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v Českých Budějovicích
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Business Law

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1 BUSINESS LAW

Business law is a private law domain governing legal relationships between entrepreneurs related to their business activity. Although it is part of civil law, due to its importance, business law is afforded a special status and taught separately.

The system of business law generally consists of a general and a special part. The general part regulates, for example, the legal status of entrepreneurs, the various forms of legal acts taken by entrepreneurs, the corporate name and naming rights and issues related to the Commercial Register. The special part regulates the:

- **law of corporations** (corporate forms of entrepreneurship and the organisation thereof)
- **law of obligations** (rules applicable to the formation of contracts, specific types of contracts, consequences of breaching contractual obligations)
- **competition law** (general competition and unfair competition law)
- **business dispute resolution**
- **insolvency law**
- **industrial and other intellectual property rights**
- **law of securities**
- **capital market law**

The general Czech Business Law I course deals with the general part and selected aspects of the law of corporations and the law of obligations. The list of the various types of business that may be pursued in the Czech Republic would be incomplete without the (law of) licensed trades. However, Czech legal science subsumes the law of licensed trades under administrative law, although issues related to licensed trades are also dealt with under business law provisions as the underlying source of trade licensing law regulates public-law, rather than private-law relationships.

1.1 Entrepreneur

1.1.1 The Concept and Status of an Entrepreneur

Traditionally, business law subjects were referred to as merchants or traders, i.e. they were professionals in a particular domain, and as such they were subject to stricter requirements compared to other private law subjects. The new Civil Code, which has been in force in the Czech Republic since 2014, abandoned the concept of entrepreneur as a person holding an appropriate public-law licence, extending the notion in order to include in it all persons who actually pursue business, regardless of their age and ability.

An entrepreneur is defined using the following characteristic features of entrepreneurship:

- carries out a gainful activity – the activity is carried out for a consideration and is supposed to be a source of revenue
- carries out the activity independently – on their own, which excludes, for example, dependent work
- on their own account and responsibility – the person bears the risks inherent in the activity they pursue
- in the form of a trade or in a similar manner
- with the intention to do so consistently – an intention to carry out the activity repeatedly is foreseen

- for profit – i.e., a positive economic result

The person only acts as an entrepreneur in such relationships that are related to their entrepreneurial activity. In relationships not related to their entrepreneurial activity, they act as ordinary people. In this, it is immaterial whether business is the person's primary or secondary activity.

1.2 Entrepreneur's Name/Corporate Name

An entrepreneur's name is a designation under which the entrepreneur acts in legal relationships. An entrepreneur who is not registered in the Commercial Register acts under their own name. For natural entities, it is their name and surname, or any other name. For legal entities not registered in the Commercial Register, such as associations, foundations or institutes, this concerns their name which must be unique and must not be misleading.

For entrepreneurs registered in the Commercial Register, an entrepreneur's name is referred to as the corporate name. In legal relationships, an entrepreneur must refer to themselves using their corporate name. The corporate name even constitutes an intangible asset, has its own value and is the subject of property rights.

A distinction is made between objective corporate name law, which consists of rules applicable to the creation of corporate names, and a subjective right to a corporate name, which consists in the exclusive right to use the corporate name in legal relationships and to seek its protection. The subjective right to the corporate name implies an obligation of an entrepreneur to act in legal transactions under the corporate name as opposed to their own name if their own name is different, which can actually happen in the practice of natural persons.

There are three types of corporate names, even though some names may combine them:

- a **personal** corporate name refers to a situation where the corporate name of a natural person is that person's surname, or for legal entities, the name of a member, founder or a person who elaborates on the concept. Therefore, there must be a specific connection between the legal person and the name of that person or the person or their legal representative must agree to it.
- **a factual corporate name** is based on a designation of the object or activity pursued by the company (such as a bank, an insurance company).
- a **fanciful** corporate name does not originate in the name of the entrepreneur, member or partner, nor is it derived from the object of their activity

By contrast to the previous regulation, a corporate name can be acquired from a legal predecessor, as a separate industrial property item without the concurrent transfer of an enterprise or a part thereof. If an entrepreneur dies, the corporate name is subject to inheritance. If the corporate name is acquired by a legal successor, it must be added to by an adequate apposition, such as "successor", "heir". If a legal entity passes to a sole legal successor (e.g., in the event of its full division), with their consent, in which case the predecessor's consent is not required. If the company takes a different legal form, the apposition must be changed.

Protection of an entrepreneur's name denotes a set of legal instruments available to an entrepreneur to prevent other persons' unauthorised interference with the rights to their corporate name. The protection may be relative, in which case it is solely directed against the person who, in a business relation with the entrepreneur concerned, breaches the good morals of competition in relation to the entrepreneur, for instance by engaging in misleading or inadmissible comparative advertising. Relative protection also applies

to additions of entrepreneurs not registered in the Commercial Register. The following remedies are available in response to a breach of fair competition:

- a stop notice, whereby the offender is required to refrain from further engaging in the unlawful conduct
- a removal notice, whereby the offender is required to remove a defective state
- adequate satisfaction, compensation for damage and restitution of unjust enrichment

Absolute protection means protection against any, even if imminent, unlawful interference and it may be invoked against anyone, using the same claims as was the case for relative protection.

1.3 Entrepreneur's Registered Office

An entrepreneur's registered office is the second most important identifier after the corporate name. Registered office denotes the space where an entrepreneur actually pursues their business or where their business is administered (the actual registered office), or any space designated by an entrepreneur as their registered office, even if it is not their actual registered office (formal, statutory registered office).

An entrepreneur/natural person who is not registered in the Commercial Register has their registered office at the address of their primary enterprise. In the absence of such an enterprise, an entrepreneur's registered office is at their residential address.

A foreign person may migrate their registered office into the Czech Republic, but they must choose a legal form of a Czech legal entity and submit to Czech law.

1.4 Business Enterprise

A business enterprise is an organised set of assets and liabilities created by an entrepreneur which, based on their will, are used to pursue their activities. In general, an entrepreneur may have multiple business enterprises and operate under a single corporate name (if registered in the Commercial Register) or in their own name.

An enterprise is presumed to comprise everything that is typically used for its operation. It is a set of individual items, movable and immovable, tangible and intangible. Clientèle tied to an enterprise or information comprising a business secret, etc., play a major role in this respect. Unlike an undertaking, an enterprise includes all assets, i.e. business property, as well as all liabilities incurred in connection with the business.

From the viewpoint of the Civil Code, an enterprise is regarded as a collective thing, if only in a special sense of that word. This peculiarity consists in its functional coherence and its ties to an owner, who brings the individual components together through their business plans. This means that it will still be the same enterprise, even if its component parts change. All its component parts that serve its purpose automatically become parts of an enterprise and the incorporation of any of them will not require an express decision.

An enterprise is not a subject but rather an object of legal relations that therefore constitutes a marketable thing. It can be bought, exchanged, donated, contributed towards the registered capital of a business corporation, pledged or leased. When disposing of an enterprise, any contracts or receivables that are part of the enterprise are automatically transferred and acquired, respectively, and the debts incurred in connection with the creation of an enterprise and its establishments pass to the successor. In the latter case, however, this involves an interference with the creditors' situation, which the law also compensates for to a certain

extent.[1] An enterprise may also pass to a new owner through inheritance (death of the enterprise owner) or following a transformation where the original legal entity winds up with a legal successor.

An enterprise is an integral unit in terms of its function, organisation, and accounting, but an entrepreneur can divide it into parts that are more or less organisationally autonomous. The parts of an enterprise expressly named by the law are **a branch, a registered branch and an establishment**.

A branch is part of an enterprise which is economically and functionally independent and which the entrepreneur has decided is a branch. A registered branch is a branch that is registered in the Commercial Register. The head of a registered branch may represent the entrepreneur in all matters relating to the registered branch. An establishment is a space where an entrepreneur pursues their business activity. The address of an establishment must not be confused with the registered office of the entrepreneur.

The legal regime applicable to separate organisational units of an enterprise is the same as that applicable to an enterprise and therefore automatic passage of contracts and debts that are part of the enterprise may occur.

Such separate organisational units are obligatorily registered in the commercial register and therefore may constitute branches. Typically, however, they will be a registered branch. What is important for a separate organisational unit is that it keeps its own (separate) accounts.

1.5 Family Enterprise

A family enterprise is considered to be an enterprise in which the spouses, or at least one of the spouses with their relatives up to the third degree or persons in an in-law relationship with the spouses up to the second degree work together and which is owned by one of these persons. Family enterprise law is regulated under family law. Family enterprise law will only apply where the rights and obligations of the participating family members are not governed by a memorandum of association (or other constitutive instrument) and where the family members are factually involved in the operations. In the case of spouses, the rules on matrimonial property law shall prevail. There is a principle in family law according to which family members share in the results of the enterprise's operations in proportion to their contribution and the use of revenues generated by the family enterprise and other issues are decided by the participating family members by a majority vote. The participation can only be transferred with the consent of all members, and only to a group of family members stipulated by law; in addition, the individual family members already participating have a pre-emptive right.

1.6 Concern Enterprise

Pursuant to the Business Corporations Act, enterprises of the dependant entity and of the dominant entity are concern enterprises. The dependant entity is the owner of the dependant enterprise and they must strictly be a business corporation. The dominant entity, i.e. the owner of the dominant concern enterprise, may be

[1] *For example, the special information obligations pertaining to parties to a contract; through the institute of statutory liability for debts that have passed to the other contracting party, or, for example, with the creditor's right to demand that the court rule that a transaction involving the enterprise is ineffective against them.*

both a business corporation or a different legal entity or an entrepreneurial natural person. A concern enterprise has the same general characteristics as a business enterprise. An ordinary enterprise assumes a new dimension with its incorporation into a single management framework. If the dominant entity is an entrepreneur, their enterprise (not only the dependent one) will be a concern enterprise and will therefore form a single functional unit = a concern enterprise.

1.7 Undertaking in the Sense of European Law

"Undertaking" is an EU law concept and has been dropped by the new Civil Code and replaced by the "business enterprise" concept. At the same time, EU law does not provide any definition of "undertaking" on account of its difficulty with regard to the differences in various legal systems of the Member States. Consequently, it leaves it to the case law of the European Court of Justice and to the European Commission to define the term, which provides for a more flexible handling of the term and a fluid definition that can be altered and modified over time. It then follows from such considerations that EU law prefers to look at the concept of undertaking from the point of view of its function in the economic sense of the word.

1.8 Business Secret and Know-how

Pursuant to the Civil Code, a business secret belongs to its owner, rather than an "entrepreneur".

There are six legal requirements that must be met at the same time for a business secret to exist. A business secret must be:

- related to the enterprise (i.e., be relevant to the business)
- competitively significant
- valuable
- identifiable (i.e., it must be possible to identify it, for example, in documents)
- confidential (i.e., not normally available in the relevant business community)
- its classification must be adequately secured by the owner in their interest (for example, in a safe)

Such confidential information may cover all business aspects that are material to the owner.

In addition, the Civil Code defines as a special unfair competition matter a breach of a business secret that may only be used in a business relation. On the other hand, this protection may also be invoked by a licensee, not only the owner. Breach of a business secret consists in an actor illegitimately disclosing a business secret to another person or using a business secret for their own benefit or for the benefit of any third party.

Know-how denotes non-patented experience or other knowledge that is kept confidential in a private interest. It is often used synonymously with business secret, and it should meet 3 requirements: be confidential, essential to the operation of an enterprise, and identifiable. Its scope is therefore wider than that of a business secret. Know-how can only be protected under the general clause of unfair competition or under possession of information.

1.9 List of Terms with Czech Translation:

Business Law	Obchodní parvo
Law of corporations	Právo obchodních korporací

Law of obligations	Závazkové parvo
Competition law	Soutěžní parvo
Business dispute resolution	Řešení obchodních sporů
Insolvency law	Insolvenční parvo
Industrial and other intellectual property rights	Průmyslová a jiná práva duševního vlastnictví
Law of securities	Právo cenný papírů
Capital market law	Právo kapitálového trhu
Entrepreneur	Podnikatel
Entrepreneur's name	Jméno podnikatele
Corporate name	Jméno korporace
Entrepreneur's registered office	Sídlo podnikatele
Business enterprise	Obchodní závod
Branch	Pobočka
Registered branch	Odštěpný závod
Establishment (premises, workplace)	Provozovna
Concern enterprises	Koncern
Undertaking	Podnik
Business secret	Obchodní tajemství
Know-how	Know-how

1.10 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 90/2012 Coll., Business Corporations Act

Act No. 455/1991 Coll., Trade Licensing Act

2 LEGAL FORMS OF DOING BUSINESS

The most common forms of pursuing business are trade business and business through so-called business corporations.

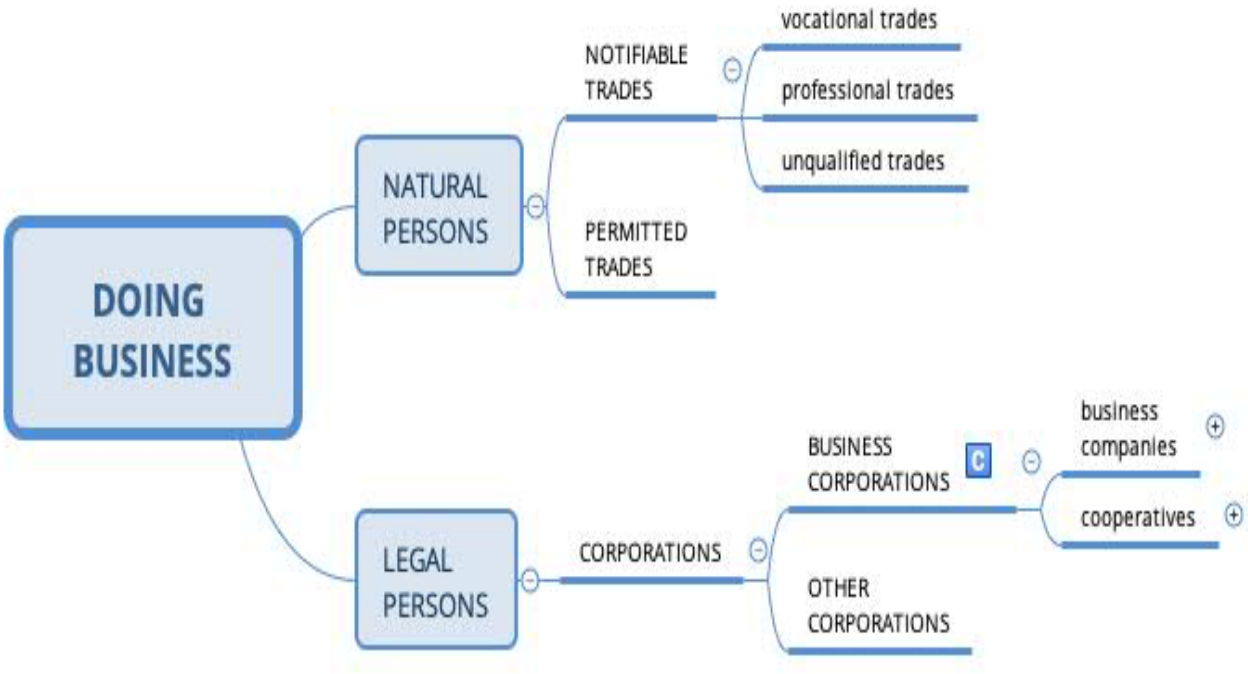

Diagram 1 Doing business

2.1 Trade Business

As mentioned in the introduction, the general Czech Business Law I course deals with the general parts and selected aspects of the law of corporations and the law of obligations. The list of the various types of business that may be pursued in the Czech Republic would be incomplete without the (law of) licensed trades. However, Czech legal science subsumes the law of licensed trades under administrative law, although issues related to licensed trades are also dealt with under business law provisions as the underlying source of trade licensing law regulates public-law, rather than private-law relationships.

