

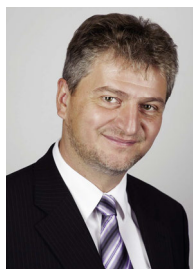
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Establishing a Company in Central and Eastern Europe



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Zoltán Lambert
Managing Partner
Regional
Coordinator CEE

Dear Readers,

I am happy to present to you our second Tax Bridge this year. As you may have realised by reading our first edition, the Tax Bridge as our Central and Eastern European Newsletter focuses on a specific issue every quarter from the viewpoint of different countries in the CEE region.

Compared to our first edition, we are proud to say that we were able to collect expertise from 3 more countries, focusing on the most important regulations of establishing a legal entity in our region. This means you can read about the regulations in 13 countries: Austria, Belarus, the Czech Republic, Hungary, Latvia, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Turkey and Ukraine.

Investors often face the problem of which kind of legal solution to choose when they want to start a business activity in a new market. In our latest Tax Bridge we try to explain what the main types of legal entity are for companies or private persons to conduct their business, and what the advantages and disadvantages of the various forms are, mostly from a legal point of view. It is probably particular to CEE that foreign companies also have to set up a legal entity for businesses that would not entail any legal steps from a tax point of view in other countries of the world (like permanent establishments, etc.)

Therefore, we focus on the regulations of the legal types of entities, especially on establishing a limited liability company (LLC), in order to be able to compare the regulations in the various countries.

We deal with questions like what the minimum registered share capital is for an LLC, can this share capital be paid as a cash contribution only, or maybe also as an in-kind contribution (e.g. IP rights, receivables, real properties, etc.), what are the main characteristics for a shareholders' meeting, what is the role of a managing director or of the supervisory board, etc. We also try to describe the steps for establishing an LLC and compare the costs of the set-up procedure in every single country.

I hope that after reading and comparing the most important regulations for establishing a legal entity in our region you will be able to choose the right decision in every country. We are certainly more than happy to help you with our professional regional staff should you have any related questions or remarks.

Zoltán Lambert
WTS Klient Hungary
Managing Partner
Regional Coordinator CEE

focus on the limited liability company

share capital

shareholders' meeting

steps for establishing an LLC

costs of the set-up procedure

professional regional staff

13 countries

main types of legal entity

advantages and disadvantages of the various forms

tax point of view

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Mag. Kerstin Weber
Managing Director

Guideline to the formation of a GmbH

Author: **Mag. Kerstin Weber**

Austrian legislation offers various types of legal entity for companies or private persons to conduct their business. Commonly used companies for doing business in Austria are:

- general partnership (Offene Gesellschaft)
- limited partnership (Kommanditgesellschaft)
- private limited liability company (Gesellschaft mit beschränkter Haftung, in short: GmbH)
- public limited liability company / joint stock company (Aktiengesellschaft)

The most suitable organisational form for a mid-sized enterprise in Austria is the GmbH, a limited liability company.

General remarks on the GmbH

a GmbH can be used for nearly all legal types of business

A GmbH is an "incorporated entity" with a legal identity independent of that of its shareholders, and can be used for nearly all legal types of business (e.g. commerce and trade, industry, retail and wholesale). It may be formed by either one or several shareholders. Austrian citizenship or a domicile or place of residence in Austria are not requirements for becoming a shareholder. This means that any natural person or legal entity and all comparable foreign entities are eligible to become shareholders of a GmbH. The top-level constitutive body is the general meeting of shareholders, which adopts resolutions and is entitled to take action in all matters involving the company. A GmbH is represented by one or more managing directors appointed by the shareholders. The managing director does not have to be (but could be) a shareholder. Furthermore, it is not required that the managing director has his or her normal residence in Austria.

must have nominal capital of at least EUR 35,000

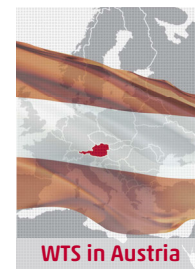
A GmbH must have nominal capital of at least EUR 35,000 when established. However, only half of this amount must generally be paid in cash into the company's bank account (a contribution exclusively in kind is also possible, but has to be reviewed by a court-appointed auditor). Another option is to establish a "privileged GmbH": shareholders are only liable for cash contributions totalling EUR 10,000 in the first ten years, and the shareholders are obliged to pay in at least EUR 5,000 of this amount in cash upon the company's formation.

How to incorporate an Austrian limited liability company

Several formalities have to be met in order to set up a GmbH. "Articles of association" have to be drawn up between the shareholders, or "a declaration on the formation of a company" if the GmbH is formed by one single shareholder. The documents must be set out in the form of an Austrian notarial deed. A foreign investor may appoint an agent for the purposes of establishing a GmbH in Austria provided the agent holds a notarised power of attorney. For a single-member GmbH (only one shareholder, who is also the managing director and must be a natural person) a simplified GmbH foundation process without an Austrian notarial deed is possible if the declaration on forming a company has standardised content and if the shareholder has a digital signature. Furthermore, a GmbH does not legally exist until it has been entered into the Commercial Register. To register the GmbH, bank confirmation has to be attached in which the bank declares that the cash contributions are paid into the company's bank account.

Costs of setting up a GmbH

Besides the contracting costs, which depend on the size of the company and the contract (e.g. where a GmbH is established by one single shareholder, the declaration on the formation of a company, fulfilling the minimum criteria, will only cost between EUR 100 and EUR 200), court fees for entering the GmbH into the Commercial Register have to be paid too. The fees generally range from EUR 400 to EUR 500. It is possible to obtain exemption from the court fees if the Austrian Promotion of Start-Ups Act applies to the newly-formed business.



to register the GmbH, bank confirmation has to be attached

court fees have to be paid for entering the GmbH into the Commercial Register

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Different company forms and the establishment procedure

Authors: **Maksim Salahub, Aliaksei Vashkevich**

When deciding to establish a corporate presence in Belarus, a foreign investor may choose either a representative office or a legal entity. Though the final decision significantly depends on the nature of the project and aims of the investor, establishing a company is the most common choice.

Forms of companies

Belarusian law provides for a variety of company forms with different legal regimes. The most widespread forms for carrying out general business are a limited liability company (LLC), a joint stock company (JSC), and a unitary enterprise (UE).

LLC

An LLC is the most widely used company form. It provides for the limited liability of its shareholders up to the amount of their shares. The limit does not apply if the LLC becomes bankrupt due to intentional actions of the shareholders.

Shares in an LLC are often referred to as a "participation interest" and do not require separate registration. The par value of the participation interest, the number of votes and the share in profit are distributed among the shareholders proportionally to the amount of the shareholders' contributions to the authorised capital of the LLC. However, the shareholders may agree on a different correlation between the participation interests, number of votes and share in profit.

Shareholders in an LLC enjoy a pre-emptive right to purchase a participation interest in the LLC. If none of the shareholders exercises this right, the pre-emptive right passes to the LLC itself. Shareholders in an LLC (except for the sole shareholder) may exit the LLC at any time and receive part of the property of the LLC proportional to the amount of their participation interest.

JSC

In many respects, a JSC resembles an LLC: in the same way it features limited liability, has a similar management structure and operating principles of the company, etc. At the same time, the shares of a JSC are

securities and subject to separate registration. Furthermore, a JSC is generally less flexible and subject to additional corporate regulations (e.g. shareholders of a JSC do not have a discretionary right of exit from the company).

