

22. Setting up a Business

Foreign legal entities are allowed to conduct trade activities, including the acquisition of real estate, under the same conditions and to the same extent as Czech entrepreneurs. They may become founders or co-founders of a company, or may join an existing Czech company.

Foreign companies may operate in the Czech Republic either by establishing a branch office registered in the Czech Republic or by establishing a Czech company. There are four different legal forms of companies; the most common are limited liability companies (s.r.o.) and joint-stock companies (a.s.). The other forms – a limited partnership (k.s.) and a general commercial partnership (v.o.s.) – are sometimes used for tax reasons (in most cases by investors from German-speaking countries). In addition, the following European forms of legal entities are allowed to operate in the Czech Republic (i) a European Economic Interest Grouping, (ii) a European Company (Societas Europea), and (iii) a European Cooperative Society. Both branch offices and companies are established by virtue of their registration in the Commercial Register. For the incorporation of Czech companies, a notarial deed executed by a Czech notary is required.

Furthermore, a legal entity established for business purposes under foreign law which is seated outside of the Czech Republic may relocate its registered seat to the Czech Republic under certain conditions. On 1 January 2014, the private law environment was significantly changed when a new codification of private law became effective (namely the new Civil Code and the Business Corporations Act).

BRANCH OFFICE

A branch office of a foreign company is not a Czech legal entity, but functions as the representative of a foreign company and incurs obligations on the foreign company's behalf. Branch offices are only allowed to engage in business activities which correspond to those of the founder. The branch office must have an appointed director, who is entitled to act on behalf of the foreign company in relation to the branch office. He/she must be registered in the Commercial Register. The law under which the branch's parent entity was founded also applies to the branch's internal dealings.

LIMITED LIABILITY COMPANY – SPOLEČNOST S RUČENÍM OMEZENÝM (s.r.o.)

Establishment

A limited liability company is commonly used only for small and medium-sized businesses. It may be established either by means of (i) a founder's deed by one entity (whether an individual or a legal entity) or (ii) a memorandum of association concluded by several entities or individuals. Such founder's deed or memorandum of association must be executed in the form of a notarial deed.

Registered Capital

The registered capital of a company is composed of the contributions made by the shareholders. The minimum contribution of each shareholder to the registered capital is CZK 1. However, in the event of such a low contribution, the risk of insolvency (and related consequences for executive directors and shareholders) should be considered. Non-monetary contributions must be fully settled before the company's registration in the Commercial Register. The founder's deed or memorandum of association must specify the non-monetary contribution, its value (which is determined by an expert) and the expert who determined its value. At least 30 per cent of subscribed monetary contributions must be paid up before the registration of the company in the Commercial Register.

Ownership Interest

A limited liability company does not issue shares. The ownership interest represents the shareholder's participation in the company and the rights and duties derived from such participation. The size of the ownership interest is basically determined by the ratio of a particular shareholder's investment contribution to the company's registered capital.

A limited liability company may have more than one type of ownership interest, to which different rights and obligations attach. For example, the obligation to work for the company can attach to one ownership interest and the obligation to contribute a higher sum of capital to the company can attach to another one. A shareholder may hold more than one ownership interest (provided that the founder's deed or the memorandum of association allows it).

An ownership interest in a limited liability company is not as easily transferable as the shares in a joint stock company. It requires a written agreement (with notarised signatures). A shareholder may transfer his/her ownership interest to another shareholder without the approval of the general meeting (unless the memorandum of association stipulates otherwise). A shareholder may also transfer his/her ownership interest to a third party with the approval of the general meeting (unless the founder's deed or the memorandum of association stipulates that such approval is not required).

An ownership interest can also be represented by a certificated security called a "common certificate". This is possible only in respect of ownership interests whose transfer is not restricted or conditional. A common certificate can be transferred by an oral/written agreement, an endorsement and a hand-over of the common certificate.

Corporate Bodies

The corporate governance of a limited liability company is simpler than that of a joint stock company. A limited liability company does not have a board of directors. Its executive body is made up of one or more executive directors. The law does not restrict their number, but their number must be stipulated in the founder's deed or the memorandum of association. The executive director is appointed by the general meeting (the supreme body of the company) or by the sole shareholder exercising the powers of the general meeting. Each executive director represents the company independently, unless the founder's deed or the memorandum of association stipulate otherwise. The founder's deed or the memorandum of association may stipulate that the executive directors form a collective body, which will make the legal position of executive directors closer to that of the board of directors in a joint-stock company.

The law does not require the limited liability company to establish a supervisory board; however, a supervisory board can be established, provided that the founder's deed or memorandum of association so stipulates.

