

# REGULATION OF JOINT-STOCK COMPANIES IN THE 19<sup>TH</sup> CENTURY HUNGARY

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## Abstract

*The article traces the historical development of the regulation of the joint-stock company in Hungary, beginning with the early 19th century when this type of company was first attempted to be regulated and until the 1870s, when fully new norms in line with Western regulations of the period were adopted. We document the beginnings of regulation in the field of joint-stock companies, demonstrating that the first successful attempts at such regulation coincided with the start of the industrialization process of Hungary in the 1840s. The joint stock company was a necessary tool for economic development, especially after the Austro-Hungarian compromise in 1867. It is ascertained that the first Act dealing with joint-stock companies in 1840 already contained the basis for the successful functioning of such companies, by regulating public subscription, voting rights, how statutes were established and the payment of dividends. The modernization of the joint-stock company in the 1870s and through later norms paved the way for the general use of bearer shares and established how capital is concentrated for the creation of the company. It also ushered in the possibility for shares to be easily exchanged, thereby responding to the joint-stock boom which followed the Austro-Hungarian compromise in 1867. In conclusion, the regulation developed in the examined period withstood the test of time, being applied until the establishment of the Soviet-type dictatorship at the end of the Second World War.*

**Keywords:** joint-stock companies in Hungary, 19<sup>th</sup> century legislative reforms, legislation as a tool for economic development, shares

## 1. Introduction. The advent of joint-stock companies

The existence of the West-East *economic slope* is a historical fact in 19<sup>th</sup> century Europe: due to the complex factors of historical conditions, from the advanced West to the East of Europe, the economic

development (especially high-scale trade and industrialization) was lower, which can even be evidenced by statistics.<sup>1</sup> This phase shift was even more pronounced as we moved gradually towards the East, also evident from the foundation of *joint-stock companies*, which were the great invention of corporate law in modern history. The joint-stock companies, as organizational

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<sup>1</sup> For the theoretical and empirical background of the economic backwardness, see: Alexander Gerschenkron, *Economic backwardness in historical perspective*, Cambridge, Massachusetts, 1962; Iván T. Berend, György Ránki, *Economic Development in East Central Europe in the Nineteenth and Twentieth Centuries*, New York, 1974; Iván T. Berend, György Ránki, *East Central Europe in the Nineteenth and Twentieth Centuries*, Budapest, 1977; Iván T. Berend, György Ránki, *The European Periphery and Industrialization, 1780-1914*, Cambridge, 1982; Ivan Berend, *An Economic History of Nineteenth-Century Europe: Diversity and Industrialization*, Cambridge, 2013; Tamás Szentes, *The Political Economy of Underdevelopment*, fourth, revised and enlarged edition, Budapest, 1983 etc.

structures based on the limited liability of the shareholders, freely transferable shares and on a gradually evolving separate legal personality, in Central and Eastern Europe emerged with a significant delay as compared to the establishment of the first British or Dutch companies of this kind (in 1600 and 1602, respectively). In Germany, the first joint-stock company was incorporated in 1750 (Frederick the Great's Asiatic Company, with the full name *Königlich Preußische Asiatische Compagnie in Emden nach Canton und China*), while this happened in Austria only at the end of the 18<sup>th</sup> century. These dates are noteworthy because they show the correlation of the level of economic development and the appearance of joint-stock companies, confirming the hypothesis according to which further to East we go, later we will witness the emergence of this form of economic organization.<sup>2</sup> Hungary was no exception either; the West-East economic slope was present here as well, since the first joint stock companies were established in the first half of the 19<sup>th</sup> century. The East-Central European states, generally by this legislative modernization, did not follow the time-consuming path of organic development, but often adapted and developed the most advanced western models, therefore the essence of the processes was accelerated modernization. In the case of Hungary, in the last decades of the 19<sup>th</sup> century, joint-stock companies were frequently used for very different business purposes, as the process of economic catching up proved to be – with certain limits – successful, at least until the First World War interrupted these positive processes.

### 1.1. Codification attempt: *Codex Cambio Mercantilis Pro Regno Hungariae*

Generally, in Hungary, companies were meant to be created by commercial law codification attempts. These efforts at regulation also indicate that the development of company law in Hungary is very different from that in Western Europe. In Western Europe, company law evolved and intensively developed as a result of an organic development that was required by the needs of the economy already at the end of the Middle Ages and in the modern era. In the regions whose development was belated due to the historical circumstances, including Hungary with a predominantly agricultural economy, the companies were meant to be created through legislative reform, in the context of a top-down modernization experiment.

In 1779, the Royal Curia was commissioned to elaborate an act on commerce and bills of exchange. The draft was prepared by 1786 and the second part also contained rules of company law. This proposal was submitted to the National Assembly that was convened after a long break as late as 1791 by Leopold II (Holy Roman Emperor and King of Hungary from 1790 to 1792). However, the National Assembly was not able to discuss the proposal and the topic was subjected to the effect of Act LXVII of 1790/91, which prescribed that “for the regular handling of those public policies and judicial matters and other topics which could not be accomplished by the National Assembly, committees will be set up and commissioners will be appointed.”

The proposal (entitled *Codex Cambio Mercantilis Pro Regno Hungariae Partibusque Eidem Adnexis In Tres Partes Divisus Per Regnicolarem Juridicam*

<sup>2</sup> See Sándor Tamás, *Jegyzetek a részvénytársaság új szabályozásához (Notes for the New Regulation of Joint-Stock Companies)*, *Gazdaság és Jog*, 2014/4, p. 17.