A JSC may either be closed or open. The main difference lies in the ability of an open JSC to offer its shares to the public. A closed JSC, by contrast, is characterised by a more stable shareholding structure due to statutory pre-emptive rights of the shareholders.

UE

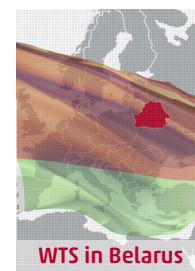
In contrast to an LLC and a JSC, a UE does not have its authorised capital divided into shares. A UE can be established by one founder only that is considered to be the owner of all the UE assets. The founder can, at its discretion, assign property to the UE or withdraw it.

A UE may be sold or otherwise assigned as a whole asset unit, including buildings, equipment, inventory, raw materials, ready-made goods, claims, debts, as well as trademarks and other exclusive rights of the UE. The asset unit is considered to be a real property object. In this regard, the asset unit plus related rights and transactions must be registered with the National Cadastral Agency.

Establishment procedure

The general features of the establishment procedure are alike for most of the company forms and mainly require the adoption of constituent documents and the state registration. At the same time, different company forms have specific requirements for some procedures. The basic procedures are described below using an example of an LLC.

An LLC is established by one or more individuals / legal entities (any combination is possible, but no more than 50 shareholders) without any limitations on the origin of the founders. The only restriction relates to the establishment of an LLC with one legal entity as a founder that itself has only one shareholder. However, the restriction is considered outdated and we expect it will be eliminated in the future.



a UE can be established by one founder only that is considered to be the owner of all the UE assets

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different company forms have specific requirements for some procedures

*establishing an LLC
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Establishing an LLC with a foreign founder usually takes approximately 3-4 weeks provided that all the documents are submitted on a timely basis and any discussion about the content of the constituent documents does not take long. The establishment procedure includes the following stages:

Pre-registration

At the pre-registration stage the founder(s) should make decisions regarding the main aspects of the future company, including:

- business name
- future location
- creation of governing bodies and election of members thereof
- amount of the authorised capital and amounts of contributions thereto
- adoption and execution of the articles of association and other incorporation documents

*requires holding
a meeting of the
founders and a
constitutive meeting*

When establishing an LLC with a sole shareholder, all the above-mentioned decisions are adopted by the founder in a single resolution. Establishing an LLC with several shareholders requires holding a meeting of the founders and a constitutive meeting.

During the pre-registration stage the founder(s) also shall ensure the preliminary registration of the chosen business name, arrange all necessary documents required for the state registration (like articles of association, extract from a company register with regard to the founder, etc.), issue powers of attorney (if necessary), and pay a state fee.

Registration

*submit the set of
the documents to
the local registering
authority*

One of the founders or their representative(s) should submit the set of the documents for the state registration to the local registering authority. The registration decision is made on the same day.

Post-registration

On the day after the state registration the registering authority issues a certificate on the state registration. Within 5 days of the

same date the LLC is automatically registered with the tax, customs and statistics authorities, as well as with the Social Security Fund and RUE Belgosstrakh (the state insurance company) without requiring action from the applicant.

*the LLC is automati-
cally registered with
the tax, customs and
statistics authorities*

The newly-formed LLC may start its activities right after the state registration. The first actions should include the following:

- ordering a corporate seal (not mandatory, but recommended)
- concluding an employment agreement/ contract with the director (or a service agreement with an outsourced manager/ managing company)
- engaging an accountant or an accounting company
- opening a bank account
- concluding a lease agreement for the LLC's registered office
- adopting mandatory internal policies, by-laws and regulations, including Regulations on Labour Protection, Internal Labour Regulations, State Inspections Ledger, etc.

*may start its activities
right after the state
registration*

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Various options for individuals and legal entities

Author: **Roman Knedlhans**

There are a number of legal forms of business in the Czech Republic: the basic forms relate to natural persons (individuals) and legal entities, both offering various options. Among other things, the difference between the two forms lies in the degree of risk associated with doing business, the number of participants in the business, the manner of exposure, capital adequacy, initial capital required, distribution of profits, management, accounting procedures, the administrative complexity of the establishment and governance.

Wide range of legal entities

As regards legal entities there is a wide range of business forms in the Czech Republic. These include, inter alia, business corporations, certain multinational forms of business according to European Community law, state enterprises or other legal forms enabling business or other gainful activity.

As far as business corporations are concerned, the Act on Business Corporations defines five types of business entity established for business purposes, which include 4 commercial companies and a cooperative that are registered in the Commercial Register. In the Czech legal system, there are two types of commercial company, these are:

capital companies

→ capital companies (limited liability companies, joint stock companies), in which registered capital is compulsory, the minimum amount is prescribed by law and consists of all contributions by members (the only obligation that founders of a capital company have in relation to the company is the payment of registered capital, all other matters may be entrusted to other parties), and

partnerships

→ partnerships (general partnerships), in which registered capital is not compulsory and only arises when the partners undertake in the partnership agreement to make contributions to the company. Between capital companies and general partnerships there are limited partnerships (sometimes referred to as quasi-partnerships).

Commercial companies are registered in the Commercial Register.

Most common form of business: limited liability company

The most common business form in the Czech Republic via a commercial company are capital companies, but primarily the limited liability company (abbreviated as "spol. s r.o." or just "s.r.o."). It is also the most common form of business entity used by foreign companies when establishing a subsidiary in the Czech Republic.

Below, this brief opinion deals with the above type of company only (further only the company). The company can be established by one or more natural persons or legal entities. The company is liable to the full extent of its assets; members are jointly and severally liable to the extent of their unpaid contributions. The minimum contribution for a limited liability company is CZK 1; there is no maximum contribution. The member's ownership interest in the limited liability company is determined by the ratio of the member's contribution to the company's registered capital. Members bear liability for the company's obligations up to the amount of the unpaid portion of their contributions as recorded in the Commercial Register, which basically means each member's liability is limited by the amount of its contribution into the company's registered capital.

The company's corporate bodies are the general meeting as the highest authority, the statutory body (executive director(s)), and the supervisory board or other body if stipulated in the articles of association.

Technical formation and registration

The basic formation document is an Association Agreement or a Memorandum of Association if there is just one member. The compulsory elements of the Association Agreement or Memorandum of Association are set forth in the Act on Business Corporations (company name and registered office, scope of business, registered capital, ownership interest of each member, general meeting, executives, etc.).

There is a distinction between the technical formation of a company, when the members sign the formation documents, and its sub-



*the company is
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*subsequent
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may take more time*

sequent incorporation (registration) by entry into the Commercial Register following the submission of the application to the relevant court, depending on the location of the company's registered office. The former step can be accomplished quickly after an agreement is reached on the wording of the formation document, while the latter may take more time depending on the fulfilment of other conditions required for registration. To enter a company into the Commercial Register the company must prove that it meets certain statutory requirements by submitting a number of documents, including:

- proving the legal existence of the founders/members with excerpts from relevant registers
- proving the legal title to the real estate in which the registered office should be located
- proving that members' contributions (or parts thereof) to the registered capital were paid to an escrow account set up for this purpose as required by law
- proving that the executive director(s) or members of other company bodies, if established, meet the requirements regarding the performance of their duties, including a certificate of good conduct, or
- proving the existence of a relevant business licence, since any company wishing to carry out business in the Czech Republic (with exceptions) needs a valid trade authorisation to conduct its business activities

*a company must
be registered for
tax purposes*

*must put its data box
for communication
with public authorities
into operation*

In relation to the establishment process described above, a company must be registered for tax purposes and with the relevant authorities (e.g. tax authority and also social security administration as well as relevant insurance company/ies if the company has employees or pays any benefits). Furthermore, after being registered in the Commercial Register, the company must put its data box for communication with public authorities (created automatically) into operation.

