

Unit 5

Company Forms

Choosing the right company form is one of the key points for the future success of the enterprise. The legal form that the company takes will affect almost every aspect of its operation such as the taxes to be paid, the owner's personal risk, company ownership, opportunities to raise capital, administrative burden, paperwork at registration and record-keeping, credibility as well as financial security. The main types of businesses operate either as **natural persons** such as the sole proprietorship, partnerships: general partnership, limited partnership, or as **legal entities/legal personality** such as limited liability company, public company limited by shares, private company limited by shares, joint ventures. An **entity** is legally seen a person or a company that exists as an independent economic unit; a natural person is a real living person while legal entity/legal person is an independent artificial economic unit, a non-living entity, which is seen by law as an independent personality. Thus it has a legal name, has rights, protections and liabilities under law, can own property, enter contracts, can have debts, can sue and can be sued in court.

Liability means the financial responsibility of the members for the debts of the company. The company with **unlimited/full liability** is not separate or independent from the person who owns it. Its members are also personally liable for the debts and obligations of the company with all their fortune. In case the company cannot pay back its debts, creditors have the right to claim both business and personal assets of the members. Any possession of the owner, such as savings, investments, furniture, car and home, can be sold to pay back the debts of the company. **Limited liability** means that the members are liable for the debts only to the extent of their investments but not with their personal assets. **Joint and several liability** means that the parties are both jointly and individually liable. They can be made to pay back the debts as a group or each of them can be forced to pay back the whole debt as an individual. **Deep pocket rule:** If one of the members can't pay his/her share of the debts, the others have to pay back the full debt, after that, it is up to the partner to agree on how to settle the case among each other. Creditors usually choose the member with the "deepest pocket" to get back their money as soon as possible.

Company registration: To start any kind of enterprise in Europe, the enterprise has to be registered officially. Sole proprietors and partnerships have to be registered at the tax and the national insurance authorities. Companies have to be registered into the **company register** through the court of registration, too, that is incorporated to get legal personality status. In most countries registrations can be done electronically. Companies have to file the following **founding documents**:

- **memorandum of association** is the 'birth certificate' of the company, stating the name of the company, the registered office and the company objectives.
- **articles of association** is a kind of 'internal rule book', a contract between the members, which governs the company's internal affairs, stating the members' rights and duties.

In Croatia both documents must be signed by the founders in front of a **notary public**, in Hungary either a lawyer or a public notary countersigns it. In the UK it is enough to sign these documents along with the INO1 form in front of a witness who must attest the signature. In the USA and Canada there is only one single document to be filed, called **articles of incorporation/charter** (sometimes



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also referred to as the **certificate of incorporation**). Applications of registration are sent to the Court of Registration with registration fee while in the UK registration is done through Companies House. To register a company with legal entity, **minimum capital/registered capital/ initial capital/start-up capital** has to be paid into the company account.

Sole proprietorship (natural person) – (e.v. HU – obrt. Cro)

The owner and the business are one and the same. It is run by the sole trader/sole proprietor/entrepreneur, who is responsible for management and control of the business alone, working on his/her own account. It is taxed as an individual and the owner has unlimited liability for the debts. For certain types of work (e.g. hairdresser, taxi driver) a licence or permission, called **local authority licence** is needed from the local authority. In Hungary it is compulsory that sole proprietors have to register at the Chamber of Commerce and Industry paying registration fee but chamber membership is optional for them.

PROS:

- easy and inexpensive to set up, low start-up costs, no minimum capital
- owner has complete control
- easy to run: flexible working hours, the owner is its own boss
- owner earns all profits, doesn't have to share
- no corporate tax
- privacy

CONS:

- full liability: owner completely liable for debts
- business terminates with owner's death or illness
- cannot be sold
- long working hours
- tax rate may be higher than other entities (personal income tax)
- hard to get outside capital, difficult to expand, owner has to bring up all capital

Business Associations:

A, Companies of without legal personality (natural entity)

Partnerships (natural entity)- no minimum capital is required – set up by two or more owners

- a) **general/unlimited partnership (kkt. HU - javno trgovačko društvo Cro)** the partners are jointly and severally liable for the repayment of the debts of the enterprise. They run the business together and have full right to control the business.



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PROS:

- partners can bring up more capital and expertise
- flexible decision making
- partners, not the partnership, taxed at the individual level
- work and stress are shared, business expenses deductible
- Easy to set up

CONS:

- partners have equal right to make decisions, possibility of conflicts and deadlock
- profit has to be shared
- partnership terminates on death or withdrawal of any partner, it has to be wound up if one of the partners dies or leaves
- partners totally liable: also liable for actions taken by other partners
- high degree of trust is needed

b) limited partnership (Bt. Hu - komanditno društvo Cro)

must have at least one **limited (external member)** and one **unlimited (internal/general)** member, only the general member is responsible for management, **sleeping/silent partners** stay away totally from management. This form is preferred to raise capital without having full responsibility. The second most widespread form in Hungary, typically a family-run business. For example: dental surgery.