*Deputationem Articulo 67. 1791. ordinatam elaboratu*) of the commercial committee was submitted to the National Assembly in 1795. However, the proposals of the committee were not discussed and thus not accepted either. The reform processes halted for several decades because of the death of Leopold II, the inflexible absolutism of his successor Franz I (who reigned from 1792 to 1835) as a reaction to the French Revolution, which became more and more radical, and to the Jacobin movement led by Ignác Martinovics. The proposal was published in Pozsony (currently Bratislava, Slovakia) in 1802.<sup>3</sup>

### 1.2. Attempts at establishing joint-stock companies

Despite the difficulties of regulation, attempts were made at establishing joint-stock companies but these attempts either halted in the planning phase or in some later phase of the process of establishment, for some reason (for example, for the lack of capital), or perhaps the company whose establishment was started only pursued activities of local significance. The *Gács-based textile plant* (fine fabric manufacturer) established by the family of the Count Forgách, which tried to issue shares around 1800; the *plan for the Northern Wine Export Company* (1802); the *Révkomárom Ship Insurance Company* (1808); the *plan for the Hungarian National Joint-Stock Company* aimed at promoting tobacco trading (1826)<sup>4</sup> should be mentioned. The first joint-stock company that could be called successful or at least functional and which pursued its activities in Hungary, the *First Danube*

*Steam Ship Joint-Stock Company* (1830) had its seat in Vienna.<sup>5</sup>

### 1.3. A new attempt at codification: Codex Cambio-Mercantilis eiusdemque Ordo Processualis

The codification efforts resumed in the first half of the 19<sup>th</sup> century. This is also the era of the development of romantic culture, which played a key role in building the nation. Through Act VIII of 1827, the title of which suggests that “further discussion of the regular efforts of the committees are postponed to the next session of the National Assembly,” also relying on the results of the previous codification attempt,<sup>6</sup> a new draft commercial code entitled *Codex Cambio-Mercantilis eiusdemque Ordo Processualis* was prepared, which was not adopted either, but which was published in a printed form both in Pozsony and Buda in 1830. This was the last proposal for commercial regulation prepared in Latin. The national awakening prepared in Latin. The national awakening also involved the strengthening of Hungarian as a legal language (the Curia adopted its decisions in Hungarian from 1830, and from 1834, the knowledge of Hungarian became the condition of holding public offices and pursuing legal practices).

To sum it up briefly, differently from how it happened in Western Europe, the advent of joint-stock companies in Hungary happened in the context of nation-building and the Reform Age, when the dissolution of feudalism, the bourgeois transformation and the emergence of capitalist production gave the context. The economic thinking of the Reform Age generation was defined by such tenets that were worded by Lajos Kossuth:

<sup>3</sup> Posenii, typis Franc. Jos. Patzko.

<sup>4</sup> See the details in Horváth Attila, *A részvénytársaságok és a részvénytársasági jog kialakulása Magyarországon (The Evolution of Joint-Stock Companies and Joint-Stock Company Law in Hungary)*, Budapest, 2005, p. 111-114.

<sup>5</sup> Horváth (2005), pp. 122–125 and Galgóczy Károly, *Cs. kir. szabadalmazott első dunagőzhajózási társaság (Imperial and Royal First Proprietary Danube Steam Boat Company)*, Statistikai Közlemények 1863/1, pp. 59–73.

<sup>6</sup> Papp Tekla, *Társasági jogalkotásunk rövid története, európai kitekintéssel (The Brief History of our Company Law Regulation, with a European Overview)*, in: Ünnepi tanulmányok Sárközy Tamás 70. születésnapjára (Festive Studies for Tamás Sárközy's 70. Birthday), Szeged, p. 265.

“the contribution that a thriving industry makes to the greatness and happiness of the nation is bigger and more important than any conquests achieved with arms [...] industry conquers misery with the grace of peace, to achieve public happiness.”<sup>7</sup> It was written in the *Hetilap* newspaper in 1845 that “the economic facts are progressed further, politics only follows them; the cause lies in the economic facts, politics is only a consequence. The economic facts give orders, and politics is obliged to obey.”<sup>8</sup>

## 2. Joint-stock companies as the key factors contributing to the economic development of the 19<sup>th</sup> century

### 2.1. The role and significance of István Széchenyi in introducing the idea of joint-stock companies in Hungary

Count István Széchenyi (1791-1860), a key political and economic thinker of the period, wrote the following in his book entitled *Hitel (Credit)*, published in 1830: “It is not true, or at least not believable that a foreign citizen would make huge sacrifice for Hungarian institutions without having a hidden and additional purpose; and thus, only Hungarians can be expected to make genuine contributions to such matters which bring moral rather than financial gains. So will a Persian, Spanish or Chinese investor be happy to see the progress of Hungary if he gets no returns from his sacrifice and the dividends that he receives from his shares will be nothing more than moral happiness? This would contradict nature and everybody

who works for a higher purpose and with pure intentions will only do so for their homeland.”<sup>9</sup> The national feeling may be the foundation for making a sacrifice. However, Széchenyi regarded gaining profits and dividends as a legitimate purpose as well, and he considered the national feeling and obtaining profits compatible. He acted in this spirit, playing an essential role in the establishment of several joint-stock companies. Széchenyi was the pioneer of the idea of joint-stock companies in Hungary.