Timing

In terms of timing, and as can be seen above, a number of documents are generally required to establish and register the

company. This can be complicated further if the founder is a foreigner due to the apostilles or super-legalisation required, assuming there is no Treaty on Legal Assistance between the Czech Republic and the given foreign state.

Generally speaking it has become much easier to establish the company since the beginning of 2014 thanks to new legislation. This change also speeded up the whole process and made it cheaper. A new limited liability company could theoretically be established in as little as 5-10 days (in the simplest cases and assuming that the founders have the company registered directly by the notary, avoiding the more expensive and lengthy filing with the court/Commercial Register). However, in practice, this period is prolonged depending on how promptly the required data and documents relating to anti-money laundering legislation are obtained when setting up the bank account, how promptly original and properly certified foreign documents (excerpts from foreign commercial registers or certificates of good conduct) are obtained and submitted or the conditions for relevant business licences are fulfilled (if the future activity of the company requires a licence or setting up a trade other than the simplest unqualified trade).

Besides the cost of any legal advice (if required), when calculating the cost of establishing a limited liability company, it is necessary to consider the relevant administrative expenses (trade licence authority fee, notarial/court registration fee, bank account opening fee) as well as minor additional expenses (possible translations, etc.).

*it has become much
easier to establish the
company since 2014*

5-10 days

*it is necessary to
consider the relevant
administrative
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Guideline to setting up a Kft.

Author: **dr. Ildikó Szopkóné Horváth**

Hungarian legislation offers various types of legal entity for companies or private persons to conduct their business:

- general partnership (Közkereseti Társaság, Kkt.);
- limited partnership (Betéti Társaság, Bt.);
- limited liability company (Korlátolt Felelősségű Társaság, Kft.);
- private company limited by shares (Zártkörűen Működő Részvénytársaság, Zrt.);
- public company limited by shares (Nyilvánosan Működő Részvénytársaság, Nyrt.);
- branch office (Fióktelep);
- representative office (Kereskedelmi Képviselet).

establishing a branch office is a favoured option when the business presence is necessary for a limited time only

The most suitable organisational form for a mid-sized enterprise in Hungary is the Kft., a limited liability company. Establishing a branch office is also a favoured option for smaller operations or when the business presence in Hungary is necessary for a limited time only.

General remarks on the Kft.

When formed, a Kft. becomes independent from its shareholders and may be used for nearly all types of business (e.g. commerce and trade, industry, retail and wholesale businesses). As a general rule, the shareholders' liability is limited to their capital contribution to the Kft. and the "corporate veil" can only be pierced in very exceptional cases.

the shareholders' liability is limited to their capital contribution to the Kft.

the minimum registered share capital of a Kft. is HUF 3,000,000

The minimum registered share capital of a Kft. is HUF 3,000,000 (roughly EUR 9,000) or its equivalent in any other convertible currency. The equity of a Kft. may consist of cash contributions and in-kind contributions (e.g. IP rights, receivables, real properties, etc.).

A Kft. may be established by one or more shareholders (called "quota-holders" in Hungarian legal terminology), who are either Hungarian or foreign legal or natural persons.

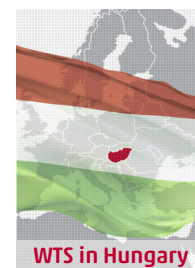
The shareholders' meeting is the principal body of a Kft., and the shareholders exercise their decision-making powers in all strategic matters of the Kft. there. A Kft. is represented by one or more managing directors (either natural or legal persons) who may have individual or joint representation rights. A supervisory board may, or in some cases must, be established at the company, tasked with reviewing and approving the decisions of the management. The company may, or in some cases must, appoint an auditor to review and audit its financial statements.

How to set up a Kft.?

To establish a Hungarian company it needs to be registered with the Hungarian Court of Registration. The registration process requires the involvement of a lawyer, who countersigns the corporate documents and files the electronic registration application. The signing of the corporate documentation does not require travel to Hungary, they can be signed abroad, but the opening of the company bank account generally needs the presence of a signatory for at least one business day.

The main steps for establishing a Kft. are as follows (this may vary slightly for the other company forms):

- Decision on the Kft. specifics, such as name, registered office, management, amount and type of share capital, designation of delivery agent.
- The Hungarian lawyer prepares the company documents, including the articles of association and the statutory declarations of the management.
- If the shareholder is a foreign company, its legalised company registry extract or similar certificate needs to be obtained and then translated into Hungarian.
- The company documents are signed either in front of the Hungarian lawyer or abroad; notarisation and super-legalisation may be necessary in the latter case (Hungarian consular or embassy certification or apostille).
- A Hungarian bank account needs to be opened to deposit the share capital.



the registration process requires the involvement of a lawyer

opening of the company bank account generally needs the presence of a signatory

- To register the company, the Hungarian lawyer files the executed and counter-signed company documents as well as the electronic application with the Court of Registration.
- The Court of Registration registers the company. As the registration process is a one-stop-shop process, the court also provides the company with its VAT number and statistical number.

the company can start its business activities from the filing of the company documents

With some restrictions, the company can start its business activities from the filing of the company documents (Step 6). The registration generally takes 1-2 weeks from the submission of all the documents.

It is possible to apply for an expedited registration (usually within a week), but in such cases the articles of association need to be prepared on the basis of a template without any additions or deletions (meaning, for example, that the functional currency of the company can only be HUF).

Costs of setting up a Kft. in Hungary

Registering a Kft. incurs no statutory fees. If the shareholder is a foreign entity or some of the documents are signed outside of Hungary, translation, legalisation and courier fees apply.

no statutory fees

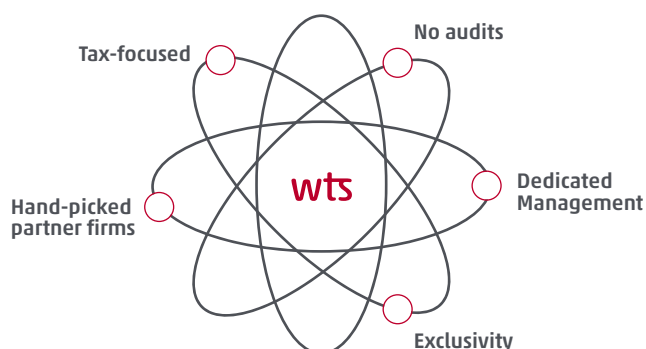
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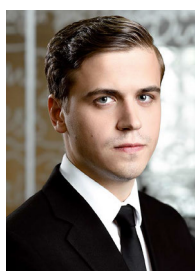
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Timing and steps of establishing a company

Authors: **Zane Paeglīte, Toms Vilnis**

A private limited liability company (Sabiedrība ar ierobežotu atbildību / SIA) is the most popular business form in Latvia, and it most resembles the German GmbH. The Latvian public limited liability company (Akciju sabiedrība / AS), on the other hand, mostly resembles the German AG.

