

# LIMITED LIABILITY COMPANY ACCORDING TO THE NEW ACT ON COMMERCIAL CORPORATIONS

Eva Daniela Růžicková

**Received: April 11, 2013**

## Abstract

RŮŽICKOVÁ EVA DANIELA: *Limited liability company according to the new Act on commercial corporations.* Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis, 2013, LXI, No. 7, pp. 2685–2691

Act No. 90/2012 Coll., on commercial corporations, is one of the legal norms which arose in connection to the re-codification of the Private law. Along with the new Civil Code and Act on International private law, it brings about fundamental changes in the field of the regulation of commercial companies. It is an act which partially replaced the current Act No. 513/1991 Coll., Commercial Code. Its content predominantly consists of the regulation of commercial companies and cooperatives, while other relations regarding commercial relations will be covered by the new Civil code. The Chamber of Deputies approved the bill on 16<sup>th</sup> December and the Act should take effect on 1<sup>st</sup> January 2014.

Since the new legislative norm brings as well many changes in the field of regulations of the limited liability company, which is currently the most used company form, the purpose of this article is to provide complete information about prepared changes in this field, while focusing on risks related to these changes for the limited liability company. According to a hypothesis determined by Pearson chi-quadrat, it should prove to the readers whether or not the changes in the field of the limited liability company will have, as a consequence, the transformation of the legal form used by persons conducting business based on the Trade Act. Further, it will be researched whether these changes will have an impact on the current form for business conduct.

Commercial Code, Act on commercial corporations, limited liability company, registered capital, re-codification, private law

## 1 INTRODUCTION

On 22<sup>nd</sup> March, 2012, in the Collection of Acts was published under No. 90/2012 Coll. a brand new Act called the Act on commercial corporations. It should take effect on 1<sup>st</sup> January, 2014. This Act was adopted in relation to an important re-codification of the private law, and this in the form of the completely new Act No. 89/2012, Civil Code and this should take effect as well on 1<sup>st</sup> January, 2014. The fundament of the Act No. 90/2012 Coll., on commercial corporations is predominantly the legal regulation only of commercial companies and cooperatives. On 1<sup>st</sup> January, 2014 this Act completely substitutes Act No. 513/1991 Coll., Commercial Code. Other legal issues related to the commercial law, such as

obligations, will be from 1<sup>st</sup> January 2014 regulated only by Act. 89/2012 Coll., Commercial Code. The content of the Act on commercial corporations will include only legal issues covering commercial companies and cooperatives. Therefore, it is important to emphasize that the Act on commercial corporations will not provide the complete regulation of all matters of commercial corporations. A large number of matters related to commercial companies and commercial corporation is regulated directly by Act No. 89/2012 Coll., Civil Code.

Currently, the commercial company type used most often for business conduct is the limited liability company. Due to the important re-codification of the private law, significant changes are brought about in this field and the goal of

this article is to provide a compact overview of modifications of the limited liability company and its regime. In addition, this article evaluates whether these modification are to have an impact on the increase of interest and willingness to establish a limited liability company by sole businesspeople doing business based on a trade license.

## 2 GOAL AND METHODS

The principal goal and cornerstone of the article is the analytic description of the legal domain of the limited liability company and the related new legal regulations in the form of the Act, on commercial corporations. Another goal is the evaluation whether, based on the questionnaire inquiry and the following analysis of the categorical data, the legal changes in the field of the limited liability company will increase the interest and the willingness of business persons to use this type of company for their business purposes. The questionnaires will be presented to selected categories of natural persons conducting business based on the Trade Act, namely sole traders which have obtained the permission for free trades and handcraft trades. The participants will be shortly informed about the new regulations provided by the Act, on commercial corporations, in the field of the limited liability company and the newly brought about changes, thereafter they will be provided with the questionnaire to be filed in.

As an introductory hypothesis, there is set the following:

- H1 – the legal changes in the field of the limited liability company will increase the interest in establishing a limited liability company,
- H2 – the legal changes in the field of the limited liability company will increase the willingness of natural persons to change the legal form for business conduct,
- H3 – the age of natural persons has an influence on the increase of interest to establish a limited liability company,

H4 – the age of natural persons has an influence on the willingness to change the legal form for business conduct.

