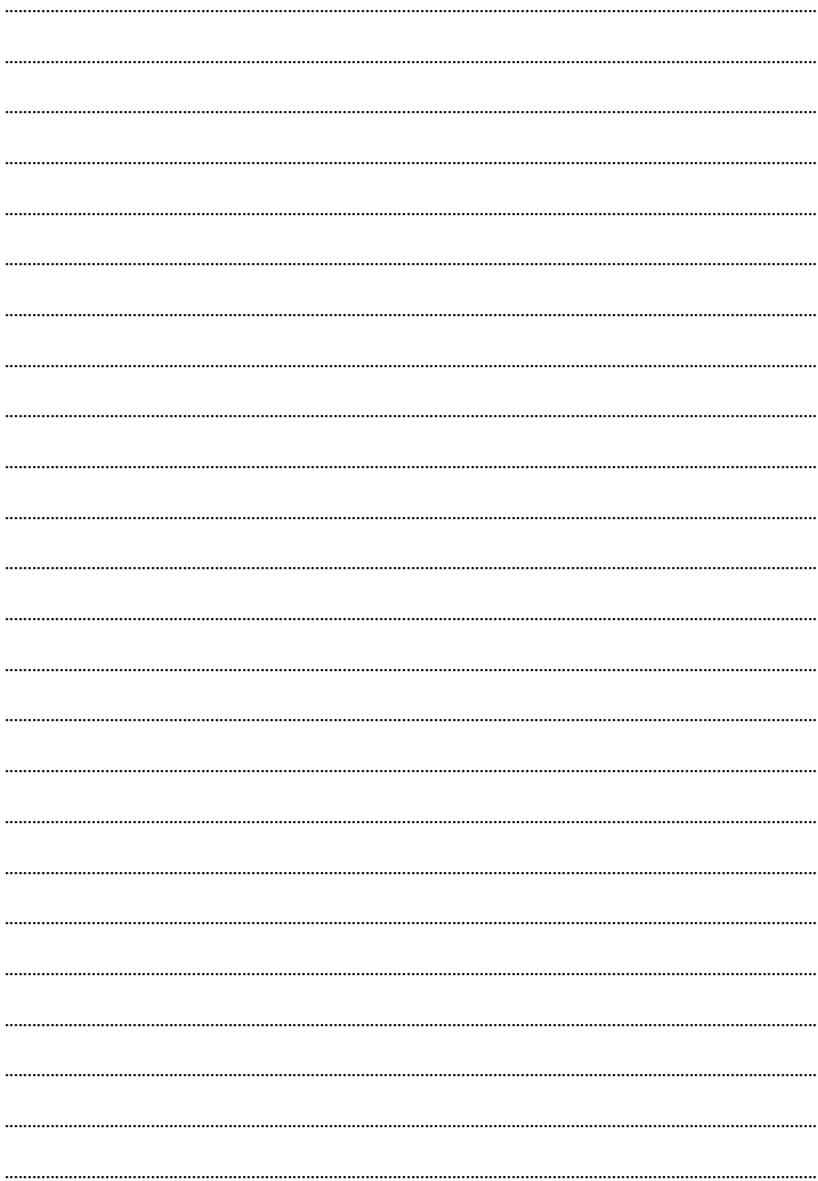
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