SIA is better suited for smaller businesses or businesses with a limited number of shareholders, smaller share capital requirements (minimum EUR 2,800) and a simpler corporate governance structure. For example, forming a supervisory board and electing an auditor are optional.

In case of an AS the share capital requirement is higher (minimum EUR 35,000) and the corporate governance structure is more complex – forming a supervisory board is compulsory. The shares of a public limited liability company can be listed on the stock exchange, and there can be different categories of shares and share options.

Timing

The registration of a company in the Latvian Company Register takes 1-3 business days, but in practice the whole process for establishing a company in Latvia usually takes 3-4 weeks, depending on several factors (such as the residency and number of shareholders, the location for signing documents, and cooperation from the bank). In some cases, the State Revenue Service of Latvia may prolong the registration procedure by up to 10 days to determine whether the company has any potential tax risks.

The ease of starting a business and establishing a company in Latvia lies in the fact that there are generally no residence requirements for management board members, a one-person management board is sufficient, and most of the establishment steps can be done under a power of attorney.

The steps of establishing a company

To establish a company in Latvia (both SIA and AS), the following actions need to be carried out:

- Shareholders sign an establishment agreement (if just one shareholder then an establishment resolution) and the articles of association of the company.
- Members of the management board and the supervisory board (if mandatory / voluntarily elected) sign their consent for the appointment to their positions.

Members of the management board must sign their consent at a notary public.

- The owner of the premises where the company will have its registered address issues consent that the company can register its address at those premises. Members of the management board sign a notice on the registered address of the company.
- If the share capital is paid in cash, the shareholders open a temporary bank account for the company and transfer the share capital to that bank account. If the share capital is paid by contributions in kind, the shareholders organise an evaluation of the in-kind contribution by an expert approved by the Latvian Company Register. The chair of the management board or a specially authorised member of the management board signs the shareholders register section at a notary public.
- Shareholders pay the state duty (EUR 150-450) and the fee for publication in the official gazette (EUR 27.03) and file the establishment documents with the Latvian Company Register. The company is also automatically registered as a taxpayer, apart from VAT, for which a separate application must be submitted to the State Revenue Service of Latvia.

Documents that need to be signed at a notary public can also be signed with electronic signatures, provided they are verifiable in the Latvian e-signature system (EDOC or ASICE format).

If documents are notarised or public documents are issued in the European Union an apostille is not required. Otherwise, apostilles or legalisation might be required depending on the country.



for VAT registration a separate application must be submitted to the State Revenue Service of Latvia

documents can also be signed with electronic signatures

the State Revenue Service of Latvia may prolong the registration procedure to determine whether the company has any potential tax risks

no residence requirements

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Legal forms and types of business

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in forms similar to those found in other European countries. Polish law stipulates the principle of freedom of business. This means that anyone has equal rights in undertaking a business activity of their choice. As a consequence, legal and natural persons from EU / EFTA member countries (as they fall under the same rules as Polish companies and individuals) may choose any legal form to run their business in Poland, with the same rules applicable as for Polish persons.

Business in Poland may be conducted in the following forms:

- companies
 - » limited liability company (LLC)
 - » joint-stock company
- partnerships
 - » registered partnership
 - » limited liability partnership
 - » limited partnership
 - » limited joint-stock partnership
- sole proprietorship
- general partnership
- branch office of a foreign company

limited liability company remains the most frequent company type chosen by foreign investors

As the limited liability company remains the most frequent company type chosen by foreign investors, below we describe this particular form of running a business in Poland.

Limited liability company

A limited liability company (sp. z o. o.) is the most popular form of business activity. This company needs to be registered in the National Court Register (KRS). A limited liability company can be formed by one or more natural persons or legal persons. An LLC has legal personality thus it is treated as a separate legal entity from its shareholders.

an LLC is treated as a separate legal entity from its shareholders

The minimum share capital is PLN 5,000 (roughly EUR 1,200), with a minimum nominal value of PLN 50 (roughly EUR 12) per share (relatively low) and it needs to be fully paid prior to registration. Contributions can be made in cash or in kind. Shareholders are not personally liable for the LLC's debts or obligations. Hence, they may only lose

up to the value of their capital investment in the LLC (cash or in kind). Nevertheless, Polish law states certain circumstances when board members can be liable for an LLC's debts.

Shareholders may be entitled to profits in proportion to the number of shares held. An LLC is liable to pay corporate income tax (basically at a CIT rate of 19%) and, where applicable, VAT.

Formation and timing

Formal incorporation may take up to 1 month in practice (depending on the submission of documents, etc.), but an LLC may conduct business immediately after signing the articles of association (holding 'under formation' status). Instead of going through the registration process, investors may also opt to acquire a ready-made shelf company.

An LLC is incorporated in front of a Polish notary, and the articles of association (AoA) must be notarised (can also be done by a lawyer acting based on a power of attorney). An LLC under formation (before the specific registration documents are submitted to the Court) may act in its own name, acquire rights, incur obligations, sue or be sued. The AoA should cover specific elements, such as the business name of the LLC (including "spółka z ograniczoną odpowiedzialnością" or the abbreviation "sp. z o. o."); the registered office of the LLC; the scope of activities; the amount of share capital; information on the share number, the value owned by each shareholder; the term of the LLC if defined. Note that all companies in Poland have to open a bank account.

Upon being recorded in the Court Register, the REGON number (identification number assigned by the Central Statistical Office) and the tax ID number (assigned by the tax office) are assigned automatically.

An LLC may have a management board (tier one, management role), a general meeting of shareholders and a supervisory board (tier two, oversight role). The supervisory board is required if the LLC has more than 25 shareholders, and if its share capital exceeds PLN 500,000 (roughly EUR 120,000).

continued on the next page



investors may also opt to acquire a ready-made shelf company

all companies in Poland have to open a bank account

The management board may consist of one or more members (appointed and dismissed by resolutions of the general meeting of shareholders, unless otherwise stipulated in the AoA).

stipulated in the Commercial Companies Code or in the LLC's AoA, and may also be convened if any authorised person or body finds it necessary.

foreign investors usually do not appoint a supervisory board in their Polish subsidiaries

The supervisory board consists of at least three members appointed by a resolution of the general meeting of shareholders. As this body is really not obligatory, foreign investors usually do not appoint a supervisory board in their Polish subsidiaries. The general meeting of shareholders may be ordinary or extraordinary. The first one is held within six months of the end of each financial year (specific agenda for such meetings are set, e.g. approval of the management board report and financial report), the latter is held in specific cases

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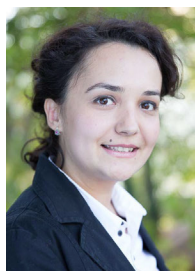
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Alexandra Savulescu
Senior Tax Consultant

Registering a company

Author: **Alexandra Savulescu**

Setting up a company in Romania involves certain steps related to the legal incorporation at the Trade Registry, as well as to the fiscal registration with the tax authorities. The same rules and procedures apply for domestic and foreign investors who decide to set up a company in Romania.

Registration at the Trade Registry

This usually happens with the support of a legal advisor who gathers all the documents and information required, prepares the Constitutive Deed and registers the documentation with the Trade Registry. The documentation covers the following necessary information: type of company, share capital structure, company activity according to NACE code (activity classification codes), company name, company premises, identification documents from shareholders and appointed administrators, proof of share capital deposit at bank, specimen signatures.