PROS:

- Limited partners are not personally liable for the partnership's debts and obligations
- Partnership does not dissolve with death of limited partner
- Number of partners/owners unlimited

CONS:

- Transfer of interest usually requires general partner approval
- Complete and separate paperwork filings
- Limited partners have little, if any, control over daily operations



B, Companies with legal personality/companies of capital – legal entities (minimal capital is required)

limited liability company (ca. ltd BrE – LLC US., Kft. Hu.)

can even be run as a one-member company, most popular company form both in Hungary and Croatia, all members have limited liability (proportionate to their investments). It is ideal for relatively small companies with a small number of members who want to take part in the management only. Compulsory bodies: managing director responsible for the management, supervisory board of at least 3 members only if the initial capital is over a certain amount of money, auditor if the total revenue is over a certain amount of money, members' board

PROS:

- members have limited liability
- unlimited lifespan, independent of illness or withdrawal
- flexible company structure: members are free to choose the most suitable organizational structure
- transferability: transferable by the members
- higher credibility, easier to get bank loans

CONS:

- higher start-up cost
- more administration

Company limited by shares

can also operate as a one-member company, members have limited liability to the face value of their shares, compulsory bodies: supervisory board, auditor, general board, Annual General Meeting (AGM)

a, public limited company/joint stock company (plc UK, NyRt Hu - d.d. dioničko društvo Cro, corporation US) its shares may be offered for sale to the general public on the stock exchange, usually larger than private limited companies

b, private company limited by shares/private limited company (ltd UK -ZRt d.o.o. as *društvo s ograničenom odgovornošću* Cro), often used as 'limited liability company' in Croatia) angolul lehet kft is, the most common company form in the UK, typically smaller companies

Private companies limited by shares are usually required to have the suffix "Limited" (often written "Ltd" or "Ltd.") -UK or "Incorporated" ("Inc.") -USA as part of their name,

PROS:

- Limited liability to the extent of face value of shares, shareholders risk only their investment
- Easy to sell small portions of stocks to raise capital
- Tax rate may be lower, can elect different year-ends which is helpful for tax planning
- a wider profile, a wider scope of business activities, high prestige
- economies of scale

CONS:

- high start-up costs
- complicated registration procedure
- state laws can limit operating flexibility
- administration, recordkeeping
- double taxation occurs when dividends are paid to shareholders (on shareholder's individual account and corporation's account – capital gain tax)
- threat of a takeover if another rival company buys up the majority of the shares
- no privacy

The different usage of business terms and the differences in company structures make things even more complicated. The Hungarian 'Kft' is very similar to the German GmbH as it doesn't own shares but by tradition it is translated into 'limited liability company' (Ltd.) In contrast, the limited liability company (LLC) in the USA has shares without double taxation (no capital gain tax). Limited companies in the UK fall into three subcategories: private limited companies (joint stock company), public limited companies, both issue shares as opposed to private companies limited by guarantee, which don't have shares, they are non-profit organizations. The joint stock company is in the UK a company limited by shares, a registered company where shareholders have limited liability whereas joint stock company shareholders in the US have unlimited liability. Croatian law refers to a public limited liability company as a "joint stock company" (*dioničko društvo* or d.d.) and to a private limited liability company as a "limited liability company" (*društvo s ograničenom odgovornošću* or d.o.o).

Public enterprises:

a, municipal undertakings- operated by local authorities, financed by local council tax, government subsidies, charges collected for the use of their services (sports centre, public transport).

b, state undertakings – operated by the government, the corporation board is appointed by the government.



Special company forms in the EEA/EU countries:

- Partnerships:
 - **EEIG (European Economic Interest Grouping)**: an EU legal entity designed to enable cross-border cooperation between companies. It has unlimited liability and is not liable for corporation tax.
- Companies:
 - **SCE (Societas Cooperativa Europaea)**: a European Cooperative (*Societas Cooperativa Europaea* is Latin for "European Cooperative Society").
 - **SE (Societas Europaea)**: a European (Public) Limited Company (*Societas Europaea* is Latin for "European Company").
 - *(proposed)* **SPE (Societas Privata Europaea)**: a European private limited company, corresponding to Ltd., GmbH, etc. This form of company is currently being proposed by the European Commission.

An SE or SCE may be created by registration in any of the EU/EEA Member States, and is subject to the European Company Statute. It may relocate its registered office to any other EU/EEA Member State with minimal formalities.