István Széchenyi played a crucial role in the building of the *Chain Bridge*. According to Act XXVI of 1836 on the construction of a permanent bridge between Buda and Pest, “the construction of a permanent bridge between Buda and Pest will be the responsibility of a joint-stock company” (Section 1). In other words, the capital required for the building of the Chain Bridge was to be secured by the establishment of a joint-stock company. The consideration for the investment, the revenues of the joint-stock company distributable as dividends were planned to be covered from the tolls to be collected for the use of the bridge. The years of collecting tolls were defined by the contract entered into with this joint-stock company, while the law said that “after the terms and conditions of the contract to be entered into with the joint-stock company expires, the permanent bridge between Buda and Pest will immediately become the property of the Nation” (Section 7).<sup>10</sup> The law focused on the construction of the Chain Bridge rather than on the elaboration of the organizational and operational rules of the joint-stock

<sup>7</sup> Kossuth Lajos, *Zárszó az Iparegyesületi Ünnepély alkalmával (Closing Speech on the Ceremony of the Industrial Union)*, *Életképek* 1844/9, p. 295.

<sup>8</sup> *Hetilap*, 17.10.1845, issue 58, p. 914.

<sup>9</sup> Széchenyi István, *Hitel (Credit)*, in: Széchenyi István válogatott művei. Első kötet (Selected Works of István Széchenyi, Volume I), Budapest, 1991, p. 280.

<sup>10</sup> The right to collect tolls for the use of bridges was originally provided for 87 years, but it was exercised only for two decades, as the bridge was redeemed by the state under Act XXX of 1870.

company. The bridge was erected, and it was delivered to the public in 1849.<sup>11</sup>

The *Pest Roller Mill Company* (1838), which was founded by Széchenyi, was also one of the first joint-stock companies.<sup>12</sup> According to a historical synthesis published in 1890, the main problem was the difficulty, or rather, the impossibility of creating a broader market arising from the underdeveloped public transportation. The product of mills, i.e., flour cannot bear high transportation costs without losing its competitiveness. However, when the Pest roller mill was designed, there were no railways and public roads were in such a miserable condition that all traffic halted when the weather was unfavorable. In such circumstances, of course, no significant business transactions could be anticipated within the borders of the country and exports to other countries were out of the question. Other difficulties resulted from the lack of capital and entrepreneurs. Széchenyi was the person who managed to obtain both missing factors, although only partially from Hungarian resources. Half of the capital and the head of the company were provided from abroad, and what is more, experienced labor force had to be brought from abroad too. Also, the foundation of the first Pest steam mill also had a local obstacle. The millers, whose livelihood was threatened, managed to organize a rather strong party in the management of the city, which was able to prevent the mill from acquiring a suitable plot of land. Palatine Joseph [1776-1847]

had to interfere with averting this obstacle and with ensuring that the new company received a plot of land, for a very high price.<sup>13</sup>

## 2.2. The Hungarian Commercial Bank of Pest

The *Hungarian Commercial Bank of Pest* was established explicitly on a contractual basis and based a royal charter of privileges. The granting of this privilege was requested as early as 1830. However, the charter was only issued as late as 1838. The bank, due to resistance from the imperial administration, could only be founded on October 14, 1840 (it was then that King Ferdinand signed the memorandum of association of the Bank) and it started its operation in 1841.<sup>14</sup>

According to the Latin language charter, the emperor ordered the following: “we strictly order to Hungary and its attached regions, to our faithful subjects of any rank or office, who became familiar of this letter in any way whatsoever, that they should not disturb or hinder the above-mentioned company in its financial institutions to be established and maintained, either publicly or privately.”<sup>15</sup> It is evident that the first modern Hungarian bank and one of the first Hungarian joint-stock companies were established by applying the technique of royal charters, which was of medieval origins and which had been obsolete in Western Europe at that moment.

<sup>11</sup> See the details in Horváth (2005), pp. 125–132.

<sup>12</sup> Horváth (2005), pp. 133–137.

<sup>13</sup> *Emlékirat a Pesti hengermalom-társaság fennállásának félszázados évfordulója alkalmából, (Memoir on the 50<sup>th</sup> anniversary of the establishment of the Pest roller mill company)*, Nemzetgazdasági Szemle, 1890, p. 356.

<sup>14</sup> Cf. Pólya Jakab, *A Pesti Magyar Kereskedelmi Bank keletkezésének és ötvenéves fennállásának története (The History of the Evolution and Fifty Years of Operation of the Hungarian Commercial Bank of Pest)*, Budapest, 1892; Lamotte Károly, *A Pesti Magyar Kereskedelmi Bank 1841–1941 – Száz esztendő emlékei (The Hungarian Commercial Bank of Pest 1841–1941, Memories of a Hundred Years)*, Budapest, 1941; Botos János, *A Pesti Magyar Kereskedelmi Bank története (The History of the Hungarian Commercial Bank of Pest)*, Budapest, 1991; Holbesz Aladár, *A magyar hitelszervezet története (The History of the Hungarian Credit Organization)*, Budapest, 1939, p. 41–46; Horváth (2005), pp. 141–145.

<sup>15</sup> Lamotte (1941) (the book contains no page numbers).