Entities with legal personality can take on one of the five legal forms provided by Romanian Company Law 31/1990, the most common being an LLC (limited liability company) and an SA (joint stock company).

A company can be set up in about 10 working days once in possession of all the supporting documents required.

Registration at the fiscal authorities

After the incorporation at the Trade Registry, the company must also register at the Romanian fiscal authorities for the direct and indirect taxes related to its activity. Also, documentation for obtaining the electronic signature allowing the registration of tax returns must be prepared and registered with the authorities.

Tax on micro-company revenues versus corporate income tax

Newly established Romanian entities are required to pay a micro-company tax from the first fiscal year. Micro-companies pay 1% or 3% tax on revenues, while corporate taxpayers pay 16% on taxable profits. The tax rates applicable for micro-company revenues are:

- 1% for micro-companies with at least one employee,
- 3% for micro-companies with no employees.

If a micro-company generates revenues exceeding EUR 1,000,000 during the fiscal year, it becomes a corporate taxpayer starting from the quarter in which this threshold is exceeded. Micro-companies with share capital of at least RON 45,000 (roughly EUR 9,700) may opt to pay corporate income tax from their registration.

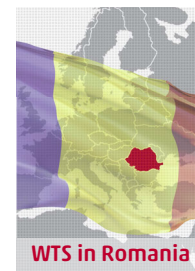
Registration for VAT purposes

VAT registration is mandatory once an annual turnover threshold of RON 300,000 (roughly EUR 88,500) is exceeded. However, any taxable person can optionally apply for VAT registration.

New companies voluntarily registering for VAT before the turnover threshold is exceeded will have to prove their capacity to perform economic activities. The VAT registration involves a risk analysis by the tax authorities based on predefined criteria (declared premises, level of share capital, number of employees, activity type, good conduct certificates of administrators, etc.). In some cases, the VAT registration process also includes interviews with the company administrator as required by the tax authorities, to clarify if the taxable person qualifies for VAT. Following this analysis, the VAT registration can be granted or rejected. The deadline for settling VAT registration requests is 45 days from the submission date.

Registration with Territorial Labour Inspectorate

Once the company is set up, personnel can be hired. Each labour contract must be notified to the Labour Inspectorate at least one day before the labour contract takes effect, via an online electronic ledger of employees (REVISAL).



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VAT registration involves a risk analysis

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Vladislav Donchenko
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Registration of a legal entity in 5 steps

Author: **Vladislav Donchenko**

Anyone going to do business in Russia or managing to establish a Russian subsidiary in the form of a limited liability company (LLC) is surely interested in the details of registering a legal entity in Russia.

In this article we will give you a useful support guide through business in Russia. We will show you the 5 necessary steps and 8 required documents for registering a legal entity in Russia.

Step 1: documents for registering a legal entity in Russia

The documents required for a company registration are as follows:

→ Registration application prepared according to template R-11001

The registration application template R-11001 was published in order No. MMB-7-6/25@ of the Russian Federal Tax Service (FTS).

→ Decision (minutes) of establishment issued by founder / founders

The decision (minutes) should contain the following information:

- » personal information about founders
- » decision on establishment of legal entity in Russia confirmed by all participants
- » information about the form of the legal entity's incorporation
- » approval of articles of association
- » registered address
- » approved amount of authorised capital, amount and nominal value of shares, procedure and deadline for payment of these shares
- » appointment of general manager

The minutes should also indicate the results of the voting conducted for each of the approval points.

→ Founders' agreement (in case of several founders)

The agreement on the establishment should contain all the basic information about the legal entity in Russia – name, address, articles of association, amount of authorised capital, etc. Also, the agreement must specify the rights and responsibilities of the founders.

→ Company's articles of association

The company's articles of association are the main, mandatory document. In addition to the basic information, the articles of association must contain a description of the company's purposes, corporate structure and its management bodies. Also, the articles of association specify the procedure for carrying out production and economic activities and any reorganisation procedure.

→ Approved letter of registered address

The approved letter of registered address is a document which confirms that the owner of the premises will provide a separate location for the legal entity in Russia. This document is not required by law, but its absence can impact on the decision to register the company. The letter must contain actual contact information about the premises owner.

→ Notification of transition to special taxation regime (if applicable)

A tax regime may be chosen before submitting the registration documents package. If any special tax regime is chosen, the corresponding notification should be attached to the package. The notification on the transition to the special tax regime was approved by the Russian Federal Tax Service in order No. MMB-7-3/829@.

→ Result of assessment by independent appraiser on property contribution to authorised capital (in case of non-cash contribution)

The minimum amount of authorised capital must be RUB 10,000 / EUR 140 (Art. 26 of the Civil Code of the Russian Federation). The capital must be contributed within four months of the registration. If the authorised capital comprises property or property rights, then an independent appraiser's report regarding such assets is required.

→ Document confirming payment of stamp duty

All the documents, statements and notifications must be filled in very carefully. If the FTS rejects the registration, the founders must submit all the documents again and repeat the stamp duty payment.



confirms that the owner of the premises will provide a separate location for the legal entity

a tax regime may be chosen before submitting the registration documents package

the minimum amount of authorised capital must be RUB 10,000

registration application template R-11001

decision (minutes)

minutes should also indicate the results of the voting

the agreement must specify the rights and responsibilities of the founders

Step 2: payment of stamp duty

the amount of stamp duty should be divided in equal shares between all founders

The stamp duty for a legal-entity registration amounts to RUB 4,000 (EUR 55). If there are several founders, the amount of stamp duty should be divided in equal shares between all founders, regardless of their participation in the company. After payment of the stamp duty you should obtain a receipt of the payment, which should be attached to the registration documents.

Step 3: submission of documents

There are 3 options for submitting documents for a legal-entity registration:

- submission of documents by hand to the FTS Office
- submission of documents by post to the FTS Office
- submission of documents online using the public and municipal services website

in Moscow documents may only be submitted to FTS Office No. 46

In Moscow, documents may only be submitted to FTS Office No. 46. In other regions, documents must be submitted to the competent FTS Office for the company's legal address. Registration by the state is carried out within 5 working days of the submission date. The certificate of incorporation and

other documents may be uplifted from the FTS Office or received in electronic form by email.

Step 4: company stamp

After receiving the company registration documents, a company stamp should be made. A company stamp can be made by any commercial company providing such services.

company stamp should be made

Step 5: opening of bank account

After receiving a company stamp the founder / founders should open a bank account at any Russian bank, at the discretion of the founder / founders.

the founders should open a bank account at any Russian bank

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Have you read?**Permanent establishment risk in Central and Eastern Europe**

The first edition of our regional newsletter, the 2018 spring issue of WTS CEE Tax Bridge focused on the latest developments in permanent establishments in 10 countries of the Central and Eastern Europe Region. It summarized the regulations in Austria, Belarus, the Czech Republic, Hungary, Poland, Russia, Serbia, Slovakia, Slovenia and in Ukraine.

If you are interested in the publication, please send us an email to the esther.lausek@wtsklient.hu email address!



Srećko Čosović
Head of Financial
Consulting

Main legal forms for companies and main activities in establishing a d.o.o.