Speaking

Dialogue1: Advice for setting up business in Croatia

Role A: You are Antónia/Adám Balogh, an entrepreneur from Hungary. You would like to buy a smaller property on the Croatian Coast, which you would run as a small hotel and let it out to tourists. You would like to get information from the legal advisor of the local employment centre in the holiday resort Pula, Croatia. Act out your role while covering the following points:

- tell the advisor about your future plan
- ask what type of company forms are common in Croatia
- you would like to set up a company, ask about the registration procedure

Your partner is starting the dialogue.

Role B: You are the legal advisor of a local employment centre in the holiday resort Pula, Croatia. An entrepreneur from Hungary who would like to run a smaller hotel in your town is visiting you to get some information from you. Act out your role while covering the following points:

- greet the client and offer your help
- tell about the most common business forms in Croatia
- tell about the registration procedure
- give the client a brochure with the necessary contact addresses
- offer to arrange a meeting for him with an expert from the local Chamber of Commerce

You are starting the dialogue.



Supplementary information:
company registration procedure in Croatia (up to 2 weeks)

Setting up a business in Croatia has been made easier through HITRO. HR, a service of the Government of Republic of Croatia as citizens and businesses have quicker, simpler access to information and services in one location.

- company name availability check - The employees of the HITRO. HR service will check the company register to find out whether a company by the same or similar name already exists.
- verification of documents by public notary (**memorandum of association**)
- settling the **share capital/minimum capital/initial capital/start-up capital**
- registering with the **Commercial Court**, the notary public can file the applications to the court registries in an electronic form
- registering with the **Central Bureau of Statistics and Tax Authorities**
- opening a business account
- order official seal and apply for statistical registration number
obtain a Statistical File Number with the State Office for Statistics (Drzavni zavod za statistiku),
- register with Croatian Pension Insurance Fund (Hrvatski zavod za mirovinsko osiguranjem, HZMO or FINA
- register with the Croatian Institute for Health Insurance (HZZO) as a contributions payer.

The minimum capital required when establishing a limited liability company is the domestic currency equivalent of 2,500 EUR and the minimum of 25,000 EUR when establishing a joint-stock company.

compulsory documents for registration:

- **registration certificate** of the founding company translated by the Croatian court interpreter
- the founding company's letter of attorney/power of attorney POA certified and translated by the Croatian court interpreter
- a copy of an identification document of the appointed company representative or proxy
- the authentication of director's or proxy's signature by public notary
- incorporation document – articles or statement of incorporation
- company name explanation (if the company has a foreign name).

Dialogue 2: Setting up business in Hungary

Role A: You are Christine/Thomas Berger, an entrepreneur from Austria. You would like to set up a golf club at Lake Balaton, you would run a golf course, a restaurant and a small hotel and let it out to Austrian and German holidaymakers. You have some friends and family members who would like to join your plan. You would like to get information from the legal advisor of the local employment centre in the holiday resort, Balatonmária, Hungary. Act out your role while covering the following points:

- tell the advisor about your future plan
- ask what type of company forms are common in Hungary
- you would like to set up a company, ask about the registration procedure

Your partner is starting the dialogue.



Role B: You are the legal advisor of a local employment centre in the holiday resort Balatonmária, Hungary. An entrepreneur from Austria who would like to set up a golf club in your town is visiting you to get some information from you. Act out your role while covering the following points:

- greet the client and offer your help
- tell about the most common business forms in Croatia
- tell about the registration procedure
- give the client a brochure with the necessary contact addresses
- offer to arrange a meeting for him with an expert from the local Chamber of Commerce

You are starting the dialogue.

Supplementary information:

Company registration in Hungary:

Procedure 1.

The company must be represented by an attorney at law in the registration process. Hire a lawyer who represents the company, drafts the founding documents and prepares other legal documents. Time: 1-2 days, lawyer's fees: ca. HUF 50,000

Procedure 2.

minimum capital: Half of it must be paid (subscribed capital) in at the time of company establishment, the other half not later than a year from establishment.

Ltd incorporations HUF 500.000 equity instead of the earlier HUF 3 million whereas companies limited by shares (public or private limited companies) have to be incorporated with HUF 5 million instead of HUF 20 million. The contribution is shared by the members, it can be *cash contribution* and **contributions in kind**.

The articles and memorandum of association shall be signed by all members and *countersigned (ellenjegyzés)* by an *attorney at law (ügyvéd)*

Procedure 3.

simplified electronic registration) apply for registration at the **Registration Court** (cégbíróóság)

Time to complete: 1 day, Costs: HUF 15,000 stamp duty, no publication fee.

Please note: an extra step added as of 1.01.2012, the Registration Court has to contact the tax office and request a tax number (same as the EU VAT number) for the company. (Previously, this was automated, so tax numbers were issued automatically for new companies.)