### 3. The key provisions of Act XVIII of 1840

#### 3.1. Commercial codification in 1840

The general rules regarding joint-stock companies were first laid down by Act XVIII of 1840 on the Legal Relations of General Partnerships.<sup>16</sup>

As a result of the intellectual movements of the Reform Age, and relying on the above-mentioned codification achievements, the complex legislation aimed at the catching up of the economy was completed by 1840. It was at that time that Act XV of 1840 on the Bills of Exchange was introduced,<sup>17</sup> as well as Act XVI of 1840 on Tradesmen, Act XVII of 1840 on the Legal Relations of Factories, Act XVIII of 1840 on the Legal Relations of General Partnerships, Act XIX of 1840 on Tradesmen's Boards and Brokers, Act XX of 1840 on Haulers, as well as Act XXII of 1840 on Bankruptcy.<sup>18</sup> The majority of these acts are actually "simple translations of the relevant Austrian provisions."<sup>19</sup> It was Vienna-based lawyer *Ignaz Wildner* (1802–1854) who participated in the elaboration of these laws.<sup>20</sup>

During the National Assembly session of 1839/1840, Wildner attended a luncheon in Pozsony (currently Bratislava), which was held by György Andrásy. It was here that he said that he now has a completely different

view of Hungarians than how they were described to him at the time of his departure from Vienna, and then he pictured the life of Hungarians based on the attacks of the paper *Allgemeine Zeitung*. This confession inspired the attending István Széchenyi to improvise and present a draft four-scene comedy, in the first scene of which Wildner receives instructions to beware of the leaders of the opposition from Prince Metternich and Police Prefect Count Sedlnitzky. In the second scene, Wildner finds the Hungarians loveable persons when attending a luncheon and when they introduce themselves to him, he realizes that these are the very persons (Deák, Beöthy, Bezerédi and Klauzál) who had been described to him as ignorant and man-eating beasts when he was prepared for the mission. In the third scene, Wildner is in a friendly relationship with the leaders of the opposition but he also betrays them. In the fourth scene, Wildner returns to Vienna after accomplishing his mission, where his friends are happy to see that he escaped from the land of robbers, maneaters and rebels, while others convict him and accompany him to prison because he made friendships with Hungarian liberal thinkers.<sup>21</sup> By the way, Ignaz Wildner was granted the title of a Hungarian nobleman for his codification activities.<sup>22</sup>

<sup>16</sup> Cf. Pókecz Kovács Attila, *Schaffung der Handelsgesetze von 1840 durch die ungarische Nationalversammlung und deren Anwendung bis 1849*, Jura 2011/1, pp. 117–127.

<sup>17</sup> See the details in Balogh Elemér, *Császár Ferenc szerepe a magyar váltójog kifejlődésében (The Role of Ferenc Császár in the Development of the Hungarian Law on Bills of Exchange)*, Jogtörténeti Szemle 2011/2, pp. 1–9.

<sup>18</sup> The effect of these rules did not extend to Transylvania.

<sup>19</sup> Holbesz (1939), p. 43.

<sup>20</sup> Sárközi Zoltán *A kereskedelmi jogalkotás kezdetei és a részvénytársasági törvény kialakulása Magyarországon (The Beginnings of Drafting Commercial Laws and the Evolution of Joint-Stock Company Law in Hungary)*, Jogtudományi Közlöny 1988/9, p. 525.

<sup>21</sup> Bártfai Szabó László, *Széchenyi ismeretlen első satírja (Széchenyi's First Unknown Satire)*, Magyar Bibliofil Szemle 1924/3–4, pp. 181–182.

<sup>22</sup> Act LII of 1840: »Taking into account the outstanding merits and services done in military and civil careers, the Estates of the Country have accepted (Section 1) the Austrian nobleman, legal scholar, Vienna-based Royal Court and Metropolitan Court lawyer Ignaz Wildner into the ranks of the naturalized nobleman of the Country, with his statutory descendants...«

### 3.2. The concept of a joint-stock company

Act XVIII of 1840 defines joint-stock companies as follows: “such companies in which neither member is specifically mentioned in the title and the total amount of corporate funds is divided to a certain number of shares of equivalent value, the shareholding members only risk the money that they have paid for the shares and they are not held liable with any other property of theirs in any case. These companies are called joint-stock companies (Actien-Gesellschaften).”

The law started out from the basic principle of the freedom of establishing joint-stock companies: everyone is free to acquire shares and join a joint-stock company without any restriction whatsoever (Section 54). This short act is by far not an exhaustive regulation of the joint-stock companies, it hardly indicates the main principles but it has the merit of wishing to promote the forming of joint-stock companies with its liberal measures, as a result of which it consistently disregards all kinds of unnecessary formalities and guardianship kind of supervision, it only wishes to protect the public from fraudulent company establishments.<sup>23</sup>

### 3.2. The establishment of joint-stock companies

Those who wish to establish a joint-stock company were obliged to submit the following written documents to the commercial tribunal (Section 55):

- a) The purpose of the company to be established and those data on which the possibility of achieving the goal of the company rests – clearly distinguishing between the certain

from the probable and the uncertain;

- b) The approximate calculation of the necessary amount of capital;
- c) The preliminary registration of the number of the shares, the date of their payment, the method of their distribution, i.e. the share plan, in which the following should also be indicated: “whether the founders intend to assign any part of the overall amount of shares to the public, and if so, what amount exactly, through public subscription.”
- d) The preliminary statutes of the company. “After having deposited these official deeds with the commercial tribunal, everyone shall have the right to review them.” “The founders may not change the already submitted preliminary statutes in their own power” (Section 57). “Any and all – subsequent – changes to the statutes are to be registered with the commercial tribunal” (Section 65). “The accepted statutes shall be sent by the competent commercial tribunal to all the other commercial tribunals in copies and the free review thereof shall be allowed” (Section 62). Quoting István Széchenyi: “The guardian angel and bright ray of sunshine of a credit is publicity.”<sup>24</sup>
- e) If the joint-stock company to be established was not purely a trading company, or if the intention was to establish a (public interest) company subject to the Act XXV of 1836<sup>25</sup>, it was required to present

<sup>23</sup> Vargha Gyula, *A magyar hitelügy és hitelintézetek története (The History of Hungarian Credits and Credit Institutions)*, Budapest, 1896, p. 79.