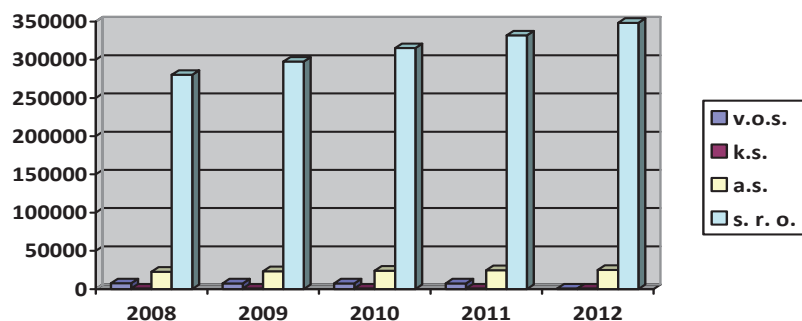
The introductory method was a literate examination and used both, current and future effective legislation. The analytic appreciation of the limited liability company had deductive features and was closely interrelated with the preceding literate examination. The indicated hypothesis was set based upon experimental investigation and was evaluated based on questionnaire investigation and analysis of categorical data.

## 3 LIMITED LIABILITY COMPANY

### 3.1 Features of the limited liability company

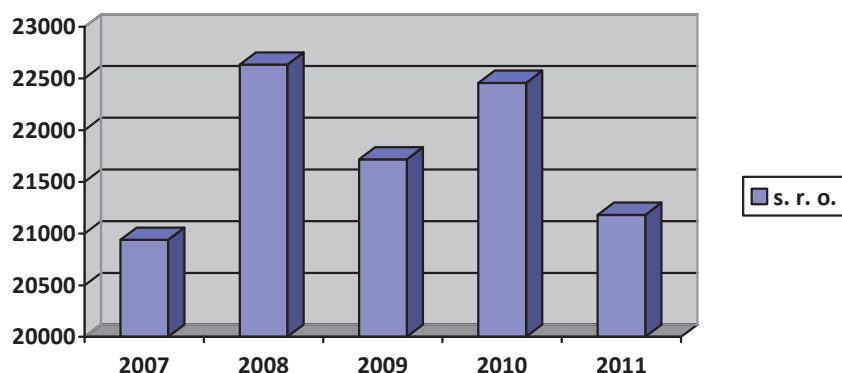
The limited liability company is one of the types of capital companies despite the fact that it demonstrates a number of features typical for personal companies. The legal regulation of the limited liability company is currently provided in the Act No. 513/1991 Coll., Commercial Code, namely in provisions of Sec. 56 and following which deal with the general delimiting of all commercial companies regulated by the Commercial Code and further in more details in Sec. 105 and following which deal specifically with the limited liability company. Based upon the collected data, it is obvious that the limited liability company is currently the most often used company established for business purposes, as demonstrated from the graphs and charts presented below.

In the period 2008–2012, the most frequently established company type was the limited liability company (see picture). The second most popular company type was the shareholder company (joint stock company), followed by public commercial company (similar to partnership) and the least popular was the commandite company (similar to limited partnership).



1: Overview of commercial companies established in the period 2008–2012 in the Czech Republic<sup>1</sup>  
Source: own processing based on data from the Czech Statistics Office

1 v. o. s., veřejná obchodní společnost - public company, k. s., komanditní společnost - limited partnership, a. s., akciová společnost - joint-stock company, s. r. o., společnost s ručením omezeným - limited liability company



2: Overview of limited liability companies established in the period 2007–2011 in Czech Republic<sup>2</sup>  
Source: own processing based on data from the Czech Statistics Office

In the period 2007–2011, the most often established company was the limited liability company and their biggest year was 2008, when 22,633 companies with limited liability were established, followed by 2010 with 22,456 companies with limited liability. One of the reasons for the heavy use of the limited liability company is the limited responsibility of company associates, i.e. they are liable for company's obligations only up to their unpaid company contribution. Thus, when all company contributions are paid, the liability of associates for obligations of the company automatically expires.