Trade business involves manufacture, trade and service provision. Trade denotes a continuous activity carried out independently, in the entrepreneur's own name, at their own responsibility, for the purpose of generating a profit and under the conditions set forth under the Trade Licensing Act. A trade can be operated only on the basis of a trade licence.

The law defines the types of trades (**permitted trades, notifiable trades** - vocational, professional and unqualified); says what trade is and what it is not and stipulates the conditions for carrying out trades (professional competence); defines the scope of a trade licence and regulates the essentials associated with the issuance of trade licences/trade permit certificates and the central register thereof. The annex to the Act includes Lists of Trade Types.

2.1.1 Types of Trades

Notifiable trades are established and operated following a notification. These trades are certified by an extract from the Trade Register. They are divided into vocational trades, professional trades and unqualified trades.

- The conditions for obtaining a licence for, and carrying out, a **vocational trade** are submission of a certificate of apprenticeship or passing a school-leaving examination in a related field of education and six-year experience in the field. Some examples of this trade include Catering or Plumbing and Heating Engineering.
- The condition for obtaining a licence for, and carrying out, a **professional trade** is submission of proof of professional competence set out by the Annex to the Trade Licensing Act. Some examples here are Tax Consultancy, Bookkeeping or Running a Driving School.
- An **unqualified trade** is a trade referred to as Manufacture, Trade and Services not listed under Annexes 1 to 3 of the Trade Licensing Act, for which the entrepreneur does not need to demonstrate any professional competence. The trade includes 80 fields of activity, from which an entrepreneur chooses those objects they wish to pursue upon registration.

Permitted trades are established and carried out on the basis of an administrative decision. These trades are also certified by an extract from the Trade Register. In addition to meeting the professional competence requirement, obtaining a licence in this trade is also contingent upon obtaining a favourable position of the competent public administration body. An example of is Operating a Travel Agency.

2.1.2 Conditions for Carrying Out a Permitted Trade

A natural person wishing to obtain a trade license must meet general and, in some cases, also special conditions. The general conditions are:

- full legal capacity, which may be replaced by judicial approval of the consent of the minor's legal guardian to the independent operation of business activities
- integrity – for the purposes of the Trade Licensing Act a person does not possess integrity if they have been convicted of a culpable offence as long as the offence was committed in connection with a business activity or in connection with the object of a business activity which the person applies for or which they notify, unless the person is regarded as if they had not been convicted

The special conditions involve professional and other competence where required by the Trade Licensing Act or special legal regulations.

2.2 Business Corporations

A business corporation is a type of a legal person whose principal objective and purpose is business; it is an umbrella term for companies and cooperatives. Corporations as such are regulated by the Business Corporations Act. The Civil Code should also be mentioned here, setting out general rules regulating **legal persons**, followed by rules regulating, for example, their legal personality, establishment and incorporation, registered office, purpose and organisational structure, as well as general rules regulating entrepreneurs and **corporations** as such.

A legal person is defined as "an organised body whose legal personality is established or recognised by the

law".

A corporation is defined as "a legal person established by a community of persons". As a rule, the community should consist of at least two members, although corporations formed by a sole member are also permitted.

The required law can therefore be divided into several levels, depending on its generality, and the principle according to which a special law takes precedence over a general law applies. The provisions of the Civil Code on legal persons are regarded as the most general regulation. They are followed by general rules regulating corporations, also as part of the Civil Code, culminating in the rules governing corporations and the types thereof in the Corporations Act.

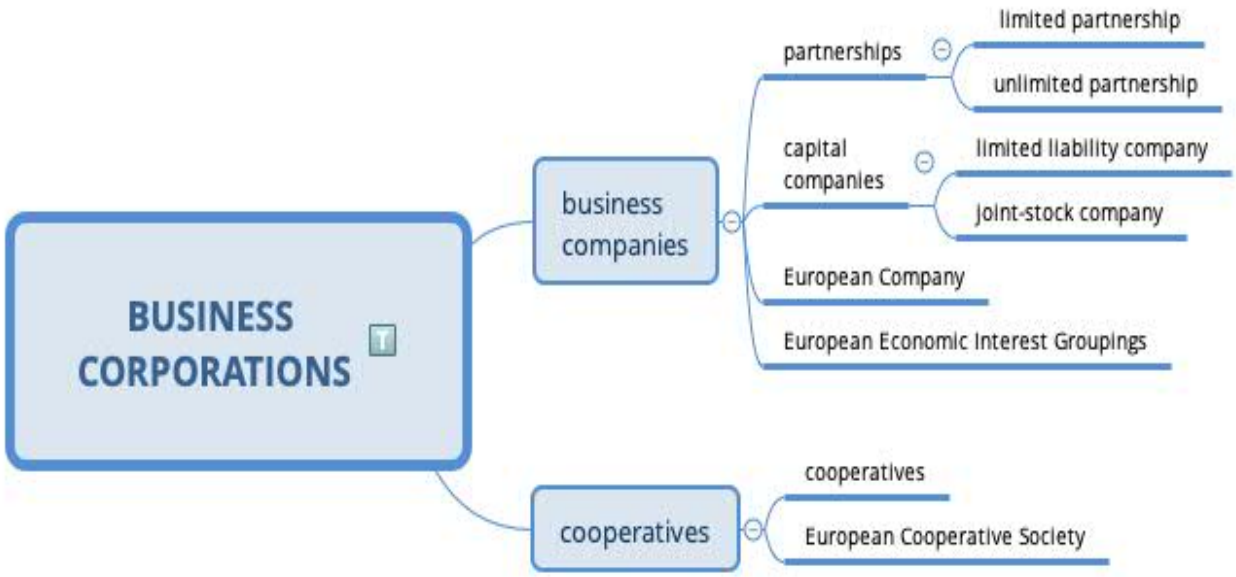

Diagram 2 Business Corporations

The Corporations Act divides corporations into business companies and cooperatives. Business companies, or companies for short, are then subdivided into partnerships and capital companies, European companies and European economic interest groupings. Both natural and legal persons may be members in business companies. All types of corporations have the status of legal persons, i.e., they have legal subjectivity, or, using the newer term, legal personality. In the contrast with natural person they have no legal capacity therefor they cannot act alone by their own name, but only through a representative.
Partnerships, both unlimited and limited, are characterised by the members' personal involvement in the company. This is reflected in the members' personal involvement in the company's business. Another typical feature of these companies is the unlimited liability of their partners; in limited partnerships, this applies to the general partner.

On the other hand, capital companies, namely limited liability companies and joint-stock companies, are specifically characterised by a contribution obligation of their members. As regards liability, members of a limited liability company are only liable for the company's debts up to the amount of the unfulfilled portion of their contribution obligation while members of a joint stock company are not liable for the company's debts at all.

A **partnership** may be either unlimited or limited.

Partnerships are characterised by the following features:

- No contribution is required to establish a partnership. A partnership may start to pursue business without a registered capital.
- A business share cannot be transferred unless the articles of association are amended.
- The members have joint and several unlimited liability for their debts (with the exception of the limited partner in a limited partnership who is liable up to the amount of the unfulfilled portion of their contribution).
- The members are foreseen to be personally involved in the company's business.
- All companies must be registered in the Commercial Register and are regarded as entrepreneurs. Partnerships can only be established for business purposes.
- Partnerships must be established by at least two members.

Limited liability companies and **joint-stock companies** are **capital companies**.

Capital companies are characterised by the following:

- A minimum registered capital amount is set, and each member has a contribution obligation vis-a-vis the company. The amount of the company's registered capital is entered in the Commercial Register.
- In a capital company, the members may hold several business shares in the same company at the same time.
- Members' business shares can be transferred even without amending the articles of association.
- The members either have no or limited liability for the company's debts.
- The members are not expected to be personally involved in the company's business. The owners are involved in the business operations by electing members of the statutory body and voting at the General Meeting, the supreme body of the company. However, it is relatively common in the Czech Republic, especially for limited liability companies, for the members to manage the company.
- All companies must be registered in the Commercial Register and are regarded as entrepreneurs. However, under the Corporations Act, capital companies may also be established for purposes other than business or the management of their own assets.
- A capital company may be established by a sole founder. Companies may also start having a sole member during their lives as a result of all business shares (shares) concentrating in the hands of a single person. This person then acts as the supreme body.

To cooperatives, the law assigns cooperatives and European cooperative societies. A cooperative is a community of an indefinite number of persons, established for the purpose of mutual support of its members or third parties or, where appropriate, for the purpose of doing business. The differences between cooperatives and commercial companies include, without limitation, the possibility for cooperative members to acquire membership without any changes to the constitutive instrument.

The European Company, European Economic Interest Grouping and European Cooperative Society are governed by the provisions of the Business Corporations Act insofar as the directly applicable European Union legislation governing the European Society, the European Economic Interest Grouping or the European Cooperative Society permits.

2.3 List of Terms with Czech Translation:

Natural persons	Fyzické osoby
Legal persons	Právnické osoby
Trade business	Živnostenské parvo
Notifiable trade	Ohlašovací živnost
Vocational trade (manufacturing trade)	Řemeslná živnost
Professional trade (regulated trade)	Vázaná živnost
Unqualified trade (irregulated trade)	Volná živnost
Permitted trade (licensed trade)	Koncesovaná živnost
Business corporations	Obchodní korporace
Business companies	Obchodní společnosti
Partnerships	Osobní obchodní společnosti
Limited partnership	Komanditní společnost
Unlimited partnership	Veřejná obchodní společnost
Capital companies	Kapitálové společnosti
Limited liability company	Společnost s ručením omezeným
Join-stock company	Akciová společnost
The European company	Evropská společnost
European Economic Interest Grouping	Evropské hospodářské zájmové sdružení
Cooperative	Družstvo
European Cooperative Society	Evropská družstevní společnost

2.4 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 90/2012 Coll., Business Corporations Act

Act No. 455/1991 Coll., Trade Licensing Act

3 ENTREPRENEUR'S LEGAL ACTS

A legal act is a legally relevant expression of will that causes the creation, change and extinction of rights and duties with external effects. An entrepreneur (legally) acts under their corporate name, or in the absence thereof, under their name or their personal name.

A natural person capable of taking legal acts, i.e., capable of acquiring rights for themselves through their own acts and of assuming duties, must possess **legal capacity**. Natural persons acquire full legal capacity upon reaching the age of majority; before that the scope of their legal capacity is determined with reference to appropriateness to the intellectual and volitional maturity of that person. In terms of business law, consent of a legal representative constitutes an important Civil Code instrument given to a minor to operate a business enterprise or engage in a similar gainful activity, although this is also conditioned by the leave of the court.

A legal person is an organised body whose **legal personality** is provided or recognised by a statute. A legal person possesses legal personality from the moment it is incorporated to the point it is wound up. A legal person having legal personality means that within certain bounds, the legal person may have rights and duties. However, unlike a natural person, a legal person does not have legal capacity and all legal entities must therefore be represented in taking legal acts.

The representation may be **direct or indirect**. For direct representation, the representative, i.e. the person authorised to act on behalf of the represented person, acts in the name and on the account of the represented person, and, for indirect representation, the representative acts in their own name and on the account of the represented party.

Legal representation can also be differentiated according to the legal title authorising the representative. Representation can be established directly **by a statute** (e.g., a statutory body representing legal persons). It may also be based on a **contract**, typically a contract of mandate, although there are also other contracts that may be used. Corporate representation constitutes a special type of contractual representation. The third legal title authorising representation is an **administrative or a judicial decision**, as is the case for guardianship.

The text below deals with representation of entrepreneurs, both legal and natural persons.

3.1 Legal Representation

Legal representation by a statutory body (a member thereof) is only possible for a legal person, where the statutory body is determined by a statute. Corporate bodies are organisational units established on the basis of the law or a constitutive instrument.

A statutory body is an executive body competent to manage the functioning of a legal person in everyday matters. In general, this involves a general authority that is subject to no restrictions and essentially cannot be made subject to any restrictions vis-a-vis third parties. The Civil Code stipulates that it can be restricted both externally and internally and whatever is recorded in the Commercial Register applies vis-a-vis third parties. The Business Corporations Act stipulates that internal restrictions are not effective vis-à-vis third parties, even if they are registered in the Commercial Register.

"Legal" representation by a person authorised to carry out a certain activity within the operation of a business enterprise. Employees represent a legal person even without authorisation, to the extent typical with respect to their position or title, the decisive aspect being how they are perceived by the public.

The special regulation of legal representation is based on Section 430(1) of the Civil Code, according to which if an entrepreneur authorises a person to carry out a certain activity within the operation of a business enterprise, that person represents the entrepreneur in all dealings that this activity typically involves. The person concerned may be authorised formally (e.g., an employee) or informally (i.e., any person authorised by the entrepreneur).

The scope of the authority granted is proportionate to the activity delegated to the representative and any internal restrictions on the scope of the authority are not effective vis-à-vis third parties.

Legal representation by a registered branch manager. A branch is part of an enterprise which has been registered in the Business Register. Its manager is authorised to represent the entrepreneur in all matters relating to the branch with effect as of the day on which the manager is registered as a branch manager. The registration of a branch manager in the Commercial Register has constitutive effects, i.e., the representative may only act in the matters concerned from the date of such registration. In the period between filing an application and the registration, the branch manager may act in typical matters related to the operation.

3.2 Contractual Representation

Contractual representation is special in that the consequences of the (relative) contractual obligation translate into relations with third parties. The contract types that establish representation are set out in Part IV. of the Civil Code. These involve **mandate contract-type obligations**, with the most important and widespread of them being the contract of mandate and with the other contracts in this group being the **brokerage**, **undisclosed mandate, forwarding, commercial agency and package tour contracts**. However, only the contract of mandate and the commercial agency contract establish direct representation.

As a special type of the contract of mandate, an **executive service agreement** is entered into between a member of a body of a business corporation and that business corporation and it is separately regulated under the Corporations Act.

A representation contract must be distinguished from a **power of attorney as a unilateral expression of will**, which serves as a certificate for third parties attesting the representative's authority to act in the name of the represented person. The obligation to issue a power of attorney for the mandatory may be included already in the contract. Where a legal person is authorised to act, the authorisation to act pertains to the statutory body or another person designated by the statutory body.

Corporate representation, which involves a special type of contractual representation, constitutes a broad commercial power of attorney, which can be granted only to a natural person and its scope is wider than that of legal representation regulated under Section 430. Corporate representation may also be granted to several natural persons (concurrent corporate representations) where each of the corporate representatives may act independently.

Corporate representation is registered in the Commercial Register and it may at any time be granted only by an entrepreneur listed therein. The registration only has a declaratory effect. Corporate representation may be revoked or terminated at any time and it automatically expires with the lease or sale of the enterprise. On the contrary, it does not become extinct with the death of the entrepreneur. The extinction of a corporate representation also needs to be registered in the Commercial Register. According to the law, corporate representation in a corporation may not be granted to a person whose execution of their office resulted in the bankruptcy of the business corporation for 3 years from the relevant court decision.

