

## Limited Liability Companies in Europe

- Andersen Guides



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Andersen Global Chairman and Andersen CEO  
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### Best-in-class

We aim to be the benchmark for quality in our industry and the standard by which other firms are measured.



### Stewardship

We hire the best and the brightest and we invest in our people to ensure that legacy.



### Transparency

We value open communication, information sharing and inclusive decision making.



### Seamless

Our firm is constructed as a global firm. We share an interest in providing the highest level of client service regardless of location.



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Our platform allows us to objectively serve as our client's advocate; the only advice and solutions we offer are those that are in the best interest of our client.

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## ALBANIA



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in the LLC. However, it does not restrict the creation of additional bodies in an LLC which, in practice, are intended to influence and supervise the managing and representation powers of the managing director, in addition to shareholder's control.

The liability of the shareholders is, in principle, limited. Indeed, the shareholders are liable for the company's liability up to the amount of their unpaid contributions in the company's share capital. Conversely, the company's liability is unlimited, which means that it is liable for its commitments with all its assets. An explicit exception from the principle of corporate veil is contained in article 16 of the Albanian Corporations Law (see below), which seeks to counteract abusive behavior that may be seen as amounting to a "moral hazard". In addition, the liability of shareholders (where the shareholder is a legal person) may also arise if a control or equity group exists.

In principle, the liability of the managing directors is 'internal'. Therefore, in case of violation of duties and standards of due diligence, the managing directors shall be required to indemnify the company for any damages resulting from their infringements. Exceptionally, however, a managing director who deliberately engages in any of the actions listed below for his/her own benefit or for the benefit of a third party shall be jointly and severally liable for any company commitments with his/her own personal assets. These actions are:

- abuse of the legal form and/or limited liability privilege offered by the company;
- dealing with one or more company assets as if they were his/her own assets;
- where the managing director knew or must have known that the company's capital was insufficient to meet its third party commitments, and he/she failed to take the necessary actions within his/her powers to prevent the company from continuing its business and/or assuming new commitments with third parties or public authorities.

## LLCs vs. Companies Limited by Shares

While LLCs are always private corporations, companies limited by shares (i.e., joint stock companies) can be either private or public. In general, companies limited by shares are more expensive to incorporate and to operate, are subject to a higher statutory minimum share capital, present a more complex internal organization and are subject to more complex capital maintenance rules. Accordingly, joint stock companies are preferred over LLCs only if particular circumstances apply to the case at hand. For example, in Albania certain activities including those related to the financial, insurance, oil, and gas industries, may only be performed by joint stock companies.

### LLC formation checklist:

As indicated above, LLCs must have at least one member and one managing director. In addition, the following are required to establish an LLC under Albanian law:

#### Company name

This must be clearly distinguishable from any other names registered in the trade registry. Companies can make an inquiry on the availability of a name prior to registration and can reserve a name for up to 30 days.

#### Registered Office

A company is required to have a registered office in Albania. The company must be the legal owner of the property used as the company's registered office. Alternatively, it must be legally entitled to use such property (e.g. on the basis of contract). Registered office services are generally available from third party service providers in Albania subject to certain statutory requirements.

#### Capital

The minimum statutory registered capital of an LLC is ALL 100 (approximately, EUR 1). The capital may consist of cash and non-cash contributions.

#### Scope of business

The activities to be carried out by the LLC need to be listed in the company's articles of association.

#### Bank Account

The LLC should have at least one bank account.

It is not required that the bank account is opened in a bank in Albania, although this is mostly the case. The bank account needs not be open before registration of the LLC; nor is it necessary to pay up the company's share capital prior to registration. Such steps must be carried out after the registration of the subsidiary with the National Business Center.

#### Albanian Accountant

Although LLCs are not required to appoint an Albanian accountant, this is recommended to ensure that the LLC complies with applicable Albanian accounting regulations.

#### Authorization / eligibility requirements

In principle, no special authorizations or eligibility criteria apply to the incorporation of an LLC. However, certain activities may only be carried out if the LLC holds the required authorization or licenses. The licensing procedure is carried out after incorporation.

### LLC incorporation procedure:

In Albania, the founding shareholders may establish the LLC themselves. In practice, however, lawyers are usually retained.

Establishing an LLC in Albania consists of the following main steps:

- Prior to executing the necessary corporate documents, it is required for the lawyer to conduct the necessary identification procedures. In addition, lawyers assist with the drafting, review and/or collection of the required founding documents (incorporation resolution, corporate documents of the founding shareholders) and determination of basic aspects in the articles of association, (registered office, amount of basic capital, duties and powers etc.) pursuant to the Albanian Corporate laws and Anti Money Laundering (AML) laws.
- Execution of corporate documentation. No specific execution formalities apply. Such corporate documentation may be signed by the founding shareholders without being physically present in Albania. The registration procedure can be followed by the founding shareholders being physically present or by a proxy acting under a power of attorney.

### Limited Liability Companies in Albania: an overview

Limited Liability Companies ("LLC" or shoqëri me përgjegjësi të kufizuar (SHPK) in Albanian), are the most common form of private "limited" company in Albania. LLCs may carry out nearly all economic activities. The internal structure and organization of an LLC is simple, as it can operate with only one shareholder and one managing director. The administrative bodies of an LLC include the General Meeting of Shareholders ("General Meeting") and the Managing Director(s) (administrators).

The General Meeting resolves on the most important matters of the company. These may include defining the company's commercial policies, adopting and amending the company's articles of association, appointing and dismissing the managing directors and auditors, and increasing and/or reducing the company's registered share capital, among others.

The Managing Director(s) are responsible for the day-to-day management of the company in compliance with any resolutions and instructions of the General Meeting. The Managing Director(s) act also as representatives of the company vis-à-vis third parties and public bodies. Managing Directors may serve for up to five years subject to extension. Remarkably, the managing director of the parent company may not be appointed as managing director of a subsidiary.

4 | The Albanian Corporations Law does not explicitly contemplate the existence of a board of directors

- Registration of the LLC is made through the National Business Center (“NBC”). Assuming that all the documents filed are accurate and complete, registration should take 24 hours from the date of the application. In practice this may take up to 3 days if any clarification is required from the NBC. Registration with NBC also involves registration with the tax authorities and the issuance of a VAT certificate. The LLC may start issuing invoices from that moment.
- Payment of the shareholder’s contribution to the share capital can be made after incorporation in accordance with the company's articles of association.
- Post-registration actions to be completed by the LLC:

is free of charge. Incorporation costs may also include translation and document legalization fees (notarization/Apostille) if the company's structure involves a foreign element (shareholder, director). Legal fees, on the other hand, depend on complexity and other variables.

Once the subsidiary/branch is registered with the NBC, the following registrations and filings should be made:

1. Registration with the local tax office (within 30 days from the registration with the NBC, otherwise a penalty is applicable).
2. Filing for employment and residence permit for foreign nationals employed by the LLC, if any.
3. Submission of information and documents up to the ultimate beneficial owner of the LLC (controlling at least 25% of the shares or interest rights) to the relevant registry (within 30 days from the registration with the NBC, otherwise a penalty is applicable).
4. Monthly tax returns.
5. Declaration of employees with the tax authorities (24 hours before hiring a new employee and no later than ten days from termination of employment). Application is made online in the web portal of the tax authorities. Declaration of the first administrator/managing director should be made on the same day of registration of the LLC.

Please note that all foreign documents must be recent, duly notarized, and apostilled or legalized, as the case may be depending on the foreign jurisdiction. Documents written in a foreign language must be translated by an official Albanian translator.

- 6 | Registration costs are negligible, as mandatory registration with the National Business Centre

## CROATIA



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### Limited Liability Companies in Croatia: an overview

Limited Liability Companies ("LLCs" or "d.o.o." in Croatian) are the most commonly used structure for conducting business in Croatia. According to the Croatian Companies Law, LLCs are companies owned by one or more individuals and/or legal entities each of whom contributes to the company's pre-agreed basic capital. LLCs can therefore be established by one or more shareholders, who may be Croatian nationals and/or foreigners.

LLC shareholders are entitled to participate in the company's management, and in the distribution of profits; to be informed about the company's affairs, and to inspect any corporate books and records.

LLCs are managed by one or more directors, who run the company's business in accordance with the articles of association, the shareholders' resolutions, the instructions of the general assembly, and the supervisory board if, any. The directors act as the company's representatives.

In certain cases defined by the Croatian Companies Law, LLCs must have a supervisory board, namely:—where the average number of employees in any given year exceeds 200, or where the share capital exceeds HRK 600,000 and there are more than 50 shareholders, among other cases.

LLCs may take the form of simplified LLCs (of

j.d.o.o. in Croatian). The minimum share capital for simplified LLCs is HRK 10,00 and the minimum nominal value of shares is HRK 1,00. Shareholder's contributions can be made in cash only. Simplified LLCs can be established by a maximum of five shareholders, with only one managing director. As may be expected, establishing a simplified LLC is far more straightforward than establishing an ordinary LLC, as it can be done only using law-defined templates, which should be signed before a public notary with offices in the Republic of Croatia.

### Liability of the shareholders:

Shareholders are liable for the payment of their contribution to the company's share capital and any other contributions that may have been agreed in the articles of association. No shareholder is responsible for the LLC's liabilities generally, with the limited exceptions defined by the Croatian Civil Code, the Croatian Companies Law and the Bankruptcy Law.

### LLCs vs. Companies Limited by Shares:

N/A

### LLC formation checklist:

In addition to the one shareholder and one or more managing director(s) requirement referred to above, the following are required to establish an LLC under Croatian law.

#### Company name

This must be clearly distinguished from any other names registered in the court registry. The company's name must not be associated to nor infringe any IP or other rights of third parties. The word "Croatia" (and its derivatives) may be included in the company's name subject to official approval only. The company's name must be in Croatian and Latin script or in an official language of an EU Member State and in Latin script. The company's name may be translated into one or more languages and appear in the incorporation documents.

#### Registered Office

A company is required to have a registered office in Croatia. The company must be the legal owner of the property used as the company's registered office. Alternatively, it must be legally entitled to use such property (e.g. on the basis of contract).

#### Capital

The minimum share capital of an LLC is HRK 20,000 ( c.EUR 2,600). The shareholders contribution can be made in cash, physical goods or rights. Prior registration of the LLC, a minimum of ¼ share capital should be paid in cash.

#### Scope of business

The LLC's activities may be listed in special shareholders' resolution, which ensures that if changes occur there will be no need to amend the company's articles of association. For activities subject to special approval, this must be obtained prior to establishing the LLC.

#### Croatian Bank

Account At least one bank account of the LLC must be held at a Croatian bank. Importantly, a the company's share capital must be partly paid up prior to registration in a temporary bank account.

Once the LLC is established, it should open a standard bank account with the same bank and the bank will later transfer the share capital contributions into this standard account.

#### Croatian Accountant

To ensure compliance with Croatian accounting regulations, LLCs must appoint a Croatian accountant.

#### Authorization/qualification requirements

In principle, the incorporation of an LLC does not require any authorization or fulfilling any eligibility requirement. However, it is important to note that certain activities may only be carried out if the LLC holds the required authorization or license. In certain special cases, the incorporation of the LLC is subject to prior authorization.

#### LLC incorporation procedure:

In Croatia, a notary public must almost invariably be involved in the process of establishing an LLC, as only a notary public is legally authorized to confirm certain documents required to be signed

when establishing an LLC. In addition, lawyers are often retained to draft the company's articles of association and other legally required documents, except where a simplified LLC is established.

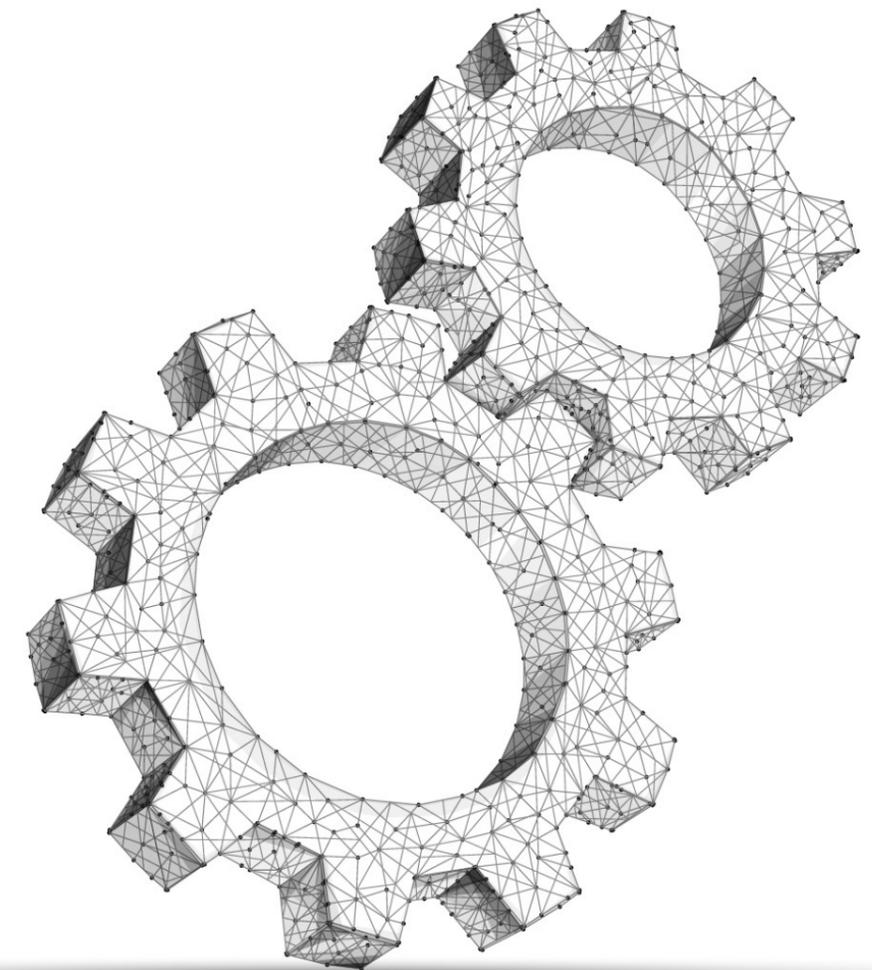
Establishing an LLC in Croatia consists of the following main steps:

- Before signing the necessary corporate documents, the lawyer must conduct the necessary identification checks pursuant to Anti-Money Laundering (AML) Law and Attorneys Law.
- Executing the corporate documentation before a notary public in Croatia. If the future shareholders are unable to attend personally at the notary's offices, such documentation may be signed by a proxy acting under a power of attorney.
- As of the date of execution of the articles of association by the shareholders before a notary public, the LLC may operate as a -company in formation (the "Forming LLC"). The Forming LLC's managing directors and the shareholders shall be jointly and severally liable to third parties for any obligations of the Forming LLC. Upon registration based on a ruling by the Court of Registration, the Forming LLC shall cease to operate as such, and any transactions entered into by it will be treated as if they had been entered into by the LLC. Furthermore, the shareholders and the managing directors shall be released of liability for the Forming LLC's obligations.
- Paying the shareholder's contribution to the share capital.
- Filing the registration application form and the necessary incorporation documents with the competent Court of Registration.
- The Court of Registration contacts the Croatian Tax Authority, which in turn provides the newly established LLC with a tax number (OIB), provided that all statutory applicable conditions are met.
- Registration by the competent Court of Registration, provided that the Court of Registration finds the filing in good order and has no further questions or requests.
- Post-registration actions to be completed by the LLC or its bookkeeper(s) (notification to the bank, registration of the LLC in the Chamber of Commerce, Central Statistical Office, Local Tax Authority, Register of real owners, etc.).