### 3.2 Comparative analysis of old and new legal regulation of the limited liability company liability

#### 3.2.1 Registered capital and the of company associates

As mentioned above, the limited liability company is classified among capital companies, and thus especially because pursuant to Sec. 108, Commercial Code, it has a duty to establish a registered capital in the minimum amount of CZK 200,000. The maximum limit of the registered capital is not set, and thus the company can establish a registered capital in whatever amount provided it is higher than CZK 200,000. If the company is established by only one person, such a person must pay the registered capital in the full extent before the submission of the request for the registration in the Commercial Register. If the limited liability company is established by more than one person, then the minimum contribution of each of them is at least CZK 20,000.

One of the key ideas of the Act on commercial corporations is the liberalization of rules regarding commercial companies, and this is a reaction to the development and needs of the commercial world.<sup>3</sup> It can be stated that exactly for these reasons the Act, on commercial corporations moves away from the legal regulation of the establishment of the registered capital and newly sets directly in Sec. 142 Paragraph 1), Act, on commercial corporations that the minimum contribution of an associate is CZK 1<sup>4</sup> and the amount of contribution can be set differently for individual shares. The interpretation of the Act implies that, in the instance when the company is established only by one person, the register capital can be CZK 1. This new regulation generally simplifies the process of establishment of a company with a limited liability and significantly eases the decision of people to establish a limited liability company. According to legal praxis, it can be stated that the current legal regulation, which covers the necessity to establish a registered capital, generates for many people a so-called psychological barrier to make the decision and choose the limited liability company as their form for business conduct. Regardless of the fact that the registered capital is only an accounting entry which does not really serve to report about the actual economic health and status of the company and related business conduct, the payment of the contribution needs to be proven not only for accounting purposes but also needs to be factually established. Exactly for this reason, the paid registered capital in the majority of limited liability companies is basically a mere accounting entry, and the company does not have any legal duty to keep showing the finances corresponding to the registered capital. Thus the legislature decided to take another step and to reduce the registered capital of the limited liability company to only CZK 1.<sup>5</sup> Thus,

2 s. r. o., společnost s ručením omezeným - limited liability company

3 Bohumil Havel, 2011: Limited liability company na úsvitu rekonstrukce. Obchodněprávní revue, ročník str. 223, č. 12. ISBN 978-80-7208-923-9.

4 § 142 odst. 1) Act. č. 90/2012 Sb., on commercial corporations

5 Bohumil Havel, a kolektiv., 2012: The Law of Corporations with an explanatory memorandum, 1. version. Publishing house SAGIT, str. 225, ISBN 978-80-7208-923-9.

the registered capital loses its originally planned function, which was the protection of creditors. As a matter of fact, this is a reaction to the fact that even the current regulation, which imposes upon the limited liability company the duty to establish the registered capital, does not have any strong practical importance for the protection of creditors and does not really lend credence about the real value of company's assets.<sup>6</sup> The future results of this decision are discussable.

However, the provision of Sec. 132 Paragraph 1) maintains the limited liability of associates and directly states that the limited liability company is a company for whose debts the associates are liable, jointly and severally up to the amount of the unsatisfied contribution as stated in the Commercial Registry at the moment when they were, by the creditor, asked to pay. In the case of the registered capital of the limited liability company in the amount of only CZK 1, the associate or associates can easily get out of their liability for the company obligations and from the moment of the payment of their contribution they will not be liable for the company's obligations.

The Act leaves in the provision of Sec. 142 Paragraph 1) Act, on commercial corporations the contractual freedom of the company founders to set in the Articles of Association a higher contribution duty for individual associates, i.e. more than CZK 1 and thus to establish a higher registered capital. The top limit for the contribution duty is not provided by the law, and thus it depends upon the agreement between the associates while establishing the limited liability company. It is possible to suspect that a higher registered capital will be established only by companies wanting to distinguish themselves from companies with the registered capital in the amount of CZK 1 and to thusly demonstrate their solidarity/solvency.