Corporate representation encompasses the authority to take any legal action necessary for the operation of an enterprise or a branch, to which the corporate representation can be limited. Corporate representation may only be granted in writing with the express indication that it involves corporate representation (or corporate representation limited to a branch). The authority encompassed by corporate representation may not be restricted vis-a-vis third parties and, save for several exceptions, it is unlimited. For example, the corporate agent may not act in matters that belong exclusively to the entrepreneur/statutory body, such as granting corporate representation to another person or convening the General Meeting. Also, the corporate agent may not take legal acts that affect the very essence of the business enterprise, i.e., they may not pledge or alienate the enterprise unless expressly stipulated otherwise. The corporate agent may authorise other persons and grant powers of attorney to them.

3.3 Representation on the Basis of a Court Decision

One example of such representation is guardianship.

An entrepreneur, a natural person who does not possess full legal capacity, may be represented in the operation of their business enterprise. If they are a minor, this will be done by legal representatives according to family law standards. If they are of legal age, they will be represented by a guardian.

The court will also appoint a guardian to a legal person that needs one to manage their affairs or to defend their rights. The court will do so if there is no person authorised to act for the legal person, i.e. if the legal person, for example, does not have a sufficient number of members of the statutory body or if it is questionable who the person authorised to act on its behalf is. This typically occurs in the event of a conflict of interests between members of the statutory body. The guardian's rights and obligations are subject to provisions on members of statutory bodies.

3.4 Exceeding the Authority to Take Legal Action on the Account of an Entrepreneur

If a representative transgresses the boundaries of their authorisation by the represented party, then, **for legal representation**, the representative himself is bound by the actions taken in this way. The represented person may, however, approve such actions without undue delay and then be bound by them as if the representative's authorisation had not been exceeded. However, if the authority is not corroborated without undue delay, the third party with whom the represented transacted and who exhibited good faith may require that the representative comply with whatever has been agreed, or pay damages.

The above rule is reversed for **contractual representation**, i.e., if, under contractual representation, the representative exceeds their authority and the represented party does not agree to that, they must notify the person with whom the representative has transacted. If they fail to do so, they shall be deemed to have approved the action. This does not apply if the person with whom the representative transacted should have and could divine from the circumstances, without any doubt, that the representative clearly exceeded the authority granted to them by the represented person.

An entrepreneur is also bound by **actions taken by another unauthorised person at their establishment** if the third party believed, in good faith, that the actor was authorised to act. By doing this, the actor commits a so-called **agency without mandate**. This occurs in relation to actions that normally occur during an activity in respect of which, to a third party, such person appears to have been authorised by the entrepreneur as long as the action was taken in the entrepreneur's establishment. If the third party exhibits good faith, the entrepreneur is automatically bound by the action.

3.5 List of Terms with Czech Translation:

Legal personality	Právní osobnost
Legal capacity	Svéprávnost
Legal representation	Zákonné zastoupení
Contractual representation	Smluvní zastoupení
Mandate contract-type obligations	Smlouvy příkazního typu
Contract of mandate	Příkazní smlouva
Brokerage	Zprostředkovatelská smlouva
Undisclosed mandate	Komisionářská smlouva
Forwarding contract	Zasílatelská smlouva
Commercial agency contract	Smlouva o obchodním zastoupení
Package tour contract	Smlouva o zájezdu
Executive service agreement	Smlouva o výkonu funkce
Power of attorney	Plná moc
Corporate representation	Prokura
Agency without mandate	Nepřikázané jednatelství

3.6 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 90/2012 Coll., Business Corporations Act

Act No. 99/1963 Coll., Code of Civil Procedure

4 COMMERCIAL AND TRADE REGISTERS

4.1 Commercial Register

The Commercial Register is one of the public registers of legal and natural persons[2], which a statute identifies as such.[3] The Commercial Register is therefore a public administration information system maintained in electronic format by the **Registration Court**. The Registration Court is the regional court in whose district there is the general court having jurisdiction over the person concerned by the registration. For a legal person, it is therefore the regional court operating in the district where the legal person has its registered office, and for a natural person, it is the regional court operating in the district where the natural person has their registered office or place of residence. In addition to courts, **notaries** may also register persons in the Commercial Register.

Each person registered in the Commercial Register is regarded as an entrepreneur, even if they have been established for a different purpose. In order to reserve their corporate name, the founders of a business corporation may ask the Registration Court to register the corporate name of a duly established but not yet incorporated business corporation. The business corporation must then file a petition to enter the business corporation in the Commercial Register within 1 month.

The data stipulated by a statute on legal and natural persons who the statute charges with an obligation to be registered in the register as well as data on entrepreneurs and natural persons who voluntarily apply for the registration are entered in the Commercial Register. Conversely, legal entities other than those charged with the registration obligation by a statute cannot be entered in the Commercial Register.

The application for registration in the Commercial Register can only be filed using a dedicated form with documents attached containing facts that are liable to registration in the register. The application may be filed in paper or electronic format. If a fact entered in the Commercial Register changes, the registered person or whoever the law charges with the obligation must promptly communicate the change to the person administering the public register, also using a specified form. An application for registration may be rejected if it has been filed by an unauthorised person, if it has not been filed using the dedicated form, or if it does not contain all the essentials, if it is incomprehensible or vague, or if any documents are missing. The court shall call on the filing party to remove the defects.

The Commercial Register consists of **register entries** and a **collection of documents**. A register entry contains all documents, i.e. paperwork or electronic files, which have been received by the court or which the court has issued in relation to a specific registered person. The collection of documents consists primarily of documents, the deposition of which in the collection is stipulated by a statute (e.g., balance sheets, income statements, notes to the financial statements).

The Commercial Register is governed by the principles of **formal and material publicity**. Formal publicity

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[2] *The other public registers are the register of associations, register of foundations, register of institutes, register of associations of unit owners and register of benevolent associations.*

[3] *On the contrary, a public list is a list of things that may be consulted by anyone, such as the land register or patent register.*

means that everyone can receive a copy of an entry or a document kept in the Commercial Register, or, as the case may be, a confirmation that the register does not include the sought information. Material publicity is also referred to as the "good-faith principle", according to which the facts entered in the Commercial Register are effective against everyone as of the date of their publication. It also means that the person concerned by the registration cannot object to the correctness of the registered facts. Nor can the concerned person claim that the registration is correct if fewer than 15 days have lapsed from its entry and if the person demonstrates in good faith that they could not become aware of it during those 15 days.

There are two types of entries in the Commercial Register. A **constitutive entry** establishes a certain legal fact (e.g., the incorporation of a business corporation), while a **declaratory entry** merely declares a certain already existing legal fact (e.g. the granting of corporate representation).

4.2 Trade Register

The Trade Register is another public administration information system where statutory data on persons who are holders of a trade license are registered. The registered data include, but are not limited to, the name of the registered person, the object of business, the type of trade, the establishment(s), etc. The Trade Register is public to the extent stipulated by law; beyond this extent, it is non-public. The Trade Register is administered by the Trade Licensing Office of the Czech Republic and its operators are the regional and municipal trade licensing offices.

4.3 List of Terms with Czech Translation:

Commercial register	Obchodní rejstřík
Trade register	Živnostenský rejstřík
Notaries	Notáři
Registration Court	Rejstříkový soud
Register entries	Rejstříkové vložky
Collection of documents	Sbírka listin
Principle of formal publicity	Princip formální publicity
Principle of material publicity	Princip materiální publicity
Constitutive entry	Konstitutivní zápis
Declaratory entry	Deklaratorní zápis

4.4 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 90/2012 Coll., Business Corporations Act

Act No. 99/1963 Coll., Code of Civil Procedure

Act No. 304/2013 Coll., Public Registers of Legal and Natural Persons Act

Act No. 365/2000 Coll., on Public Administration Information Systems

5 INCORPORATION, WINDING UP AND TRANSFORMATIONS OF BUSINESS CORPORATIONS

The law divides the process of both forming and winding up business corporations into two stages. In the former case, this involves establishing a business corporation, followed by its incorporation after a certain period of time. The latter case concerns dissolving and winding up a business corporation.

5.1 Establishment of a Business Corporation

Business corporations are established through a legal act of their founders, where establishment denotes the adoption of an instrument of constitution. In most cases, this takes place through the conclusion of a memorandum of association by all founding members, or the adoption of articles of association for joint-stock companies (or a cooperative) or the signing of a deed of foundation where the company is being founded by a sole founder. A sole founder may establish a capital company, i.e. a limited liability company or a joint-stock company, with the law imposing a requirement in this case for the instrument of constitution to be provided in the form of an authentic instrument. Memorandum of association is a bilateral or a multilateral legal act that binds both its parties and the company itself. A deed of foundation involves a unilateral legal act.

The law requires that all foundational legal acts of business corporations be furnished in writing with certified signatures. In addition, for memoranda of association of capital companies, the law requires that they be furnished in the form of an authentic instrument, namely a notarial deed.

A foundational legal act must indicate the trade name and registered office of the legal entity as well as the object and statutory body of the company. The establishment of a company also means a contractual relationship is formed between its founders (members), who are mutually bound by the memorandum of association through their rights and obligations. However, once established, a business corporation does not yet become a subject of rights therefore does not possess legal personality. It only assumes legal personality once the company is incorporated, i.e., registered in the Commercial Register. Registration in the Commercial Register therefore has an *ex nunc* effect. During the period between the establishment and incorporation, the business corporation is referred to as a so-called preliminary company. Whoever acts on behalf of the company during this time is the entitled and obliged person under the very legal act. The company may then assume the effects of such legal act within three months of being incorporated.

5.2 Incorporation of a Business Corporation

As explained above, the conclusion or adoption of a foundational deed only means a business corporation has been established, without automatically acquiring legal personality. It only acquires legal personality with incorporation, which involves registering the business corporation in the Commercial Register.

An application to register a business company must be filed within 6 months of its establishment, with the period commencing on the day following the establishment. The founders of a business corporation may set a different time limit for filing an application to register the corporation in the Commercial Register. With the lapse, in vain, of the time limit, the founders are presumed to have rescinded the memorandum of association. For capital companies, all members of the board of directors or the statutory manager for a joint-stock company, and all executives for a limited liability company file the application for registration. For an established unlimited partnership and limited partnership, and for a cooperative, the application to register

the business corporation in the Commercial Register is to be filed by all members, or all members of the board of directors and the chairman of the cooperative respectively.

The Registration Act implies the obligation to file the application using the form available at the Ministry of Justice website. The application to register a business corporation may be filed both in paper format, which requires certified signatures, and in electronic format, which must be electronically signed or sent via a data box.

The application to register a business corporation in the Commercial Register must be filed with the competent registration court, namely the Regional Court in the district where the business corporation plans on having its registered office. The Regional Court shall register the established company in the Commercial Register or resolve to reject the submitted application within five business days at the latest. The time limit shall commence on the date of filing the application.

The court will reject an application that: has been filed by a person not authorised to do so; has not been filed as specified; does not contain all the specified essentials; is incomprehensible or vague; or does not include documents supporting the data to be registered. The court shall call on the filing party to remove the defects.

In the process of being formed, the court may also **pronounce a business corporation null**, even *ex officio*, if, for example, the foundational legal act is missing, the business corporation has been established by fewer people than the law requires, or the court establishes that all of the founding members lack legal capacity. Before ruling to nullify a business corporation, the court shall set a time limit for the business corporation to remove the identified shortcomings, if possible. All legal actions a business corporation took before it was pronounced null by the court apply. Third party protection is therefore ensured.

5.3 Dissolution and Winding up of a Business Corporation

The dissolution and winding up of a business corporation is governed by general civil law regulating the dissolution and winding up of legal entities and the liquidation thereof. Part I of the Business Corporations Act, which covers the general issues of corporate law, only regulates supplementary issues.

Legal entities, including business corporations, are dissolved by decision of the members (partners) or the competent body of the business corporation; on expiry of the period for which they were established; by public authority (court) decision; or upon attaining the purpose for which they were established. In practice, business corporations are typically dissolved as a result of a decision of its members or corporate body (voluntary dissolution) or by court decision, a scenario referred to as involuntary dissolution.

Where voluntary dissolution applies, the empowerment to make the decision varies depending on the legal form of the business corporation. In unlimited and limited partnerships, a decision to dissolve a corporation must be made by all members. Dissolving a limited liability company requires a decision made by the members on the basis of an agreement which must be presented in the form of an authentic instrument. This power may be delegated to the General Meeting on the basis of the memorandum of association. The General Meeting may then decide to dissolve the company with liquidation by at least two thirds of the votes cast. Similarly, in a joint-stock company, dissolving the company requires a decision of the General Meeting.

As regards involuntary dissolution, the decision is made by a court. Dissolving a business corporation in this way is reserved to situations where any of the following statutory reasons applies:

- a business corporation engages in an illegal activity to such an extent that it seriously undermines public order;

- a business corporation no longer meets the conditions required for its incorporation;
- a business corporation has not had a statutory body capable of forming a quorum for more than two years;
- a business corporation has lost all business licences unless it has also been established for the purpose of managing its own assets or for purposes other than pursuing business;[4]
- a business corporation has not been able to perform its activities and, consequently, serve its purpose for more than 1 year;
- a business corporation is not able to perform its activities because of insurmountable differences between the members;
- a business corporation, without making recourse to natural persons, carries out an activity which may only be performed by natural persons pursuant to other legal regulation[5]

A business corporation may only be dissolved by a regional court having the substantive and local jurisdiction as per the registered office of the company, and it may only initiate the proceedings to dissolve the company on the basis of a petition. The petition, along with the presented evidence, may be filed either by persons having a legal interest in the dissolution of the company, or by the prosecution office on the basis of the evidence presented, if this is in the public interest. The decision in the matter shall be made by resolution. The company and its members or shareholders may be parties to the proceedings.

In addition to the aforementioned reasons, a business corporation can also be dissolved in court proceedings even if, for example, the General Meeting fails to elect an executive within 1 month of the termination of office of the previous executive of a limited liability company, or if a new member of the board of directors of a joint stock company is not elected within 2 months of the termination of office of the previous member of the board of directors. All legal acts taken by the business corporation before its dissolution are valid and the protection of third parties is therefore guaranteed.

The aforementioned grounds for dissolving a business corporation must be distinguished from pronouncing a business corporation null by court, as may be the case in the course of forming the business corporation (see above).

A business corporation is wound up on the day it is erased from the Commercial Register.

The actual winding up of a business corporation is preceded by its dissolution and the subsequent liquidation, or—where the company has more creditors and is insolvent or over-indebted—insolvency proceedings. In such a case, the liquidation is temporarily suspended and the business corporation enters into insolvency proceedings. A business corporation is dissolved without liquidation if the company is to be transformed.

5.4 Liquidation of a Business Corporation

Liquidation is a process that takes place after a business corporation is dissolved and before it is erased from the Commercial Register thereby ceasing to exist. The aim of liquidation is to settle any liabilities, monetise

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[4] *Only capital companies can be established for purposes other than pursuing business, yet business activity is undoubtedly the predominant purpose of business corporations.*

[5] *This involves an activity that, according to the provisions of the Trade Licensing Act, can be performed only by special licence holders.*

the assets and distribute the liquidation balance, if any, among members or shareholders.