All corporate documentation must be submitted to the Court of Registration in Croatian. Documents written in a foreign language must be translated by an official Croatian translator.

The time frame of the incorporation procedure depends on various factors: execution and legalization of documents outside Croatia, official translations negotiation between shareholders regarding the Articles of Association, etc.). A typical incorporation procedure takes one to four weeks, followed by a two-week court registration procedure.

Registration costs include court and notary public fees depending on the amount of shareholders contributions. In most cases, registration costs do not typically exceed HRK 3,000 - 4,000. Registration costs may also include translation and document legalization fees (notarization/Apostille endorsement) if there is the company's structure involves a foreign element (shareholder, director). Legal fees depend on complexity and other variables.



## CYPRUS



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As a common law jurisdiction, in Cyprus directors have common law (fiduciary) and statutory duties. The directors' fiduciary duties are to act at all times in good faith and for a proper purpose, to avoid conflicts of interests (if any conflict arises, directors must inform the company), to retain their discretion, independence, and judgment and to act with due care and skill. Directors owe their fiduciary duties to their company, as opposed to individual shareholders, creditors employees. etc.

However, in certain circumstances, the directors may also owe their fiduciary duties to the shareholders (e.g. where the directors are involved in the sale of shares of a shareholder) or to creditors (e.g. where a company is insolvent).

### Limited Liability Companies vs. Companies Limited by Guarantee (with or without a share capital)

Under Cypriot law, Companies Limited by Guarantee have no share capital. Therefore, neither shareholders nor its members act as guarantors. The liability of its members is limited to the amount which, under the incorporation documents, members have undertaken to contribute to the company's assets in case of dissolution.

The Limited Liability Company with share capital and the responsibility of its members is based on the share capital they have according to the registration documents but also on the amount that the members have agreed to contribute in case of dissolution. This type of company can be either privately or publicly held. In this latter case, public limited companies may offer their shares for purchase to the public.

### Formation checklist:

#### Registered Office

A company is required to have its registered office in Cyprus.

#### Capital

There is no minimum registered capital for a Ltd.

The capital may consist of cash and non-cash contributions.

#### Scope of business

The Company's activities are listed in the articles of association. Activities that are inconsistent with Cypriot law and activities that fall within the scope of other legislations that do not belong to Cyprus legislation are prohibited.

#### Cypriot Bank Account

Under Cypriot law there is no requirement for an Ltd to own a bank account in Cyprus. However, this is strongly advisable to show the company's actual intention to carry on business activities, as opposed to merely being a 'shell' company.

#### Cypriot Accountants & Auditors

To ensure compliance with applicable statutory obligations, all Cyprus companies must draw up financial statements on an annual basis. Financial statements must be audited by an independent auditor or by an auditor registered in Cyprus. Audits are to be carried out pursuant to International Standards of Auditing (ISAs).

#### Authorization / eligibility requirements

In principle, the incorporation of an Ltd does not require any authorization nor fulfilling any eligibility requirement. However, it is important to note that certain activities may only be carried out if the Ltd holds the required authorization or license. These include: hotels, schools, restaurants, bars, cafes, financial institutions, banks, insurance companies, doctors' limited companies and lawyers' limited companies.

### Ltd incorporation procedure:

In Cyprus only licensed, practicing lawyers may incorporate a company. The establishment of a Ltd consists of the following main steps:

Before incorporation: one must decide on the type of company, the name of the company (subject to pre-approval from the Registrar of Companies), the address of the registered office, the directors and secretary, the members and the share capital, the activities of the company and the drafting of the company's memorandum and articles of association. Once the desired name of the company has been approved, the next step is for the company to be registered

with the Cypriot Registrar of Companies. This formality can be done online or by sending hard copies of the requisite documents and forms to the Registrar. The documents to be submitted are: a statutory declaration signed and sworn before the court by the appointed lawyer, the company's memorandum and articles of association in accordance with the proposed type of the company, duly signed and in the Greek language.

If a private or public Limited Liability Company with shares chooses to adopt, as its articles of association, the regulations contained in Table A of Schedule 1 of the Cypriot Companies Law, a relevant document should be submitted which refers to the title of the regulations that are being adopted, a solemn declaration of the witnesses to signatures (only if filing online), a certified translation of the memorandum and articles of association (if drafted in a language other than Greek), either by an affidavit or by a sworn translator of the Republic of Cyprus, in case one wishes to create a translation file for obtaining certified copies of the memorandum and articles of association in a foreign language, permission, consent or pre-approval by the appropriate governmental authority or appropriate body in case it is necessary for the use of words or phrases and/or due to the nature of business respectively, in case it has not been submitted already with the application for name approval and finally, the payable official fees charged by the Registrar.

The timeframe for incorporation largely depends on the workload of the Registrar, but typically this usually takes 7-10 business days with accelerated service.

### Limited liability companies in Cyprus: an overview

The most common type of company generally incorporated in Cyprus is a Limited Liability Company ("Ltd"). Ltd's may be either private or public and the denotation 'Ltd' or 'Limited' must accompany the company's name.

Ltd's must have a minimum of one shareholder, the maximum number of shareholders being 50 (excluding company employees). There is no minimum authorized and issue share capital required. The company's shares are not freely transferable. There must be at least one director and one secretary (who can be a natural or a legal person).

The Ltd's registered office must be in Cyprus. Finally, preferential or special classes of shares may be issued, and the liability of every shareholder is limited to the amount of shares subscribed.

Shareholders of a Cyprus Ltd, as a such but in no other capacity, are only liable for the amount payable on issue of those shares and their liability cannot generally go beyond.

Shareholders may enter into agreements ("SHAs") setting out the rules applicable to their relations. . SHAs may contain provisions intended to protect the rights of minority shareholders. Actions brought under a SHA would be for breach of contract and against fellow shareholders or other parties to the SHA if the company is not a party.


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**LLC formation checklist:**

As indicated above, LLCs must have at least one member and one managing director. In addition, the following requirements apply to the establishment of an LLC:

**Shareholders**

There is no minimum or maximum number of shareholders. The LLC founders can be German or foreign individuals and/or legal entities, trading partnerships and civil-law corporations.

**Individual Shareholders' Agreement / sample of record**

The LLC contract and the record concerning the set-up of the company must be certified by a Notary Public. The Shareholders' Agreement must contain at least the following information: corporate name, registered office, corporate purpose, amount of the share capital, and amount of the contributions to be paid by each shareholder.

In addition to the above required particulars, it is strongly advisable that the Shareholders' Agreement sets out rules applicable to the following: fiscal year, company's term and termination, appointment of managing directors, scope of the managing directors' representation powers, passing of resolutions by the shareholders, convening of the Shareholders' Meeting, voting procedures, shares disposal and inheritance, annual financial statements, allocation of profits, redemption of shares, departure and settlement, formation costs, exemption from the ban on self-contracting for managing directors, arbitration clause, and competition clause.

For a straightforward formation of an LLC and an entrepreneurial company (limited liability), use can be made of a standard record, which also contains the company's articles of association (see sec. 2 para 1a of the German Companies Law). These procedures make incorporation simple and cost-effective. This record must be certified by a Notary Public, followed by an application for registration with the Register of Commerce. Electronic

forwarding of the declaration with the sample record to the Local Court (Register of Commerce) is then done via the Notary Public.

**Capital**

The share capital of an LLC must be at least EUR 25,000, 1 EUR in the case of entrepreneurial companies (limited liability). Notice, however, that entrepreneurial companies must pay one quarter of the annual profits (if any) into a statutory reserve until the EUR 25,000 statutory minimum capital has been reached.

**Share contributions**

Share capital contributions must be of at least 1 Euro. The shareholders' contributions can be of different amounts.

Share capital contributions may be made in cash or in kind. In the case of cash contributions, at least one quarter of the relevant contribution must be paid up at the time of incorporation. A declaration to the Register of Commerce can only be filed if the amount of share capital contributions is at least equal to half the minimum share capital, i.e. EUR 12,500.

In the case of entrepreneurial companies (limited liability), the share capital must be paid up in full in cash before filing the application with the Register of Commerce. Contributions in kind are not allowed.

In practice, contributions in cash are paid into a bank account opened by the LLC. For registration in the Register of Commerce, the LLC's managing director must prove that the contribution is available to he/her. If the Local Court is not persuaded by the managing director's proof it may require additional evidence e.g. in the form of a paying-in slip or a statement of the LLC's bank account.

As for contributions in kind – i.e. via personal or real property – it is important to note that contributions in kind must be made for the complete amount to ensure that they are at the managing director's free disposal at the time of applying for registration with the Register of Commerce. Furthermore, the value of the contribution in kind must be proven in a report on the formation by contributions in kind. If the Local Court has grounds to suspect that a contribution in kind has been overvalued, it can require an expert to issue a report on the value

of the contribution. This will inevitably increase the LLC's incorporation costs. From this point of view, therefore, cash formation may be easier and more cost effective.

Increasing or decreasing the company's share capital requires notarial certification and is to be reported to the Register of Commerce for registration.

**Corporate name**

The corporate name is the name of the LLC as shown in the Register of Commerce. The corporation name of an LLC can refer to the company's activity (factual designation), contain the name(s) of one or more shareholder(s) (designation by name) or consist only of a fantasy name. Combinations of these elements are also possible, and in any case the factual designation must contain an individualizing addition. Corporate names must include the words "Limited Liability Company" ("Gesellschaft mit beschränkter Haftung") or the abbreviation "LLC" ("GmbH") or entrepreneurial company (limited liability) ("Unternehmergesellschaft (haftungsbeschränkt)") or the abbreviation "UG (haftungsbeschränkt)" as the case may be. The suffix "haftungsbeschränkt" ("limited liability") may not be abbreviated.

**Registered office**

The company's registered office may be located anywhere in Germany. However, LLC's may also have their administrative headquarters (place at which the main administrative activity is carried out) abroad. Notice that under new legislation, relocating the headquarters of a German GmbH or UG (haftungsbeschränkt) abroad and circumventing liquidation is not possible.

**Corporate purpose**

By law, a GmbH is always deemed a trading company, whatever the purpose actually pursued (formal merchant). GmbHs can pursue virtually any purposes admissible by law, provided that the company's corporate purpose is clearly stated in the articles of association. Words like "trade with goods of all kinds" or equivalent expressions are regarded as being too general by the courts. Certain professions may not be performed in the form of a GmbH/UG (haftungsbeschränkt), e.g. pharmacies and notaries' offices, which can nevertheless form a partnership.

**Limited liability companies in Germany: an overview**

Limited Liability Companies ("LLCs" or Gesellschaft mit beschränkter Haftung (GmbH) in German) are trade corporations with their own corporate organization and legal personality. LLCs, which can be set up for any admissible purpose, have a share capital determined by the Shareholders' Agreement, which matches the aggregate sum of the contributions to be made by the shareholders. Only the LLC is liable to creditors for corporate debts.

LLCs are the simplest form of capital company, a key benefit of which is flexibility in terms of organization. LLCs are equally suited to small enterprises, medium-sized family-run companies and even also large-scale companies.

Compared with joint stock corporations, LLCs are partly subject to less strict rules. Furthermore, the incorporation of an LLC is less formal and thus easier and more cost-effective. One-man LLCs are also possible and, normally, an LLC does not require a Supervisory Board.

LLCs are not public corporations. As a result, transfers of shares are subject to no statutory restrictions but must be certified by a Notary Public. However, the Shareholders' Agreement may include certain requirements applicable to the transfer of shares, e.g. the approval of the co-shareholders.

If the company's corporate purpose includes activities subject to approval (e.g. real estate, craftsmen's activities), permission may be evidenced upon registration in the Register of Commerce, according to the new LLC law. This results in speedier registration formalities. Existence of the necessary permission at the start of the activity subject to permission suffices. It is to be proven at the business registration.

#### Appointment of executive bodies

By law, GmbHs must have two executive bodies: one or more managing directors and the Shareholders' Meeting. The articles of association may include additional bodies (e.g. a Supervisory Board).

Application for registration of the GmbH in the Register of Commerce is attended to by the managing director(s). The latter is/are appointed by the Shareholders' Agreement or by a resolution passed by the shareholders. The appointment may be withdrawn at any time.

The name(s) of the managing director(s) is/are entered in the Register of Commerce.

#### Notarial certification

Upon registration of the GmbH, any founders not known to the Notary Public must prove their identity through valid identity documents. Individuals appearing on behalf of a third party individual or entity must produce a written power of attorney or a subsequent approval in a notarially certified form. If the signature under a power of attorney is certified by a foreign Notary Public, the signature must be legalized (or apostilled) depending on the country of origin. This formality may be completed by a Consul of the Federal Republic of Germany.

If one of the founders is a legal entity, a certified excerpt from the Register of Commerce (or equivalent official registration documents for foreign enterprises) must be produced as evidence of the legal entity's existence.

#### Application to and registration in the Register of Commerce

The GmbH only becomes formally established upon registration in the Register of Commerce. Application for registration must be made in writing at the locally competent Local Court (Amtsgericht).

The signature and the signing of the corporate name must be certified by a Notary Public.

Upon registration in the Register of Commerce, the company's corporate name, registered office, corporate purpose, share capital, date of execution of the Shareholders' Agreement, the individual(s) appointed as the Managing Director(s) and his/her/their representation powers are to be stated.

The following must also be enclosed with the registration application:

- the Shareholders' Agreement executed before a notary public,
- if applicable, powers of attorney for the persons acting,
- a list of Shareholders signed by the Managing Director(s), in the event of provision of contributions in kind, the report on the foundation by contribution in kind and documents on the value of the contributions in kind.

In addition, an assurance that the necessary minimum payments of the share contributions have been made and are finally at the free disposal of the Managing Director(s) is to be given.

The Notary Public sends all the documents to the competent Local Court by electronic means.

The entries in the Register of Commerce are made known by publication in the Electronic Federal Gazette.

#### LLC incorporation procedure:

In Germany, a lawyer or a Notary Public must be involved in the LLC incorporation process. In practice, this is performed by lawyers in close collaboration with a Notary Public.

The establishment of an LLC consists of the following main steps:

- Prior to execution of the necessary corporate documents, it is required for the lawyer or the Notary Public to conduct the necessary identification procedures.
- Execution of the corporate documentation. Documents executed abroad may require certain formalities (notarization and Apostille / legalization by a German Consulate).
- As of the date when the LLC's articles of

association are countersigned by the Notary Public, the LLC may operate as a pre-company and may start carrying on business. Upon registration by final decision of the Court of Registration the LLC shall cease to function as a pre-company, and all transactions concluded in that capacity will be treated as if they had been concluded by the LLC. If the registration of the LLC is refused by a final ruling, or if the registration application is withdrawn, and there are outstanding claims once the members' limited liability is exhausted, the acting individuals of the LLC to be established shall bear unlimited, joint and several liability against third parties.