The Registration Court issues a **certificate** (igazolás) for the company with the company's name, address, temporary tax and statistical number and the number of reference of the registration. After receiving the above certificate the company may start to operate in the form of a **pre-incorporated company**.

Attached documents:





- corporate documents specified by the provisions of law (memorandum of association,
- proof of bank account opening
- bank statement of the equity payment
- specimen signature sheet (aláíási címpéldány)

Procedure 4:

the Registration Court registers companies with the **State Taxation Office** (for VAT and income tax purposes) and with the **Statistical Office** and the **local government** in charge of collecting the **local tax** from the company and **National Health Insurance Fund** (Országos Egészségbiztosítási Pénztár) for social contribution and pension scheme payments through an online system.

Please note: **compulsory chamber registration** as of January 2012, all companies are obligated to report to and register at the local chamber of commerce (according to their registered seat) in Hungary. Chamber membership is optional. As being part of the European Union (EU), Hungarian registered enterprises can now obtain an EU VAT registration number for doing business across the EU. The Hungarian EU-VAT reg.number starts with "HU". This way the existence of the subject company, VAT issues and the cross-check is available on the common EU website for companies.

Dialogue3: Asking for appointment with the public notary

Role A: You are Antónia/Adám Balogh, an entrepreneur from Hungary. You would like to buy a smaller property in a holiday resort, Pula, on the Croatian Coast, which you would run as a small hotel and let it out to tourists. You have decided to run it as a **limited liability company**. You would like to register your company. Call the local public notary. Act out your role while covering the following points:

- tell the notary about your future plan
- agree with your partner about an appointment
- ask about what documents you have to obtain
- ask about the costs to be expected

Your partner is starting the phone conversation.

Role B: You are the public notary of a Croatian holiday resort, Pula. A Hungarian entrepreneur is calling you. Give advice about registering businesses in Croatia.

- ask how you can help
- suggest making an appointment to discuss further details
- tell what documents to obtain
- tell the client to apply for residence permit
- tell about the costs to be expected

You are starting the phone conversation.



Writing

Transactional letter 3.

Reporting

At work it often happens that you are asked to report about certain business related issues to your colleagues, superiors or customers. Business reports cover a wide range of topics such as information about investment opportunities, business environment, company results, description of potential rival or partner companies, new laws and regulations, etc. Different methods such as opinion poll, survey, pilot test, interview, questionnaires, are used to collect the necessary information. This kind of writing is more than a simple letter giving information, as you are also requested to do some further research, group your findings logically, draw conclusions and make recommendations. To follow a logical flow of thoughts, sub-headings are essential.

Layout:

Purpose: You state the aim and content of the report and indicate the time when your research was done and the method you applied to collect data.

Main Body: Each aspect of the research is presented under sub-headings.(e.g. costs, facilities, location, access, availability, turnover, quality, price, consumer awareness, strategy, etc.) Present your findings and draw conclusions from them.

Conclusion/Recommendation/Suggestion: Your findings are summarised and you state your opinion and give recommendation.

Purpose:

The purpose/aim/intention of this report is to examine/assess/evaluate/present/discuss the possibility of a merger/a larger investment.

This report contains the assessment of the suitability of Victoria Vogue for promotion to project leader.

This report outlines the advantages and disadvantages of the new product line.

As requested, this is a report concerning the matter/subject of EU funding opportunities in the region.

The findings/data in this report were collected/gathered/obtained by means of a telephone survey.

I would like to present the result of a survey in which customers/residents were asked/interviewed about.....

The survey was carried out/conducted to determine /discover shopping habits and consumer choices.

This expertise is about the performance

Main Body:

As for the investment environment, high taxation, red tape, strong competition would cause difficulties.

This fact suggests/implies/indicates that





Only X % of the respondents are for....., which shows/implies/indicates/illustrates that.....

It must be pointed out/highlighted/underlined/emphasized that.....

The experts asked agree that.....

Conclusion:

In conclusion, it is obvious/ quite clear that the company cannot afford further technical investments.

To conclude,

In summary

To sum (up)

To summarize,

On the whole,

I/we conclude that the current state of affairs is for/against.....

I would recommend/advise purchasing the new equipment.

I would recommend/advise the company to purchase.

I suggest launching a new advertising campaign to increase/raise consumer awareness.

I suggest (that) the company should launch the new product in the Croatian market.

On the basis of these findings, such a step seems strongly advisable.

The results of this survey suggest/indicate/reveal that taking further action is highly recommended.

Our recommendation/suggestion is that

Unfortunately, progress has not been made as far as expected

I/we do hope/trust that the plan/scheme/agenda/programme outlined/pesented/drawn up meets with your approval/will receive your serious consideration/will be supported by you.