A business corporation enters into liquidation on the day it is wound up, or, as the case may be, on the day it is pronounced null. From this point on, a business corporation is obliged to attach "in liquidation" to its trade name[6]. This is to make it clear to third parties that it is now a liquidator who acts on behalf of the business corporation. Beginning with the entry into liquidation, no one may legally act on behalf of the business corporation for any purpose other than the liquidation once they became (or should have become) aware of the entry into liquidation. Once a business corporation enters into liquidation, a petition must be filed without undue delay to register the business corporation's entry into liquidation in the Commercial Register. The petition is filed by the liquidator who acts on behalf of the company, oversees its book-keeping and takes other steps within the company. The actions the liquidator takes may only pursue a purpose that is appropriate to the nature and aim of the liquidation.

The liquidator is summoned by the competent body of the business corporation as soon as the latter enters into liquidation. Only a person eligible to be a member of a statutory body, and who indeed acts as a statutory body, may be a liquidator. If a business corporation enters into liquidation without appointing a liquidator, the liquidator shall be appointed by the court, even *ex officio*.

The liquidator shall communicate the business corporation's entry into liquidation to all its creditors they are aware of. A creditor's failure to submit their receivable shall not cause the receivable to extinguish, but the creditor opens themselves to the risk that their receivable will not be settled. In connection with the settlement of receivables, the liquidator monetises the assets of the business corporation. If the liquidator does not succeed in monetising the entire estate, the latter shall be offered to the creditors as means of settling their receivables. When settling debts, the law provides for a preferential right afforded to employees' receivables to be settled first; the liquidator should also settle receivables while respecting the order in which they fall due. After taking these steps, the liquidator shall prepare a final liquidation report, a proposal on the use of the liquidation balance and financial statements.

Each member has the right to a share in the liquidation balance. The liquidation balance is determined using the balance sheet compiled as at the date of the proposed distribution of the liquidation balance, based on the balance of funds once all assets of the business corporation have been monetised.

Upon a business corporation's winding up with liquidation, the members shall be liable for its debts up to the amount of their share of the liquidation balance and at least to the extent in which they were liable during its existence. Where the members were not liable for the company's debts during its existence, the settlement amongst them shall be carried out according to the proportion of their contributions as at the date of winding-up of the company. The liquidation is completed with the distribution of the liquidation balance; after that, the liquidator must file a proposal to erase the business corporation from the Commercial Register within thirty days of the end of the liquidation.

5.5 Transformations of Business Corporations

The winding up, modification or incorporation of a business corporation may be the result of a transformation.

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[6] hence not from the registration of the business corporation's entry into liquidation in the Commercial Register

A transformation will typically lead to a dissolution of a business corporation without liquidation.

A business corporation may decide to transform at any point of its existence. A transformation is therefore possible even if the company has already entered into liquidation or if its insolvency proceedings are already in progress. The main consideration here is the interest the company owners have in keeping the company in existence. Liquidation is completed on the day the members or competent body approves its transformation.

The transformation of a business corporation follows draft terms of conversion, which contain all essential information. Draft terms of conversion constitute the underlying document of the entire transformation process and are drawn up by persons involved in the transformation or by the management board. Where the person involved is a legal entity, its statutory body is responsible for drawing up the draft terms. An important part of the draft terms is the exchange ratio determining the rate at which members of the company being acquired will participate in the acquiring company. In this way, the principle of protecting the members' rights is fulfilled, with the members of the companies to be acquired becoming members of the legal successors.

Under the Transformations of Business Companies and Cooperatives Act, transformation denotes a merger of a company or a cooperative; division of a company or a cooperative; transfer of assets and liabilities to a member; change of the corporate form and cross-border migration.

Merger is one of the most commonly used methods of transformation. With this type of transformation one or more entities are wound up without liquidation with their assets and liabilities passing to the acquiring company. There are two forms of merger: merger by acquisition and merger by the establishment of a new company. Merger by acquisition involves one or more companies winding up and their assets and liabilities passing to an existing successor company. Merger by the establishment of a new company involves one or more companies winding up and their assets and liabilities passing to a newly incorporated successor company.

Another frequent transformation mechanism involves **division**. In a division, the assets and liabilities of a business company are split up and transferred to a successor company. Depending on whether or not the commercial company being divided winds up, there are two general forms of division: partial and full. As a result of a full division, the company being divided winds up. Its assets and liabilities pass to two or more newly incorporated companies (full division by the formation of new companies) or to existing companies (full division by acquisition). By contrast, in a partial division, the company being divided does not wind up and only a portion of its assets and liabilities passes to one or more newly formed companies (partial division by the formation of new companies), or to one or more already existing companies (partial division by acquisition). Both full and partial division may combine the two subordinate modes.

Transfer of assets and liabilities to a member involves the last transformation mechanism related to the passage of the assets and liabilities of a company winding up to a successor entity. In this case, members or the competent corporate body decide, depending on the terms specified for each corporate form, that a single receiving member will take over the assets and liabilities of the company. Similar to mergers and full divisions, the transfer of the assets and liabilities to a member results in the business corporation being dissolved without liquidation and wound up. The member to whom the assets and liabilities are transferred becomes the full legal successor of the company winding up and therefore assumes all its assets and liabilities. The other members of the company winding up lose their membership, do not become members of the legal successor, but are entitled to reasonable monetary compensation from the receiving member.

Change of corporate form does not result in the business company winding up and its assets and liabilities passing to a legal successor. It is only the internal legal situation and legal status of the members that change.

Change of corporate form is characterised by the continuity of the business company being transformed.

Cross border migration denotes a transformation where the business company does not wind up and its assets and liabilities are not transferred to another legal successor. It only involves transferring the company's registered office to another country along with any associated changes to its corporate form.

The Transformations of Business Companies and Cooperatives Act also regulates cross-border mergers, cross-border divisions and cross-border transfers of assets and liabilities. Only persons that are liable to the law of any European Union Member State may engage in cross-border transformations.

5.6 List of Terms with Czech Translation:

Establishment of a business corporation	Založení obchodní korporace
Preliminary company	Předběžná společnost
Memorandum of association	Společenská smlouva
Articles of association	Stanovy společnosti
Deed of foundation	Zakladatelská listina
Notarial deed	Notářský zápis
Incorporation of business corporation	Vznik obchodní korporace
Pronounce a business corporation null	Prohlásit neplatnost obchodní korporace
Dissolution of a business corporation	Zrušení obchodní korporace
Winding up of a business corporation	Zánik obchodní korporace
Liquidation of a business corporation	Likvidace obchodní korporace
Transformations of business corporations	Přeměny obchodní korporace
Merger of a company	Fúze obchodní společnosti
Division of a company	Rozdělení obchodní společnosti
Transfer of assets and liabilities to a member	Převod jmění na společníka
Change of corporate form of a company	Změna právní formy obchodní společnosti
Cross border migration of a company	Přeshraniční přemístění sídla

5.7 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 90/2012 Coll., Business Corporations Act

Act No. 99/1963 Coll., Code of Civil Procedure

Act No. 304/2013 Coll., Public Registers of Legal and Natural Persons Act

Act No. 455/1991 Coll., Trade Licensing Act

Act No. 125/2008 Coll., Transformations of Business Companies and Cooperatives Act

6 PARTNERSHIPS, UNLIMITED PARTNERSHIP

6.1 Partnerships

Partnerships are either limited or unlimited. The typical features of partnerships and general matters related to their life cycle were explained in the previous chapter.

A **partnership** may be either unlimited or limited.

Partnerships are characterised by the following features:

- No contribution is required to establish a partnership. A partnership may start to pursue business without a registered capital.
- A business share cannot be transferred unless the articles of association are amended.
- The members have joint and several unlimited liability for their debts (with the exception of the limited partner in a limited partnership who is liable up to the amount of the unfulfilled portion of their contribution).
- The members are foreseen to be personally involved in the company's business.
- All companies must be registered in the Commercial Register and are regarded as entrepreneurs. Partnerships can only be established for business purposes.
- Partnerships must be established by at least two members.

The text below takes a closer look at the specifics of partnerships.

6.1.1 Establishment and Incorporation of a Partnership

Both a limited partnership and an unlimited partnership must be established by at least two people. For a limited partnership, one person must assume the limited partner position and at least one must assume the general partner position.

A partnership is established following the drafting of the constitutive instrument, namely **a memorandum of association**. It is at that point that a partnership is established although in order to be incorporated, the partnership still needs to be registered in the Commercial Register. During the period between its establishment and incorporation, a partnership is referred to as a so-called preliminary partnership. The memorandum of association must be furnished in writing and bear certified signatures. Failure to comply with this condition will nullify the memorandum of association.

According to the law, the memorandum of association must contain certain mandatory essentials. A memorandum that does not contain any of the essentials will be null and the Register Court will reject the application to register the partnership in the Commercial Register. The memorandum of association must contain:

- the corporate name and registered office of the partnership
- the objects or activity of the partnership or an indication that the partnership was established for the purpose of managing its own assets, and
- identification of the partners with indication of their names and their place of residence or registered office
- identification of the initial members of the statutory body, including where they are identical to all of

the partners

None of the remaining essentials of a memorandum of association are mandatory, including the rules applicable to the partners' shares or their contribution obligation.

At the second stage of the process, the partnership is incorporated. The incorporation consists in registering the partnership in a public register, namely the Commercial Register. The registration takes place following a petition filed by all partners within a certain time limit of the establishment of the partnership through the memorandum of association. The law sets the time limit to 6 months from the establishment of the partnership, unless stipulated otherwise in the memorandum of association. All necessary documents must be attached to the petition.

6.1.2 Dissolution and Winding up of a Partnership

The process of dissolving a partnership takes place in two stages, with dissolution being the more problematic. **Dissolution** may be voluntary (where the partners themselves agreed to dissolve the partnership) or forced (i.e., any of the statute-based grounds for dissolution has occurred). The dissolution may unfold in several ways, either in accordance with the general rules identical to all legal entities and, inherently, business corporations, or on the basis of special reasons for dissolution of a limited or unlimited partnership, which can be added to by reasons indicated in the memorandum of association. The special reasons are related either to the termination of a partner's participation in the partnership or to a change in the property or legal relations of the partners. Where these special reasons for dissolution apply, the partners may agree on the continued existence of the partnership within a specified time limit.

Partnerships wind up in the same way as any other business corporation, namely with the erasure from the Commercial Register. The petition to erase a partnership from the Commercial Register will typically be filed by the liquidator, within thirty days of the end of the liquidation.

6.1.3 Rights and Obligations of the Owners/Partners of a Partnership

The **rights** include, but are not limited to, the right to vote and to audit, the right to share in profits and the right to property settlement in the event a partner's participation is terminated or the company is wound up without a legal successor. The additional rights include, without limitation, the right to sue for damages on behalf of the company.

The **obligations** of the partners include, without limitation, the obligation to share in a loss, the liability obligation and the contribution obligation if stipulated by the memorandum of association. Other obligations are non-pecuniary, such as the obligation to participate in the partnership's activities or the duty of loyalty.

Where the rights and obligations are set out by law, the provisions concerned are typically optional, i.e., the partners may regulate their rights and obligations differently under the memorandum of association. Where the memorandum of association does not regulate such rights and obligations, the default legal regulation applies. However, this does not give the partners an opportunity to relieve themselves from their obligations, but rather to regulate their matters alternatively. The regulation must not upset the accepted standards of morality or contravene the law. If it did, the provision concerned would be void.

The text concerning the specifics of individual partnerships deals in more detail especially with the rights and obligations of partners as regards the contribution and any liability obligations as well as managing the

partnership via its corporate bodies and the profit share and share in loss.

6.2 Unlimited Partnership

Unlimited partnership is a partnership of at least two persons who participate in its business operations or asset management and are liable for its debts jointly and severally, and its essentials may be summarised as follows:

- an unlimited partnership must consist of at least two persons
- an unlimited partnership operates under its own corporate name with “veř. obch. spol” or “v.o.s.” attached to it. If the corporate name of the partnership contains the name of at least one of the partners, "a spol.” is added
- the partners have joint and several unlimited liability for the partnership’s debts
- the partners are personally involved in the business or asset management of the unlimited partnership

The partnership may be formed by both natural and legal persons. There are 3 groups of persons who are excluded as potential partners of an unlimited partnership: persons who may generally be referred to as being insolvent[7]. If such a person participated in the establishment of a partnership, they would not become a partner despite the fact that the partnership was properly registered in the Commercial Register. The partners are subject to a ban on competition.[8]

6.2.1 Partners’ contributions and contribution obligation, liability

Unlimited partnerships are regarded as a purely personal type of a company and **the contribution obligation is optional**. According to the applicable rules, the founders, or partners of an unlimited partnership are under no obligation to provide cash contributions or contributions in kind in creating the required capital.

If a contribution obligation has been agreed, it must be met within the time limit, in the manner, and to the extent, as stipulated by the memorandum of association.

A contribution consists in an obligation of a partner to provide the partnership with its own sources of financing its assets. The sum of all of the obligations represents the registered capital of the partnership. In this way, a partner acquires an interest in the partnership. Generally, the subject of a contribution is the thing the partner agrees to invest in the partnership. The subjects of contributions may be divided into two general groups, cash contributions and contributions in kind. Work and services as contributions in an unlimited partnership are permissible where permitted by the memorandum of association and approved by all partners. [9]

A partner’s business share represents their interest in the business corporation and the rights and obligations

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[7] *a person, against whose assets bankruptcy was declared in the past 3 years, or a petition for the initiation of insolvency proceedings was rejected for reason of the insufficiency of assets, or the bankruptcy proceedings were closed for absolute inadequacy of assets;*

[8] *a ban on competition restricts their freedom to engage in such business activities that may conflict with the interests of “their” company*

[9] *This has only been possible under the applicable law since 2014; it was incorporated in the statute to render unlimited partnerships a more appealing option for new entrepreneurial entities as this form is not so widespread in the Czech Republic so far.*

the interest entails. It is prohibited to transfer a partner's business share in an unlimited partnership. The passage of a partner's business share may only occur in the event of the death of the partner, and the law does not allow the business share to pass unless this is expressly permitted by the memorandum of association.

An unlimited partnership is liable for its debts with its entire assets. As a priority, a creditor of a partnership will enforce their receivables from the company itself. The company is then obliged to comply with its debt. It is only after the partnership is unable to comply with its debt to a creditor in a proper and timely manner that the creditor may turn to the partners as the partnership's guarantors. **Partners in an unlimited partnership assume unlimited liability** for all debts of the company, in their full amounts, and they can neither exclude nor restrict such liability.

6.2.2 Bodies

Companies generally establish two types of bodies. Firstly, there are the mandatory bodies the law stipulates for each type of company, which the company must have. For unlimited partnerships, those are the **statutory body** and the **supreme body** of the company, which is comprised of all the company's partners. Therefore, a distinction must be made here between the matters in which the partners act as the supreme body of the company (e.g. approving the financial statements) and those in which the partners act as parties to the memorandum of association, especially in view of the formal requirements for each type of a legal act. Secondly, there are the optional bodies which companies do not have to, but can, have, almost entirely at their sole discretion.

A partner who is to become a statutory body must possess integrity within the meaning of the Trade Licensing Act and they must not be subject to an obstacle preventing them from engaging in a trade. At the same time, they must be of legal age and possess full capacity. The requirements for persons who become statutory bodies are therefore more stringent than those for partners. Members of a statutory body of an unlimited partnership benefit from a general authority, which may not be restricted with effect vis-a-vis third parties.