- Opening of a bank account and transfer of minimum share capital of EUR 12,500 along with a bank certificate.
- Filing the registration request and any necessary incorporation documents with the competent Court of Registration.
- The Notary Public contacts the competent financial authority in Germany. The financial authority provides the newly established LLC with a tax number, provided that all conditions prescribed by law are met.
- Registration by the competent Court of Registration, provided that the Court of Registration finds the filing in good order and has no further questions or requests.
- Post-registration actions to be completed by the LLC (e.g. notification to social security authorities, application for specific approval or license if required to conduct the business, etc.).

Documents must be submitted to the Court of Registration in German. Documents in a foreign language (e.g. certificate of registration of the foreign legal entity quota holder) must in general be officially translated into German.

The timescale of the incorporation procedure depends on various factors (structure of initial capital contributions (valuation issues), execution and legalization of incorporation documents outside Germany, whether the founding members intend to enter into a 'Shareholders' Agreement', etc.). A typical incorporation procedure takes 4-6 weeks, followed by a 2-week court registration procedure.

Establishment costs vary according to the company's share capital and goodwill and also whether the more favorable set-up record or an individual Shareholders' Agreement is used. To the extent to be seen according to statements up to now, the costs are due as follows:

Without a foundation record, the costs for the foundation of an "UG (haftungsbeschränkt)" are just as high as for a GmbH without foundation record. The fee for the entry of a company into the Register of Commerce is approx. EUR 100. There are then also costs for the publication of the entry in the Federal Gazette and possibly in further publication bodies. Here too, an amount in the order of magnitude of EUR 100 to EUR 300 should be expected per publication. This calculation does not include costs for further support in particular formulations by the Notary Public or for making use of a lawyer's advice, e.g. for the draft of a Shareholders' Agreement. In particular with a view to the draft of a Shareholders' Agreement, it is recommended that the question of costs be discussed beforehand, as the fees due are subject to free agreement.

## GREECE



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transactions, the previous words are expressed as “Single Member Limited Liability Company” or “Single Member LLC.” or “Single Member LTD”.

The company’s capital is determined by the partners at their discretion, provided that the minimum nominal value of each partnership may not be under EUR 1. The capital is divided into “portions of participation”, and may not be incorporated into shares (Art. 1 par. 2 Law 3190/1955).

The governing bodies of an LLC are the “Meeting of Partners” convened at least once a year and the “Director(s)” elected by the Meeting of Partners.

**Partners’ Resolutions:** One of the main personal elements of an LLC is the way that the company’s resolutions are passed in a Meeting of Partners, i.e. through the principle of “double majority”. The principle of “double majority” means that no resolution can be passed, unless there is, at the same time, a majority on the number of partners (majority of partners) and a majority on participations on the company capital (majority of capital). In other words, a resolution can only be passed in a Meeting of Partners by a majority of more than one half (1/2) of the total number of partners representing more than one half (1/2) of the total capital of the company (Art. 13).

**Director(s)’ Resolutions:** The Director(s) is(are) responsible for the management of the company and its affairs. One or more Directors may be appointed. If there is more than one Director, they shall act and take resolutions jointly, unless otherwise provided by the articles of association or by a resolution of the Company’s Meeting of Partners (Art. 17). In case there is no specific provisions in the company’s articles of association, then all partners of the company shall jointly act as Directors by law (Art. 16).

**Managing Directors’ Liability:** The Director(s) is (are) liable for compensation against company, each partner or any third party, in case they have violated any of the provisions of Law 3190/1955 or of the articles of association or in case they have acted with negligence during their term of

office or while representing the company (Art. 26). Notwithstanding the above, the director(s) is (are) personally and jointly liable with the company for the payment of income tax, withholding tax, Value Added Tax, Single Property Tax, as well as the payment of insurance contributions, additional fees, and other fees to Social Security Institutions, regardless of the time of their certification, provided that the debts became overdue during their term of office and these debts were not paid or reimbursed to the State through his fault.

**Partners’ Liability:** One of the main characteristics of the LLC’s capital element is that the company is exclusively liable, without limit, for its debts with its assets (Art. 1 par. 1 Law 3190/1955) while the partners have no personal liability whatsoever for the company’s affairs, obligations, responsibilities and liability towards third parties or the authorities. **Partners’ and Managing Directors contributions:** The partners of an LLC must pay insurance contributions (article 39, law 4387/2016) and if they also exercise management duties, for a fee, they must pay contributions for the specific fee according to article 38, law 4387/2016. The Managing Directors who do not have the status of a partner (third party) must also pay contributions for the specific fee, in accordance with article 38, law 4387/2016.

### LLCs VS Companies limited by shares

**Company Limited by shares (SA):** A Company Limited by shares, namely the Société Anonyme, is a capital company with legal personality. Whereas an LLC is always private, a company limited by shares can be either private or public. An S.A. may also be listed on the stock exchange under certain conditions. SAs are responsible for the corporate debts with their assets, while the liability of shareholders is, in principle, limited to the amount of their shareholding (capital contributions). The company’s capital is divided into shares.

The internal organization of an SA includes the General Meeting of Shareholders and the Board of Directors. This type of company is more complex in terms of procedural matters and the requirements that need to be met for its incorporation, with the most important being the minimum capital standard of EUR 25,000 required for the company’s establishment. As a

general rule, the S.A. is preferable for investments of a larger scale with a significant capital base, included groups of companies.

**Idiotiki Kefalaouchiki Etaireia (IKE):** However, in the current decade the LLC company has almost been replaced by a newer corporate form, namely “Idiotiki Kefalaouchiki Etaireia” or “IKE” in Greek (and “Private Company” or “P.C.” for international transactions), which is much more flexible than LLC. In fact, the corporate form of IKE is notably the most popular form for business, due to its flexibility, low cost of operation and simplicity of the establishment procedure, compared to LLCs and S.As.

More specifically, IKEs are commercial companies with legal personality, which may be incorporated by one or more persons. Their capital is determined by the members in their discretion without restriction from the Law, as there is no minimum share capital requirement. In addition, the PC alone is liable with its property for the company’s obligations. In essence, the IKE provides more flexible establishment requirements, since the latter until recently could be incorporated only through a Notarial deed. According to article 6 of Law 3190/1955, as amended by the Law 4541/2018 (Gov Gazette Vol. A, No. 93/31.5.2018), the incorporation procedure has now been simplified and the LLC can be incorporated not only through a Notarial deed but also with a private document using the standard “Model AoA”, via the electronic procedure of “One Stop Shop” service of the competent Chamber of Commerce (“Y.M.S in Greek).

However, the involvement of a Notary is still required for the amendment of AoA for the LLCs incorporated before the enforcement of Law 4541/2018 and also for the resolutions of Single Member LLCs and the transfer of the partners’ portions of participation. Moreover, in IKE the partners may participate in the capital not only with capital contributions but also, with non-capital or with guaranteed contributions. Capital contributions are contributions in cash or in kind. Capital contributions in kind are only allowed when they refer to assets which can be evaluated in cash. In short, IKE is considered preferable to LLC in terms of the type of the founding act, the flexibility in the establishment, the cost of the establishment and the decision making.

### LLCs in Greece: an overview

A Limited Liability Company “LLC”, (Etairia Periorismenis Efthisis or “E.P.E.” in Greek) is a commercial company with legal personality acquired upon registration in the General Commercial Registry. LLCs are an intermediate (mixed) corporate form between partnerships and corporations, which combine characteristics of both personal and capital companies. Therefore, LLCs are a convenient form of organization for both small and medium-size enterprises. Greek LLCs can be formed by one or more natural or legal persons. These persons are called “partners”, not shareholders.

The duration of a limited liability company is definite, and it is defined in years. The specified duration of the company can be extended before the relevant expiration date by a resolution of the Partners’ Meeting.

The company’s name is formed either by the name of one or more partners or by the object of its business activity or by other verbal indications and it can be partially or entirely written out in Latin letters. The corporate name must include, written out in full, the words “Etairia Periorismenis Efthisis” or “E.P.E.” in Greek. For international transactions, the above words are expressed as “Limited Liability Company,” “LLC” or “LTD”.

The company name of a single member limited liability company must include the word “Monoprosopi Etairia Periorismenis Efthisis” or “Monoprosopi E.P.E.” in Greek. For international

Also, regarding the possibility, through the non-capital and guarantee contributions, of participation in the capital of a partner who does not have or does not wish to allocate funds for his participation. In addition, another advantage of IKE over LLC is the smaller due insurance contributions of IKE to EFKA.

In conclusion, both IKE and LLC are corporate types that lie between the capital companies and the personal companies. However, nowadays LLC constitutes an obsolete form for business, whilst the corporate form of IKE is preferred by the entrepreneurs due to its simplified procedural, flexibility and limited incorporation requirements, as mentioned above. It could be said that even if IKE was created as an intermediary company between Ltd. and SA., from a comparative overview of the two corporate types (IKE and EPE) it is concluded that IKE has made the existence of EPE almost unnecessary. In view of the above and given the clear prevalence of IKE instead of LLC, more accurate would be a comparison between IKE and SA and the identification of the preferred option.

### Checklist for the establishment of an LLC

#### Registered Office

A company is required to have a registered office in Greece. The real estate used for the company's registered office must be owned outright by the company, or the company must be legally entitled to use it, through a lease contract.

#### Capital

The company's capital is determined freely by partners and there is no minimum amount, provided that the nominal value of each partnership part is set to be at least EUR 1. All partnership parts shall get the same nominal value. The company's capital can be formed by contributions in cash or in kind. In the latter case, contributions must be assets which can be evaluated in cash. The capital must be paid upon the establishment of the company.

#### Corporate name

The corporate name of an LLC is formed either by the name of one or more partners, by the company's purpose, or by other words, as it was referred in detail per above. An application to General Commercial Registry is necessary in order that the under-establishment company receives

a corporate name which is not used by another entity.

#### Scope of business activities

The activities and purposes of the company are detailed in the articles of association and cannot be illegal or contrary to the public order. In addition, a Greek LLC may not carry on any business required by law to be carried on exclusively by another type of company, usually a Société Anonyme (Art. 3 par. 2).

#### Greek Bank Account

Upon registration of the company in the Greek General Commercial Registry, the company must hold a bank account at a Greek bank for the operation of its business.

#### Greek Accountant & Auditors

At the end of each fiscal year, the company's annual financial statements are drawn up under the care of the company's Director(s), and then approved by the Meeting of the Partners. Financial statements based on the Greek Accounting Standards ("Ellinika Logistika Prototipa" in Greek) are drawn up pursuant to Law 4308/2014 (Gov. Gazette Vol. A', No. 251/24.11.2014).

#### Qualification requirements

Unless a special license is required from the competent authority, depending on the business scope (e.g., specific license for trade of pharmaceutical products, trading of food and beverage etc.), the steps set out in paragraph III below must be followed for establishing a company in Greece.

### Incorporation of an LLC

For establishing an LLC the following three (3) conditions must be met: (i) execution of the company's articles of association, (ii) payment of the company's share capital and (iii) compliance with any publicity formalities imposed by Law. The main procedural steps for the company's incorporation are the following:

- An LLC is incorporated either by a Notarial deed or by a private document using the standard "Model AoA", via the General Commercial Registry ("G.E.MI") online procedure available from the competent Chamber of Commerce.

Furthermore, Law 4541/2018, redefines the obligatory content of the articles of association, in case the LLC is incorporated through the standard model of AoA, from which no deviation is permitted.

- The "One Stop Shop" service checks all the submitted documents to verify their legality. After approval, it provides the founders with the G.E.MI announcement of the company's establishment and the company's G.E.MI Number.
- Upon establishment of an LLC and during its entire term, the company is subject to publicity formalities, as provided for in article 8 of Law 3190/1955, as amended by the Law 4541/2018. The articles of association, as well as any amendments thereof must be filled, according to the newly established "One Stop Shop" ("Y.M.S") procedure. The financial statements of an LLC and the auditors' report (where applicable according to the law 4308/2014) are also published in G.E.MI. The obligation of publication of the above documentation to the Official Government Gazette has been abolished by the Law 4281/2014.
- The Greek Tax Authority provides the newly established LLC with a tax identification number ("T.I.N"), provided that all conditions prescribed by the law are met.

Without prejudice to extraordinary circumstances (e.g. events of force majeure) the timeframe for the establishment of an LLC via the online service takes about two (2) working days. The procedure involving a notarial deed is more time consuming. Upon submission of the application for the company's establishment, the One Stop Shop service ("YMS") checks the submitted documents and provided that the legal prerequisites are met, the establishment procedure will be successfully completed.

If, during the verification process of the documents submitted online, it is found that the application, the company's articles of association or the supporting documentation do not comply with current legislation, the interested parties are invited, either by fax or e-mail, to make the necessary clarifications or corrections, within 5 working days of receiving such invitation. If the deadline of 5 working days expires and no action has been taken by the interested parties or if, after

re-submitting any missing/faulty documents and/or information it is found that they do not meet the applicable statutory requirements, the company's establishment cannot be registered in GEMI. In this case the company's establishment fee is not refunded.

## HUNGARY



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certain acts of the quota-holder (the quota-holder either abused its limited liability or forced a permanently disadvantageous business policy on the company).

In principle, the liability of the managing directors is 'internal', which means that it arises in relation to the LLC but not to the LLC's creditors. However, the managing director may be personally liable to the company's creditors for example if, in an insolvency situation, the managing director failed to give priority to the creditors' best interests or if the LLC's registration procedure ends unsuccessfully and the LLC started doing business as a pre-company (see below).

Due to the 'private' nature of the LLC, LLC quotas may not be publicly traded.

### LLCs vs. Companies Limited by Shares

Whereas LLCs are always private, a company limited by shares can be either private or public. In general, a company limited by shares is more expensive to set up and to operate, has a higher statutory minimum capital requirement, and requires a more complex internal organization. Furthermore, the preparation of shares is expensive (whether electronic or in print), etc. Accordingly, companies limited by shares are preferred over LLCs only if a special benefit particular circumstances apply to the case at hand. For example, in Hungary certain financial activities may only be pursued by companies limited by shares.

### LLC formation checklist

In addition to the fact that an LLC must have at least one member and one managing director, the following are required to establish an LLC under Hungarian law:

#### Company name

This must be clearly distinguishable from the names of all other registered and exiting Hungarian companies. A corporate name may be reserved for up to 60 days prior to applying for registration.

#### Registered Office

A company is required to have a registered office in Hungary. The company must be the legal owner of the property used as the company's registered office. Alternatively, the company must be legally entitled to use such property (e.g. on the basis of contract). Registered office services are generally available from third party service providers in Hungary, subject to certain statutory requirements.

#### Capital

The minimum statutory registered capital of an LLC is HUF 3,000,000 (or its equivalent in convertible foreign currency). The capital may consist of cash and non-cash contributions.

