

Holding of the general and member's meeting at a different place than the registered seat of the company

During the operation of a company, it may arise in practice that the members or shareholders intend to hold the meeting of the supreme body at a different place than the registered seat of the company. This was lawfully allowed prior to the entry into force of the new Civil Code and it is also possible currently under the rules of the new Civil Code as well. At the same time, it is essential to note that although the rules regarding the operation of legal entities and business associations became more flexible by the entry into force of the new Civil Code, however, in this respect, more strict rules replaced the former rules of the Companies Act, which is also confirmed by a recently published decision of the Budapest Court of Appeal.

Former regulation

According to the relevant rules of the Companies Act, in case of a limited liability company, the member's meeting could be held at a different place other than its registered seat if the instrument of incorporation of the company provided so, or in the absence of this, if the members gave their consent to this in advance by passing a resolution with simple majority. In case of companies limited by shares, the general meeting in general had to be convened to the registered seat of the company according to the rules of the Companies Act, provided that at the same time the statutes or the board of directors of the company could provide otherwise. Thus, it is essential to highlight that according to the regulations of the Companies Act, it was possible to hold the members' meeting or the general meeting of a company at a different place than the registered seat of the company even if the instrument of incorporation of the company did not include such provision.

Current regulation

With respect of the issues referred above, the current regulation basically and generally stipulates that a company shall hold its member's meeting or its general meeting, that is the meeting of its supreme body at the registered seat of the company. The new Civil Code does not include other detailed regulations, in particular specific provisions regarding the possibility to derogate from this rule. The reason of this is that the new Civil Code, contrary to the former Companies Act, basically allows derogation from its rules. Accordingly, and considering that the holding of the meeting of the supreme body at a different place than the registered seat is not contrary to the rules of the new Civil Code, which set out the general limits of the possibility of derogation, thus holding of the meeting of the supreme body at a different place than the registered seat of the company is still lawfully possible. However, it is important that besides that the new Civil Code generally allows the derogation from its rules within certain limits (regarding the relationship between the members and founders of the legal entity and their relationship to the legal entity , as well as regarding the regulation of the organisation and the operation of the legal entity), this is basically subject to the condition regarding the operation of legal entity that the derogation shall be recorded in the instrument of incorporation of the legal entity.

In accordance with the above, in practice the holding of the meeting of the supreme body at a different place than the registered seat of the legal entity is only possible if the provisions of the instrument of incorporation of the legal entity expressly so allow. In the absence of this, it is currently not possible for the supreme body of the company to hold its meeting at a different place than the registered seat of the



company even if the members would give their consent or the board of directors would decide otherwise. Thus, it can be established that the new Civil Code consequently includes more strict rules regarding this issue as the Companies Act previously included.

Decision of the Budapest Court of Appeal

In respect of a company limited by shares, the mentioned decision of the Budapest Court of Appeal approved the decision of the court of registration of the Budapest Capital Regional Court, which among others rejected the application for registration of changes of the company because the resolution of the general meeting serving as its basis was passed at a general meeting convened to and held at a different place than the registered seat of the company, provided that the statutes of the company did not include any provision with respect to the possibility to hold the general meeting at a different place than the registered seat of the company. Thus, the company argued in vain that during the twenty years of its operation, they never held the general meetings at the registered seat of the company or all shareholders of the company attended the general meeting and the resolutions were unanimously passed, the resolutions passed in this manner could not form the basis for the registration, the relevant application for registration of changes was rejected with a final and binding decision.

Summary

It is essential to note that although the new Civil Code generally includes rules which allow derogation, the general condition of the possibility of derogation is that it shall be recorded in the instrument of incorporation of the legal entity. Contrary to this, the Companies Act basically included cogent rules, i.e. rules which did not allow derogation, the possibility of derogation was stipulated by specific regulations. Due to the difference of the two regulatory approaches, there are certain cases, which result more inflexible operation and stricter conditions regarding the operation of a legal entity under the scope of the new Civil Code contrary to the former regulations. Among others, such case is the possibility to hold the meeting of the supreme body at a different place than the registered seat of the company, which is only possible currently if the instrument of incorporation includes such provision. Accordingly, it is generally essential to ensure that the issues, in connection with which the company intends to derogate from the provisions of the new Civil Code, shall be fully regulated in detail in the instrument of incorporation of the company.