

22. Setting up a Business

Foreign legal entities are allowed to conduct trade activities, including 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 business name of the company shall be unique (this can be checked in the Czech Commercial Register at www.justice.cz)

BRANCH OFFICES

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 **must fully list their planned activities on their application for registration in the Commercial Register**, as they are only allowed to engage in the activities listed. The branch office must have an appointed director who is entitled to act on behalf of the foreign company as regards 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. If start-up losses are anticipated, establishing a branch office may permit the deduction of such losses against the foreign company's income in its home jurisdiction.

As of January 2002, there are no restrictions on acquisition of real estate by branch offices of foreign companies in the Czech Republic.

LIMITED LIABILITY COMPANY – SPOLECNOST S RUCENIM OMEZENYM (*s.r.o.*)

A limited liability company is commonly used only for small and medium-sized businesses. It may be established either by (i) a founder's deed by one entity (whether an individual or a legal entity) or (ii) by a memorandum of association concluded by a group of entities. However, a limited liability company with one shareholder cannot establish or become the sole shareholder of another limited liability company. Both the founder's deed and the memorandum of association must be executed in the form of a notarial deed. The incorporation document also determines whether or not a limited liability company will issue its articles of association.

A limited liability company does not issue shares. The ownership interest of each shareholder is the proportion of their contribution to the registered capital of the company.

The minimum registered capital is CZK 200,000 (approx. EUR 6,900). 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 and its value which is determined by an expert appointed by the court. At least 30% of subscribed monetary contributions must be paid up before registration of the company in the Commercial Register. The total of paid-up investment contributions and the value of non-monetary investment contributions must amount to at least CZK 100,000. If a company is formed by one person only, its registered capital must be fully paid up before registration in the Commercial register.

Corporate governance is simpler than that of a joint stock company. A limited liability company does not have a board of directors. Its statutory body is made up of one or more executive officers. The law does not restrict their number. The executive officer is appointed by the general meeting, the supreme body of the company, or by the sole shareholder exercising powers of the general meeting. Each executive officer acts on behalf of the company independently unless the founder's deed or the articles of association stipulate otherwise. 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. The supervisory board consists of at least three members elected by the general meeting.

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 and, if the memorandum of association so stipulates, the approval of the general meeting must be obtained. The transfer of the ownership interest to a third person shall be expressly allowed by the memorandum of association.

JOINT-STOCK COMPANY - AKCIOVA SPOLECNOST (a.s.)

A joint-stock company is used for large companies. It is established by a founder's deed by one shareholder, being a legal entity, or by a memorandum of association by more than one shareholder (whether individuals or legal entities). Both the founder's deed and the memorandum of association must be executed in the form of a notarial deed. A joint-stock company is obliged to issue its articles of association. Bearer shares are freely transferable while transfer of registered shares may be subject to certain conditions specified in the articles of association. If the registered shares are book-entered shares, they are transferred by registering the new owner with the Central Securities Depository.

Minimum registered capital is CZK 2,000,000 (approx. EUR 70,000) or CZK 20,000,000 (approx. EUR 700,000) if the company is founded through a public offer of shares. Non-monetary contributions must be fully settled before the company's registration in the Commercial Register. At least 30% of subscribed monetary contributions must be paid up before registration. The statutory body of a joint-stock company is the board of directors consisting of at least three members. Its members are generally elected 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 to the general meeting. Joint-stock companies with one shareholder may decide to appoint only one member to the board of directors.

Each 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. The supervisory board consists of at least three members. If the company has more than 50 full-time employees, the latter elect one-third of the supervisory board's members. The articles of association may determine that employees can receive company shares under better conditions than other shareholders. However, the total amount of shares issued or the purchase price of all shares, which are not subject to full payment by employees, may not exceed 5% of the company's registered capital at the time when the decision on such employees' subscription is made.

TRADE LICENCES AND REPRESENTATION

Before registering in the Commercial Register (see below), all companies must obtain a trade licence, or – for some types of business – a concession, corresponding to the activities they intend to perform. For this purpose, they must appoint an authorised 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 some types of the general business activities (“volná živnost” in Czech). An authorised representative must be designated for each activity performed by the company; however, one authorised representative may be responsible for more than one trade licence of the company. One authorised representative may not perform this function for more than two companies.

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Effective 1 August 2006, the company has the option to apply for registration with the tax office (for almost all types of taxes) along with the application for a trade licence.

LIABILITY

Shareholders of a joint-stock company are not liable for the company's activities. Shareholders of a limited liability company are jointly liable only up to the amount of their non-paid subscribed contributions to the registered capital according to the registration in the Commercial Register.

REGISTRATION OF A COMPANY IN THE COMMERCIAL REGISTER

A company comes into existence by registering in the Commercial Register maintained by the respective Registry Court. The statutory body of the company must apply to the Commercial Register to register the company within 90 days from the date (i) the company was founded or (ii) the company's trade licences were issued and delivered. As of 1 July 2005, obligatory but standardized forms for applications to the Commercial Register are available. The Registry Court is obliged to register the company or to deliver another decision within the period of 5 working days (temporarily 10 working days), otherwise it is considered that the registration was performed on the following day after this period has expired.

The following documents must be attached to the application in particular:

- documents, not older than three months, showing the valid incorporation of the founder and the power of its representatives to act on its behalf;
- incorporation documentation, i.e. founder's deed or memorandum of association;
- specimen signatures of directors;
- evidence that the company's registered capital was paid up in the minimum required amount (usually shown by a bank statement);
- a statement of credibility signed by each member of the statutory or supervisory body;
- extracts from the criminal registry for each proposed representative and supervisory board member (extract from the Czech Criminal Register and, if the representative is a foreigner, an extract from the Criminal Register from country of his/her origin and, if he/she is not a citizen of an EU country, an extract from the Criminal Registers of the countries where he/she spent at least three consecutive months in the three previous year; all of these documents/extracts must not be older than three months);
- company trade licences or concessions;
- evidence of title (ownership right or lease agreement) to the premises where the registered office of the company will be situated;
- powers of attorney for any person (obligatory for foreigners without a delivery address in the CR) to be registered in the Commercial Register in relation to the incorporation of the company (e.g. executive officers).