#### Scope of business

The activities to be carried out by the LLC need to be listed in the company's articles of association in line with the applicable Hungarian statistical codes (classification), which is based on EU NACE numbers.

#### Hungarian Bank Account

At least one bank account of the LLC must be held at a Hungarian bank. It is not mandatory to open the bank account before the registration of the LLC.

#### Hungarian Accountant

To ensure that the LLC complies with applicable Hungarian accounting regulations, LLCs must have a Hungarian accountant.

#### Delivery agent

If the application for registration indicates a foreign entity or a foreign natural person who does not have a residence in Hungary, an agent for service of process (delivery agent) must be designated in the registration application. The delivery agent may be an individual with permanent residence or an entity with a registered office in Hungary. The delivery agent is responsible for collecting any documents relating to the company's operation and addressed to his principal by a court or other authority.

#### Authorization / eligibility requirements

In principle, no special authorizations or eligibility criteria apply to the incorporation of an LLC. However, certain activities may only be carried

out if the LLC holds the required authorization or licenses. In certain special cases, depending on the type of activity, the incorporation of the LLC is subject to prior approval.

### LLC incorporation procedure

In Hungary, an attorney or a notary public must be involved in the process of establishing an LLC, as only they are authorized by law to countersign the articles of association. In practice, this is performed by attorneys in most cases.

Establishing an LLC consists of the following main steps:

- Prior to the signature of the necessary corporate documents, it is required for the attorney to conduct the necessary identification procedures as per the provisions of the AML Act and Attorneys Act.
- Execution of corporate documentation. If documents are to be signed abroad this may require certain formalities (notarization and Apostille / legalization by a Hungarian Consulate). Alternatively, a recordable videoconference may be arranged between the attorney and the signatories on the identification and signing verification procedures following receipt of the signed originals by the attorney.
- As of the date when the LLC's articles of association are countersigned by the attorney, the LLC may operate as a pre-company and upon submission of the application for registration it may start carrying on business. Upon registration by final decision of the Court of Registration the LLC shall cease to function as a pre-company, and all transactions entered as such will be treated as if they had been entered by the LLC. If the registration of the LLC is refused by a final ruling, or if the registration application is withdrawn and there are any outstanding claims once the members' limited liability is exhausted, the managing directors of the pre-company shall bear unlimited, joint and several liability against third parties.
- Filing the registration request form and any necessary incorporation documents with the competent Court of Registration.
- The Court of Registration contacts the Hungarian Tax Authority. The Hungarian Tax

### Limited Liability Companies in Hungary: an overview

Limited Liability Companies ("LLC" or "kft." in Hungarian) are the most common form of private "limited" company in Hungary. LLCs may carry out nearly all economic activities. The internal structure and organization of LLCs are simple and the liability of its members (or quota-holders) is limited.

It is possible for an LLC to operate with only one quota-holder and one managing director. Both Hungarian and foreign natural and legal persons have the legal capacity to become quota-holders and/or managing directors of an LLC (subject to investment restrictions / qualification and other eligibility requirements, which may apply to certain industry sectors). LLCs may have more quota-holders, additional managing directors, a supervisory board and an auditor, and even further corporate bodies, boards, etc. as the founding quota-holders deem appropriate – Hungarian corporate law is flexible in that regard.

Quota-holders are liable to the company up to the amount of their contribution to the company share capital, and to other contributions if set out in the articles of association. No single quota-holder is responsible for the LLC's liabilities generally with the limited exceptions defined by the Hungarian Civil Code, the Companies Registration Law and the Bankruptcy Law, which contain provisions on lifting the 'corporate veil', and which are most likely to apply in case of insolvency followed by liquidation and where the LLC's inability to pay its creditors is attributable, in full or in part, to

Authority provides the newly established LLC with a tax number, provided that all conditions prescribed by law are met.

- Registration by the competent Court of Registration, provided that the Court of Registration finds the filing in good order and has no further questions or requests.
- Post-registration actions to be completed by the LLC or its bookkeeper(s) (notification to the bank, registration of the LLC to the Chamber of Commerce, Central Statistical Office, local Tax Authority, company gate registration, etc.).

All corporate documentation must be submitted to the Court of Registration in Hungarian. Documents in a foreign language (e.g. certificate of registration of the foreign legal entity quota-holder) must be officially translated into Hungarian.

The timescale of the incorporation procedure depends on various factors (structure of the initial capital contributions -valuation issues-, execution and legalization of incorporation documents outside Hungary, whether the founding members intend to enter into a 'Shareholders' Agreement', etc.). A typical incorporation procedure takes 4-6 weeks, followed by a 2-week court registration procedure.

Registration costs are negligible, as mandatory registrations (with the Court of Registration, the Hungarian Tax Authority, etc.) are free of charge. Registration costs may also include translation fees and document legalization fees (notarization/Apostille endorsement) if the company's structure involves a foreign element (shareholder, director). Legal fees, on the other hand, depend on complexity and other variables.

**ITALY**



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be exercised before the expiry of such 2-year period.

### LLCs vs. Public Limited Companies

The Società per Azioni (S.p.A.) or Public Limited Company ("PLC") is a type of company whose capital is represented by shares. PLCs are the type of commercial corporation most suitable for large investments.

Important differences divide PLCs and LLCs, which should be carefully analyzed at the time of incorporation to ensure that investors choose the right e type of company most suitable to their needs. PLCs are commercial entities where the capital component prevails over the personal element represented by the quotas of an LLC. In both types of companies, however, the liability of the shareholders and the quota-holders is limited to their contribution to the company's share capital, which means that the company is liable only with its own assets for its own obligations.

The main difference between PLCs and LLCs arises from the shareholders' method of participation in the share capital. In a PLC, the share capital is represented by shares (fractions of the share capital), characterized by an easier form of circulation; in LLCs, the share capital is divided into quotas among the participating quota-holders. Quotas can be of different amounts and may be more difficult to transfer due to the personal nature of such participations. In LLCs single quotas don't have to be proportional to the amount paid by the shareholder to be part of the company.

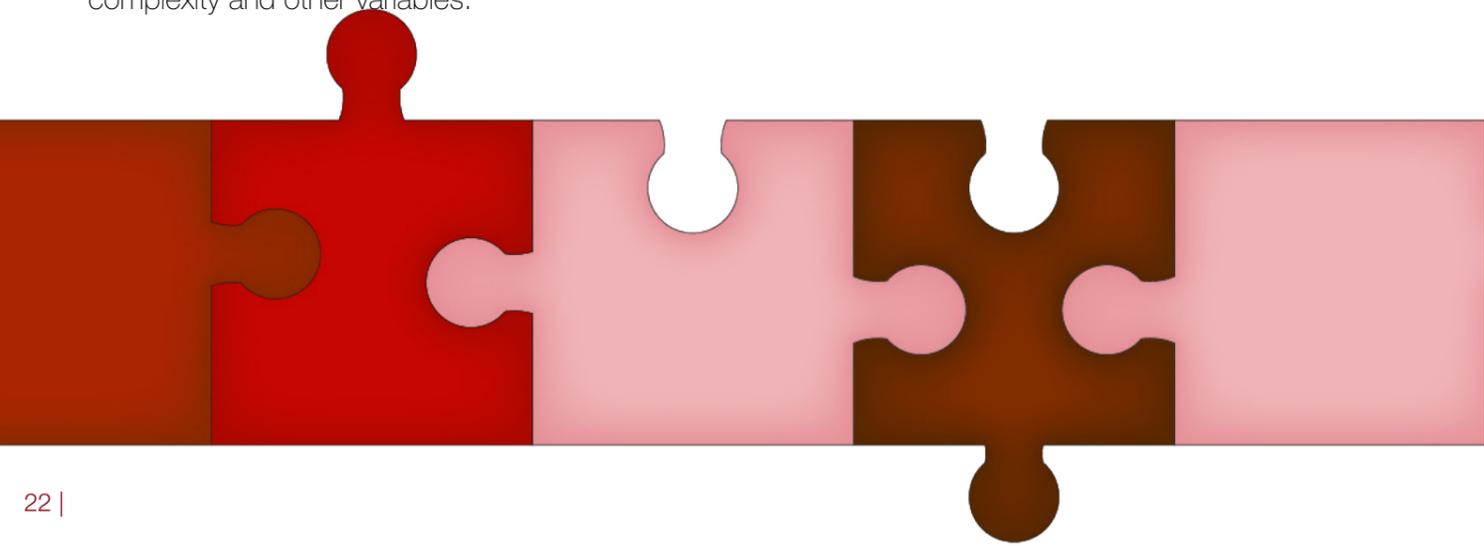
As for the minimum share capital, while a PLC requires a minimum of EUR 50,000, LLCs require EUR 10,000 (also EUR 1,00, in certain specific cases regulated by the Italian Civil Code).

Finally, LLCs are one of the most common forms of company for carrying out business activities. Traditionally intended for smaller companies than

### Limited Liability Companies in Albania: an overview

Limited Liability Companies ("LLCs" or Società a Responsabilità Limitata (S.r.l.) in Italian) are corporations the capital of which is divided into quotas, not shares (azioni). The quota-holders are liable for the company's obligations up to the amount of their contribution in the company's share capital. The company, on the other hand, is liable with its assets. LLCs were conceived to allow small entrepreneurs with limited capital resources to establish a company and run a business on the guarantee that their liability is limited to the amount of their contribution to the company's share capital.

LLC quotas are freely transferable by law. Transfers may be made by deed between living persons and by inheritance. However, the LLC's articles of association can limit or even ban transfers of the quotas, thus highlighting their personal nature. The LLC's articles of association can also subject the transfer to the approval of the company's corporate bodies, or to the approval of other quota-holders or even third parties. In such cases, the quota-holder (or his/her) heirs may exit the company. This exit cause applies in all cases except where there is a ban (maximum two years) on quota transfers in the Company's articles of association, in which case the articles may also establish that the quota-holders' exit right cannot



PLCs, LLCs are also beginning to be used for large companies, which can therefore benefit from greater organizational flexibility.

### LLC formation checklist

#### Memorandum of Association

Drafted by a notary public. This document specifies, inter alia, the first quota-holders, the first directors, and the distribution of the quotas among the quota-holders.

#### Articles of Association

Which sets out, inter alia, the company's operation rules based on certain specific requirements provided by the Italian Civil Code.

#### Share Capital

At least 25% (100% in the case of a single quota-holder LLC I) of the authorized share capital must be paid up. Unpaid contributions must be settled at the request of the Board of Directors or the Sole Director or before a capital increase. For LLCs requiring only EUR 1,00, contributions must be made in cash and the entire subscription amount must be paid up at the time of incorporation.

#### Application for registration with the Italian Business Registry Office

Filing the Memorandum of Association and the Articles of Association to the Italian Business Registry Office (public register, managed by the Chamber of Commerce, which collects official data and documents on individuals and companies).

#### Registration

Registration of the company in the Register of Companies.

#### Other authorizations

Obtaining any governmental authorizations necessary for the activities to be carried out by the company. However, holding companies does not require any authorizations to be operational.

### LLC incorporation procedure

The incorporation of an LLC requires the observation of the following steps:

- Obtaining a negative certificate issued by the Central Commercial Registry confirming that the availability of the intended company's

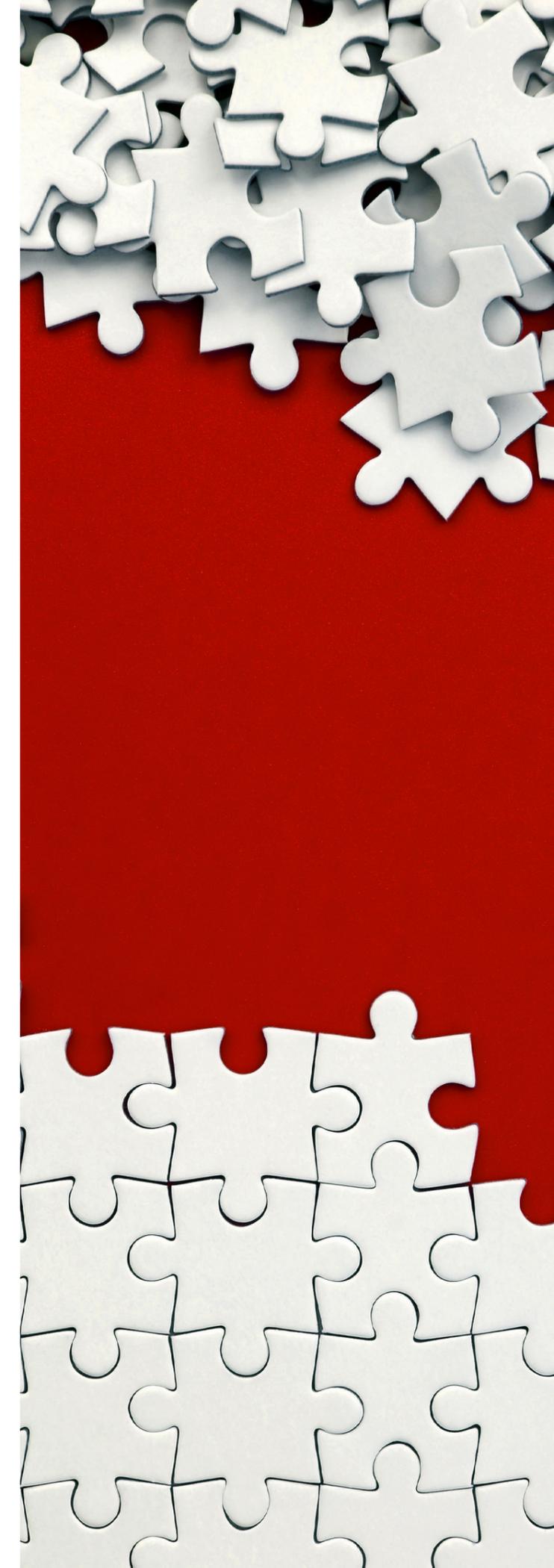
corporate name.

- Opening an Italian bank account for depositing the share capital.
- Paying the shareholder's contribution.
- Obtaining an Italian Fiscal Code and VAT Number for the Company, in order to fulfill the Tax Authorities requirements.
- In case of foreigner Directors, an Italian Fiscal Code (ID number for foreigners) must be obtained. For this purpose, a copy of the passport must be submitted. To apply for an Italian Tax Code, , foreign directors typically grant a power of attorney notarized and apostilled to an attorney based in Italy.
- Drafting the articles of association. The memorandum of association must indicate: (i) the company's corporate name and for each quota holder: name and surname or company name, date and place of birth or State of incorporation, domicile or registered office, citizenship; (ii) the location of the company's registered office and branches , if any; (iii) the activities constituting the company's corporate purpose; (iv) the amount of the authorized and issued share capital; (v) the contributions and participation of each quota-holder in the S.r.l.; (vi) the company's functioning rules, including rules applicable to the company's s administration and representation, and any persons responsible for inspecting the LLC's accounts; (vii) type of administration , the number of directors, the powers of the directors and the appointment of the first directors; (viii) an estimate of the company's incorporation costs ; and (ix) the duration of the company.
- The management of the LLC can be allocated to both quota-holders and non-quota-holders.. There can be (i) a sole director or (ii) a board of directors.
- Granting the memorandum of association of the new LLC before an Italian Notary Public. This may be done by the person already entitled to act on behalf of the new company. Alternatively, a different individual may be given powers broad enough to grant the memorandum of association. To execute the memorandum of association, the documents referred to above must be submitted, i.e. a negative certificate of the corporate name, the articles of association, a bank certificate evidencing payment of the share capital and the Italian ID card.
- Acceptance by the Director/s of their appointment. This can occur at the time of

executing the memorandum of association before the Italian Notary Public or by acceptance letter at a later stage. Acceptance letters must be signed and the signatures notarized and, if applicable, apostilled.