Author: **Srećko Čosović**

There are four legal forms for companies in Serbia:

- general partnership (o.d.)
- limited partnership (k.d.)
- limited liability company (d.o.o.)
- joint-stock company (a.d.)

A general partnership (o.d.) is a company with two or more partners bearing unlimited joint and several liability for the company's obligations with all their assets.

A limited partnership (k.d.) is a company with a minimum of two members, at least one of which bears unlimited joint and several liability for the company's obligations (general partner), while at least one other bears limited liability up to the amount of their outstanding contribution (limited partner).

A limited liability company (d.o.o.) is a company in which one or more company members hold equity interests in the company's share capital; the company members are not liable for the company's obligations apart from certain special cases defined by the Act on Business Entities.

A joint-stock company (a.d.) is a company whose share capital is divided into shares held by one or more shareholders who are not liable for the company's obligations, except in special circumstances, as defined by the Act on Business Entities.

In the following paragraphs we will discuss the main activities needed to establish a limited liability company in Serbia because it is the most common legal form in Serbia given the limited liability of its founders and the low capital requirement (minimum basic capital is RSD 100, i.e. less than EUR 1).

How to establish a limited liability company (d.o.o.) in Serbia?

Main activities in establishing a d.o.o.:

- Preparing documentation, such as incorporation deed, signature form (OP form), etc. All foundation acts must be certified by a notary. The owners, or legal representatives of the owners if a legal entity is a founder of the Serbian company, must present themselves at the notary office with their passport/Serbian ID card, or they can issue a power of attorney. By filling in one of the documents, which are subsequently submitted to the Serbian agency of business registers (APR), the founders

choose whether they will register the company for VAT: if they believe they will not generate turnover of more than RSD 8,000,000 (roughly EUR 60,000) in the following 12 months, they are not obliged to register for VAT. Documents can be prepared and certified in 1-2 days.

- Submitting documentation to the Serbian agency of business registers (APR): if the APR approves the registration it will publish the foundation decision in 5 working days, stating the registration number and tax number (PIB).

- Opening bank account: it takes approximately 10 days from establishing the company to open a bank account and set up the necessary software.

- Tax registration: the newly founded company registers on the online tax portal and files a corporate income tax return to calculate monthly corporate income tax prepayments. A tax return is filed 15 days from the date of establishment.

All things considered it takes less than a month to establish a limited liability company in Serbia.

Along with the process described above the company is obliged to create a stamp (after establishment this is necessary for opening a bank account). Also, the company's legal representatives must obtain electronic signatures to sign the financial statements.

The company must have a registered office as well as an in-house/external accountant. The tax authority can demand contracts and similar documents in order to prove that the company has an office at its registered address and that it has designated an accountant.

The costs for establishing a company can vary, but the estimated minimum is EUR 1,000.



WTS in Serbia

*submitting
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(APR)*

opening bank account

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Lukáš Mokoš
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Structuring and taxation of businesses

Author: **Lukáš Mokoš**

Slovakia is one of the youngest sovereign countries in the world with a strategic location in the middle of Europe. Its history started after a peaceful separation from Czechoslovakia in 1993. On 1 May 2004, Slovakia joined the EU, and in July 2008 gained approval from the Council of the EU to join the European Monetary Union on 1 January 2009. Many reforms have been realised in recent years. Slovakia was one of the biggest reformers in the world, introducing reforms in almost all areas such as tax, pensions, welfare, labour market, public finances and healthcare.

Corporate law

The Slovak Commercial Code and other specific laws provide a variety of options for establishing/structuring business in Slovakia. All business entities must be registered in the Slovak Commercial Register, the legal forms available are as follows:

- enterprise or branch office of a foreign company
- joint-stock company
- limited liability company
- limited partnership
- general partnership
- cooperative
- simple joint-stock company

Generally, the registration of legal entities requires a variety of documents. Among others, the most important are a deed of foundation, the company's Articles of Association, and a trade licence issued by the local trade authority. Minimum capital requirements have to be fulfilled.

Special approval, rather than a trade licence, is required in areas such as banking, finance, defence and other areas determined by Slovak law. Both foreigners and Slovak citizens may head up local entities, but foreigners are required to hold a temporary residence permit before they can be registered as statutory representatives in the Commercial Register. This does not apply to citizens of EU and OECD member states.

Tax system

Generally speaking the Slovak tax system comprises direct and indirect taxes. Direct taxes are income taxes (corporate and personal) and local taxes. Indirect taxes are value added tax and excise duties (on mineral oils, beer, tobacco products, wines, spirits, electricity, coal and natural gas).

Corporate income tax – PE focus

Corporate income tax is levied on the worldwide income of residents and on the Slovak source income of non-residents. Under Slovak legislation, a permanent establishment means a permanent place or facility through which non-residents fully or partially carry out their activities in the territory of the Slovak Republic. In particular, a place from which the business is organised, branch, office, workshop, sales place, technical facility or the place of research and extraction of natural resources. The place or facility shall be treated as permanent if it is used systematically and repeatedly for the activities.

Building sites, constructions and assembly sites are deemed to be permanent establishments only if the duration of the activities exceeds 183 days. The term "permanent establishment" also includes a person acting on behalf of an entity that has its registered office abroad or is a resident abroad and who negotiates or enters into agreements on behalf of such an entity on a continuous or repeated basis under a power of attorney. Providing services in Slovakia for more than 183 days in a 12-month period also leads to the creation of a permanent establishment under local legislation.

Results of BEPS Actions

The corporate income tax rate is 21%, except for withholding tax which is 19% or 35%. The largest amendment of the Income Tax Act took effect from 1 January 2018. Many regulations were implemented as a result of BEPS Actions. One of the major pillars of this amendment is business combinations, in which only fair value is applicable in most situations (basically non-taxation is unachievable). Among others, tax exemptions in share deals for legal entities, rules for exit taxation and permanent establishment rules for "digital platforms" were implemented.



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Sara Mauser
Legal Associate

Limited liability company under Slovenian law

Author: **Sara Mauser**

Slovenian legislation recognises several types of company:

- joint-stock company
- limited liability company
- unlimited liability company
- limited partnership
- Societas Europae

The limited liability company (LLC) is the most common and is used for most types of trading business.

Advantages and conditions of an LLC in Slovenia

An LLC may be formed by one or more domestic or foreign, natural or legal persons, who become the shareholders upon the formation of the company.

an LLC may have a maximum of 50 shareholders

An LLC may have a maximum of 50 shareholders and one or more representatives (directors), who manage the operations and represent the company.

The main advantages of an LLC, which most often attract investors, are the limitation of liabilities and the relatively low amount of share capital required. An LLC is only liable for its obligations with its own assets (the personal liability of shareholders is excluded). The minimum share capital is EUR 7,500 and a subscribed contribution may be provided in cash or as a non-cash contribution or non-cash acquisition by shareholders. A non-cash contribution may be provided in the form of movable or immovable property, rights, an enterprise or part of an enterprise. The value of contributions may differ but shall be no less than EUR 50.

minimum share capital is EUR 7,500

documentation depends on the number of shareholders

The documentation required for establishing an LLC depends on the number of shareholders and whether the founder is present when setting up the LLC. In some cases, certain documents must be signed in front of a notary public or even concluded in the form of a notarial deed (for example the shareholders agreement in the case of two or more shareholders). So if such documents

are signed abroad, they must be concluded in a form that corresponds to Slovene requirements – this usually means that the documents must be concluded as notarial deeds or, if applicable, they must include an apostille and be translated.

