19. Setting up a Business

CZK 1
Limited liability company
Minimum registered capital

CZK 2 mil.
Joint-stock company
Minimum registered capital

0
Branch office
No registered capital

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 Czechia either by establishing a branch office registered in Czechia 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 Czechia (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 Czechia may relocate its registered seat to Czechia under certain conditions.

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 executive director is elected and recalled by the general meeting (the supreme body of the company), or by the sole shareholder exercising the powers of the general meeting. Also, the founding documents may incorporate a right to elect and recall executive directors into an ownership interest. In this case, the owner of this type of ownership interest has a right to elect and recall a certain number of executive directors stipulated in the founding documents. The number of executive directors elected by the owner of this type of ownership interest may not exceed the number of executive directors elected by the general meeting. Each executive director represents the company independently, unless the founding documents stipulate otherwise. The founding documents 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 – dualistic structure

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 founding documents so stipulate). Also, the founding documents may incorporate a right to elect and recall board members into a share. In this case, the owner of this type of a share has a right to elect and recall a certain number of board members set in the founding documents. The number of the board members elected by the owner of such a share may not exceed the number of the board members appointed by the company's bodies. 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.

Corporate Bodies – monistic structure

Companies with a monistic management structure have only one company body – a management board. Until 31 December 2020, companies with a monistic management structure had two company bodies - a management board and a statutory director. If the articles of association so stipulate, the management board can have only one member.

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. As an exception to this rule, monetary contributions to a limited liability company not exceeding in total CZK 20,000 (approx. EUR 840) may also be paid to the company by other means, for example, by a cash payment to the company or by a bank transfer of the amount of the contribution to the company's current account.

The special bank account is 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

Generally, for the purpose od conducting business activities in Czechia, 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 approx. 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 Czechia'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 Czechia, 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);
- 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

A new Act on UBO Register (the "**New UBO Act**"), implementing the EU's Anti-money Laundering Directive no. V (AMLD V), took effect as of 1 June 2021. Since 1 January 2018, Czech law required that all companies register their ultimate beneficial owners ("**UBOs**") in the country's UBO Register (the "**Register**"). Nevertheless, the New UBO Act introduces crucial changes to the legal framework regulating both the Register and UBOs. In particular, it brings updated definitions, public access to data and significant sanctions for non-compliance.

The former definition of a UBO did not always yield a clear UB determination. The New UBO Act provides an updated definition of a UBO centring on the substantive meaning of the term, rather than the mere fulfilment of certain formal criteria. A UBO will now be defined as any natural person who ultimately owns or controls a legal person or legal arrangement. The definition is further elaborated in respect of various types of legal entity.

Under the former UBO legislation, information in the UBO Register was not publicly available. The New UBO Act enables online public access to key data. The aim is to make the UBO Register considerably more transparent.

Previously, only limited sanctions were levied for a failure to register a UBO. The New UBO Act introduces new direct sanctions, including fines of up to CZK 500,000 (approx. EUR 21,000). More importantly, a failure to comply with UBO registration requirements could have a significant impact on the corporate governance of companies and expose statutory bodies to new risks and liabilities. Under the New UBO Act:

- a company is prohibited from distributing profits (directly or indirectly) to any UBO not registered in the Register;
- a company is prohibited from distributing profits to any shareholder that has not registered its UBO;
- a UBO may not (directly or indirectly) exercise its voting rights at general meetings or pass resolutions as a sole shareholder if it is not registered in the Register;
- any shareholder that has failed to register its UBO(s) may not (directly or indirectly) exercise its voting rights at general meetings or pass resolutions as a sole shareholder;

- the rights and obligations arising from legal actions whose aim was to conceal the identity of a UBO and which arose during the period when the UBO was not registered in the Register, will not be enforceable.

From a practical point of view, further risks apply, e.g. given that the company with incorrectly registered UBO is deemed to be unable to fulfil AML/KYC check criteria of Czech banks, the banks may be threatening to close the bank accounts of such company or refuse to provide loans to such company. Also, Czech notaries generally refuse to execute notarial deeds which are required for several types of corporate resolutions for the companies with obviously outdated or incorrect UBO registrations.

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 Czechia. 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 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 to enable the official electronic delivery of documents, in particular from the public authorities to the owners such 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).

Act on screening of foreign investments

On 1 May 2021, the Foreign Direct Investments Screening Act is set to come into force which will allow the government to screen potentially high-risk foreign transactions by investors from countries outside the EU. Based on the new rules, the state may approve the foreign investment under review, or make it conditional upon the fulfilment of certain conditions, or in the extreme case, prohibit its execution (or continuation, in the case of existing projects). The law operates with two basic categories of investments and related screening arrangements: (a) investments in risk areas (i.e. sectors and industries that carry a higher risk for interests protected by the state, stipulated by the FDI Act) – these require prior approval; and (b) other investments that do not require approval, but that may retroactively be screened ex officio, because of their potential to threaten interests protected by the state. When planning cross-border transactions, it is important to assess whether the given investment is subject to clearance sufficiently ahead of time. If so, one must allow for a work-intensive and time-demanding screening procedure.