- File a declaration form evidencing the foreign investment of the stakeholders in the LLC, as the case may be.
- Registration of the Memorandum of Association deed in the Italian Business Registry Office.
- Completion of tax and labor procedures s (application for a VAT number and a Fiscal Code, registration).

Registration of an LLC at the Italian Business Registry may take up to two weeks after notarization, which can take place once the aforementioned information and documents are obtained.



## MOLDOVA



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### LLC Formation Checklist

#### Shareholders

The number of shareholders may not exceed 50 (fifty). Solo shareholder companies are also allowed.

#### Registered office

The founding shareholders must designate a particular address in Moldova to serve as the legal registered address of the LLC.

#### Share capital of LLC

The share capital of the LLC consists of contributions of its members and represents the minimum value of its assets, expressed in Moldovan lei (MDL). The size of the share capital shall be determined by the founding shareholders in the Charter and may later be amended. The law does not stipulate the minimum amount of the share capital. The capital contributions of the founding shareholders must be paid within 6 months from the date of state registration of the LLC. The contributions to the share capital of the LLC are deemed to be paid in cash, unless the Charter provides otherwise. The in-kind contributions of the founders must be made within 30 days after the state registration of the company, and would often entail a prior independent valuation.

#### Administrator

The founders shall appoint the administrator of the LLC. The administrator may be a Moldovan or foreign national. Foreign nationals may need to fulfill additional immigration law requirements.

#### Ultimate beneficial owners

In the process of registration, a Declaration on the Ultimate Beneficial Owner(s) (UBOs) of the LLC shall be submitted to the Public Services Agency. The ultimate beneficial owners are natural persons who ultimately own or control the company or hold the ownership or control of at least 25% of the shares or of the voting rights of the company. UBO information and disclosures will also be required for subsequent bank account opening.

### LLC Formation Procedure

The following documents shall be filed to register a Moldovan LLC:

- documents pertaining to the founder(s): the registration certificate(s) of the founder(s), extract(s) from the registry of home jurisdiction, the corporate documents of the founder(s) (charters/articles of association);
- the resolution of the founder(s) to create the LLC;
- documents pertaining to the appointment of the management bodies of the LLC; and
- a UBO disclosure declaration.

Additional filings:

- proof of payment of company registration fee;
- proof of name verification,
- proof of right to use the legal address

The registration usually occurs within 1-2 days from filing. Once the LLC is registered, it acquires full legal capacity. Many Moldovan LLCs prefer to obtain and use company seal, which are optionally granted at incorporation.

### Limited Liability companies in Moldova: an overview

Limited liability company (“LLC”) or Societate cu raspundere limitata (S.R.L.) in the Romanian language, is the most common type of companies registered in Moldova. Out of a total of 122,000 companies registered in Moldova, 91,000 are organized as LLCs. LLCs are commercial for-profit entities with legal personality, whose registered capital is divided into participations (shares). The liability of the LLC shareholders is limited to the amount of the capital participation.

### LLCs vs. Joint Stock Companies

Companies incorporated as Joint Stock Companies (“JSC”) are, as a rule, more complex, this legal form being usually reserved for or preferred by banks, insurance companies, and large industrial companies with 50+ owners (shareholders). Less than 2,000 Moldovan business entities are organized as JSCs. The capital of a JSC is divided into shares, usually held by a larger number of shareholders. The issuance, acquisition, and sale of JSC shares are subject to various special rules. Unlike in the case of an LLC, the JSC shares may be admitted to trading on a stock exchange market. The corporate structure of a JSC is, as a general rule, more complex than that of an LLC: while LLCs are usually managed by an administrator, JSCs have Boards of Directors with a supervisory role and administrators with an executive function. Also, unlike LLCs, JSCs have various minimum capital requirements oftentimes linked to various types of industries.





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In principle, the liability of the managing director(s) depends on the internal relations. The authorizations are regulated in the articles of association of the company. It can be determined that the managing director(s) can have unlimited authorizations in the internal and external trade or limited authorizations in its managing which depends by the shareholders' decision.

The company in relation to third parties represents the manager. The manager signs so that after pointing out the company of the company, he obtains his status of management and puts his signature. The manager is obliged to manage the affairs of the company with attention to order and conscientiousness trader and to keep the business secret of the company. The manager is personally and unlimitedly responsible, and if the company has two or more managers they are accountable both jointly and severally to the company and to third parties for operating contrary to the provisions of the law and other regulations and for non-compliance with the company agreement. If there are multiple managers they respond unlimitedly and in solidarity. The shareholders are not responsible for the obligations of the company.

### LLC formation checklist

As indicated above, LLCs must have at least one member-shareholder and one or more managing director(s). In addition, the following are required to establish an LLC under Macedonian law:

#### Registered Office

A company is required to have a registered office in North Macedonia.

#### Capital

The minimum statutory registered capital of an LLC is EUR 5,000.00 (or its equivalent in convertible Macedonian currency). The capital may consist of cash and non-cash contributions. The payment of the capital can be deferred up to one year from the day of the company's incorporation.

#### Scope of business activities

The activities to be carried out by the LLC need to be listed in the company's articles of association in line with the applicable National Classification of Activities (NCC) of the Republic of North Macedonia and basically it is incorporated with Business Clause which is an indication that the subject of entry in the trade register can perform all activities according to the National Classification of Activities (NCC).

#### Macedonian Bank Account

At least one bank account of the LLC must be held at a Macedonian bank. During the incorporation process, only the bank is chosen and the assigned bank account is temporary. Upon registration of the LLC, the bank account should be opened by the LLC' manager(s) who confirms it with submission of notarized signature and registration certificate of incorporation, and entering into an agreement with the bank.

#### Macedonian Accountant

To comply with the obligations arising from North Macedonian accounting laws and regulations, LLCs must appoint a Macedonian accountant.

#### Authorization / qualification requirements

Generally, in North Macedonia, the incorporation of an LLC does not require any authorization or the fulfilment of any eligibility requirement. Companies interested in doing business in specific sectors (e.g.: pharmaceuticals, banking, insurance, higher education...) need to get special permits from the appropriate authorities (e.g.: Ministry of Health/Education etc.)

### LLC incorporation procedure

In North Macedonia, companies are incorporated by the Central Register through a Registration agent, an accountant or directly by the authorized person of the new company.

The Central Register has implemented a "one-stop-shop" system through which company formation can normally be completed within four hours (2-3 business days in practice). The system encompasses all registration procedures with the various state bodies (including the provision of a tax ID No). The system for electronic registration

offers a simple, fast, and secure registration method for all types of registrations in the Trade Registry and the Registry of other legal entities. Additionally, if an application for establishing a legal entity is made, the system offers the option for registering the relevant individuals in the mandatory social security (pension and health care insurance).

The incorporation of an LLC consists of the following main steps:

- Prior to the signature of the necessary corporate documents, it is required for the attorney/accountant or the authorized person to conduct the necessary identification procedures for shareholder/ director and determination of the basic aspects (registered office, minimum share capital, percent of shares, etc.)
- Execution of the incorporation documentation.
- Execution out of Macedonia may require additional formalities, including notarization and Apostille. In name and on behalf of shareholder and/or director may be authorized third party or Attorney at law to sign the documents, with notarized Special Power of attorney.
- Electronic signature of all documents required and online submission to the Central Registry's web site via a registration agent/accountant or directly by a company's authorized representative.
- Each subject of the registration receives a seven-digit, electronically assigned unique identification number (EMBS).
- After submission, the Central Registry determines the code of the organizational form of the subject of registration. The Central Registry, in addition to the ID No, enters the Tax No of the registration subjects. To all entities to which ID No is granted, the entry of Tax No determined by the Public Revenue Office shall be performed only according to the provisions of this Law. The entry of Tax No is performed by electronic exchange between the Public Revenue Office and the Central Register. The Public Revenue Office submits the Tax No within 90 minutes from the submission of the data by the Central Registry.
- In addition to the ID No and Tax No, the Central Registry also enters the number of VAT payers of the subjects for registration, in case of application for voluntary registration.

### Limited Liability Companies in North Macedonia: an overview

Limited Liability Companies ("LLCs" or DOO/DOOEL in Macedonian) are the most common form of private "limited" company in North Macedonia. According to Macedonian Company Law, an LLC is a corporation participated by one or more Individuals and/or legal entities via contributions to the company's pre-agreed basic share capital..

LLCs may be established by one or more individuals/legal entities, and may have one or more directors with limited or unlimited powers. LLCs may also have a supervisory board, which monitors the implementation of the company's agreement, takes care of the operation of the company's property and its preservation, controls the manner in which the company is managed by the manager and reports to the shareholders' meeting.

### Liability of the shareholders

The company shareholders are entitled to participate in the management of the company, in the distribution of profits, to be informed about the operation of the company, to inspect the company's books and other corporate records and to take a share in the company's proceeds in the event of liquidation. Shareholders have other rights as determined by Macedonian law. The shareholders are not responsible for the obligations of the company, except if that is not determined by the law.

- Checking and approving the incorporate application by Central registry.
- Issuing a Registration certificate and Decision for incorporation.

All corporate documentation must be submitted to the Central Registry of the Republic of North Macedonia, in Macedonian. Documents written in a different language must be officially translated into Macedonian (e.g. manager/ founder passports, power of attorney for registration agent, special power of attorney) and notarized by a Macedonian Notary Public.

The timeframe of the incorporation procedure depends on various factors (providing basic information for the incorporation, translation, notarization of incorporation documents in and outside North Macedonia). A typical incorporation procedure takes 1-2 weeks, followed by an electronic registration in the trade register approximately 2-3 business days in practice.

The incorporation costs are excluded. Registration costs consist of translation fees and document legalization expenses (notarization/Apostille) to the extent that there is a foreign element (shareholder, director) in the company's structure.



POLAND



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personal assets. The Liability of shareholders is limited to the amount of their contribution to the share capital of company. Pursuant to the Polish Commercial Companies Code, only members of the LLC's management board are liable for the company's debts when the execution against the LLC proves to be ineffective. members of the company's management board may be released from such liability if they can prove that a petition for bankruptcy was filed early enough or at the same time a decision was made to open restructuring proceedings. Members of the company's management board may also be liable for the company's obligations under general rules set forth in the Polish Civil Code or bear criminal, tax and special liability under other laws.

### Short summary of characteristics

Limited Liability Companies ("LLC" or "spółka z ograniczoną odpowiedzialnością – "sp. z o.o." in Polish) are a type of capital, commercial company that can be established by one or more natural or legal persons. LLCs are established for any legally permitted purpose, most often for economic, but also for charitable purposes.

A significantly limited liability of the shareholders for the LLC's obligations, a low minimum required share capital, a relatively uncomplicated incorporation procedure and a straightforward functioning make LLCs an attractive legal form for running business in Poland. LLCs are the most frequently established company type in Poland. This type of the company are established by entrepreneurs who would like to conduct business as a corporation, but at the same time do not want to set up a less accessible joint-stock company.

LLCs may be established by only one natural or legal person (but not solely by another sole shareholder of the LLC) and have only one board member. LLCs may, of course, have more shareholders and members of the management board. LLCs may also have a supervisory board or an audit committee, but these are only mandatory if the company's share capital exceeds PLN 500,000 and there are more than 25 shareholders in the LLC.

LLCs are liable for any third party obligations with the company's assets. The shareholders, however, are not liable for the company's debts with their

### LLCs vs. Companies Limited by Shares

LLC are always private companies, whereas a company limited by shares (joint-stock company) can be either private or public.

Unlike joint-stock companies, LLCs show certain characteristics of a partnership company.

As indicated above, LLCs are not generally required to appoint a supervisory body. The LLC's shareholders have a right to personally inspect the activities and functioning of the company, the company's corporate books and records, and obtain information about the state of the company's affairs and assets.

Other features of an LLC that are characteristic of partnerships include: the possibility for the remaining shareholders to demand that the court exclude a shareholder from the company, the possibility to dissolve the company at the request of a shareholder (only if specific statutory conditions are met), the possibility for the shareholders' meeting to issue binding recommendations to the management board with regard to the management of the company's affairs, and the possibility for the heirs of a deceased shareholder to join the company, unless the articles of association provide otherwise.



In an LLC, as opposed to a joint-stock company, the possibility of issuing bearer documents, as well as named documents and documents on request is excluded.

The LLC's articles of association may be executed before a Polish notary public or on an official template via the online system available from the Polish Ministry of Justice. The articles of association of a joint-stock company may only be executed before a notary public.

### LLC formation checklist

In addition to having at least one shareholder and one member of the management board, the following elements are required when establishing an LLC in Poland:

#### Registered office of the LLC

The registered office of a legal entity (including an LLC) is the city in which its governing body has its registered office. The registered office needs to be located in Poland. A real estate for the company's seat must be owned by the LLC or the company have to be legally entitled to use it (e.g. under a lease agreement).

#### The purpose (i.e. business) of the LLC

The LLC's articles of association must specify the company's business activity in accordance with the relevant codes of the Polish Classification of Business Activities (in Polish: "Polska Klasyfikacja Działalności" ("PKD")). In practical terms, specifying the LLC' purpose has only an internal effect, i.e. it is only relevant in terms of costs, as the tax authorities may decide that the costs incurred by the company are not tax deductible if they are not in line with the corporate purpose specified in the articles of association. Exceeding the company's purpose does not render any legal transactions entered by the company void or illegal.

#### Share capital

The share capital of an LLC must be at least PLN 5,000. It may be divided into shares of equal or unequal nominal value, as the shareholders may decide. The nominal value of a share may not be less than PLN 50. If the articles of association provide that a shareholder may have more than one share, all shares must be equal and indivisible.

Shares may not be subscribed below their nominal (par) value.

#### Bank account

A Polish LLC must have at least one bank account opened in a Polish bank. The bank account may be opened after registration of the company in the Register of Entrepreneurs (National Court Register (in Polish: "Krajowy Rejestr Sądowy" ("KRS"))).

#### Comprehensive accounting

Pursuant to the Polish Accounting Law, LLCs must keep a "comprehensive accounting system". This system of bookkeeping is far more complex than the "simplified accounting system". The basic assumption is the unconditional need to record every zloty that passes through the company. In addition, LLCs must draw up financial statements on a yearly basis. Maintaining full bookkeeping on one's own requires knowledge of the current legal regulations and time-consuming preparation of register documents. Most investors appoint an external law or tax firm which can provide legal, tax, and accounting support.