### **3.2.2 Shares in the limited liability company**

According to current legal regulations provided by the Commercial Code, each associate has only one commercial share in the limited liability company. The new regulations of the limited liability company, namely Sec. 135 on commercial corporations allows associates to have various types and numbers of commercial shares, to which can be attached priority rights. The Act does not describe further these types of shares, but assumes that their establishment and specification will be set by the Articles of Association. In praxis, one can expect the establishment of e.g. shares linked to the co-pay duty of associates, priority shares with the right of priority profit payment, etc.

An important change occurs as well with respect to the regulation of the transferability of a share. For the transfer of a share to another associate, the consent of the general meeting will no longer be requested. However, the requirement of a consent of one of company's organs can be set by the Articles of Association. The possibility to transfer a share to an outsider will be newly set by the law. If the associates want to exclude the transferability of a share to a third person, they must spell it out in the Articles of Association.<sup>7</sup>

### **3.2.3 Termination of the participation of an associate in the limited liability company**

The Act on commercial corporations maintains the, to date, established possibilities to terminate the participation of an associate in the limited liability company. In addition to Sec. 202, on commercial corporations introduces a new manner to terminate the participation of an associate in the limited liability company via the exit of the associate from the company. This manner reflects the existing regulation by Act No. 513/1991 Coll., Commercial Code, where the possibilities of the exit of an associate were significantly limited and conditioned by the consent of association of the company. If this consent was not granted, the associate could only ask the court to cancel his participation in the company, provided he brought evidence that he cannot be justly expected to remain in the company. The new legal regulation directly provides the exit possibility of an associate from a limited liability company, provided the general meeting decided about the change of a prevailing nature of business conducted by the company or about an extension of the duration of the company. The realization of the right of the associate to exit from the limited liability company requires that he voted during the general meeting against the fore-mentioned matters, which carry the right to exit from the company.

### **3.2.4 Prohibition of competition**

According to Act, on commercial corporations, there occur changes with respect to the legal regulation of the prohibition of competition. The most important change entails the fact that the prohibition of competition is not conceived as a per se mandatory regulatory ban and it can be overcome based upon a permission given by all associates. Thus, if all associates do not express their consent with the competition activities of the executive of the company, there continues the existing legal prohibition for the executive to conduct business in the scope of activity or business conduct of the company, to serve as a statutory corporate officer or to be in a similar position within another commercial

6 Štenglová, I., Plíva, S., Tomsa, M. a kol., 2010: Commercial Code. Coment. 13. version. Praha: C. H. Beck, s. 364.

7 <http://www.epravo.cz/top/clanky/spolecnost-s-rucenim-omezenym-ve-svetle-navrhu-zakona-o-obchodnich-korporacich-75091.html>

corporation with a similar scope of activity or business conduct, or to participate in the business conduct of another commercial corporation as an associate or as a controlling person of another person with the same or similar scope of activity or intermediate affairs for others. The Articles of Association can, based on the consent of all associates, regulate the prohibition of competition differently from the default legal regulation. The Articles of Association can set the extent of the prohibition of competition and possibly expand the prohibition of competition even on associates.

#### 4 THE IMPACT OF THE NEW REGULATION ON THE ESTABLISHMENT OF THE LIMITED LIABILITY COMPANY

##### 4.1 General information regarding the questionnaire investigation

Based on the questionnaire investigation and its consequent evaluation by an analysis of categorical data, a study was performed about whether the legal changes of the regime of the limited liability company will increase the interest and willingness of selected business persons in the use of this legal form of company and if one's age has an influence on the interest and willingness of selected business persons to use the limited liability company for their business activity.

The questionnaire investigation was performed as follows: firstly, the prepared questionnaires along with cover letters including the list of the legal changes with respect to the limited liability company were presented to selected categories of natural persons conducting business based on the Trade Act, namely traders having free trade permission or a handcraft trade permission. The natural persons conducting their business based on the Trade Act will be extracted from the commercial records of ARES for the territory of the Municipality Prague 2. Persons conducting business based on the

trade permission were selected especially because they are liable during their business conduct with all their assets, regardless whether these assets are business assets or personal assets. For this reason, the use of the limited liability company in the light of the new legal regulation might be of particular interest for them.

