

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. Furthermore, a legal entity established for business purposes under foreign law seated outside of the Czech Republic may relocate its registered seat to the Czech Republic under certain conditions.

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 business activities on their application for registration in the Commercial Register**, as they are only allowed to engage in the business 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. 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 – SPOLEČNOST S RUČENÍM OMEZENÝM (*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 or individuals up to 50. However, a limited liability company with one shareholder cannot establish or become the sole shareholder of another limited liability company. One individual may be a sole shareholder of not more than three limited liability companies. 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 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.

The minimum registered capital is CZK 200,000. 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 (if adopted) 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. With the approval of the general meeting a shareholder may transfer his ownership interest to another shareholder, unless the memorandum of association provides otherwise. If the memorandum of association so admits, a shareholder may transfer his ownership interest to another third party. The memorandum of association may make transfer of the ownership interest dependent on the general meeting's approval. Should the company have sole shareholder, an ownership interest is always transferable to third parties.

JOINT-STOCK COMPANY – AKCIOVÁ SPOLEČNOST (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 (Please note that further existence of bearer shares under Czech law is currently subject of public discussions; the relevant legislative proposals in this respect were, however, recently rejected by the House of Deputies of the Czech Parliament), while transferability of registered shares may be restricted but not excluded by 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 or CZK 20,000,000 if the company is founded through a public offer of shares. A subscriber is obliged to pay the issue price of the subscribed shares within the time-limit fixed in the articles of association, but no later than one year after the company's incorporation. The statutory body of a joint-stock company is the board of directors. The board of directors must have no fewer than three members, this shall not apply in the case of a company with sole shareholder. Its members are generally 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 to the general meeting or the supervisory board.

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 and the number of its members must be divisible by three. If the company has more than 50 full-time employees, the latter elect one-third of the supervisory board's members. The resolution of the company's general meeting regarding the increase of the registered capital or the articles of association may determine that employees can receive company shares under better conditions than other shareholders. However, the total of portions of the issue price or the purchase prices 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 or some other business authorisation. 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 four entrepreneurs.

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 obligations. Shareholders of a limited liability company are jointly and severally liable for company's obligations only up to the unpaid aggregate of their investment contributions according to the entry in the Commercial Register.

REGISTRATION OF A COMPANY IN THE COMMERCIAL REGISTER

A company comes into existence by registering in the Commercial Register (www.justice.cz) 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 or similar business authorisation 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, 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 (members of the company's statutory body);
- 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 and supervisory body and the consent with the entry into the Commercial Register;
- 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 of an EU country, an extract from the Criminal Register from country of his/her origin or from the Criminal Register of an EU country of his/her last stay and, if he/she is not a citizen of an EU country, an extract from the Criminal Registers of the country of his/her origin; all of these documents/extracts must not be older than three months);
- extract from the Trade Licences Register or other authorisation relating to its business activity;
- evidence of title (ownership right or the consent of the owner) 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).

ACQUISITION OF REAL ESTATE

Since 1 May 2009 citizens from EU and other countries are not limited in the nature and scope of acquiring real estate (except for land that is part of an agricultural land fund or forest) in the Czech Republic. The original "legal obstacles" requiring that foreigners hold a Czech Residence Permit or Visa were lifted. Thus, they may acquire real estate under the same conditions as Czech citizens.

Since 1 May 2009 foreign legal entities from EU and other states may acquire real estate (except for land that is part of an agricultural land fund or forest) in the Czech Republic without any restrictions and under the same conditions as Czech legal entities. Hence, the original legal requirements as to the location of the company or an establishment of a branch in the Czech Republic and entitlement to conduct business in the Czech Republic were lifted. Please note that the Czech Foreign Exchange Act still provides for formal regulation of the above-mentioned matter which is, however, in fact ineffective; legislative proposals calling for the formal abolition of the legal regulation are currently being discussed by the Czech Parliament.

Any purchase or transfer of real estate must be registered with the relevant Land Registry. The real estate transfer tax is 3 % of the selling price or the officially assessed value, whichever is greater, and is paid by the seller. The buyer is the guarantor and pledges for payment of the transfer tax. The transfer-tax return must be delivered to the Tax Administration Office and the transfer tax paid within three months following the registration of the transfer in the Land Registry.