6.2.3 Profit Share and Share in Loss

Any profit is distributed among the partners according to rules stipulated by law or the memorandum of association. Unless the company generates a profit, it is automatically deemed to have turned a loss, and the partners share in the loss according to the set rules. The law stipulates that profits and losses be distributed among the partners **equally**. **As regards a profit, this method shall only be applied in the alternative**. Indeed, according to the law, the profit will primarily be used to compensate the partner who has worked for, or provided services to, the company provided such work or services are not counted towards the concerned partner's contribution. Such a partner is entitled to a profit share corresponding to the valuation of the work or services they have invested in the company. According to another rule applicable to the distribution of profit, each partner is entitled to a profit share equivalent to 25% of the amount of their paid-up contribution. Consequently, the profit will be distributed among the partners in proportion to the amount of their paid-up contributions. If, after the application of this mechanism, a portion of the profit still remains undistributed, the balance will be distributed equally among all the partners.

The statutory body decides on the payout of the profit shares and the payment term for the profit shares to be paid out is set to six months from the end of the reporting period, which the partners may modify in the

memorandum of association, similar to other matters. However, the modification may not contradict the law or good morals. Therefore, the memorandum of association may not, for example, include a stipulation that only some partners will share in the profit, and, on the contrary, that only some of them will share in a loss, etc.

6.3 List of Terms with Czech Translation:

Joint and several unlimited liability	Neomezené, společné a nerozdílné ručení
Contribution	Vklad
Cash contribution	Peněžitý vklad
Contribution in kind	Nepeněžitý vklad
The passage of a partner's business share	Převod podílu společníka
Registered capital	Základní kapitál
Mandatory bodies	Obligatorní orgány
Statutory body	Statutární organ
Supreme body	Nejvyšší organ
Optional bodies	Fakultativní orgány
Profit share	Podíl na zisku
Share in los	Podíl na ztrátě

6.4 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 90/2012 Coll., Business Corporations Act

Act No. 455/1991 Coll., Trade Licensing Act

Act No. 182/2006 Coll., Bankruptcy and Settlement (Insolvency) Act

7 LIMITED PARTNERSHIP

Companies are divided to partnerships and capital companies. Even though a limited partnership tends to be classified as a partnership, it is rather a mixed company, as it combines, in a way, the characteristics of an unlimited partnership with those of a limited liability company.

- A limited partnership operates under its own corporate name with "komanditní společnost" "kom. spol." or "k.s." attached to it.
- Similarly to a partner in an unlimited partnership, **the general partner** has unlimited liability[10] for the company's debts, they have no contribution obligation, their business share is not transferable, they are authorised to act in the name of the company and contribute to its management and they are subject to the prohibition of competition[11].
- **The limited partner** does not have unlimited liability for the company's debts (with all their assets). They have a contribution obligation, their business share is transferable, usually they are not personally involved in the dealings of the company and they are not subject to the prohibition of competition.

A limited partnership is an association of natural or legal persons and the partnership itself is a legal person.

7.1 Member's Contribution and Contribution Obligation, Liability

General partners are members **who are not obliged to invest a contribution** in the company. General partners represent the statutory body of the company and are entrusted with its business management. A general partner's relationship with the company is personal in its essence, being based on the individual qualities, skills and capabilities of the partner and his or her activity for the company. General partners are subject to the provisions on unlimited partnership, *mutatis mutandis*.

The limited partner invests a contribution in the company. **There is not set minimum contribution**. The legal status of the limited partner may (optionally) be subject to the so-called limited liability amount (see below). The memorandum of association may provide that the limited partner fulfils their contribution obligation by carrying out or performing work or by providing a service or services. In the absence of specific regulation (contractual or statutory), the provisions applicable to unlimited partnerships shall be applied *mutatis mutandis* to the limited partners, and the provisions on a limited liability company will only be applied if so expressly stipulated by the statute.

As stated above, the liabilities of the general and limited partners vary in scope.

The rules applicable to the **liability of general partners** are identical to those applicable to partners in an unlimited partnership. General partners have joint and several unlimited liability for the partnership's debts with other members. Where the general partner is married, then subject to the conditions laid down by a statute, the payment obligation related to liability may also extend to assets belonging to the community property of the spouses. A statute also makes it possible for the spouses to arrange a different property regime.

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[10] *Formerly referred to as "liability with their entire assets"*

[11] *the ban on competition restricts their freedom to engage in such business activities that may conflict with the interests of "their" company*

The **limited partner** has joint and several liability for the company's debts along with the other members. However, their liability is limited to the amount of their paid up contribution entered in the Commercial Register. Broadly speaking, the limited partner is only liable for the company's debts up to the amount of the unpaid portion of their contribution. Limited partners may be subject to the so-called limited liability amount. The company is under no obligation to agree on a limited liability amount, yet the latter may be optionally set in the memorandum of association.

If a **limited liability amount** is agreed, the scope of liability changes. The limited partner has joint and several liability for the company's debts, along with the other members, up to their limited liability amount entered in the Commercial Register at the time of receiving the creditor's payment request. The limited liability amount, and inherently the liability itself, is reduced by the amount the limited partner has paid up towards their contribution. The limited liability amount must be at least equal to the limited partner's contribution amount.

A limited partner's liability changes if their name is part of the company's corporate name. Such a limited partner will have the same liability as the general partner.

If a new general or limited partner accedes the company, they are liable for the company's debts incurred prior to their accession However, they may ask the other members to provide full compensation for the performance provided in this way including any costs incurred. If an interest of a general partner or a limited partner in the company is terminated, the partner is only liable for the company's debts incurred while their interest existed. Both partners are also liable for the company's debts after the company is dissolved with liquidation. Then, the members are liable for the debts up to the amount of their share of liquidation balance and at least to the extent in which they were liable during its existence.

7.2 Bodies

The statutory body of a limited partnership includes all **general partners**. However, the memorandum of association may stipulate that only some general partners or only one of them are the company's statutory body. A general partner who does not possess integrity within the meaning of the Trade Licensing Act or a limited partner who is subject to an obstacle to carrying out a trade cannot become a member of the statutory body. The general partner may be recalled from the statutory body by decision of all members. However, if the memorandum of association provides that a general partner may not be recalled, the only available option involves approaching the court to decide on the recall of the member from the statutory body. General partners are authorised not only to act in the name of the company vis-a-vis third parties, but also to take care of the company's business management.

The supreme body of a limited partnership is formed by all its members. All members decide on matters that do not fall under the scope of the statutory body, with general partners and limited partners casting their votes separately. However, the memorandum of association may, for example, regulate decisions taken by a majority vote. Unless otherwise provided in the memorandum of association, each partner has one vote. If the memorandum of association grants more than one vote to certain members, this must be justified, for example, with reference to the amount of their contributions.

7.3 Profit Share and Share in Loss

Unless otherwise stipulated in the memorandum of association, profit and loss shall be apportioned so that one half goes to the general partners and the other to the company. **The general partners will share the**

profit/loss equally. A general partner is entitled to a profit share equivalent to 25% of the amount at which they have fulfilled their contribution obligation, where relevant. If the generated profit does not cover the amount to be paid out, it will be distributed among the general partners in proportion to the paid-up portion of their contribution obligations, where relevant. A general partner also has the right to a profit share equivalent to the cost of any valued work or services they are obliged to render without fulfilling their contribution obligation.

The portion of the profit that pertains to the company is generally distributed among the **limited partners** in proportion to their respective business shares. Limited partners do not share in losses. However, where a limited liability amount has been agreed, it will have an effect on the profit and loss distribution among individual partners. If the limited liability amount has been agreed, the portion of the profit that pertains to the company, after tax, will then be distributed among the limited partners in proportion to their business shares and limited liability amounts. Hence, the higher the limited liability amount of a specific limited partner, the higher their profit share. Any loss shall be covered by the limited partner along with other members in proportion to their business share, yet only up to their limited liability amount.

The memorandum of association or a decision of all members may modify the profit distribution rules by way of derogation from the statute.

7.4 Specific Points of Focus in Dissolving a Limited Partnership

The process of dissolving and winding up a business corporation was described in the previous chapter on legal forms of entrepreneurship and the specific points of focus for business companies. The text below only refers to special provisions concerning limited partnerships.

The company is dissolved if the general partner's interest in the company is terminated for reasons foreseen by law or for other reasons specified in the memorandum of association. However, the law gives the members an option to decide, by amending the memorandum of association, that the company will continue to exist even if the interest of the general partner in the company has been terminated. The agreement must be reached by the time the final report on the liquidation process is submitted by the liquidator and it may also be included in the memorandum of association in advance.

A limited partnership may also be dissolved by a court decision if the set statutory reasons apply. If all general partners cease to meet the requirements for being members of the statutory body, the law gives them an opportunity to agree on the accession of a general partner who meets these requirements, in which case the company continues to exist.

7.5 List of Terms with Czech Translation:

Limited partner	Komanditista
General partner	Komplementář
Limited Liability amount	Komanditní suma

7.6 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 90/2012 Coll., Business Corporations Act

Act No. 455/1991 Coll., Trade Licensing Act

8 CAPITAL COMPANIES, LIMITED LIABILITY COMPANY

8.1 Capital Companies

Capital companies include a limited liability company and a joint stock company. The typical features of capital companies and general matters related to their life cycle have been already mentioned in the chapter on the legal forms of pursuing business.

Capital companies are characterised by the following:

- A minimum registered capital amount is set and each member has a contribution obligation vis-a-vis the company. The amount of the company's registered capital is entered in the Commercial Register.
- In a capital company, the members may hold several business shares in the same company at the same time.
- Members' business shares can be transferred even without amending the articles of association.
- The members either have no or limited liability for the company's debts.
- The members are not expected to be personally involved in the company's business. The owners are involved in the business operations by electing members of the statutory body and voting at the General Meeting, the supreme body of the company. However, it is relatively common in the Czech Republic, especially for limited liability companies, for the members to manage the company.
- All companies must be registered in the Commercial Register and are regarded as entrepreneurs. However, under the Corporations Act, capital companies may also be established for purposes other than business or the management of their own assets.
- A capital company may be established by a sole founder. Companies may also start having a sole member during their lives as a result of all business shares (shares) concentrating in the hands of a single person. This person then acts as the supreme body.

The text below takes a closer look at capital companies.

8.1.1 Incorporation and Winding up of a Capital Company

All business corporations are **established by a memorandum of association**; for capital companies the memorandum must be furnished as an authentic instrument. Where the company is established by a sole founder, the memorandum of association is replaced by a deed of foundation. Joint stock companies use articles of association as their constitutive instrument. The company must file an application to register in the Commercial Register within 6 months of its establishment; failure to do so has the same effects as a rescission of the memorandum.

The contribution may be in cash or in kind. A contribution in kind may, for example, be a movable or immovable property, an enterprise or a part thereof or a receivable from another person. The law expressly forbids regarding work or services as a contribution. Upon incorporation, the ownership title to the contribution passes to the company and the members are not entitled to a return thereof, including after a future dissolution of the company, as the case may be. The method of paying up the contributions may differ between the two types of capital companies. For both, however, all contributions in kind must be paid up before the company can be incorporated, which will occur with its entry in the Commercial Register.

Upon establishment, the memorandum of association must indicate a **contribution administrator** who will be

in charge of receiving and administering the contributions or parts thereof. A declaration issued by the contribution administrator on the fulfilment of the contribution obligation by members must be affixed to the application to register the company in the Commercial Register.

The sum of all contributions represents the registered capital of the company. The proportion of an individual member's contribution in the overall registered capital amount determines the extent to which, in the future, the member will share in the profits, liquidation balance or decision-making.

The memorandum of association, at the time of the establishment, and the supreme body by its decision after the company is incorporated, may impose on the founders or new members an obligation to pay up the **contribution premium (for LLCs) or share premium (for joint stock companies). This amount has no bearing on the registered capital** and it is not considered in determining each member's share. If a member or a founder fulfils their contribution in successive steps, the amount paid will always be counted towards the contribution (share) premium. A contribution and any premium make up the issue price of the business interest (share) in joint stock companies. As regards a contribution in kind, the amount of which is determined by an expert as on the day of passage of the ownership title to the company, its value may be lower than the issue price. In such a way, the contributor will settle the balance in cash.

As regards the dissolution and winding up of capital companies, the process is described in the general chapter on dissolution and winding up of business corporations in the previous chapter.

8.1.2 Members' Business Shares in Capital Companies

A business share represents a member's participation in the company and their rights and obligations attached thereto. A business share may consist in **a security** (a share for a joint stock company, or **a common certificate** for a limited liability company). As already mentioned, a member of a capital company, unlike a member of a partnership, may hold multiple business shares in the same company and dispose of them at will.

Each member has the **right to a profit share** in connection with their business share in the company. The decision to distribute any profit is taken by the supreme body with reference to the approved ordinary or extraordinary financial statements. The law also allows for advance payments on the profit to be paid out. The advance payments may only be made if the company has sufficient funds to distribute profits. This must be proved by interim financial statements. If, after the payout of advance payments at the end of an accounting period, the financial statements report a loss, the company may recover any advance payments from the members. Profit shares, including advance payments for this purpose, may not be paid out by a company if the same could result in its insolvency under the Insolvency Act.

If a member's participation in the company is terminated, the member is entitled to a **settlement share**. However, this rule does not apply where the business share has been transferred or where the company winds up at the same time.

A member also has the right to a **share of liquidation balance** if the company is dissolved with liquidation.[12] The liquidation balance shall be first distributed among the members up to the level at which they met their contribution obligation. Where the liquidation balance is insufficient for such distribution, it shall be

[12] *The procedure here is identical for all companies.*

distributed among the members according to the proportion of their paid-up contributions. The same principle shall be applied to any remaining liquidation balance to be distributed.

8.1.3 Members of Corporate Bodies of Capital Companies

A person wishing to become a member of a corporate body of a business company must have **full legal capacity and possess integrity within the meaning of the Trade Licensing Act** and they must not face an obstacle to a trade. Both a natural person or a legal entity may be a member of a corporate body; in the case of a legal entity, the office is exercised through a representative. The representative must meet all the requirements and conditions laid down for actual body members.

The law imposes on all elected members of a corporate body an obligation to **act with due care**. Therefore, for limited liability companies and joint stock companies, this applies to the executives and members of the board of directors, respectively, and, broadly speaking, also to members of the supervisory board and administrative board members for joint stock companies. If any of these persons breaches this obligation, they must return to the company the benefit they have acquired as a result of the breach. In the assessment as to whether a member of the body has acted with due care, an account will only be taken of the care that would have been exercised by any other reasonably diligent person in a similar situation if they were a member of a similar body of a business corporation. A member of the body must also act with due care where there is a conflict between their private interests and those of the company. In addition, they must promptly inform the other members of the body and the supervisory body that such a situation has occurred.

The same group of persons is also subject to a **ban on competition** restricting their freedom to engage in such business activities that may conflict with the interests of "their" company. This can be further elaborated upon in the constitutive instrument.

The law has very strict provisions that apply to all members of a business corporation if the **company becomes insolvent**. If that is the case, the insolvency administrator may claim from corporate body members any benefit they received from the company in the last 2 years of serving their respective offices as long as they knew or should have known that the company's insolvency was imminent and failed to take any measure necessary to avert the insolvency. The provisions of the Act are even stricter for members of the statutory body. If a member of a corporate body has repeatedly breached the duty to act with due care during the last 3 years, the court may decide, even *ex officio,* to expel the member.