JOINT-STOCK COMPANY – AKCIOVÁ SPOLEČNOST (a.s.)

Establishment

A joint-stock company is usually used for large companies. It is established by articles of association by one or more shareholders (whether individuals or legal entities). The articles of association must be executed in the form of a notarial deed.

Shares

A joint-stock company can issue either bearer or registered shares in the form of either certificated or book-entered shares. As of 1 January 2014, certificated bearer shares are no longer allowed and existing certificated bearer shares must be either immobilised (physically deposited) in a bank or exchanged for book-entered shares. The transferability of registered shares may be restricted (e.g. by requiring that the general meeting approve share transfers) but not excluded by articles of association. The transferability of bearer shares may not be restricted. Registered certificated shares are transferred by means of, an oral/written agreement, an endorsement and a hand-over of the shares. Book-entered shares are transferred by virtue of the registration of the new owner with the Central Securities Depository.

Registered Capital

Minimum registered capital is CZK 2,000,000 (or EUR 80,000 for companies which are allowed by a special law to keep their accounts in EUR). At least 30 per cent of the registered capital must be paid up before the application for the registration of the company in the Commercial Register is filed (or earlier, if the articles of association so stipulate).

Corporate Bodies

The executive body of a joint-stock company is the board of directors. Members of the board of directors are elected and recalled by the general meeting (or by the supervisory board if the articles of association so stipulate). The board of directors decides on all matters that are not reserved for the general meeting or the supervisory board. A joint-stock company must establish a supervisory board, which monitors the activities of the board of directors and the operations of the joint-stock company. If a company has more than 500 employees, one-third of the members of the supervisory board must be elected by employees. This obligation was introduced in January 2017 and existing companies must comply with this obligation by January 2019.

Alternatively, instead of a board of directors and a supervisory board, a joint-stock company can have an administrative board and a single director. The choice of the corporate bodies structure (i.e. either (i) a board of directors and a supervisory board, or (ii) an administrative board and a director) must be stipulated in the articles of association. If the articles of association so stipulate, the administrative board can have only one member who can at the same time perform the office of a director.

ESTABLISHMENT OF A COMPANY

As mentioned above, both a limited liability company and a joint-stock company must be established by a notarial deed executed by a Czech notary.

OPENING OF A BANK ACCOUNT

Before registering in the Commercial Register (see below), the founders must pay the monetary contributions into a special bank account opened specifically for this purpose. The bank will not allow the company (or anybody else) to use the money deposited in such bank account before the registration of the company in the Commercial Register, unless the money is to be used for the payment of establishment-related costs.

The special bank account will be opened on the basis of an agreement concluded between the bank and the contributions administrator of the company. The contributions administrator is an individual (either a founder or another person) responsible (before the registration in the Commercial Register) for the payment of contributions (both monetary and non-monetary). The contributions administrator can also be a foreign person.

For practical reasons, it is worth noting that the contributions administrator should visit the bank personally to open the account, which might be problematic for foreign persons. However, some banks allow the special account to be opened on the basis of a power of attorney granted by the contributions administrator (whose signature must generally be

verified by a notary). We recommend that the specific requirements for the opening of the special bank account be discussed with the relevant bank before the establishment of the company (and the appointment of the contributions administrator) to avoid any complications. Furthermore, if a person is to be granted the right to disposal of the money deposited in the bank account, such person might be required to visit the bank personally as well.

TRADE LICENCES AND REPRESENTATION

Before registering in the Commercial Register (see below), both branches and companies must obtain a trade licence from a trade licensing office corresponding to the activities they intend to undertake, or some other form of business authorisation. For this purpose, they must appoint a responsible representative (“*odpovědný zástupce*” in Czech) who is responsible for the company’s compliance with the conditions of the trade licences. The appointment of a responsible representative is not required for any of the 80 general business activities covered by the so-called free trade (“*volná živnost*” in Czech) licence. One responsible representative may be responsible for more than one trade licence of the company. On the other hand, one responsible representative may not perform this function on behalf of more than four entrepreneurs.

The company has the option to submit a single application to the trade licensing office; in such application it will apply for both (i) trade licence(s) and (ii) registration with the tax office (for all types of tax, except for the excise tax and some ecological taxes) along with the application for a trade licence.