**Attorney for delivery** If the application for registration of an LLC is submitted by a foreign entity or a foreign natural person having its registered office/residence outside the EU, an attorney for delivery in the territory of Poland must be appointed. If the entity/person has its registered office/place of residence within the EU, there is no obligation to appoint such an attorney in the territory of Poland, but investors often decide to do so, as it speeds up contacts with state institutions.

#### Permit/eligibility requirements

As a general rule, the establishment of an LLC does not require any permits or fulfilling any eligibility requirements. However, certain activities may be performed only upon obtaining required permits or licenses.

### LLC incorporation procedure

In Poland, LLCs are most often established by a notary public. The company's articles of association are usually drawn up in a notarial form, the exception being a company established via the online system available from the Polish Ministry of Justice). In practice, due to legal requirements, investors are usually assisted by lawyers.

Stages of establishing an LLC:

- Execution of the company's articles of association in a traditional form - before a

notary. Foreign shareholders may appear in person or represented by an authorized proxy. In this case, the power of attorney should be granted before a foreign notary, apostilled and officially translated into Polish, unless, it is bilingual. Alternatively, the official template available on the Polish Ministry of Justice's web site may be used. Notice that in the official template, the content of the articles of association is very limited and may not be amended later on. To establish a company online each shareholder must have a valid electronic signature.

- Upon execution of the articles of association, but before registration in the Register of Entrepreneurs, the company becomes a "company in formation". This is a company with its own legal (temporary) personality, which may therefore acquire rights in its own name, incur obligations, sue and be sued. Upon registration in the Register of Entrepreneurs, the LLC will become the subject of any rights and obligations of the LLC in formation. The transformation of a company in formation into a proper company takes place on a continuation basis.
- Submitting an application form for registration of the company, together with the necessary incorporation documents, to the appropriate Registry Court.
- If the Court finds no deficiencies or errors in the submitted documentation and application, the Court enters the company in the Register of Entrepreneurs (National Court Register (in Polish: "Krajowy Rejestr Sądowy" ("KRS"))).
- The Registry Court contacts the Polish tax office, which allocates a tax number (NIP) to the newly formed LLC, provided that all conditions set forth in law are met.
- After registering the company in the Register of Entrepreneurs, the company must complete the applicable VAT registration formalities, notify the local tax office, pay the legal transaction tax and register the beneficial owners of the LLC in the Central Register of Beneficial Owners.

Corporate documents must be submitted to the Registration Court in Polish. Documents drawn up in a foreign language must be officially translated into Polish and apostilled.

The time needed to set up an LLC varies depending on whether the procedure is conducted in a traditional way - executing the articles of association before a Polish notary (from 3 weeks to even 3 months), or online via (anywhere between 24 hours and up to 10 days).

The costs of registering a company incorporated before a notary public are essentially as follows: PLN 600 mandatory court fee, notary's fee, the costs of sworn translations, and document legalization fees (if there are foreign persons in the company (shareholder/board member). Online registration costs include a PLN 350 court fee, the costs of sworn translations, and document legalisation fees (again, if there are foreign persons in the company). In addition, VAT and taxes on civil law transactions (at least PLN 200) also apply.

## PORTUGAL



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Single shareholder LDAs are allowed.

LDAs. are managed by one or more directors, who must be individuals (not companies), either Portuguese nationals or foreigners, shareholders or not, appointed by the general meeting or by the single shareholder, as the case may be, or designated in the company's articles of association. The directors are accountable to the general meeting of shareholders or the single shareholder, as the case may be.

The appointment of an auditor is not mandatory. However, companies which do not have an audit board or an auditor must appoint an external auditor to audit the company's accounts when two of the following limits are exceeded (for two consecutive years): (i) total balance sheet: EUR 1,500,000; (ii) net turnover: EUR 3,000,000; (iii) average number of employees: 50.

Quota ownership is subject to registration at the Commercial Registry Office. Transfers of quotas may be executed through a private contract, without the need for notary certification. To be legally effective, a transfer of quotas must also be subject to registration.

Transfers of quotas are subject to the rules and limitations established in the company's articles of association and, in the absence thereof, to the requirements contemplated in the Portuguese Companies Code.

### LLCs Vs. Companies Limited by Shares

In the Portuguese Sociedade Anónima or "S.A." the share capital is constituted by subscribing stocks or shares ("acções").

Contrary to the LDA., which is always private, S.A. can be either private or public, i.e. shares may be offered to the public and listed in the Stock Exchange Market.

In general terms, S.A. are more costly, less flexible in terms of structure and are subject to grater

formalities and requirements compared to LDAs. (see above):

- The minimum registered and subscribed share capital is EUR 50,000.
- S.A. must have at least five shareholders, unless the company is incorporated by another company, in which case one single shareholder is accepted.
- S.A. are generally managed by a board of directors, although having a sole director is also possible provided that the company's share capital does not exceed EUR 200,000.
- S.A. are required to appoint a statutory auditor to certify their accounts.
- Transfers of shares ("acções") are not subject to registration at Commercial Registry Office. However, S.A. shares must be nominative by law. Bearer shares are no longer permitted. Therefore, even if they may be executed through a private contract, transfers of shares must be subject to an endorsement on the shares' certificates and to registration with the company itself, the registrar entity or the custody entity, as the case may be.

### LLC formation checklist

#### Company's name

The company's name must be clearly distinguishable from other registered names. To ensure that the proposed name is not refused by the trade register, searches may be made on the National Company Registrar ("RNPC – Registo Nacional de Pessoas Colectivas"), on the availability of a name prior to the application. The company's name may consist of the names of one or more shareholders (very frequent in multinational groups), on the company's activity, on a fantasy expression or on a combination of these elements followed, in any case, by the expression "Limitada" or the abbreviation "Lda."

#### Registered office

The company's registered office must be in Portugal. Although this is usually the case, it is not mandatory for the registered office to match the company's principal place of business or the place of the de facto company's administration.

#### Corporate purpose

The activities to be carried out by the company need to be approved by the RNPC and

subsequently restated in the company's articles of association. The application to the RNPC must also indicate one or several CAE (Portuguese National Classification of Economic Activities) codes based on the business activities to be conducted.

#### Shareholders

There is no legal provision establishing a minimum or a maximum number of shareholders. Sole shareholder companies are allowed. The shareholders may be Portuguese or foreign, legal or natural persons.

#### Share capital

In addition to the minimum registered and subscribed share capital requirements indicated above, it is important to point out that contributions in cash may be deferred for 5 years. In the memorandum of incorporation the shareholders may declare that the share capital will be deposited in a bank account opened in the name of the new company no later than the end of the first fiscal year. The share capital may also consist of contributions in kind – assets or patrimonial rights which will have to be assessed by an external auditor prior to the company's incorporation.

#### Directors

There is no legal maximum number for Directors and their number may be even or odd. Directors are appointed on the articles of association or by a shareholders' resolution. The Directors are registered by their full name, address and Portuguese taxpayer number. If a Director is a foreign citizen with no Portuguese taxpayer number, such number will have to be requested before his/her appointment. Should the Director have his/her residence outside the EU, a tax representative with Portuguese residence/head office will have to be appointed for this purpose. Portuguese Accountant: To ensure compliance with the obligations arising from Portuguese accounting laws and regulations, LDA. need to have a Portuguese official accountant ("TOC – Técnico Oficial de Contas").

#### Authorization/eligibility requirements

Although the incorporation of an LDA. does not require any authorization or eligibility requirements, certain activities may only be carried out after obtaining the required authorization or license, subsequently to the incorporation of the company.

### Limited Liability Companies in Portugal: an overview

The Portuguese Sociedade por Quotas or "LDA." has traditionally been the investment vehicle used in Portugal for small businesses, many of a family nature. Reduced costs, a flexible structure and simplicity are its key advantages against other types of company. In LDAs. each shareholder contributes a stated amount (its share or "quota") in the company's total share capital.

The minimum registered and subscribed share capital is EUR 1 (for one-shareholder LDAs. EUR 2 for a two-shareholder LDA. etc.). Unlike the shares of Public Limited Companies (in Portuguese Sociedade Anónima or "S.A."), shares in LDAs. companies cannot be offered to the public or listed in the stock market.

In general terms, shareholders have their responsibilities limited to the amount of the shares they subscribe.

Shareholders are not liable to company creditors, unless otherwise set forth in the company's articles of association or where the company consists of one shareholder, in which case the sole shareholder may, in certain extreme situations of bankruptcy, or if agreements between the company and the sole shareholder are entered into in violation of the company's purpose, incur unlimited liability jointly and severally with the company.

## Ultimate Beneficial Ownership

With the incorporation agreement, the shareholders must identify those individuals holding, directly or indirectly, more than 25% of the ownership and/or the voting rights of the company. In some specific cases the declared beneficial owners may be the Directors. After the incorporation of the company is duly registered, such declaration must be submitted to registration in a specific website. Also, as part of their KYC procedures and consistently with money laundering and financing of terrorism activities prevention regulations, banks are demanding proof of this registration to open a bank account.

## LLC incorporation procedure

The main legal steps required to incorporate a Portuguese LDA are as follows:

- Obtaining a Portuguese legal entity number or taxpayer number for each shareholder (if not yet available).
- Obtaining approval for the company's name and the respective taxpayer number.
- Obtaining Portuguese taxpayer number(s) for any non-resident Director(s) of the new company (if not yet available).
- Drafting and signing the memorandum of incorporation and the company's articles of association.
- Registration of the memorandum of incorporation and articles of association with the Commercial Register Office, for which a list with details on the ultimate beneficial owner(s) is required.
- Opening a bank account for depositing the company's share capital.

If the shareholder is a foreign company, prior to the above steps the shareholder should also execute:

- Resolutions of its board of directors or shareholders general meeting – as the case may be under the law of its nationality and in accordance with the provisions of its articles of association – deciding to set up a subsidiary company in Portugal, and to appoint its legal representative(s).
- Granting of a power of attorney (normally in favour of a lawyer) for the purpose of incorporating and registering the subsidiary company, as the case may be.

After incorporation, companies must file a commencement of activity statement with the Portuguese Social Security and to inform the Social Security of the hiring of employees. Newly incorporated companies need also file a commencement of activity statement with the Portuguese Tax Authorities. Although the traditional way of incorporating companies remains available, there are currently two swifter methods of incorporating companies in Portugal: “one stop shop” and online.

The incorporation on a “one stop shop” basis requires that a few conditions are met, namely that the company's articles of association follow a draft previously approved by the competent authority. The incorporation documents need to be filed in person with a specialized Commercial Registry Office desk.

The incorporation of a company online, on the other hand, may be requested online, by accessing a specific website (“Portal da Empresa”). As a result, there is no need to file the request for incorporation in person or at any specialized Commercial Registry Office desk. For such purpose, the indication of the data and the delivery of documents in said website should be made via electronic authentication or electronic signature.

Lawyers, for example, have electronic certificates enabling them to carry out this form of incorporation of companies. Also, the signatures of the memorandum of incorporation and the company's articles of association must be certified by a notary or lawyer in the presence of the signatories.

Unlike the “one stop shop” incorporation method, where shareholders may not vary at all the articles of association template provided by the Commercial Registry Office, the online incorporation is far more flexible by allowing investors to draw up articles of association entirely adapted to their needs.

As a result of more stringent KYC requirements (see above), in practice a new company may only open a bank account after its incorporation has been registered. Please note that documents issued by foreign countries' entities may be subject to legalisation (apostille) and an official translation may need to be provided, depending on the country of origin.

## ROMANIA



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## Limited Liability Companies in Romania: an overview

Limited Liability Companies (“LLCs”) or Societate cu răspundere limitată in Romanian are the most common, simple, flexible and cost-effective form of private limited company in Romania. Except for some businesses which must operate as a joint stock company (“societate pe acțiuni”), such as banking, finance and insurance companies, the LLC complies with all the requirements needed in Romania for developing a commercial activity.

The share capital of the LLC is represented by shares, and share transfers may be made by mere agreement between the parties. However, in order to be effective in relation to third parties, the transfer needs to be registered with the Trade Registry Office. Unless otherwise provided in the company's articles of association, the shares are freely transferable only between shareholders. Transfers to any other person requires approval by shareholders representing  $\frac{3}{4}$  of the share capital.

Despite having a closed nature and requiring straightforward incorporation formalities, the image of an LLC as a small or a family company would be misleading. This form of corporate association is also suitable for large companies with up to 50 shareholders.

The shareholders' liability is limited to the amount of their contributions to the share capital, except in the event of fraud, in which case the shareholders could be liable with their own assets.

LLCs cannot issue bonds and their management structure and internal governance rules are flexible, which means that the shareholders hold ample discretion.

## LLCs Vs. Public Limited Companies

Whilst LLCs are characterized by an element of trust between the shareholders (which is why the maximum number of shareholders is limited to 50- and the need for shareholders' approval in case of transfer of shares to a third party exists), joint stock companies (“JSC” or societate pe acțiuni in Romanian) are more open in nature. JSCs can be incorporated to have a large number of shareholders and investors (minimum 2 shareholders, but no maximum limit), which also explains why this is the corporate form required for companies seeking admission to trading on a stock exchange. The establishment costs of a JSC are slightly higher than for a LLC because the minimum share capital required is larger (EUR 25,000 vs. less than EUR 1) and because corporate decisions must be made public by law.

Because JSCs require a larger share capital, only 30% of a JSC share capital needs to be paid up at the time of incorporation and in subsequent capital increases. Any unpaid amount of capital needs to be paid up by a certain deadline depending on certain circumstances. Conversely, the share capital of LLCs must be fully paid up at the time of incorporation. Also, unlike JSCs (where the share capital may consist of money and assets), the share capital of a JSC may also consist of receivables.

Consistently with their different nature, the rules on transfers of shares are also different for LLCs and JSCs. In JSCs shares may be freely transferred to any person, subject only to registration of the transaction in the company's Shareholders Register, unless a different formality applies under the company's articles of association. Registration of the transfer in the Trade Registry is not a requirement for third-party enforceability.

In non-listed companies the shareholders may provide (e.g. via a shareholders resolution) rights of first refusal in favor of existing shareholders.

Unlike LLCs, JSCs can issue bonds and listed shares are deemed as securities, subject to specific legal and tax rules; shares listed on the Bucharest Stock Exchange can be further traded only via the market platform. (OTC transactions are permitted in very limited cases.

Differences also arise in the management body of LLCs and JSCs. LLCs can be managed by administrators, who can operate as a board or separately, with specific duties in different areas. There is no maximum limit on the number of directors or in their term of office. JSCs, on the other hand, may be managed by one or several directors/a Board of Directors of even number and executive manager(s) OR by a Supervisory Board having between 3 to 11 members and a Managing Board with members of even number). The term of office of the members of the Board of Directors, the Supervisory Board, and the Managing Board cannot exceed 4 years, although they can be re-elected.

### LLC formation checklist

#### Registered office

LLCs need to have their registered office in Romania, at the place where their effective administration is located. Secondary offices (mainly for operational purposes) can be established elsewhere.

