

ESTABLISHING A BRANCH OR SUBSIDIARY IN THE CZECH REPUBLIC

O některých rozdílech organizační složky a dceřiné společnosti informují JINDŘICH KRÁL a RADEK DVORÁČEK.

There are several ways foreign companies can enter the Czech market. Companies based in the European Union may provide cross-border services, meaning they can offer their services on a temporary basis in another EU member state without having to establish themselves there. In order to do business on a long-term or permanent basis, however, they must either do so through a local subsidiary (typically a limited liability or joint stock company) or set up a branch. Below we summarize some of the main aspects of these two options.

There are certain common misunderstandings regarding the legal status of branch. For one, unlike a subsidiary, a branch is not an independent legal entity but instead represents the company in the Czech Republic, meaning that any agreements entered into or any obligations or rights assumed by the branch are directly binding on the company. However, like a subsidiary, a branch is considered a local tax payer in the Czech Republic.

When it comes to administrative formalities, incorporating a branch is considerably easier and faster than in the case of a subsidiary. The founding company simply adopts a written resolution. It does not need to pay any capital contribution or do anything else.

On the other hand, to set up a limited liability company (LLC) the parent company must issue its resolution on the foundation in the form of notarial deed, which must include the articles of association, and make monetary or non-monetary contributions to the LLC's registered capital. At its for-

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|----------------------------------|----------------------------------|
| articles of association | stanovy |
| [ˌɑːtɪkəl əv əˈsəʊsi'eɪʃən] | |
| burden of proof | důkazní břemeno |
| [ˈbɜːdn əv ˈpruːf] | |
| branch | organizační složka |
| [brɑːntʃ] | |
| branch manager | vedoucí organizační složky |
| [ˈbrɑːntʃ ˌmænɪdʒə] | |
| capital contribution | vklad do základního kapitálu |
| [ˌkæpɪtəl kəntɪˈbjuːʃən] | |
| cross-border services | přeshraniční služby |
| [ˌkrɒs ˌbɔːdə ˈsɜːvɪsɪz] | |
| director | jednatel; člen představenstva |
| [dɪˈrektə] | |
| due managerial care | péče řádného hospodáře |
| [ˌdjuː mænəˌdʒɪəriəl ˈkeə] | |
| General Meeting | valná hromada |
| [ˌdʒenərəl ˈmiːtɪŋ] | |
| notarial deed | notářský zápis |
| [nəʊˌteəriəl ˈdiːd] | |
| resolution | rozhodnutí |
| [ˌrezəˈluːʃən] | |
| limited liability company | společnost s ručením omezeným |
| [ˌlɪmɪtəd laɪəˈbɪlətɪ ˌkʌmpəni] | |
| parent company | mateřská společnost |
| [ˈpeərənt ˌkʌmpəni] | |
| registered capital | základní kapitál |
| [ˌredʒɪstəd ˈkæpɪtəl] | |
| registered office | sídlo |
| [ˌredʒɪstəd ˈɒfɪs] | |
| subsidiary | dceřiná společnost |
| [səbˈsɪdiəri] | |
| supervisory board | dozorčí rada |
| [ˈsuːpəvaɪzəri ˌbɔːd] | |
| trade licensing authority | živnostenský úřad |
| [ˌtreɪd ˈlaɪsənsɪŋ ɔːθərətɪ] | |



mation, they must have specified its registered office that is the premises in which the office of the branch or subsidiary will be located. In both cases, a branch or a subsidiary is considered legally established when it is registered in the Commercial Register.

Although there are generally no restrictions on the scope of business activities of either a branch or a subsidiary, both must obtain the relevant trade licences (or other relevant permits) in order to conduct their business. Most standard types of trade licenses can be obtained by notifying the relevant trade licensing authority.

Regarding running a branch vs. running a subsidiary, in the case of a branch a branch manager is responsible for day-to-day operations and acts on behalf of the company in regards to the branch. In contrast, in the case of a subsidiary the statutory executives are either one or several directors who act jointly or independently on behalf of the company according to the articles of association of the subsidiary. A subsidiary may also have a supervisory board, which monitors the subsidiary's business and ensures it is operating according to the law. In the case of a joint stock company, a supervisory board is required by law, whereas LLCs usually do not have one.

Liability is another big difference between a branch and a subsidiary. Unlike a branch manager, who is only liable to the extent agreed on with the company (e.g. based on an employment agreement), the director of a subsidiary is liable for any damages to the subsidiary resulting from any breach of his/her legal duties unless executing specific orders of the General Meeting, in which case he/she is only liable if the orders are contrary to statutory provisions. If there is a question as to whether an executive exercised due managerial care, the burden of proof is on the executive.

Foreign companies have different needs when it comes to doing business abroad. Whether opening a branch or a subsidiary depends on such issues as the amount the company wants to invest and what it aims to achieve. ■

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