Setting up an LLC in 6 steps

The key steps in the process of establishing an LLC are outlined below:

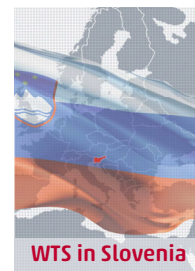
- Choosing the name of an LLC (the availability of the LLC name must be checked and, if required, reserved with the Court Registry). To include the word Slovenia or its adjectives in the LLC's name, permission from the Government of the Republic of Slovenia must be given
- Choosing an LLC's business activities from the classification of company activities and entering them into the articles of association or the shareholders agreement (if the LLC is not a single-member company)
- Obtaining a Slovenian Tax Identification Number for a foreign shareholder and /or for foreign representatives
- Preparation of documents required for establishment: articles of association or shareholders agreement (if the LLC is not a single-member company), resolution on business address, resolution on appointment of representatives, declaration by representatives agreeing with appointment and declaring there are no circumstances prohibiting the appointment under Slovenian legislation, request for issuance of book of resolutions in a hard copy or as an electronic book (only where LLC is a single-member company), other documents needed in the process, for example power of attorneys, if any of the actions are to be performed by an attorney (e.g. obtaining tax ID numbers, opening a temporary bank account), a copy of the representatives' personal documents with their permanent address and an extract from the Business Register for the founding entity if the shareholder is a foreign entity

choosing the name of an LLC

choosing an LLC's business activities

obtaining a Slovenian Tax Identification Number

preparation of documents required for establishment



opening of temporary bank account

- Opening of temporary bank account (account used to pay the share capital) and obtaining a certificate for such payment

registration of an LLC

- Registration of an LLC with the Slovenian Business Register upon a submitted application for entry into the Court Register (together with all the required documentation). LLC registrations are most commonly performed by a notary public or by officials at "Vem" spots, which are part of a nationally financed support system for business entities and entrepreneurs.

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WTS Global has been awarded as "European Indirect Tax Firm of the Year" by International Tax Review at the European Tax Awards in 2017 and 2018 as well. The award acknowledges the excellent work of the well-integrated Indirect tax practice headed by Jürgen Scholz, partner of WTS in

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Vakur Balci
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Documents and deposits for establishing a corporation

Author: **Vakur Balci**

Turkey's FDI (foreign direct investment) Law is based on the principle of equal treatment, allowing international investors to have the same rights and liabilities as local investors.

The conditions for setting up a business and transferring shares are the same as those applied for local investors. International investors can establish any form of company set out in the Turkish Commercial Code (TCC), which offers a corporate governance approach that meets international standards, fosters private equity and public offering activities, creates transparency in managing operations, and aligns the Turkish business environment with EU legislation as well as with the EU accession process.

According to the TCC, a corporation can be established in three ways:

- joint stock company (JSC)
- limited liability company (LLC)
- cooperative company

A JSC and an LLC are the most common types chosen, both in the global economy and in Turkey. Whilst some financial thresholds (i.e. minimum capital) and bodies differ from each other, the procedures to be followed for establishing a JSC or an LLC are the same. The minimum capital requirement is TRY 10,000 (roughly EUR 1,800) for an LLC, while TRY 50,000 (roughly EUR 9,000) is required as the minimum capital for a JSC.

When establishing a corporation in Turkey, one needs to adhere to the following rules and regulations.

Submit memorandum and articles of association online at MERSIS

Pursuant to the Trade Registry Regulation, trade registration transactions must be completed through MERSIS (Central Registry Record System).

MERSIS is a central information system for carrying out commercial registry processes and storing commercial registry data electronically on a regular basis. A unique number is given to legal entities that are actively involved in business. New companies can be

established online on MERSIS, and already-established companies can operate through the system after transferring their records.

Execute and notarise company documents

The following documents are required for a registry application at the relevant Trade Registry Office:

- notarised articles of association (four copies, one original)
- if the foreign partner is a natural person, the required documents are: two copies of passports for each natural person shareholder
- if the foreign partner is a legal entity, the required documents are:
 - » Certificate of Activity of the legal entity designated as the shareholder, issued by the relevant authority in the investor's country. The certificate must include information regarding the current status and signatories of the company
 - » resolution(s) of competent corporate body of legal-entity shareholder(s) authorising the establishment; if there is any specific condition for the prospective company to be incorporated (name of company, field of activity, etc.) this must be stated in the resolution for the sake of clarity

- » if a legal entity is to be appointed as a member of the board of directors at the prospective company, the name of the real person who will act on behalf of the legal entity and the legal-entity board member's appointment must be stated within the same or with a separate resolution for the sake of clarity

- » if the process is going to be followed by a proxy, a notarised copy of a power of attorney authorising the attorneys who will follow up the application at the competent Trade Registry Office and other official authorities in order to proceed with the application (where applicable)



articles of association

copies of passports

Certificate of Activity

resolution(s) of competent corporate body of legal-entity shareholder(s)

name of the real person who will act on behalf of the legal entity

notarised copy of a power of attorney

minimum capital requirement is TRY 10,000 for an LLC

trade registration transactions must be completed through MERSIS

central information system for carrying out commercial registry processes

<i>signature declarations</i>	→ notarised signature declarations (two copies)	Deposit at least 25% of the start-up capital in a bank and obtain proof thereof	
<i>identity cards</i>	→ notarised identity cards of the company managers (one copy) It should be noted that except the first item above, all the necessary documents that will be issued and executed outside Turkey must be notarised and apostilled or alternatively ratified by the Turkish consulate where they are issued. The original documents executed, notarised and apostilled must be officially translated and notarised by a Turkish notary.	25% of the share capital must be paid prior to the new company registration. The remaining 75% of the subscribed share capital must be paid within two years. Alternatively, the capital may be paid fully prior to registration.	<i>25% of the share capital must be paid prior to the new company registration</i>
<i>officially translated and notarised</i>		Apply for registration at the Trade Registry Office After gathering the following documents, the founders may apply for registration:	
	Obtain potential tax identity number A potential tax identity number for the company, non-Turkish shareholders and non-Turkish board members of the company must be obtained from the relevant tax office. This potential tax identity number is necessary for opening a bank account in order to deposit the capital of the future company. The documents required by the tax office are as follows:	→ application requesting registration	<i>application</i>
<i>potential tax identity number is necessary for opening a bank account</i>		→ four copies of incorporation notification form	<i>incorporation notification form</i>
		→ four copies of notarised articles of association (one original)	<i>articles of association</i>
		→ bank deposit receipt with respect to payment made to bank account of Competition Authority (0.04% of company's share capital)	<i>bank deposit receipt</i>
<i>application</i>	→ application requesting registration	→ for each person authorised to represent the founders of the limited liability company, two copies of their signature declarations	<i>signature declarations</i>
<i>articles of association</i>	→ notarised articles of association (one original)	→ founders' declaration (one original)	<i>founders' declaration</i>
<i>tenancy contract</i>	→ copy of tenancy contract showing registered address for the company	→ Chamber of Commerce registration form (two different forms for two different shareholder types: real person shareholder or legal entity shareholder)	<i>Chamber of Commerce registration form</i>
<i>power of attorney</i>	→ if the process is going to be followed by a proxy, a power of attorney must be issued specifically showing the authority to act on behalf of the company at the tax authority in order to obtain a tax identity number or potential tax identity number	→ written statement of non-shareholder members of board of directors that acknowledge this duty	<i>statement</i>
	Deposit percentage of capital to the account of the Competition Authority Original of bank receipt (from Halk Bank, Ankara corporate branch) indicating that 0.04% of the capital has been deposited into the account of the Competition Authority at the Central Bank of the Republic of Turkey (CBRT) or a public bank, or the electronic funds transfer (EFT) receipt signed and stamped "collected" (account no: 80000011 – IBAN no: TR40 0001 2009 4520 0080 0000 11), which shows an amount equal to 0.04% of the company's capital has been paid to the account of the Competition Authority.	→ bank certificate of minimum capital deposit paid (at least 25% of subscribed capital). If there is any capital contributed in kind: » expert report regarding in-kind capital contribution » statement of relevant registry indicating there is no limitation on such in-kind capital contribution » Document indicating annotations to relevant registries regarding the in-kind capital contribution	<i>bank certificate</i>
<i>0.04% of the capital has been deposited</i>			