There are three ways in which a **membership of a corporate body may be terminated**. The first, and the most obvious one, is expiry of the term of office. Another scenario involves a member resigning their office on a corporate body, which, however, they must not do at a time when this would be inconvenient for the company. The last scenario, which only applies to members of the statutory body, involves expulsion by court.

8.1.4 Rights and Obligations of the Owners/Members of a Capital Company

The **rights** include, but are not limited to, the right to vote and to audit, the right to share in profits and the right to property settlement in the event a member's participation is terminated or the company is wound up without a legal successor. The additional rights include, without limitation, the right to sue for damages on behalf of the company.

The **obligations** of the members include, without limitation, the obligation to share in loss, the liability

obligation and the contribution obligation. Other obligations are essentially non-pecuniary, such as the loyalty obligation.

Where the rights and obligations are set out by law, the provisions concerned are typically optional, i.e., the members may regulate their rights and obligations differently under the memorandum of association. Where the memorandum of association does not regulate such rights and obligations, the default legal regulation applies. However, this does not give members an opportunity to relieve themselves of their obligations, but rather to regulate their matters alternatively. The regulation must not upset the accepted standards of morality or contravene the law. If it did, the provision concerned would be void.

The text concerning the specifics of individual capital companies deals in more detail especially with the rights and obligations of partners as regards the contribution and liability obligations as well as managing the company via its corporate bodies and the profit share and share in loss.

8.2 Limited Liability Company

A limited liability company is a company whose members are jointly and severally liable for the company's debts up to the amount at which they have not fulfilled their contribution obligation, pursuant to the record in the commercial register at the time when fulfilment was demanded by a creditor A limited liability company can be described in several points:

- a limited liability company may be established by one or more persons
- a limited liability company pursues business under its own trade name with the addition of "společnost s ručením omezeným", "spol. s r.o." or "s.r.o."
- the members are jointly and severally liable for the company's debts up to the amount at which they have not fulfilled their contribution obligation
- the members are not expected to be involved in the company's business, but their involvement is possible
- a member may hold multiple business shares, including business shares of different types
- A transfer of a business share typically requires the consent of the General Meeting. A member's business share may be incorporated into a common certificate. A common certificate is a security and it may not be subject to any restrictions or conditions regarding its transferability.

8.2.1 Member's Contribution and Contribution Obligation, Liability

As explained above, a company is established by a memorandum of association or articles of association and later incorporated through its entry in the Commercial Register. The memorandum of association may subsequently be amended either by all members or by a decision of the General Meeting where the memorandum of association so provides.

The minimum contribution and registered capital amount is CZK 1, but the memorandum of association may specify a different minimum amount. As has been said in the previous chapter, contributions in kind are also acceptable. A contribution in kind must be valued by an expert, with the company bearing the costs associated with the valuation. If, according to an expert opinion, the price of the contribution is higher than the required amount of the member's contribution, the difference is referred to as **contribution premium**. The general meeting may decide either to return the surplus to the member or allocate it to a reserve fund.

Prior to filing an application to enter the company in the Commercial Register, each member must pay up the

entire contribution premium, any contributions in kind and at least 30% of their cash contribution. The time limit within which any balance of the contribution must be paid up will be determined by the memorandum of association, but the time limit must not exceed 5 years from the date of incorporation. If a member fails to pay up their cash contribution within the set time limit, they shall pay default interest on the outstanding amount at a rate equivalent to two times the default interest rate promulgated by the relevant Government Decree. A different default interest rate may be stipulated in the memorandum of association. The General Meeting may expel the member from the company. However, if a member owns multiple business shares, the expulsion applies only to the business share, in respect of which the member is in default.

If a company is unable to comply with its debt to a creditor in a proper and timely manner, the creditor may contact the members as the company's guarantors and the members will be jointly and severally liable for the debt up to the amount of the outstanding portion of their respective contributions.

8.2.2 Bodies

The General Meeting is the supreme body of each capital company, where members exercise their right to participate in the activities of the company. The powers of the General Meeting include approving the financial statements, distributing any profit or loss, making decisions regarding amendments to the content of the memorandum of association, appointing and recalling the executives, etc.

The General Meeting is made up of the members. Each member has one vote for CZK 1 of their contribution. Unless otherwise stipulated in the memorandum of association, the General Meeting only forms a quorum if the holders of at least one half of the votes are present. The General Meeting decides by simple majority. To be adopted, selected decisions will require a two-thirds majority of the votes of all members. These include, for example, amendments to the memorandum of association, transformation of a limited liability company or dissolution of the company. The General Meeting is convened by the executive. The frequency at which the meetings are held is typically determined by the memorandum of association, yet in any case, the General Meeting must convene at least once in the reporting period in order to approve the financial statements, namely at some point during the first 6 months of the new reporting period.

The statutory body of a limited liability company is one or more executives. If more than one executive is present, they may form a collective body. As their main mission, statutory bodies are in charge of the company's business administration, ensuring the specified records and accounting books are kept properly, maintaining a list of members and informing other members about the company's operations. The executives are subject to certain restrictions designed to avoid **conflicts** between the executive's **personal interests** and those of the company. Those restrictions in particular apply to pursuing the same line of business or membership in a statutory body of a company that pursues the same line of business.

The supervisory function is exercised by the supervisory board; limited liability companies are not obliged to create supervisory boards. The main mission of the supervisory board is to oversee the activities undertaken by the executives and to audit the accounts. Once a year, the supervisory board submits an activity report to the General Meeting.

Where provided for in the memorandum of association, the members of the company's bodies are elected by cumulative voting. For the purposes of cumulative voting, the number of votes of a member are determined by multiplying the number of votes disposed of by the member at the general meeting and the number of elected member positions in a company body. The number of votes shall be determined separately for each

body. Each member of a body shall be voted on separately and the persons who receive the most votes are elected. Recalling a member of a body elected by cumulative voting then requires the consent of a majority of the members who voted for their election.

8.2.3 Profit Share and Share in Loss, Common Certificate

Members are entitled to a profit share in proportion to the business share of each of them. The law also permits the existence of business shares that guarantee a fixed profit share. A member becomes entitled to a profit share once the financial statements are approved; the profit share must be paid out by the company within 3 months. The law determines the maximum amount that can be distributed among members stipulating that the amount cannot be higher than the economic result reported for the last completed accounting period increased by any retained earnings from previous periods and reduced by any losses from previous periods and by allocations to the reserve and other funds. As mentioned above, the company may also pay advances on profit shares.

A member may hold multiple business shares, including business shares of different types. A member's business share may be incorporated into **a common certificate**. A common certificate is a security that serves a purpose similar to that of shares in a joint-stock company. The company shall issue a common certificate similar to a share and a note on the issue of the common certificate is entered in the Commercial Register**. A common certificate can only be issued for a business share that is not subject to any restrictions or conditions regarding its transferability. This is what makes this instrument different from a business share typical of a limited liability company as, for the latter, the approval of the General Meeting is typically required for a transfer.** Conversely, a business share that is incorporated into a common certificate may be transferred by a contract and by endorsement. The common certificate must then be submitted to the company for the transfer to be effective vis-a-vis the company. Details on the members, their business shares and contribution obligations are entered in a list of members, and without each member's consent, the company may not use them for any purposes other than in its interaction with the members.

As already mentioned, the General Meeting may impose on members an obligation to provide **an additional cash payment ("additional payment obligation").** However, the possibility must be established in the memorandum of association. The memorandum of association will determine the business shares that entail the additional payment obligation and the amount the additional payments may not exceed in aggregate. A member who has not voted for the additional payment obligation at the General Meeting may leave the company. This applies only to members who have fully met their contribution obligation associated with their business share to which the additional payment obligation is tied.

8.3 List of Terms with Czech Translation:

Contribution Administrator	Správce vkladů
Contribution premium (for LLCs)	Vkladové ážio
Share premium (for joint stock companies)	Emisní ážio
Settlement share	Vypořádací podíl

Share of liquidation balance	Podíl na likvidačním zůstatku
To act with due care	Jednat s péčí rádného hospodáře
Ban on competition	Zákaz konkurence
General Meeting	Valná hromada
Statutory body	Statutární organ
Executives	Jednatelé
Supervisory board	Dozorčí rada
Common certificate	Kmenový list
Additional payment obligation	Příplatková povinnost

8.4 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 90/2012 Coll., Business Corporations Act

Act No. 455/1991 Coll., Trade Licensing Act

Act No. 182/2006 Coll. Bankruptcy and Settlement (Insolvency Act)

Act No. 125/2008 Coll., Transformations of Business Companies and Cooperatives Act

Government Decree No. 351/2013 Coll., laying down the default interest rates and the amount of costs connected with the application of receivables, determining the compensation of liquidators, liquidation administrators and court-appointed members of legal entity bodies, and regulating certain matters related to the Commercial Register and public legal entity registers.

9 JOINT-STOCK COMPANY

A joint-stock company is a company whose registered capital is apportioned among a certain number of shares. A share is a security that gives its owner the right to participate in managing the company, its profit and any liquidation balance. A joint-stock company can be summarised as follows:

- a joint-stock company may be established by one or more persons
- a joint-stock company operates under its own corporate name with "akciová společnost" "akc. spol. "or" a.s." attached to it
- the members (shareholders) are not liable for the company's debts, except for where the company is dissolved with liquidation where the shareholders are liable up to their so-called share in the liquidation balance
- the members are not expected to be involved in the company's business, but their involvement is possible
- a member may own multiple business shares and a member's business share is incorporated into a share, which is a security
- transferability of registered shares may be restricted (but not excluded) in the articles of association by making it contingent upon the consent of any of the company's bodies
- transferability of bearer shares may not be subject to any restrictions

9.1 Member's Contribution and Contribution Obligation, Liability

The memorandum of association used in limited liability companies has its equivalent in **articles of association** used in joint-stock companies, and a company is established with the adoption thereof. Persons who have adopted the articles of association and participate in the subscription of shares are the **founders of a joint stock company**. Shares comprise the registered capital of the joint-stock company. The law sets a minimum registered capital for a joint-stock company. The amount is CZK 2,000,000, or EUR 80,000 where the company keeps its books in euros.

In order for the establishment to take effect, each founder must pay up the full share premium and at least 30% of the aggregate value of the shares they have subscribed by the time of filing the application to register the company in the Commercial Register. Founders may pay up the issue price of the shares subscribed by them by making a contribution in kind. The issue price of a share must be equal to or higher than its nominal or book value (in the case of a no-par share). If the issue price is higher, the difference is referred to as a share premium. If a shareholder pays up the issue price in successive instalments, each payment shall be counted towards the share premium in the first place.

Every shareholder has a contribution obligation vis-a-vis the company. The contribution obligation is met with the payment of the issue price within the time period specified in the articles of association or, where the registered capital is being increased, in the related decision of the General Meeting. However, the period may not exceed one year from the date of incorporation of the company or from the effective date of a capital increase. If a shareholder is late paying up the issue price, the company is entitled to a default interest (see the section on limited liability companies). Such a member may also be expelled if the Board of Directors calls upon them to meet their contribution obligation within a grace period, but the grace period lapses in vain. The expulsion only applies to shares in respect of which the shareholder has failed to meet their contribution obligation.

If a company is unable to comply with a debt to a creditor in a proper and timely manner, the creditor may not turn to the members as the company's guarantors.

9.2 Bodies

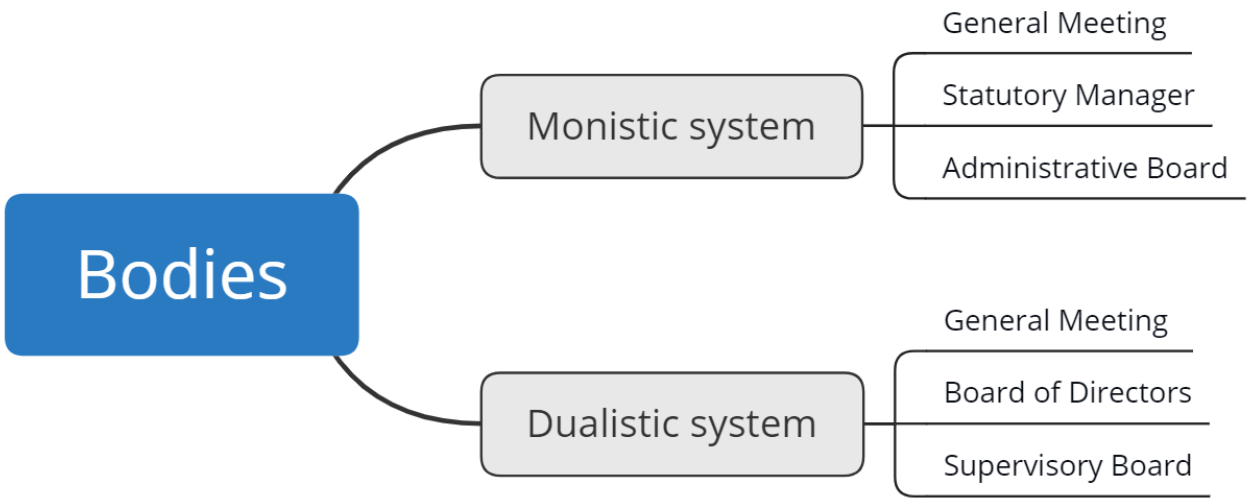

Diagram 3 Bodies of Joint-stock company

The supreme body of each joint-stock company is the **General Meeting**, through which members exercise their right to participate in the management of the company. The General Meeting must convene at least once in each reporting period.

The General Meeting may only be held if it is attended by holders of shares whose par value or book value (for no-par value shares) exceeds 30% of the registered capital. This only applies to shares that give a voting right to their holders. The General Meeting decides by a majority of the votes of the shareholders present. The articles of association may determine the maximum number of votes a shareholder may hold, thereby limiting their voting rights. At the General Meeting, every shareholder has the right to demand an explanation of any matter relating to the company if they consider this information to be important for the exercise of their shareholder rights at the General Meeting. They are also authorised to make proposals and counter-proposals on matters discussed by the General Meeting.

A shareholder may attend the General Meeting either in person or on behalf of a shareholder under a written power of attorney. The articles of association may also permit voting outside of the General Meeting using appropriate technical facilities. The conditions of such voting should be determined in such a way that the company can check the identity of the person who intends to exercise their right to vote.

The powers of the General Meeting include, without limitation, approving the financial statements, decisions to distribute the profit, amending the articles of association, revising the amount of the registered capital, issuing convertible and preferential bonds, appointing and recalling members of the Supervisory Board, etc.

The founders of a joint stock company can opt for a model determining how the company will be **internally organised** by applying either the dualistic or the monistic system. In both systems, the General Meeting is the supreme body. But the two systems differ in the statutory and supervisory bodies.

The statutory body in the **dualistic system** is the **Board of Directors**, which is entrusted with the company's

business administration. The board of directors ensures the books are properly kept, and submits to the General Meeting, for approval, the financial statements as well as proposals on profit distribution or coverage of loss. Members of the Board of Directors are appointed and recalled by the General Meeting. However, the articles of association may stipulate that the office be exercised by the Supervisory Board. By default, the Board of Directors has 3 members unless otherwise stipulated in the articles of association. The Board of Directors itself appoints and recalls its Chairman. Its decisions require a majority vote of the members present, where each member has one vote.

The supervisory body in a joint-stock company applying the **dualistic system** is the **Supervisory Board**, which oversees the activities of the Board of Directors and the company as such and adheres to the principles approved by the General Meeting. The Supervisory Board is authorised to consult all documents and records relating to the company's operations and check their formal correctness and compliance with reality. Its other mission consists in reviewing the financial statements and proposals for profit distribution or coverage of loss.