#### Share Capital

The minimum share capital required to establish an LLC may be less than EUR 1. The only requirement is that the minimum face value of 1 share is at least RON 1. Therefore, the minimum legal value of the share capital mainly depends on the number of shareholders. The share capital must be totally disbursed. The share capital may consist of money and assets. In this latter case, title documents to such assets must be submitted for registration purposes.

The LLC incorporation application should comprise evidence on the full payment by the shareholders of the initial share capital provided in the articles of association (i.e. a bank statement).

#### Romanian Bank Account

As part of the LLC's incorporation formalities, a bank account must be opened in Romania for depositing the initial share capital.

#### Scope of business activities

The list of activities that the company is going to conduct, identified also by reference to their CAEN (National Classification of Economic Activities) number needs to be specifically included in the company's articles of association.

#### Articles of association

The founding shareholder(s) should agree upon and sign the articles of association. These must necessarily include all aspects expressly provided by law, including: (i) corporate name, legal form and registered address; (ii) corporate purpose (i.e. the company's business); (iii) the share capital and the number of shares allocated to each shareholder; (iv) the company's duration; (v) ID of the director(s), their powers and whether they are to act jointly or jointly and severally; (vi) name of the internal censors, as the case may be; (vii) secondary offices; (viii) each shareholder's quota of profit and losses, and (ix) winding-up and liquidation procedures.

#### Register of Shareholders

Containing particulars of the company's shareholders and of any subsequent transfers of shares.

#### Ultimate Beneficial Ownership Statement

A statement (certified by a notary public or a local lawyer) on the individuals holding, directly or indirectly, more than 25% of the company's voting rights must be executed; if such individuals cannot be identified, mention must be made of the individual members of the company's senior management bodies.

#### Incorporation Resolution

If the founding shareholder(s) are legal entities, the resolution of their relevant corporate body on the incorporation of the company should be provided.

#### Details of the founding shareholder(s)

(i) copy of the ID document (for individual shareholders) or certificate from the Trade Register from the country of residence of each shareholder (for corporate shareholders), respectively; (ii) statement (certified by a notary or by a local lawyer)

confirming that each shareholder complies with the legal requirements for holding such position; (iii) fiscal record certificate (for Romanian nationals), or statement confirming that the shareholder has a clean fiscal record and not being fiscally registered in Romania (for foreign entities), (iv) for foreign corporate shareholders, a good standing letter issued by a bank from their country of incorporation.

#### Details of the company's director(s)

(i) ID copy, (ii) statement (certified by a notary or by a local lawyer) confirming the director's compliance with the legal requirements for being a director of the Company and that the director holds a clean fiscal record and not being fiscally registered in Romania, (iii) signature specimen.

#### Details of the company's internal censor(s):

if the Company has more than 15 shareholders, internal censors need to be appointed; in such case, data similar to that for directors should be provided.

Proof of payment of the Trade Registry incorporation fee (less than EUR 50) and standard application form.

\*Documents in a foreign language must be accompanied by an official Romanian translation. Apostille or supra-legalization may be needed for documents issued by foreign public authorities (including notaries).

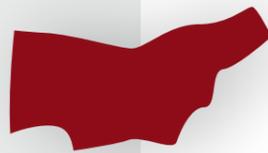
### LLC incorporation procedure

For the incorporation of an LLC the following steps need to be followed:

- Obtaining a negative certificate issued by the Trade Registry Office confirming that the intended corporate name is not being used by another company.
- Opening a Romanian Bank account for depositing the share capital.
- Paying the shareholder's contribution as initial share capital.
- Appointing the company's director(s) and, if needed, of the internal censors, followed by and acceptance of their appointment (this is usually included in their statement issued confirming compliance with the legal requirements for holding the position).

- Preparing and submitting the application file comprising the documents listed in the section above.
- Registering the Company in the Commercial Registry.

Typically, it takes approximately 5 business days to register the LLC in the Trade Registry after submission of a complete application.


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In principle, the liability of the directors is 'internal', which means that it arises in relation to the LLC but not to the LLC's creditors. However, directors may be personally liable to creditors if, in an insolvency situation, they have failed to carry out their duties in a timely manner or have acted in breach of certain prohibitions.

Due to the 'private' nature of the LLC, the business shares of the LLC cannot be publicly traded.

**LLCs vs. Companies Limited by Shares**

While LLCs are always private corporations, companies limited by shares can be either private or public. In general, companies limited by shares are more expensive to incorporate and to operate, are subject to higher statutory minimum capital requirement, present a more complex internal organization, and the preparation of shares is expensive. Accordingly, companies limited by shares are preferred over LLCs only if particular circumstances apply to the case at hand. For example, in Slovenia a company limited by shares is required to pursue certain financial activities.

**LLC formation checklist**

As indicated, LLCs must have at least one member and one director. In addition, the following are required to establish an LLC under Slovenian law:

**Registered Office**

A company is required to have a registered office in Slovenia. The company must be the legal owner of the property used as company's registered office. Alternatively, the company must obtain permission with a certified signature of the owner of the real estate, allowing it to conduct its business activities at the property's address. Registered office services are generally available from third party service providers in Slovenia.

**Capital**

The minimum statutory registered capital of an LLC is EUR 7,500.00. The minimum capital

requirement per business share is EUR 50.00. The capital may consist of cash and non-cash contributions.

**Scope of business**

The business activities to be carried out by the LLC need to be listed in the company's articles of association, consistently with the applicable Slovenian statistical codes (classification), which is based on EU NACE numbers.

**Bank Account**

If the founding capital consists of cash contributions, it is mandatory for the LLC to open a temporary bank account with a bank in Slovenia or with a bank in another EU Member State before the registration of the LLC. The temporary bank account may later be changed to a regular bank account after registration of the LLC.

**LLC incorporation procedure**

In Slovenia, a notary must be involved in the process of establishing an LLC, as the law requires that the articles of association be executed as a deed. This requirement does not apply when the LLC has only one shareholder, however in this case a book of resolutions must be prepared by the notary.

Establishing an LLC in Slovenia consists of the following main steps:

- If shareholders are foreign corporations, they must obtain an original excerpt from the court/business register, which should not be older than 30 days. The excerpt must be apostilled/legalized and translated into Slovenian.
- If shareholders and/or directors are foreign individuals, they must apply to obtain Slovenian tax ID numbers.
- If shareholders are foreign individuals and no system for mutual exchange of information is established between the Republic of Slovenia, another Member State or a third country, the shareholders need to obtain an extract from the criminal register, confirming that they have not been sentenced to prison by a final ruling. The criminal record excerpt should not be older than 30 days and has to be certified with a signature and official seal, apostilled/legalized and translated into Slovenian.
- If shareholders are foreign individuals and no system for mutual exchange of information is

established between the Republic of Slovenia, another Member State or a third country, the shareholders need to obtain a certificate stating that they have no outstanding tax liabilities in their country of domicile or the country in which the legal person has its registered office.

- If the founding capital consists of cash contributions, the LLC must open a bank account with a bank in Slovenia or with a bank in another EU Member State before registration. The bank must give confirmation that share capital has been fully paid into the account.
- Prior to the signature of the necessary corporate documents, the notary is required to conduct the necessary identification procedures pursuant to AML (Anti-money Laundering) regulations.
- The execution of documentation outside of Slovenia requires additional formalities for the declaration of the director regarding fulfilment of prescribed conditions for appointment, which must be certified by a notary and apostilled/legalized. In case there are several shareholders, the articles of association must be executed as a notarial deed, which is signed in front of a notary in Slovenia. This formality does not apply if there is only one shareholder. Foreign shareholders may wish to give powers to a law firm in Slovenia in order for them not to attend in person before a Slovenian notary.
- Once all the required documentation is gathered and signed, an application is filed for registration of the company into to the Slovenian court register.
- Registration in the Slovenian court register provided the application is found to be complete and all legally prescribed conditions are fulfilled.
- Steps to be taken after registration by the LLC include the registration of beneficial owners, filing of a corporate tax return based on an estimated tax base for the tax period and opening of a standard bank account for business transactions (if a temporary bank account was opened for the purpose of paying in the initial capital, this is usually changed into a regular bank account after registration of the LLC).

**Limited Liability Companies in Slovenia: an overview**

Limited Liability Companies ("LLCs" or "d.o.o." in Slovenian), are the most common form of private "limited" company in Slovenia because of their simple corporate structure and organization, low capital requirement, and the fact that the liability of the LLC's shareholders is limited. LLC may have only one single shareholder and one director. However, if needed, LLCs may have more shareholders (up to 50), additional directors, procurators, a supervisory board and further corporate bodies, such as a management board, etc., as the shareholders may deem appropriate.

Shareholders are liable to the company up to the amount of their initial contribution to the company's share capital, and to other contributions if set out in the articles of association.

Shareholders are generally not responsible for the LLC's liabilities with the very limited exceptions defined by the Slovenian Companies Law, which contains provisions on lifting the 'corporate veil', and which are to apply where the shareholders have engaged in abusive practices with the company's assets for their own benefit to the detriment of the company's creditors or where they have use the company to achieve a goal prohibited for them as individuals.

Shareholders may also be liable to creditors if the LLC's registration procedure ends unsuccessfully and the LLC has started doing business in its pre-registration stage.

All corporate documentation must be submitted to the court register in Slovenian. Documents in a foreign language (e.g. certificate of registration of a foreign corporate shareholder) must be translated into Slovenian by a judicial translator.

Establishing an LLC in Slovenia usually takes 5-10 business days, depending on how quickly all the relevant documents can be prepared and the complete foreign documentation gathered and how quickly the bank account can be opened. Opening a bank account certainly considerably delays the process if the shareholders are foreign persons, as KYC formalities to check the identity of foreign new clients (the shareholders) and tracking the origin of the funds need to be completed. Banks usually also want to meet the future director of the company in person.

The costs of establishing an LLC consist primarily of translation costs and the cost of document certifications in case of foreign shareholders or directors (notarization/apostille). Legal costs depend on the complexity of the shareholder structure, additional requirements for the articles of association, etc.



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Despite having a closed nature and requiring straightforward incorporation requirements, picturing LLCs as small or family companies would be misleading. This form of corporate association is also suitable for large companies. Furthermore, Spanish LLCs do not have a maximum number of quota-holders.

Liability is limited to the contributions made by the quota-holders. However, there are certain cases in which quota-holders might be liable with their personal assets for company debts. Here are some examples:

- Sole quota-holder of a limited company: the sole quota-holder will be liable for any company debts with his assets if he does not register the sole membership in the Commercial Registry within 6 months from the occurrence of such circumstance.
- Overvaluation of non-monetary contributions: quota-holders will be held liable for the overpricing.
- Capital reduction: quota-holders are liable for 5 years for any debts for the amount they would have received for such reduction. This does not apply when the reduction is agreed upon assignment of accounting reserves equal to the amount received by the quota-holders as repayment of the corporate contribution.
- Liquidation of the Company: shareholders will be held liable for unpaid corporate debts up to their share in the liquidation proceeds.

### LLCs Vs. Public Limited Companies

While LLCs are more "closed" in nature, public limited companies (sociedad anónima) are established to accommodate a large number of quota-holders and investors. Indeed, this is the corporate form required for a company to be listed. In general, establishing a public limited company is more costly because the required minimum share capital is larger (EUR 60,000 as opposed to EUR 3,000), because Independent experts are mandatory when operating with assets, and because publicity is mandatory in many cases.

### Limited Liability Companies in Spain: an overview

Limited Liability Companies "LLCs" or sociedad de responsabilidad limitada, "S.L" in Spanish, are the most common, simple, flexible and cost-effective form of private limited company in Spain. Except for some businesses, which may only be operated by a public limited company (sociedad anónima or "S.A."), including banks, credit finance institutions and insurance companies, LLCs satisfy all legal requirements needed in Spain for developing a commercial activity. The share capital of the LLC is represented by quotas (participaciones sociales). Transfers of quotas must be executed as a deed to be legally effective. Unless otherwise provided in the LLCs articles of association, quotas may be freely transferred as among quota-holders (socios), the shareholder's spouse, ascendants or descendants or even among companies of the transferor's group. Otherwise, transfers of quotas are subject to the rules and limitations established in the company's articles of association and, failing this, to the requirements set out in the Spanish Capital Companies Law.



Pursuant to the Spanish Capital Companies Law only 25% of the capital of public limited companies needs to be paid up at the time of incorporation. In the case of LLCs, the share capital must be fully paid up from the outset.

In terms of transfer of quotas and shares, the transfer of LLC's quotas is subject to greater formalities due to the importance of the status of shareholder in the company. Public limited companies, on the other hand, are established to bring together a large number of investors which means that shares are considered as securities (valores) the transfer of which cannot be restricted.

Differences also exist as regards the management body. If the LLC has a board of directors, the maximum number of directors is 12 and there is no maximum time in which they can serve. In public limited companies, boards must have a minimum of 3 directors and there is no maximum number of directors prescribed by law. The exact number of directors and their term of office must be established in the articles of association. Their term of office cannot exceed 6 years, although directors can be re-elected.

### LLC formation checklist

#### Registered office

LLCs need to have their registered office in Spain, at the place of their effective administration or management or at the place of their principal operation center.

#### Share Capital

The minimum share capital required to establish an LLC is EUR 3,000, which must be fully paid up. The share capital may consist of assets or patrimonial rights that can be economically valued, exclusively.

#### Spanish Bank Account

As part of the LLC's incorporation formalities, a bank account in Spain needs to be opened for depositing the company's initial share capital.

#### Scope of business activities

The company's articles of association must list the company's business activities, which need to be consistent with the Spanish National Classification of Economic Activities.

#### Book Register of Shareholders

This must record the quota-holders of the company and any subsequent transfers of quotas.

#### Ultimate Beneficial Ownership

A notarial deed stating any individuals holding, directly or indirectly, more than 25% of the company's voting rights must be granted.