LIABILITY / CRIMINAL LIABILITY

Shareholders of a joint-stock company do not guarantee the company’s obligations. Shareholders of a limited liability company jointly and severally guarantee such company’s obligations only up to the sum of unpaid contributions to the company’s registered capital. Executive directors, directors and board members of Czech companies are obliged to perform their respective offices with due care (and are liable for any damage caused to such company by any breach on their part of this obligation). In some cases, shadow directors (i.e. persons who de facto control a Czech company, even if they do not have any official position in such company) or other companies from the same group of companies can be liable for damage caused to such Czech company by exercising their influence over such Czech company to its detriment. The Czech legal system recognises the concept of the criminal liability of legal entities; such liability can be in some cases effective beyond the Czech Republic’s borders. This concept allows for, in some cases, the prosecution of a legal entity where a crime has been committed to the benefit of such legal entity by its director, employee or other associated person.

REGISTRATION OF A COMPANY IN THE COMMERCIAL REGISTER

A company comes into existence by virtue of its registration in the Commercial Register (which is publicly accessible at www.justice.cz) maintained by the respective Registry Court (which is the local Regional Court).

The executive body of the company must file an application to the Commercial Register to register the company within six months of its incorporation, unless the founding document (i.e. the founder’s deed, the memorandum of association or the articles of association) stipulates otherwise. Obligatory standardised forms for applications to the Commercial Register are available on the webpage of the Ministry of Justice. The Registry Court is obliged to register the company or to make its decision without undue delay.

Documentation

An application to the Commercial Register must be accompanied by documents evidencing each piece of information to be registered. Such attachments comprise in particular the following:

- documents, not older than three months, evidencing the valid incorporation and existence of the founder (usually the founder’s extract from the Commercial Register) and the power of its representatives to act on its behalf;
- founding document;
- evidence that the company’s registered capital was paid up in the minimum required amount (usually evidenced with the relevant bank statement);
- an affidavit signed by each member of the executive and supervisory body and consent from each member to the entry of his/her details in the Commercial Register;
- extracts from the criminal registry for each proposed representative and supervisory board member (extract from the Czech Criminal Register – in the case of Czech citizens and EU citizens whose current residence is in the Czech Republic, the extract will be obtained by the court itself; if the representative is an EU citizen, an extract from the Criminal Register of the country of his/her origin or from the Criminal Register of the EU country in which he/she last resided and, if he/she is not a citizen of an EU country, an extract from the Criminal Register of the country of his/her origin; all of these documents/extracts may not be older than three months);
- extract from the Trade Licensing Register or other authorisation relating to its business activity;
- consent of the owner of the premises in which the registered office of the company will be situated (in the event that such premises are leased); the consent of such owner must have a notarised signature and cannot be older than three months;

- powers of attorney or any other documents necessary for the execution of any of the above-listed documents or application (e.g. if the application is filed by an attorney, powers of attorney from all members of the executive body to file the application).

REGISTER OF BENEFICIAL OWNERS

All companies must register their beneficial owners in the newly established Register of Beneficial Owners by 1 January 2018. The register will be maintained by the Registry Court and will not be public. The information on beneficial owners will be available only to selected public authorities and persons required under the anti-money laundering legislation to perform identification of a client.

ACQUISITION OF REAL ESTATE

Since 1 May 2011, all foreigners (irrespective of whether they are legal entities or individuals) – both EU or non-EU – have faced no restrictions on the type of real estate they may acquire in the Czech Republic. Any purchase or transfer of real estate must be registered with the relevant Land Registry. The new Civil Code (effective as of 1 January 2014) introduced a concept of “*superficies solo cedit*”, which means that a structure always belongs to the owner of the land on which it is built. However, in some circumstances, the separate status of structure and land still exists – for instance: (i) when the owner of a piece of land was not identical to the owner of a structure located on such piece of land as at 31 December 2013 the legal ownership of such structure and such land continues to be separate until certain circumstances arise, (ii) when the respective sets of in-rem rights encumbering a structure and the land on which it stands land are different and do not allow the merger of the ownership right of the structure with the ownership right of the land, (iii) when a structure is only of a temporary nature or (iv) in circumstances in respect of which the legal regulations stipulate explicitly that certain types of structures are not part of the land on which or in which they are situated (e.g. electricity cables, sewage pipes or certain types of roads). If a structure and the land on which it stands remain separate, their owners have a pre-emptive right in respect of each other (e.g. the owner of the structure must offer the structure to the owner of the land before selling it to any third person).

DATA MAILBOXES

Each legal entity has a data mailbox, which is an electronic storage space. It is automatically set up for each legal entity on the basis of its registration in the Commercial Register. The system is operated by the state and its purpose is to enable the official electronic delivery of documents, in particular from the public authorities to the owners such as the data mailboxes; it is also possible to electronically communicate with the public authorities via the data mailbox. It is vital for a company to log in to its data mailbox on a regular basis as a message (official document) is deemed to have been delivered to it after the expiry of 10 days (starting from the day on which such message was placed in the data mailbox by the relevant public authority).