The Supervisory Board has 3 members elected and recalled by the General Meeting. The articles of association may set a different number of members, but the number must be divisible by three. The Supervisory Board elects its chairman.

The statutory body in the **monistic system** is the **statutory manager**[13] appointed by the Board of Directors. The statutory manager performs the same functions as the Board of Directors in the dualistic system.

The **supervisory body** in the **monistic system** is the **Administrative Board**. The Administrative Board is subject to all the provisions on the Supervisory Board, except that its mission is expanded compared to the Supervisory Body in the dualistic system, as it also sets the fundamental directions to be followed in the company's business administration and oversees that this is duly respected. The body's operations are managed by its Chairman, elected by the other members.

A single natural person may act as the Chairman of the Administrative Board and the Statutory Manager.

9.3 Profit Share and Share in Loss, Shares

As explained above, shareholders are not liable for the company's debts, and inherently, for its loss, except for where the joint-stock company is being dissolved with liquidation where the shareholders are liable up to their so-called share in the liquidation balance.

The general meeting may not approve a distribution of profit if the financial statements indicate the equity before or after the distribution falls below the amount stipulated by a statute. Also, it is impossible to distribute among members an amount higher than the profit/loss increased by the retained earnings from previous years and reduced by the loss from previous years and by allocations to mandatory funds.

A shareholder is entitled to a profit share approved by the General Meeting for distribution. Generally, a shareholder's profit share is determined by the ratio of their share to the registered capital. For shares that entail a right to a fixed share of profit (see below for shares associated with special rights), no decision of the

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[13] *The amendment to the Business Corporations Act, effective from 1 January 2021, abolishes the statutory director's body within the monistic structure. The only obligatory bodies to be established should now be the General Meeting and the Board of Directors.*

General Meeting is required and the claim to such a share exists once the financial statements are approved.

The articles of association may tie various types of shares with different claims to a dividend. A joint-stock company may issue the following types of shares.

The law allows joint stock companies to issue either shares with a par value or no-par value shares, but not both. **Shares with a par value** are shares whose value is set and is not subject to variations during the life cycle of the company. The business share represented by such a share is determined by the ratio of the par value to the overall registered capital. One company may issue shares with different par values. **No-par value shares** do not have a set par value; they represent equal shares in the company's registered capital. The share amount pertaining to a single no-par value share is calculated by simply dividing the amount of the registered capital by the total number of shares. A no-par value share confers one vote upon its holder.

From the formal perspective, a share can be either a registered security or a bearer security. **A registered share** is issued to the order of a specific natural person or legal entity; it is an order instrument. Transferability of registered shares may be restricted (but not excluded) in the articles of association by making it contingent upon the consent of any of the company's bodies. The list of shareholders is kept by the issuer. **A bearer share** is a bearer instrument that is subject to no transferability restrictions. A company cannot issue them as certificated shares.

A joint-stock company may issue **shares of various forms**. They may be certificated shares, book-entry shares or immobilised shares. **Certificated shares** may be issued as individual shares or collective instruments where a single instrument represents multiple shares. Only registered shares may be certificated. **Book-entry shares** exist only as records and have no physical form. Only a licensed body may administer a register of book-entry securities. In the Czech Republic, this is entrusted to the Central Securities Depository. Book-entry shares (book-entry securities in general) are subject to no restrictions on transferability unless the articles of association stipulate otherwise. Both bearer shares and registered shares may be available in this form. Book-entry shares may be transferred by contract and for the transfer to take effect, evidence of the holder change must be presented to the company. **Immobilised shares** are certificated shares placed in (collective) custody with a licensed body, which subsequently issues their book-entry equivalents and maintains the list of shareholder. Only the Central Securities Depository or a securities trader authorised to provide investment and investment instrument custody services may take this role. Even when the holder of such shares changes, the shares do not physically leave the collective custody and only the relevant records are updated. Handling immobilised shares is similar to handling book-entry shares.

A joint-stock company may issue **shares with special rights** or so-called **ordinary shares**, which do not give any special rights to their holders. Shares that entail the same rights form a single type. **Special rights** and the content thereof are determined by the articles of association and may relate, for example, to the profit share, the weighing of votes, the preferential right to subscribe further shares or other securities issued by the company. Shares that confer a preferential right to a profit share, the company's other own sources, or the liquidation balance are referred to as **preference shares**. However, such preference shares are issued **without voting rights**, unless the articles of association stipulate otherwise. The law restricts issuing shares with no voting rights so that the aggregate par value of such shares does not exceed 90% of the company's registered capital.

Convertible and preferential bonds constitute special types of securities a joint-stock company can issue. **Convertible bonds** confer upon their owners the right to exchange the bonds for the company's shares within the bond tenor. These may be shares already issued or shares issued as a result of a decision to conditionally

increase the registered capital. An owner of a **preferential bond** has the preferential right to subscribe the company's shares at the issue thereof provided the company decides to conditionally increase its registered capital. Existing shareholders have the right to acquire preferential and convertible bonds.

9.4 List of Terms with Czech Translation:

Articles of association	Stanovy společnosti
Founders of a joint-stock company	Zakladatelé akciové společnosti
Share premium	Emisní ážio
Contribution obligation	Vkladová povinnost
Dualistic system	Dualistický system
Monistic system	Monistický system
General Meeting	Valná hromada
Board of Directors	Představenstvo
Statutory manager	Statutární ředitel
Supervisory Board	Dozorčí rada
Administrative Board	Správní rada
Chairman of the Administrative Board	Předseda správní rady
Shareholder	Akcionář
Shares with a par value	Akcie se jmenovitou hodnotou
No-par value shares	Kusové akcie
Registered share	Akcie na jméno
Bearer share	Akcie na majitele
Certificated share	Listinná akcie
Book-entry share	Zaknihovaná akcie
Immobilised share	Imobilizovaná akcie
Ordinary share	Kmenová akcie
Preference share without voting rights	Prioritní akcie bez hlasovacího práva

Convertible bond	Vyměnitelný dluhopis
Preferential bond	Prioritní dluhopis

9.5 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 90/2012 Coll., Business Corporations Act

Act No. 256/2004 Coll., Capital Markets Business Act

Government Decree No. 351/2013 Coll., laying down the default interest rates and the amount of costs connected with the application of receivables, determining the compensation of liquidators, liquidation administrators and court-appointed members of legal entity bodies, and regulating certain matters related to the Commercial Register and public legal entity registers.

10 LAW OF OBLIGATIONS – CONCEPT, FUNCTIONAL ELEMENTS

The law of obligations is a set of rules governing the rights and obligations existing between legal subjects. As a rule, property and services are the object of obligations. **'Obligation'** is an abstract concept, which is not defined by law and is usually interpreted as an obligation law relationship where one of the parties to the relationship (the debtor) is obliged to provide the other party (the creditor) with a certain value, generally a property value, i.e. a performance, and the other party (the creditor) may demand such performance from the debtor. A civil law obligation is characterised by the so-called equal footing of the parties, who must generally agree on the establishment and formation of their mutual subjective rights and duties unless such legal duties follow directly from the law. An obligation is therefore a relationship resulting from civil law relations established between at least two subjects, the object of which is the obligation itself, i.e. a right to demand that the other party acts in a certain way, to demand a performance, the provision of a property value, etc., and where the obligation is enforceable in law and protected by law and where the protection is exercised by a public authority.

10.1 Subjects

Both natural persons and legal entities may be subjects of obligations. Under private law relations, a subject is always a person with the so-called legal personality. The group of potential subjects of law relations may also include the State, or municipalities and regions. The basic subjects of an obligation are therefore a debtor (the person liable to pay) and a creditor. The present Civil Code avoids references to "creditor" and "debtor", but instead refers to the subjects as the "parties" who have decided to establish an obligation between them. There are multiple specific terms to refer to the parties depending on the specific contract type concerned (such as "buyer" and "seller" for a purchase contract).

An obligation is a relative relationship, i.e., it applies to specific, individually identified subjects between whom mutual rights and obligations exist or could potentially exist. Conversely, absolute property rights are effective against everyone, and the distinction between absolute and relative rights is therefore absolutely clear.

10.2 Principles Underlying the Contractual Law of Obligations

Equality of parties is one of the underlying principles of private law. The equality must be understood on two levels. No one can impose an obligation or a right on another. On the other level, it is important that once parties reach consent and enter into a contract, they may not enforce the other party's duties by themselves but rather via an independent third party, which they both face on an equal footing. At present, the new Civil Code does not expressly refer to equality, the concept is methodologically subsumed under the principle of autonomy of will.

The parties' freedom to contract as a manifestation of the autonomy of their will therefore means not only that the parties enjoy the freedom to enter into a contract, but also that they may choose the contractual party, the contract type, determine the content of the contract and its form and to terminate the contract subject to the agreed conditions.

In some cases, however, entering into a contract may be stipulated as a duty where emphasis is placed on the protection of a public interest or a state-protected interest of individuals. This applies, for instance, where a lawyer or a member of the Czech Medical Chamber is obliged to enter into an insurance contract, etc. Also, for the same reason consisting in protection of a public interest, some contracts are subject to mandatory

provisions of the law, i.e. rules the parties cannot derogate from. This is the case, for instance, for consumer or standard-form contracts. **A standard-form contract** refers to a situation where the terms and conditions are laid down solely by one party, namely the stronger one, leaving the other party with the simple take-it-or-leave-it option. In addition, the contract must not contain any provisions making it non-terminable or any equivalent provision, such as setting the term of the contract to 500 years.

The contracting parties may enter into a contract either expressly (orally or in writing) or in any other way that does not give rise to doubts as to what the parties intended to agree upon, which is referred to as the so-called implied formation of contract. In exceptional cases, the law imposes certain formal requirements, such as for a contract for the establishment or transfer of a title to an immovable thing.

The Civil Code gives prominence to autonomy of will, referring to the principle right in the first section while at the same time defining acts that are prohibited. The prohibited acts involve stipulations contrary to good morals, public order or the law concerning the status of persons (so-called status law), including personality rights (personality protection law). Such stipulations may then be sanctioned by being voidable, which means that the other party must demand that they be pronounced null. Nullity is retained in certain cases and it results in the performance concerned being regarded as impossible from the very outset. This option is reserved for acts that are clearly contrary to good morals and contravene the law, where the meaning and purpose of the law so require if the stipulation is manifestly contrary to public order.

Another underlying principle is **pacta sunt servanda, i.e., agreements must be kept**. This also means that a contract may only be amended with the consent of all parties, or on other statutory grounds. But even here, there are certain exceptions to the rule, for example when it comes to assignment of receivables where the creditor may change regardless of whether the debtor agrees to such a change.

The law relatively frequently refers to **good faith** (*bona fides*) expressly, but the principle applies universally. The principle is based on the presumption that, in their actions, a law subject relies on an objectively justifiable personal belief that they are acting lawfully, that the right they are exercising pertains to them and that they are not interfering with anyone else's right. Whoever claims the opposite bears the onus of proof. The absence of good faith must therefore be proven.

According to another principle, **no one can allege his own fault** (*nemo turpitudinem suam allegare potest*), i.e., no one can succeed in invoking their own dishonesty. Consequently, an abuse of a right is eliminated since no protection is afforded where one's right has obviously been misused.

Similarly to the autonomy of will, **the good conduct principle** is also enshrined in the very preamble of the Civil Code, which stipulates that the interpretation and application of a statute must not be contrary to good morals and must not lead to cruelty or inconsiderate behaviour offensive to ordinary human feelings. Legal acts that are contrary to good morals as well as legal acts that contravene the law are null if the meaning and purpose of the law so requires. A court shall, even *ex officio*, pronounce nullity of a legal act that is manifestly against good morals or which is contrary to a statute and manifestly disrupts public order, as well as an act that requires the provision of a performance which was impossible from the beginning.

10.3 Classification of Obligations

According to the legal ground on which they arose, obligation rights are classified as either **contractual** or **tortious** or, by analogy, as **quasi-contractual** and **quasi-tortious**, where "quasi" means "seemingly/as if"; the reference here is to an obligation that has been established as if under a contract or a tort, yet one essential component is always missing.

Depending on the form, there are **formal** and **informal** obligations. The distinctive element here is whether, or not, the law stipulates a prescribed form for the obligation, such as whether the obligation must be furnished in writing.

Distinction is also made between **synallagmatic** and **asynallagmatic** obligations with the presence of reciprocity being the distinctive element, where in synallagmatic obligations the parties' performances are mutually interdependent, as opposed to asynallagmatic obligations, which are not.

Also, obligations are divided according to whether they are **gratuitous** or **not**.

Obligations may also be divided **according to the manner of performance**, namely into **one-off**, **recurrent** or **continuous** obligations.

The actual performance may be fee-based, substantive or service-based.

The subject of performance may be determined individually, generically or alternatively.

According to the dependency, an obligation may be incidental, i.e. entirely **dependent**, or **primary**. The life of each dependent obligation is then inextricably linked to that of the primary obligation.

Depending on the number of subjects involved, obligations may be **simple** and **joint**, or **compound**, where the latter may be subject to debtor solidarity either under the law or following an agreement of the parties. The debtor who ends up performing for the other debtors, may apply a regression claim to the others.

Prior to 2014, relations between entrepreneurs in the Czech Republic were regulated by the Commercial Code. At present, they are regulated by the Civil Code, which puts an end to the twin-track approach to the law of obligations. Business obligations are now defined through the identification of relations between two entrepreneurs, with the concept of entrepreneur assuming a central position in business law. An entrepreneur acts as a subject in all legal relations based on the standards of business law.

10.4 Business Obligations

Under the current regulation, an entrepreneur is a person who independently carries out a gainful activity, on their own account and responsibility, in the form of a trade or in a similar manner with the intention to do so consistently for profit. Persons registered in the Commercial Register and persons who are entrepreneurs by law are also regarded as entrepreneurs. Therefore, business obligations are relations between entrepreneurs in which they engage in the course of their business. The former law foresaw a higher degree of professionalism on the part of the actors. Traces of this special position of such persons are also found in the new Civil Code. The current law does not, in principle, distinguish between business and non-business relations, but in the law of obligations, entrepreneurs are subject to special provisions, where the law, for example, stipulates that if a person belongs a to a particular profession, as is the case, for instance, for entrepreneurs, they are capable of exercising the requisite expertise and care and are as such expressly regarded as persons having special qualities in the context of forming obligations. The law also protects the weaker party. The aim here is not protect consumers only, but rather all non-business subjects, of which an entrepreneur must not take advantage.

Situations where an entrepreneur enters into a legal relation with another entrepreneur are subject to the law of economic relations. In such relations, the law presumes the professionalism and expertise referred to above on both sides. No party is regarded as being a weaker party. It is precisely these relations that need to be regarded as **business obligations**.

Moreover, the law contains a number of derogations for business relations, which are usually signalled in text using typical language such as "in legal relations between entrepreneurs" or "between entrepreneurs."

Another thing that implies that entrepreneurs are subject to more stringent requirements is the doctrine of reasonable expectation, according to which experts are subject to increased demands as regards the quality of their legal acts. Other persons may rely on the actor having a particular quality or ability. This quality can be rendered explicit, but it is sufficient for the actor to be a member of a particular profession (a doctor, a lawyer) or to exercise a particular occupation to which the special qualities relate (e.g., an electrician).