<sup>24</sup> Széchenyi (1991), p. 261.

<sup>25</sup> Act XXV of 1836 on the Private Companies that Increase the Public Assets and Trading of the Country.

the deeds to the Royal Council of Governor.

As long as there was a public subscription to shares (public offering), the law provided as follows: “shares are sold through subscription under public supervision, which subscription should remain open for at least three days, and the shareholders should be convened for a general meeting.” (Section 58). In the statutory general meeting, the company “constitutes itself (constituiert sich), the preliminary statutes are read out, the final statutes are determined, a board is assigned for the opening and management of the cash desk, if it is regarded necessary by the company, a company manager (Firmaführer) can be elected, and the board will be specifically authorized to get the statutes and the specimen signature registered. All these will be decided by the majority of votes cast by the attendants of the meeting” (Section 58). This means that the corporate governance structure of the company was based on the managing bodies of the company, the board and optionally the company manager, while the main company organ was the general meeting.

According to the law: “before such formation of the company, the founders may not require any preliminary payments for the shares in any case whatsoever. It is also forbidden to pay interests on the shares from the funds that are preliminarily paid by the shareholders for their shares” (Section 59). “The company shall pay the founders preliminary costs, and as long as these are sufficiently proven, these shall be paid immediately, unless it is otherwise provided by the statutes” (Section 63).

### 3.3. Protection of statutes and of minority shareholders and the prohibition of bearer shares

The board was forbidden by the law to diverge from the statutes: “the board shall not diverge from the statutes, or determine rules binding for the company without a specific authorization, which can only be done by achieving a majority vote in the general meeting of the company” (Section 64).

Similarly, the scope of the company could only be changed on the basis of a general meeting decision, with a three quarter majority, while the minority shareholders could exit the company, maintaining their claim for the payment of “the shares of the company at the time in question, and if there were any profits, the proportionate part of such profits.”

The *issuance of bearer shares was prohibited* by law: “no such shares which are not for a certain name (au porteur) shall be issued” (Section 56).<sup>26</sup>

The law also used the method of maximizing votes and in consequence tried to exclude the “tyranny” of majority shareholders by legal tools: “in the general meeting of the company, each member will have one vote for each full share, however, they cannot have more than ten votes in any case whatsoever, however many shares they should possess” (Section 60).

It was mentioned as a deficiency of the law that it did not impose any sanctions for frauds, “although the legislators, or at least some of them should have known how complicated frauds had taken place abroad for a long time.”<sup>27</sup>

<sup>26</sup> For the current prohibition of bearer shares in Hungary see Emőd Veress, *Report from Hungary: Is It Possible to Issue Bearer Shares in Hungary? Remarks on Mandatory and Default Rules in Hungarian Company Law, European Company Law 2019/3*, pp. 95-100.

<sup>27</sup> Rónay Károly, *Részvényjogunk vajúdása (The Labor Pains of our Shares Law)*, Királyi Közjegyzők Közlönye 1933/4, p. 112.

#### 4. First Hungarian Savings Bank of Pest

It was on the basis of this regulation that the first Hungarian Savings Bank of Pest, which was founded in 1839, was transformed into a joint-stock company in 1845 at the initiative of the lawyer, writer and politician András Fáy (1786-1864). Its reorganization into a joint-stock company was proposed by Lajos Kossuth (1802-1894), later Governor-President of the Kingdom of Hungary during the revolution of 1848–49.

Savings banks were established before 1840 for philanthropic purposes, as associations, for example, for the reduction of usury. The *General Savings Bank of Brassó* that was established at the initiative of an official of the Vienna Chancellery, later the Councillor of the City of Brassó (currently Braşov, Romania, in German: Kronstadt), Peter Lange (1797-1875) was the first such savings bank. "This institution, which was founded on the basis of a German example and followed philanthropic principles, remained relatively small and isolated, also due to geographical reasons."<sup>28</sup> Despite this fact, the General Savings Bank of Brassó was Hungary's first independent financial institution. "Brassó has been the first trading and industrial city of Transylvania for a long time. Its population exceeded 18 thousand as early as 1786 and its hardworking and well-to-do German inhabitants, who were always very open to the cultural impacts coming from their Western language relatives, were very willing to welcome the savings associations."<sup>29</sup> After 1840, the Hungarian

savings banks were generally established in a joint-stock company form but such institutions of the Transylvanian Saxons in Brassó and Nagyszeben (currently Sibiu, Romania, in German: Hermanstadt) preserved their associative (non-commercial) form.<sup>30</sup>

It was this origin as an association that has led to that in the case of most of the savings associations organized as joint-stock companies, each shareholder, irrespective of the number of their shares, had only one vote at the general meeting. However, some savings associations used the opportunity that the number of votes was maximized in ten by Act XVIII of 1840, therefore they planned their statutes in such a way that they could ensure more than one vote for the shareholders. For example, at the Győr Savings Bank joint-stock company, those shareholders who held 1-4 shares had one vote, those who owned 5-9 shares had two votes, while those who had more than ten shares had three votes.<sup>31</sup> By this approach a specific tool of minority shareholders protection was created.

#### 5. Joint-stock company foundation fever

The regulation created the legal frameworks for the foundation of joint-stock companies. In the press, news like the following appeared one after the other: "In Nagyszeben, Ferencz Czinege, who is famous for his knowledge of engineering techniques and chemistry, intends to set up a grandiose leather company through

<sup>28</sup> Tomka Béla, *A magyarországi pénzüzetek rövid története 1836–1947 (The Brief History of Hungarian Financial Institutions 1836–1947)*, Budapest, 2000, p. 9.