continued on the next page

- » Written agreements between founders, other persons, and the founding company regarding the foundation of the company

rate application has to be made following the registration of the company at the Social Security Institution.

*Trade Registry Office
notifies the
relevant tax office
and the Social
Security Institution*

Following the completion of the registration phase before the Trade Registry Office, the Trade Registry Office notifies the relevant tax office and the Social Security Institution ex-officio regarding the incorporation of the company. The Trade Registry Office arranges for an announcement in the Commercial Registry Gazette within approximately 10 days of the company registration. A tax registration certificate must be obtained from the local tax office soon after the Trade Registry Office notifies the local tax office.

social security number

A social security number for the company must be obtained from the relevant Social Security Institution. For employees, a sepa-

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Maxim Oleksiyuk
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New Law on Companies

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The Ukrainian Law on Limited and Subsidiary Liability Companies (Companies Law), in effect since 17 June 2018, gives rise to new opportunities as well as new risks. Here are some of the most important new legal features that foreign companies should consider when entering the Ukrainian market.

Corporate agreements

LLC shareholders can conclude a corporate agreement (either when establishing the LLC or later), which can regulate the manner for exercising shareholder's rights and discharging obligations. The corporate agreement is confidential by default, and it is not subject to mandatory registration or notarisation.

We would pay special attention to the risk stemming from Art. 7 (6) of the Companies Law, according to which an agreement entered into by a party to a corporate agreement that violates such corporate agreement is null and void if the other party under the agreement knew or should have known about such violation. This provision increases the vulnerability of the company's creditors.

Irrevocable powers of attorney

Irrevocable powers of attorney were introduced, which cannot be cancelled without the consent of the authorised person, or can be cancelled only in the cases provided for therein. Such a power of attorney may be issued for fulfilling or ensuring the fulfilment of the obligations of the parties to the corporate agreement.

Corporate agreements together with irrevocable powers of attorney enable nominal shareholders in an LLC. While a nominal shareholder is registered and disclosed, the real beneficiary may be hidden and control the company as an authorised person under an irrevocable power of attorney.

However, unfair use of these mechanisms creates a risk of seizing control in affiliated companies via irrevocable powers of attorney, which would be extremely difficult to cancel, even after the removal of the director who issued such power of attorney. Consequently, limitations on a director of a holding company to issue an irrevocable power of attorney and/or conclude a corporate agreement are strongly recommended.

General Meeting

The quorum requirement (more than 60% of all votes) for a general meeting has been cancelled. However, most decisions should be

approved by more than 50% of the votes of all shareholders of the company (and not those present, as before). Furthermore, some decisions of the general meeting can only be approved by unanimous consent of all shareholders. It should be noted that general meetings may now be held by video-conference. Also, the place of a general meeting may be outside the territory of Ukraine.

Supervisory Board

For the first time ever, the Companies Law provides a possibility to establish a supervisory board for an LLC, which controls and regulates the activities of the company's executive body. The supervisory board may be vested with some powers of the general meeting, excluding questions falling under the GM's exclusive competence.

Significant transactions

The Companies Law envisages that any significant transaction exceeding 50% of the net assets of the company by the end of the previous quarter must be approved by the company's general meeting. Otherwise, such significant transaction does not create any binding obligations for the company (i.e. it is null and void).

For those purchasing under such "null and void" agreements there is a risk that the tax authorities will not recognise respective VAT credits as well as deductible expenses.

The rules on significant transactions are extremely inconvenient for companies with small net assets. In some cases, instead of an LLC it is advisable to choose the form of a private enterprise (that can be established by one legal entity, or by one or several individuals), which is not subjected to restrictions on significant transactions.



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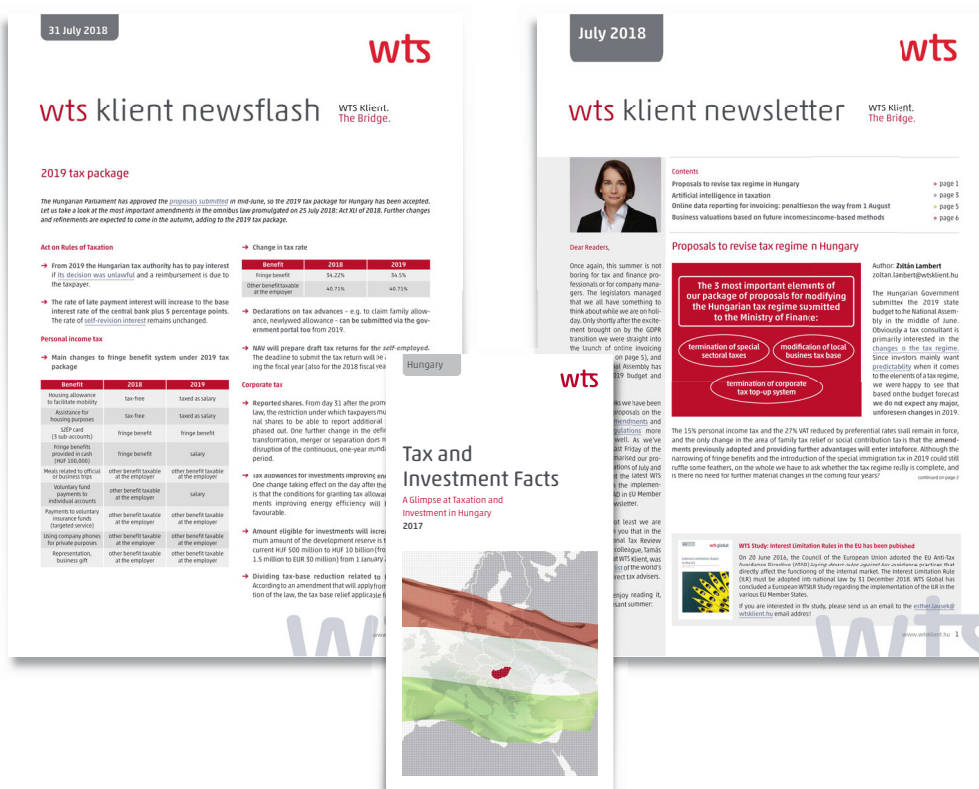
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