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Limited Liability Company on the outside, and company limited by shares on the inside

The frameworks of regulations relating to business associations became more flexible with the entry into force of the new Civil Code. The greater freedom inherent in this has obviously limits and these lines may clearly and primarily crystallize on the basis of legal practice being expressed in emerging court decisions. A notable step of this process was the decision made in a specific case of the Budapest Court of Appeal, which primarily gives a guideline in connection with the possible corporate governance model of limited liability companies.

According to the decision, such corporate **governance model may also be designed in the case of limited liability companies, in which the governing body of executive officers** (even under the name of board of directors) **performs the management of the business association rather than a single executive officer**. The executive officers shall perform their functions in a board.

The Budapest-Capital Regional Court proceeded at first instance in the specific case did not provide legal opportunity of this under the provisions of the new Civil Code because in the court's interpretation the provision relating to limited liability companies' management, according to which one or more members shall perform the management of the business association, is a special provision compared to the general provision relating to legal persons, which stipulates that decisions related to the governance of a legal person shall be adopted by one or more executive officers or by a body consisting of executive officers.

By contrast, the viewpoint of the Budapest Court of Appeal for the provisions relating to legal persons is that the freedom of contract as a principle shall affect all provisions of book three in the Civil Code, therefore these rules - as the regulations relating to contracts – shall be considered as "model" provisions and the Budapest Court of Appeal did not share Budapest-Capital Regional Court's view, according to which the general provision relating to the management of legal persons would be such a general provision, which might not overwrite the specific rule relating to the management of limited liability companies.

According to the Budapest Court of Appeal's decision, it follows from the freedom of establishment of legal persons that **the rules of their organizational structure and operations may be freely determined** too – within the limits of Section 3:4, paragraph (3) of the new Civil Code.

Therefore, as none of the provisions of the new Civil Code prohibits that a governing body performs the management (even under the name of board of directors) and since this construction does not violate the interests of business association's creditors, employees and minority members, as well as does not prevent the exercise of effective supervision over the legitimate operation of the business association, there is no legal obstacle to establish a management board in the case of limited liability companies.

On the one hand, the decision above is important from the perspective that it underpins that legal interpretation in the case of limited liability companies, according to which it is possible to design a form of decision making process in board in connection with the internal decision making process according to the needs.

It is important to emphasize that this offers a greater freedom in connection with internal functioning compared to the provisions of the former Act IV of 2006 on Business Associations, but the executive officers have to invariably take the provisions on Act V of 2006 on Public Company Information, Company Registration and Winding up- Proceedings („Ctv.") into account beside the relevant provisions of the new Civil Code relating to this in terms of representation and signing for the business association, in accordance with which the right of representation of executive officers may be individual or joint under the applicable provisions of Act V of 2006 on Public Company Information, Company Registration and Winding up- Proceedings („Ctv."). There is no opportunity to establish several or different representation within the current legislative frameworks and thus the need for opportunity of "miscellaneous" right of representation often arising in practice, partly individual partly joint, – e.g. related to threshold - is still not allowed.

It is worth reviewing whether the corporate governance model of business associations corresponds with the daily practice or requirements of the company's governance whether it effectively ensures the company's operation or the interests and claims of owners and if it is necessary, the appropriate amendments shall be made even with the adaptation of international practices.