<sup>29</sup> Vargha (1896), p. 84.

<sup>30</sup> See the details on these saving banks in Egry Gábor, *A brassói és nagyszebeni Általános Takarékpénztár korai történetének néhány jellegetessége - 1835–1848 (Some Characteristics of the Early History of the Brassó and Nagyszeben General Savings Banks - 1835–1848)*, Századok 2002/6, pp. 1261–1293.

<sup>31</sup> Vargha (1896), p. 111.

shares.”<sup>32</sup> In 1864, based on the decree issued by Austrian emperor Franz Joseph I, the *Pest Commodities and Stock Exchange* was founded, whose purpose, according to its statutes, was the following: “the selling and buying of all kinds of commercial goods, bullion (gold and silver), currencies and bills of exchange, shares and bonds issued by Hungarian industrial companies based on high-level permits, aimed at facilitating pledge, insurance and shipping transactions.” Its first president Frigyes Kochmeister (1816–1907) managed the institution for more than three decades.

However, the thriving of joint-stock companies genuinely began in Hungary only after the Austro-Hungarian Compromise of 1867, which closed the period of absolutism that followed the 1848–49 revolution with final effect. In 1868, the press wrote about a share fever, and the period that followed the Austro-Hungarian Compromise was named *Gründerzeit*, which can be translated as a fever to establish companies. As a pasquinade stated in 1868:

“Nulla dies sine linea! In Hungarian, this means that there is no day in Buda-Pest without the emergence of a new joint-stock company. What is more, sometimes the fertile mother of joint-stock companies, which is the desire to speculate and profiteer, gives birth to two born-alive infants on the very same day. We only have a few more weeks to go before we see joint-stock companies satisfy all kinds of needs from the cradle to the grave [...] The birth of a new company is very easy. If two or three people drink a glass of wine or beer together, this company of people will immediately transform into a founding board [...] Of course, a competitor for each joint-stock

company appears right away. The founders become directors and management councilors, their relatives and other protégées are given well-paying positions. The first general meetings will probably promise high dividends, which can be expected in the future. In the meantime, the shares continue circling around and they end up in the hands of ordinary people, where they will stay. The whole world, even the simplest cartman hopes for bright dividends, dreams of millions of Forints, which will just flow to their wallets without anything to be done by the shareholder, during his sleep [...] Imagination runs wild; the desire to become rich quickly without any effort is spreading like a stain on a fabric; whole classes of the society suffer from the share fever [...]”<sup>33</sup>

However, it should be stated that the legislation has produced such results due to the favorable political and economic circumstances created by the Austro-Hungarian Compromise in the setting of a general economic development.

## 6. Legal modernization: Industry Act and Commercial Act in the 1870s

The Industry Act VIII of 1872 terminated the operation of *guilds*, while the Commercial Act XXXVII of 1875 modernized the regulation of joint-stock companies based on the German example.<sup>34</sup> The model for the Hungarian Commercial Act was provided by the General Commercial Code of the German States of 1861, the *Allgemeines Deutsches Handelsgesetzbuch (ADHGB)*, which was also taken over by Austria as the member of

<sup>32</sup> Hetilap, 15.07.1845, issue 31, p. 494.

<sup>33</sup> Vasárnapi Újság, year 15, issue 27, July 5, 1868.

<sup>34</sup> On the circumstances of the adoption of the Commercial Act, see Horváth Attila, *A kereskedelmi törvény - 1875. évi. XXXVII. tc. (The Commercial Act no. XXXVII of 1875)*, in: *A kettős monarchia (The Dual Monarchy)*, Budapest, 2018, pp. 203–245.

the German Confederation (Deutscher Bund) in 1862-63. Professor István Apáthy (1829–1889) played a vital role in the elaboration of the draft. However, the Commercial Act was not a servile copy but a flexible adaptation of the ADHGB. This was also visible in the regulation of the joint-stock companies:

Regarding the definition of the organizational structure of joint-stock companies, there is a striking difference between the ADHGB and its Austrian version on one hand, and the Hungarian legislation on other hand. This first shows in the size of legislation. The ADHGB contains a total of 43 sections in Part 3 norms regarding the joint stock company, while there are 63 sections in the tenth part of the Hungarian version on the same subject. The differences in content are even more conspicuous. Between the emergence of the two commercial regulations, between 1861 and 1875, significant changes took place in the development of European capitalism. It is a rather well-known fact that after the Austro-Hungarian Compromise of 1867, then the Franco-Prussian War of 1870-71, a large-scale company establishment fever began in Hungary on the one hand, and in the territory of the German Empire, on the other hand. The operational frameworks defined in the ADHGB of 1861, which reflected conditions that were outdated by that time, proved to be too narrow in several aspects, by taking into account the lessons learned from the 1873 over-production crisis. This is why the statutorily regulated organizational structure of joint-stock companies in Hungary is much more complex and many-sided compared to the requirements of the ADHGB.<sup>35</sup>

### 6.1. The concept of a joint-stock company

Pursuant to the Hungarian Commercial Act (hereinafter referred to as: CA), “those companies are regarded as joint-stock companies which are established with a capital that consists of predefined and equivalent value shares of a certain number (complete or part) and where the holders of the share are only held liable up to the value of their shares” (Section 147 of CA).