A very important aspect for entrepreneurs is the possibility to include various **usages of trade** in their legal acts, which is only possible under legal relations between entrepreneurs. In legal relations between entrepreneurs, established usages are even regarded as being above the law. Usage can be defined as a certain method of action that is generally accepted and has been observed for a certain period of time by those exercising the activity. Business usages

denote practices that have solidified in business relations. Usages may be local, national, or international, and they may be related to a particular sector, or only to a particular type of a trade. Consequently, business usages need to be regarded as unwritten standards, i.e., practices and general usages of trade pertaining to a specific obligation. The application of practices may be excluded.

10.5 Consumer Obligations

The consumer category is characteristic for the special statuses the parties enjoy. In assessing the origin and content of an obligation, a consumer enjoys a protected status in comparison to an entrepreneur—in sharp contrast to the doctrine of equality of parties central to the very concept and underlying principles of the law of obligations or private law in general. Present-day private law however recognises that civil-law subjects are not necessarily equal at the time an obligation is being formed, and therefore introduces the concept of weaker party protection.

The aim is to establish a balance to compensate for the de-facto distortion created by the economic superiority of the professional. According to the definition, a consumer is a person who enters into a contract or otherwise transacts with an entrepreneur.

Consumer obligations therefore form a separate system of law and their existence led to the broadening of the definition of entrepreneur in statutory law. The broader definition, applicable only to consumer obligations[14], also encompasses non-entrepreneurial persons as long as they enter into contracts the subject matter of which concerns their own business, manufacturing or similar activity, or in the independent exercise of an occupation.

10.6 List of Terms with Czech Translation:

Obligation	Závazek

[14] Furthermore, it applies to the protection of entrepreneurs who are in a weaker position in a given contractual relationship, where—if the mutual obligation of entrepreneurs includes an obligation to supply goods or services at a price, the price is due within thirty days of the debtor receiving an invoice or a similar payment request, or of the date of receiving the goods or service, whichever occurs later.

Civil law relations	Soukromoprávní vztahy
Principles underlying the contractual law of obligations	Základní zásady smluvního práva
The parties' freedom to contract principle	Zásada smluvní svobody
Pacta sunt servanda principle	Smlouvy se mají dodržovat
Good faith (bona fides) principle	Zásada dobré víry
No one can allege his own fault (nemo turpitudinem suam allegare potest) principle	Nikdo nemůže mít prospěch ze svého protiprávního chování
Good conduct principle	Zásada dobrých mravů
Consumer obligations	Spotřebitelské závazkové vztahy
Business obligations	Obchodní závazkové vztahy
Contractual obligations	Smluvní závazky
Tortious obligations	Deliktní závazky
Quasi – contractual obligations	Kvazikontraktní závazky
Quasi – tortious obligations	Kvazideliktní závazky
One-off obligations	Jednorázové závazky
Recurrent obligations	Opakované závazky
Continuous obligations	Nepřetržité závazky
Incidental (entirely dependent) obligations	Akcesorické závazky
Primary obligations	Hlavní závazky
Simple obligations	Jednoduché závazky
Joint obligations	Společné závazky
Compound obligations	Složené závazky
Usages of trade	Obchodní zvyklosti

10.7 Related Acts:

Act No. 89/2012 Coll., Civil Code

11 FORMATION OF CONTRACT AND PRACTICAL RECOMMENDATIONS

11.1 Formation of Contract

The typical method of forming a contract starts with an offer (a proposal to form a contract), addressed to a predetermined person. This is followed by acceptance, or revocation or recall of the offer.

Derogations from the typical method of forming contracts mainly involve entrepreneurs, to whom the protection afforded to other persons is denied and who are charged with special duties. The need for different rules for entrepreneurs is based primarily on the presumption that entrepreneurs are professionals who regularly engage in similar obligations and therefore have a higher level of expertise and experience in this area and are subject to more stringent demands. At the same time, if two entrepreneurs act as professionals, there is no need for the same protection as in the case of a consumer; on the contrary, the business relations must be flexible and fast and unimpeded with unnecessary formalities. Depending on with whom an entrepreneur enters into a contract, the transactions are divided into **B2B** (business to business) and **B2C** (business to consumers). Special rules are laid down for the so-called **standard-form contracts**.

As mentioned above, with the typical method of forming contracts, an offer is an addressed legal act intended for a predetermined person. Although an offer may be aimed at more than one person, it must always be clear who the persons are. On the contrary, **for most special methods of forming contracts**, a non-addressed legal act is presumed. The special methods of forming contracts include:

- auction
- public competition for the best bid
- public offer
- offer through advertising, which is a kind of a public offer, although regulated under the provision on offer
- awarding public procurement regulated under a special statute

11.2 Practical Recommendations

The contract should answer the following questions:

- who
- to whom
- (why)
- what
- for how much
- where, when, how
- and if not, then

When forming a contract, attention should be paid to the following aspects:

- status of parties to a specific contract
- authorisation to act in the name of a party to the contract
- if there are multiple parties, clarify the type of performance - divisible, indivisible, kind of co-ownership
- compare the content of the contract with the relevant contract type according to the civil code – mandatory, optional

- fee-based or non-fee based performance
- form of the contract and method of its formation
- for a fee-based contract, regulate the fee, payment term, default interest, contractual fine, security
- whether a set-off is possible or not
- whether an assignment is possible or not
- regulate the method of communication between the parties (delivering communications, statements, notices of termination)
- confidentiality of the parties
- pay attention to other statutes - government approval, municipal/regional council approval, consent of the general meeting, land register on the day of execution of the contract
- consider due managerial care, expert opinion
- recommendation to exclude usages of trade and, where applicable, established practice between the parties from the concluding provisions of the contract

11.3 List of Terms with Czech Translation:

The typical method of forming a contract	Typický způsob uzavíraní smluv
Derogations from the typical method of forming contracts	Odchylky od typického způsobu uzavíraní smluv
B2B contracts	Smlouvy mezi podnikateli
B2C contracts	Smlouvy mezi podnikatelem a spotřebitelem
Standard-form contracts	Adhezní smlouvy
Special methods of forming contracts	Zvláštní metody uzavírání smluv
Auction	Dražba
Public competition for the best bid	Veřejná soutěž o nejvýhodnější nabídku
Public offer	Veřejná nabídka
Offer through advertising	Nabídka reklamou
Public procurement regulated under a special statute	Zadávání veřejných zakázek, které jsou upraveny ve zvláštních zákonech

11.4 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 134/2016 Coll., on Public Procurement

12 CONSUMER PROTECTION AND OBLIGATIONS

12.1 CONSUMER PROTECTION IN THE EU

EU law in particular regulates blanket consumer protection, which pertains to public law. However, obstacles to the free movement of goods have also been dealt with by private law of the Member States, and therefore a certain amount of harmonisation exists when it comes to the protection afforded to individual consumers (e.g. liability for damage caused by a product defect).

Consumer law itself is very fragmented in the EU. The Commission called for an improvement in its 2007 Green Paper, trying to overcome this fragmentation by preferring full harmonisation over minimal harmonisation. However, this runs counter to Member States' interests. Member States have not yet delegated to EU bodies the power to harmonise private contract law.

Consumer protection directives can be divided into those that constitute full harmonisation of the laws of the Member States and therefore do not permit any derogations through national rules. These include, for example, the Liability for Defective Products Directive, the Timesharing Directive, the Consumer Credit Directive, the Unfair Commercial Practices Directive and the Consumer Rights Directive. Other consumer protection laws belong to a group of directives that only require Member States to enact minimal harmonisation. In practice, this means that Member States can adopt a higher standard of protection provided that this does not create an unjustified obstacle in the internal market.

Consumer protection is a **joint competence shared between the Union and the Member States**, which in practice means that Member States exercise their competence to the extent that the Union has not. The competences of this kind are also sometimes referred to as a doctrine of occupied field. Member States do not have the power to create their own laws in areas already regulated by EU law (except for where they adopt stricter rules in the event of minimum harmonisation). And, as explained above, the 'fields occupied by the Union' have so far been considerably fragmented. However, this is not to say that the Directives do not have practical benefits for consumers.

12.2 Consumer Protection in the Czech Republic

Consumer protection in the Czech Republic is primarily regulated by two key laws, namely the Consumer Protection Act, which covers this area from the public law point of view, and the Civil Code, which regulates the private law aspects of consumer law.

In order to prevent a consumer, i.e. the weaker and more vulnerable party, from entering into transactions that are disadvantageous for them, the Consumer Protection Act sets certain obligations, which must be adhered to in the public interest and which are to be overseen by public authority bodies. At the same time, the competent supervisory authorities are designated and public-law fines are set out.

The consequences of non-compliance with the mandatory consumer protection provisions in the Civil Code have private law effects, i.e. they affect the legal relationship between a consumer and a seller and any dispute between the two may only be resolved by the competent court.

The private-law and public-law aspects of consumer protection overlap in the field of unfair competition, since unfair commercial practices, as defined by the Consumer Protection Act, may also become the underlying facts of the case for unfair competition as regulated by the Civil Code, and consumers can defend themselves against

them using this particular unfair competition law.

Consumer protection can be divided into public- and private-law protection, or also into substantive- and procedural-law protection.

12.2.1 Private-law Consumer Protection

Formation of contracts with weaker parties is closely linked to **standard-form contracts**, which involve contracts whose basic terms are determined by, or under the directions of, one of the parties only without the weaker party actually having a say in the content of the basic terms. This in particular involves form contracts and standard business terms and conditions drawn up by entrepreneurs and leaving consumers with the simple 'take-it-or-leave-it' option. The use of forms is therefore typical of standard-form contracts, but this does not preclude the formation ad-hoc form contracts, whether in relation to a single particular person or to a specific subject-matter. Conversely, if the other party has an actual opportunity to affect the basic terms of a 'form contract' and the entrepreneur successfully demonstrates this, the form contract will not be regarded as a standard-form contract *per se*. Very similar to a form contract are **the terms and conditions incorporated into the contract through a dedicated clause**, as both of these constitute forms of standardising contracts. In addition, disparity in the strength of the contracting parties is a necessary prerequisite to regarding a contract as a standard-form contract. The law on standard-form contracts will therefore only be applied where one of the parties is in a weaker position. Consumer protection then consists in an effort to mitigate the effects of the consumer's unequal position vis-à-vis the entrepreneur, who may unbalance the mutual rights and obligations under the contractual relationship with a consumer in their own favour.

A consumer is any person who, outside of their business or outside of their independent occupation, enters into a contract or otherwise transacts with an entrepreneur. Protection is therefore afforded to any natural person who, in contracting with an entrepreneur, has not acted as part of their business or independent occupation as long as the conduct of that person was aimed at acquiring goods or services for personal consumption or for the consumption of a close person.

Consumer protection also involves the not-so-common 'relative mandatoriness', which manifests itself in the fact that any arrangement derogating from the provisions on consumer protection is disregarded.

The provisions on consumer protection contained in the Civil Code primarily transpose European Directives concerning, *inter alia*, consumer distance and off-premises contracts, abusive arrangements in consumer contracts, timesharing, distance financial services contracts, travel contracts, as well as liability for defective performance in the purchase of movable or immovable property, as well as a comprehensive set of provisions regulating in detail consumer protection in purchasing items or services, including complaints.

12.2.2 Public-law Consumer Protection

Consumer Protection Act

The Act deals largely with unfair commercial practices and the protection of so-called "vulnerable consumers" (who are particularly vulnerable due to a mental or physical infirmity or age or gullibility), from the point of view of an average member of this group, such as seniors. Under the Consumer Protection Act, unfair commercial practices include, without limitation, misleading conduct, misleading omissions and aggressive business practices. An average consumer is a person who has sufficient information and is reasonably attentive

and cautious, taking into account their social and cultural background and language skills.

Furthermore, the Act, for example, stipulates that a seller must not discriminate against consumers when selling products or providing services. A seller who violates the prohibition of discrimination against consumers may be charged with a fine of up to CZK 3,000,000.

The Consumer Protection Act also contains provisions that primarily have a private-law effect, such as that a complaint must be settled within 30 days of being applied, as the lapse of this period in vain activates the legal fiction of a substantial breach of contract with all the consequences this gives rise to. The Act can therefore be characterised as a mix of public- and private-law consumer protection rules, or as a public-law standard with private-law implications.

Other Laws

In order for the free movement of goods and the sale thereof to all consumers across all Member States to work effectively in the EU common market, it is essential that the products meet single technical and safety standards. As indicated above, it was therefore necessary to harmonise the standards and transpose them into the relevant national laws. In the Czech Republic this is the case for the General Product Safety Act, the Act on the Technical Requirements for Products and the Act on Assessment of Conformity of Specified Products Made Available on the Market.

Public Authorities

There are a number of public authorities that oversee consumer protection in various segments of the market in the Czech Republic, such as the **Czech Agriculture** and **Food Inspection Authority** and health inspection offices. The most important supervisory body is the **Czech Trade Inspection**, which reports to the Ministry of Industry and Trade.

Unlike in private law, where the parties to a dispute are equal, in a public-law relationship, the parties do not head into a dispute on an equal footing as one party is an administrative authority, which, as a public body, decides on the rights and obligations of the other party. This means that only if a subject feels affected by an administrative decision, they can bring an action before the competent court and the court will then decide between the public authority and the subject concerned in accordance with the principle of equality of parties.

Offences and Crimes

The sanctioning of unlawful conduct of entrepreneurs in relation to consumers usually falls within the scope of an **administrative authority**, which decides on the indictment and the sanction for an administrative offence, where the facts of individual offences and the maximum fine to be imposed are set out in dedicated statutes.

As regards **criminal liability**, however, reference should also be made to the Criminal Code, which mentions consumers in the constitutive elements of two crimes, namely violation of the fair competition rules and consumer detriment. For both of these criminal offences, the protection afforded to consumers is rather economic in its nature. Crimes involving damage to health are the constitutive elements of several other provisions. However, consumer protection is primarily the domain of **administrative sanctioning.**

12.3 List of Terms with Czech Translation:

Consumer protection	Ochrana spotřebitele

Consumer obligation	Spotřebitelské závazkové vztahy
Shared competence between EU and Czech Republic	Sdílené pravomoci mezi EU a Českou republikou
Standard-form contracts	Smlouvy uzavírané adhezním způsobem
The terms and conditions incorporated into the contract through a dedicated clause	Obchodní podmínky inkorporované do smlouvy doložkou
Consumer	Spotřebitel
Czech Agriculture and Food Inspection Authority	Státní zemědělská a potravinářská inspekce
health inspection offices	Hygienické stanice
Czech Trade Inspection	Česká obchodní inspekce
Criminal liability connected to the consumer protection	Trestní odpovědnost související s ochranou spotřebitele
Administrative sanctioning	Správní trestání

12.4 Related Acts:

Act No. 89/2012 Coll., Civil Code

Act No. 634/1992 on Consumer Protection

Act No. 250/2016 Coll., on Liability for Offences and Offence Proceedings

Act No. 40/2009 Coll., Criminal Code

Act No. 102/2001 Coll., on General Product Safety

Act No. 22/1997 Coll., on Technical Requirements for Products

Act No. 90/2016 Coll., on Conformity Assessment of Specified Products Made Available on the Market

Document COM (2006) 704

Directive on Liability for Defective Products (85/374/EEC)

Timesharing Directive (2008/122/EU)

Consumer Credit Directive (2008/48/EC)

Unfair Commercial Practices Directive (2005/29/EC)

Consumer Rights Directive (2011/83/EU)

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