### LLC incorporation procedure

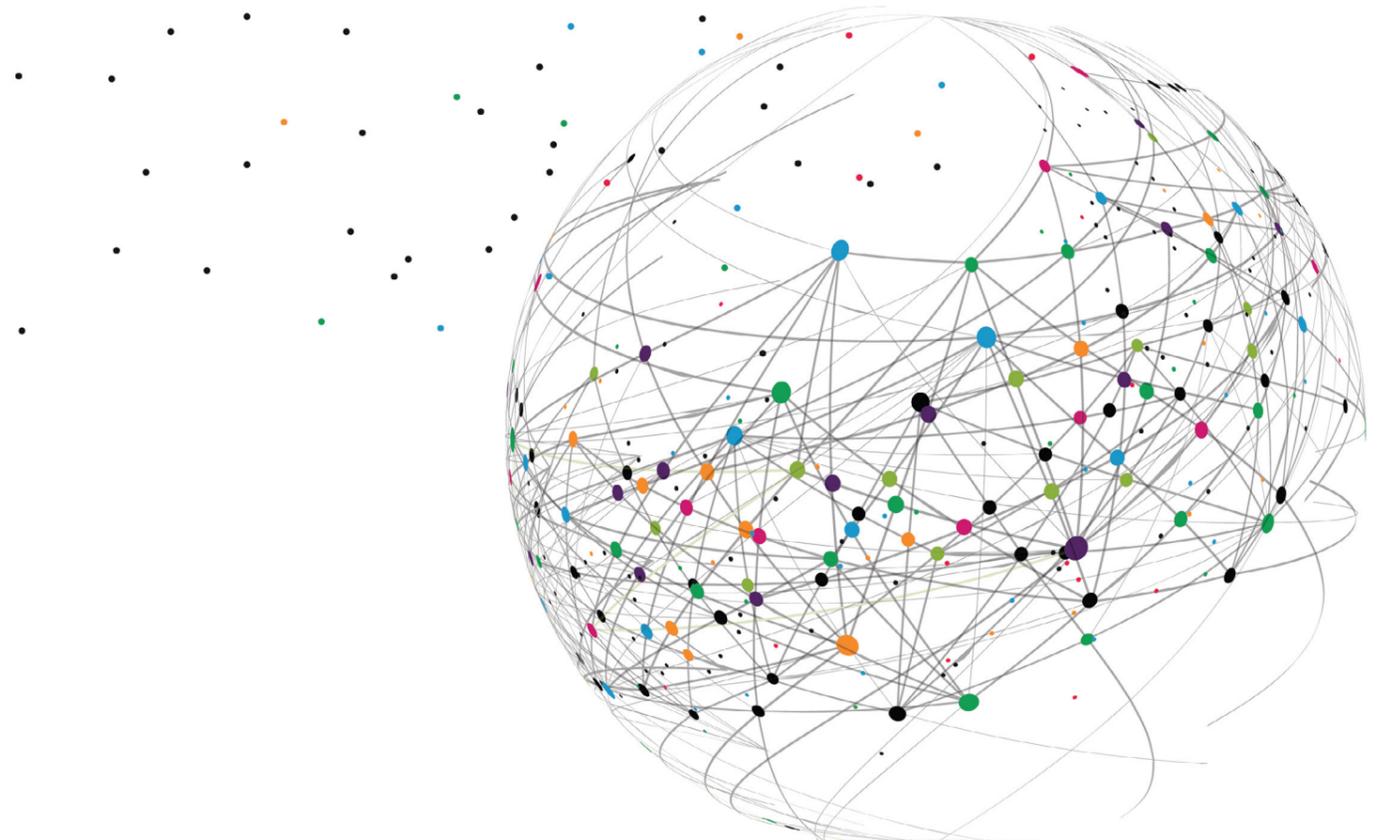
For the incorporation of an LLC the following steps must be followed:

- Obtaining a negative certificate issued by the Central Commercial Registry confirming availability of the intended corporate name.
- Opening a Bank account in Spain for paying into the company's initial share capital.
- Paying the shareholders' contributions.
- Obtaining a Spanish Tax Identification Number (N.I.F.) for the company.
- In case of foreign directors, a N.I.E. (ID number for foreigners) must be obtained. To do so, usually the foreign director grants a Power of Attorney notarized and apostilled to an attorney based in Spain.
- The directors must provide a notarized and legalized copy of their Passports in case the N.I.E. is requested.
- Drafting of the company's articles of association. These must contain: (i) the corporate name and corporate purpose; (ii) the share capital; (iii) the number of shares; (iv) the type of management body; (v) directors' remuneration, if any; (vi) directors' term of office (limited or unlimited) and (vii) financial year start date and the duration of the company.
- The LLC's management may lie on: (i) a sole director; (ii) two or more joint and several directors; (iii) two or more joint directors; or (iv) board of directors, consisting of at least 3 members. A chairman and a secretary of the board must be appointed, whilst it is also possible to appoint a CEO.
- Execution of the incorporation deed before a Spanish Notary Public. To this end, the individual who will appear before the Spanish Notary Public needs to be designated. This person may be someone entitled to act on behalf of the new company, or a proxy with broad enough to execute the incorporation

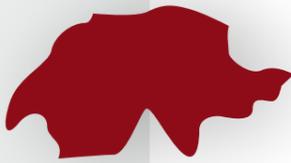
deed. To grant the incorporation deed, the following documents have to be submitted: a negative certificate of the corporate name, the company's articles of association, a bank certificate evidencing payment of the share capital and the Spanish ID card (D.N.I.)/N.I.E. (ID number for foreigners)/passports of the quota-holders.

- Acceptance by the director/s of their appointment. Acceptance may be made before the Notary when granting the deed of incorporation or by via an acceptance letter at a later stage. Acceptance letters need be signed and the signatures notarized and, if applicable, apostilled.
- Filing a declaration form (D1A) evidencing the foreign investment of the quota-holders in the LLC, if given the case.
- Registering the deed of incorporation in the Commercial Registry.
- Completing procedures for tax and labor purposes (VAT and Social Security registration).

The estimated time for registering the LLC in the Commercial Registry is two weeks following execution of the incorporation deed.



## SWITZERLAND



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- Share capital: LLCs require a minimum paid-in share capital of CHF 20,000, while for the CLS the minimum share capital requirement is CHF 100,000.
- The name and residence of the shareholders of a LLC are public, since they are namely indicated in the excerpt of the Register of Commerce available to the public online. On the other hand, the identity of the shareholders of a CLS can remain undisclosed to the general public.
- The aggregate costs for the incorporation of a LLC with CHF 20,000 share capital are approximately CHF 2,500, while those for an CLS with CHF 100,000 are approximately CHF 3,500.
- Finally, the minimum annual (recurring) fees for the address, accounting (including annual report preparation), and tax return preparation are set around CHF 6,000/8,000 (depending on the amount of work needed, e.g. for the invoices issuance), whether the client chooses an LLC or a CLS.

### LLC formation checklist

#### Registered Office

A company is required to designate a registered office in Switzerland.

#### Capital

The minimum statutory registered capital of an LLC is CHF 20,000. The capital contributions may be made either in cash or in kind.

#### Scope of business

The scope of business of the LLC must be clearly indicated in the company's articles of association. Any activities subject to regulatory monitoring (e.g. any banking activity) must be previously authorized by the relevant supervisory authority.

Auditors Swiss law allows the founders of a small/midsize LLC to opt for a waiver on the appointment of an audit company, which is almost always the case.

Citizenship vs residence issues Although all shareholders of the LLC may be foreigners, at least one managing director having individual signatory power (or at least two managing directors having joint signature) must be resident in Switzerland, regardless of their citizenship. Under Swiss company law, a foreign resident cannot be the sole director of an LLC (but can be its sole shareholder), but at least a second director who must be resident in Switzerland must also be appointed.

### LLC incorporation procedure

Incorporation is formalized by means of a public deed. The incorporation application must be filed by a notary public with the commercial register at the jurisdiction of the LLC's registered office. The establishment of an LLC consists of the following main steps:

- The name of the company must be previously checked for availability.
- Before the notary public even only one person may appear acting also on behalf of the founder or of the other founders (either private person or legal entities), provided however that the appearing person must be duly authorized to represent the other founders pursuant to written powers, namely:
  1. a special power of attorney duly legalized (and apostilled if issued and legalized out of Switzerland); and
  2. if a legal entity appears as founder an original excerpt of the commercial register of the relevant legal entity (if Swiss entity) or a legalized and apostilled excerpt of the commercial register of the relevant legal entity (if foreign).
- All the board members and directors must execute the application form to be filed with the commercial register and their signatures must be legalized; should the legalization occur out of Switzerland, the Apostille is required.
- All corporate documentation must be submitted to the register of commerce in one of Switzerland's three official languages, usually that used in the LLC's Canton of incorporation. Therefore, documentation in a foreign language (e.g. certificate of registration of the foreign legal entity shareholder) must

be translated into one of Switzerland's official languages.

The incorporation timescale depends on various factors: execution and legalization of documents outside of Switzerland, translation of the documents, KYC checks by the bank that receives the LLC share capital contribution, etc. A typical incorporation procedure of a Swiss LLC is generally very quick and takes 10-15 days, followed by a register of commerce registration procedure of 3 - 5 days.

### Limited Liability Companies in Switzerland: an overview

Limited Liability Companies ("LLCs" or "GmbH", "Sàrl", and: "Sagl" in German, French and Italian, respectively) are corporations with separate legal personality participated by one or more individuals or corporations. The LLC's nominal capital must be at least CHF 20,000.

LLCs are liable for their obligations up to the value of the company's assets. In contrast, shareholders are liable for the payment of their contribution to the share capital and other possible contributions agreed in the articles of association, only. Shareholders are not responsible for the LLC's liabilities.

Each shareholder participates in the nominal capital by making at least one capital contribution. It is possible for an LLC to operate with only one shareholder and one managing director, who can also be the same and sole person.

### LLCs vs. Companies Limited by Shares

A commercial company is usually incorporated in Switzerland either in form of a Company Limited by Shares ("CLS", "AG", in German, "SA" in French and Italian), or of an LLC.

CLSs and LLCs are treated equally in terms of taxes and governance.

The main differences between the CLSs and LLCs are the following:

## UKRAINE



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Sayenko Kharenko, Ukraine  
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The general meeting of participants is the highest governing body of an LLC and may decide on any matter of the company's activity. The exclusive competence of the general meeting of participants includes adoption of the company's charter, increasing or decreasing the company's charter capital, appointing supervisory board members, director or members of the board of directors, declaring dividends, and winding up the company, as well as other matters established by the law, which may be further supplemented in the charter. The powers within the exclusive competence of the general meeting of participants may not be delegated to other bodies of the company.

Ukrainian legislation provides for a two-tier board structure. An LLC must have an executive body (a sole director or a board of directors) and may, but does not need to, have a supervisory board. If a supervisory board is created, its competence may include appointment of the director or members of the board of directors. By default, an LLC has a sole director. The charter may provide for a board of directors. The sole director or the board of directors is responsible for day-to-day business activity of the company and may decide on all matters of the company's activity, except for matters under the exclusive competence of the general meeting of participants and the supervisory board (if created).

Participatory interests in an LLC are transferrable instruments. By default, participants have a pre-emptive right to purchase participatory interest (or part thereof) of other participants which is offered for sale to third parties. The pre-emptive rights may be waived in the company's charter by a unanimous resolution of all of the company's participants. Also, participants of an LLC may enter into a shareholders' agreement that may provide for waiver of the pre-emptive rights by a party or parties to such agreement.

### LLCs vs. Joint Stock Companies

LLCs are always private companies, whereas a joint stock company ("JSC") may be either private or public. Unlike JSCs (including those having one

shareholder), LLCs are generally not subject to regulatory supervision of the National Securities and Stock Market Commission (unless they are issuers of debt or certain other types securities).

As noted above, LLCs do not issue shares, as their charter capital is divided into participatory interests which do not qualify as securities. At the same time, the charter capital of a JSC is divided into shares, which qualify as securities.

Unlike LLCs, JSCs are subject to more stringent regulations as to corporate governance (e.g. they may be required to establish supervisory boards, the share issue and transfer procedures are more complicated, lengthy and costly, etc.) and may not operate based on a model charter.

### LLC formation checklist

The following elements are required when establishing an LLC in Ukraine:

#### Registered office of the LLC

An LLC needs to have a registered office in Ukraine. The respective premises need to be either owned by the company or it needs to have another entitlement to use the premises (e.g. under a lease agreement).

#### The purpose (i.e. business) of the LLC

The LLC must register the types of its business activity in accordance with the relevant codes of the Ukrainian Classification of Types of Economic Activities.

In practical terms, specifying the LLC's types of activity is relevant from the tax perspective, as the tax authorities may decide that the costs incurred by the company are not tax deductible if they are not in line with the corporate purpose. Exceeding the company's purpose does not render any legal transactions entered by the company void or illegal.

#### Charter capital and its distribution between participants

There is no minimum requirement for charter capital of an LLC. From a practical standpoint, the initial amount of charter capital should cover the costs for initial set-up and maintenance of the company until it starts generating income or is funded otherwise (e.g. by shareholder loans). The

amount of such costs may vary depending on individual factors for each company (such as the "idle period" before commencement of operations, salary of the director(s) and employees, cost of registered address or office lease, cost of accounting outsourcing, etc.).

Also note that a foreign natural person must have a Ukrainian tax identification number in order to be registered as a participant of an LLC.

#### Director

The company must have at least one director. The director of a Ukrainian company must have a Ukrainian tax identification number.

#### Bank account

An LLC should have at least one bank account opened in a Ukrainian bank in order to be able to pay taxes and salaries to employees, etc. The bank account may be opened after registration of the company in the Companies Register.

#### Accounting

It is highly recommended for an LLC needs to engage an outsourced accountant or hire its own accountant to help with bookkeeping in accordance with the requirements of Ukrainian law. By default, the company's director is responsible for the company's bookkeeping.

### LLC incorporation procedure

In order to incorporate an LLC, the following documents have to be filed to a state registrar by or on behalf of the founder(s):

- standard form application on registration of a company;
- resolution (minutes of meeting) of founder(s) signed in front of a Ukrainian notary;
- charter of the company signed in front of a Ukrainian notary (unless the founders decide that the company will operate based on the model charter);
- in case a founder is a foreign legal entity – copies of its legalised (apostilled) extract or certificate from companies register (or equivalent document) translated into Ukrainian;
- a notarized and legalized (apostilled) copy of passport of ultimate beneficial owner(s) of the company;
- ownership structure of the company – a

### Short summary of characteristics

Limited Liability Company ("LLC") is a type of commercial company that bears liability for its obligations only with its own property. LLC is a company with charter capital divided into participatory interests and it may have one or several participants (the number of participants is not limited).

Due to practical considerations and less restrictive regulatory framework, LLC is the most frequently used corporate form in Ukraine. It offers several advantages, including no statutory requirements for minimum charter capital amount, relatively uncomplicated incorporation procedure, simple and flexible corporate governance, as well as fewer regulatory requirements and restrictions.

LLCs do not issue shares. The charter capital of an LLC is formed by contributions of participants and the charter capital amount is the sum of par value of participatory interests of its participants. The value of the participants' contributions to the charter capital of an LLC should be no less than the par value of their respective participation interests. A contribution to the charter capital of an LLC may be in the form of money, securities or other property.

Participation interests are qualified as corporate rights, i.e. rights of a participant to manage the company, receive dividends or distributions in case of liquidation of the company, as well as other rights prescribed by the law.

schematic representation illustrating the chain of ownership starting from the founder(s) of the company and up to the ultimate beneficial owners(s), including relations between all entities in the ownership chain (percentage of shares owned, etc.), accompanied with documents proving control of the ultimate beneficial owner(s) over the company through the entire chain of entities in the ownership structure;

- power(s) of attorney confirming the powers of the representative(s) of the founder(s) (if issued abroad – legalised or apostilled and translated into Ukrainian).

An LLC is incorporated within 24 hours (during business days) from filing of respective documents to a state registrar, provided that the filed documents comply with the requirements of the law. Faster registration is possible for an uplifted registration fee.





This guide provides an overview, compiled by the member and collaborating firms of Andersen Global, of the LLC incorporation in different European countries.

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