This statutory definition was criticized with reason, as it is not sufficiently accurate: the holders of the shares are liable to the company for the complete payment of the consideration of their shares. However, they are not held liable for the debts of the company. In the legal literature of the time, it was emphasized that Act XVIII of 1840 also worded its text more accurately when it stated that in the joint-stock companies, the shareholding members only risk the money that they have paid for their shares and they are not liable with any of their other property in any case whatsoever.<sup>36</sup>

The nominal value of the shares could not be increased during the existence of the company. Such increase was regarded invalid.

### 6.2. The foundation of a joint-stock company

According to the CA, a joint-stock company can be regarded as established if 1. its capital is provided; 2. the company’s statutes have been elaborated, and 3. the company was incorporated in the trade register (Section 149).

During subscription, if no higher amount of payment was stipulated in the draft, 10% of the nominal value of each subscribed share is to be paid in cash in the

<sup>35</sup> Sárközi (1988), p. 526.

<sup>36</sup> Mutschenbacher Viktor, *A kereskedelmi jogtudomány elemei a magyar kereskedelmi törvénykönyv szabályaihoz alkalmazva (The Elements of Commercial Law adjusted to the Rules of the Hungarian Commercial Code)*, Pécs, 1884, p. 238.

value defined in the draft. The subscribers or their legal successors cannot be obliged to make any higher payments than the value that is stipulated in the law or in the draft before the statutory general meeting is held. Any contrary share subscription shall be deemed invalid. For incorporating the company, at least 30 percent of the nominal value of the shares had to be actually paid. What is equally important, the joint-stock company was not allowed to issue new shares before the full payment of the originally issued shares. The new shares issued prior to full payment were invalid and their issuers had joint responsibility with all their property for any and all damage arising from the issuance of the shares. Otherwise, they were not obliged to make any other contribution to the purpose and the obligations of the company but the payment of the nominal value of the shares defined by the statutes (Section 168). Those shareholders who failed to realize the payments for their shares in due time were obliged to pay late interests based on the law.

The company was free to stipulate a certain amount of penalty in the statutes in the case of missed payments, irrespective of the other statutory consequences, or to declare that the defaulting shareholders will lose their rights arising from the subscription to the shares and the effected payments (Section 169). If the share was annulled due to the missed payment, the subscriber to the share was still held liable up to 50% of the nominal value of the subscribed shares (Section 171).<sup>37</sup>

The initial subscribers remained liable for a value up to 50% of the subscribed shares even if the shares were passed on by observing the law and the statutes.

The statutory general meeting had to be held within two months from the closing time of the subscription to the shares. If the general meeting was not convened in these two months, or the subscription to the shares remained unsuccessful, the subscribers could claim back their contributions without any deductions. It was the joint and several obligation of the founders to refund these contributions. Otherwise, the shareholders could not reclaim the amount that had been paid and during the existence of the company, the shareholders could only claim the amount of the pure profits which were distributed among the shareholders based on the statutes.

At the statutory general meeting, each subscribed share was worth one vote, but no one may have more than ten votes. The statutory general meeting had quorum if at least seven subscribers who represented at one-quarter of the capital were present at the meeting either in person, or through a representative.

### 6.3. The transferability of shares

The transferability (negotiability) of the securities, i.e., of the shares that were issued as the consideration for the contribution to the formation of the company's capital is a key characteristic feature of a joint-stock company.

The holder of the share made his funds available to the joint-stock company with final effect by having bought the shares, funds which cannot be redeemed, only the shares can be sold to someone else. The economic advantage of the shares is in their very marketability. The share as a tool for capital placement may have attractive power for the public in two ways. On the one hand, if the company fulfills the hopes attached to

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<sup>37</sup> However, the shareholder was protected by the rule that the claims of a shareholder could only be declared terminated if the announcement on payment was displayed by the closing deadline indicated in the statutes, and announced at least three times in a determined gazette and the last time that there was such announcement, it was displayed at least four weeks prior to the final deadline for payment (Section 170).

it, then it will bring profits through the paid dividends. On the other hand, the changes in the prices of the shares also mean a significant attractive power for speculation.<sup>38</sup>

#### 6.4. The number of shares

The number of issued shares had to be indicated in the statutes of the joint-stock company. The number of shares was not defined by the CA, but at least seven subscribers were required by the law. Therefore, the company had to issue a minimum of seven shares. Also, the CA *did not set a minimum capital requirement*, nor did it provide on a minimum nominal value.

#### 6.5. Registered and bearer shares

It was allowed by the CA to define in the statutes whether the shares were *registered or bearer* shares. The CA it made possible to issue bearer shares, differently from the earlier regulation. The assignment of bearer shares was realized by handing over them (Section 172). In the Hungarian law, the issuance of bearer shares was prohibited by Act XVIII of 1840 but the rules set out in the CA still did not count as a novelty: after 1869 several laws made it possible for railway joint-stock companies to issue bearer shares.<sup>39</sup> A company under the regime of CA could have both registered and bearer shares at the same time.

In the case of registered shares, the assignment had to be entered in the share register by indicating the names and residential addresses of the shareholder. The shares could also be assigned with a blank endorsement, but the shareholder could be deemed certified with the company only in case that the assignment was entered in the share register by the presentation of the

share, unless it was otherwise provided by the statutes. The ancient shareholder remained liable up to the amount of the outstanding nominal value of the registered share, despite the assignment, until the new shareholder was entered in the company register (Section 173).

It was established in the judicial practice that a provision in the statutes which excludes the assignment of registered shares, or one that would make sales practically impossible, or excessively burdensome, was invalid. The requirements regarding a transfer fee had to be defined in the statutes preliminarily, which could not be replaced by a simple decision of the general meeting. For example, it was invalid if the transfer fee was defined by the board of directors pursuant to the statutes. In another court decision, it was stated that the transfer fee should not exceed 20% of the nominal value of the share. These restraints had to be indicated in the share deed as well.<sup>40</sup> “However, those restrictions which only extended to a short time and which were imposed for a rational purpose were not made invalid. Such requirements often guaranteed the success of the company foundation. There were many such enterprises where the identity of the shareholders seemed to be an important aspect at the time of establishing the company, to ensure that in this critical moment, the company should have no malignant, bad-intentioned members. The validity of this restriction was defined in a maximum of five years.”<sup>41</sup>

#### 6.6. Capital protection requirements

The joint-stock companies were not allowed to acquire or pledge their own shares. In this respect, exceptions were

<sup>38</sup> Horváth (2005), p. 217.

<sup>39</sup> Horváth (2005), p. 219.

<sup>40</sup> Horváth (2005), p. 219.

<sup>41</sup> Horváth (2005), p. 220. See Curia decisions No. 45/1904, 1068/1903 and 1039/1904.

possible if the shares were acquired for the purpose of capital decrease (Section 161). If the members of the board of directors violated this rule of capital protection, they had joint liability towards the creditors of the company.

The shares could be issued for a particular person or to a bearer, but they could always be issued for a definite amount of money and were indivisible with regard to their holders. In those temporary shares or share vouchers which were issued before the full payment of the nominal value *the actually paid amount had to be clearly indicated* (Section 164).

It was prohibited by law that any interests or dividends be provided or paid to the shareholders from the capital. Only the pure profits that remained according to the annual balance sheet could be distributed to the shareholders. Despite of this, interest-bearing shares were acknowledged by the CA with a limitation. The law stipulated that it was possible to determine interests to the benefit of the shareholders for the period defined in the statutes as necessary for the preparation for the activity of the company, exclusively for the before starting the full-fledged operations (Section 165). The shareholders could not claim any dividends until supplementing the capital reduced by the losses.

## 7. Conclusion

A high number of joint-stock companies were established on the basis of the CA: for example, Ganz és Társa Villamossági-, Gép-, Vagon- és Hajógyár Rt (Ganz and Partner Electric Machinery, Wagon and Shipyard Joint-Stock Company), Hofherr-Schranz-Clayton-Shuttleworth Magyar Gépgyári Művek Rt (Hofherr-Schranz-Clayton-Shuttleworth Hungarian Machine Factory Joint-Stock Company), Gschwindt-féle Szesz-, Élesztő-, Likőr és

Rumgyár Rt. (Gschwindt Spirit, Yeast, Liquor and Rum Factory Joint-Stock Company), Weiss Manfréd Acél- és Fémművek Rt (Weiss Manfréd Steel and Metal Works Joint-Stock Company), Wolfner Gyula és Társa Rt (Wolfner Gyula and Partner Joint-Stock Company), Goldberger Sám. F. és Fiai Rt (Goldberger Sám.F. and Sons Joint-Stock Company), Salgótarjáni Kőszénbánya Rt (Salgótarján Coal Mining Joint-Stock Company), Rimamurány-Salgótarjáni Vasmű Rt (Rimamurány-Salgótarján Steel Works Joint-Stock Company), Magyar Kerámiagyár Rt (Hungarian Ceramics Factory Joint-Stock Company), Révai Testvérek Irodalmi Intézet Rt (Révai Brothers' Literary Institute Joint-Stock Company) etc. The joint-stock companies constituted critical components of the Hungarian industry and economy in general. In 1909, the first Hungarian automobile factory was also established based on the CA, which was the Arad-based (currently Arad, Romania) Magyar Automobil Részvénytársaság Westinghouse Rendszer (which later, from 1912, came to be called Marta – Magyar Automobil Részvénytársaság). The municipality of Arad provided a plot of 16 acres to the factory and subscribed an amount of 30,000 crowns for the capital of the company.

The CA and the joint-stock company regulation remained in effect in the period between the two world wars, not only in the present-day Hungary but also in Transylvania, which became part of Romania under the 1920 Trianon Peace Treaty, under the name Transylvanian Commercial Code (Codul Comercial din Transilvania). The history of the CA was closed by the Second World War and the Soviet-type dictatorship. In the years of Soviet-type dictatorship, joint-stock companies were not needed, therefore they were not regulated either, the central players

of the economy were the state enterprises integrated into the state administration, subordinated to line ministries and having public law features.<sup>42</sup>

In the course of and following the change of the economic and political regimes, Hungary saw the elaboration of several company laws, which indicated, among others, the adjustment of the law of

joint-stock companies to the economic needs, as well as the development thereof: Act VI of 1988, Act CXLIV of 1997 and Act IV of 2006. Currently, company law and the regulation of joint-stock companies are integrated by the legislator into the Hungarian Civil Code (Act V of 2013), but this is the law in force, which is not the subject of an analysis of legal history.<sup>43</sup>

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<sup>42</sup> Professor Tamás Sárközy gave a scientifically exciting overview of the period. See Sárközy Tamás, *A szocializmus, a rendszerváltás és az újkapitalizmus gazdasági civiljoga 1945–2005 (Economic Civil Law of Socialism, the Change of the Regime and New Capitalism 1945–2005)*, Budapest, 2007.

<sup>43</sup> For the current regulation, see Veress Emőd, *A részvény mint értékpapír (The Shares as Securities)*, Budapest, 2019.

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