In total, 25 questionnaires were sent to persons conducting business based on trade permission in the field of free trades and 25 questionnaires to persons conducting business based on trade permission in the field of handcraft trades. The return rate of the questionnaires was 100%. The collected data was evaluated by the analysis of categorical data while using the computer program STATISTIKA. The level of importance was set as  $\alpha = 0.05$ . For the evaluation of the collected data the statistical method of dependency of quantitative signs Pearson's chí-quadrade was used. The conditions for the use of chí-quadrade were satisfied ( $n > 40$ ).

##### 4.2 Results of the questionnaire investigation

**Hypothesis 1** – changes in the field of the limited liability will increase the interest of respondents to establish a limited liability company.

$H_0$  – among mentioned signs there does not exist any dependency, i.e. changes in the field of the limited liability company do not increase the interest of the respondents to establish a limited liability company.

The value of Pearson's chí-quadrade is  $X^2 = 0.8021390$ . The level of importance is  $\alpha = 0.05$ , i.e.  $X^2_{0.05 (1)} = 3.841$ . Taking into consideration that  $X^2 < X^2_{0.05 (1)}$ ,  $H_0$  – confirms the null hypothesis, it means that among mentioned signs there does not exist any dependency, i.e. the changes in the field of the limited liability company will not increase the interest of respondents to establish a limited liability company.

**Hypothesis 2** – changes in the field of the limited liability company will increase the willingness

I: Contingent table of hypothesis No. 1

	Increased interest in ltd. yes	Increased interest in ltd. no	sum
Free trade	18	7	25
Handcraft trade	15	10	25
Sum	33	17	50

Source: own processing

II: Contingency table hypothesis No. 2

	Willingness to change the legal form for business conduct yes	Willingness to change the legal form for business conduct no	sum
Free trade	8	17	25
Handcraft trade	13	12	25
Sum	21	29	50

Source: own processing



III: Contingency table of hypothesis No. 3

	Increased interest in ltd. Yes	Increased interest in ltd. no	sum
25–34 years	6	16	22
35–44 years	5	11	16
45 years and more	10	2	12
Sum	21	29	50

Source: own processing

IV: Contingency table hypothesis No. 4

	The willingness to change the legal form for business conduct Yes	The willingness to change the legal form for business conduct no	sum
25–34 years	12	10	22
35–44 years	10	6	16
45 years and more	11	1	12
sum	33	17	50

of natural persons to change the legal form for business conduct.

$H_0$  – among the mentioned signs there does not exist any dependency, i.e. the changes in the field of the limited liability company will not increase the willingness of respondents to change the legal form for business conduct.

The value of Pearson's chí-quadrade is  $X^2 = 2.052545$ . The level of importance is  $\alpha = 0.05$ , i.e.  $X^2_{0.05(1)} = 3.841$ . Taking into consideration that  $X^2 < X^2_{0.05(1)}$ ,  $H_0$  – null hypothesis confirms, it means that between the mentioned signs there does not exist any dependency, i.e. the changes in the field of the limited liability company will not increase the willingness of respondents to change the legal form for business conduct.

**Hypothesis 3** – the age of the business conducting natural persons has an influence on the increase of interest in the establishment of a limited liability company.

$H_0$  – among mentioned signs there does not exist any dependency, i.e. the age of the business conducting person does not have any influence on the increase in their interest to establish a limited liability company.

The value of Pearson's chí-quadrade is  $X^2 = 11.1338$ . The level of importance is  $\alpha = 0.05$ , i.e.  $X^2_{0.05(2)} = 5.991$ . Taking into consideration  $X^2 > X^2_{0.05(2)}$ ,  $H_0$  – null hypothesis rejects, it means that between mentioned signs exists the dependency, i.e. the age of the business conducting natural person has an influence on the increase in the interest in establishing the limited liability company.

**Hypothesis 4** – the age of the business conducting person has an influence on the willingness to change the legal form for business conduct.

$H_0$  – among the indicated signs there does not exist any dependency, i.e. the age of the business conducting natural person does not have an influence on the willingness to change the legal form for business conduct.

The value of Pearson's chí-quadrade is  $X^2 = 4.896$ . The level of the importance is  $\alpha = 0.05$ , i.e.  $X^2_{0.05(2)} = 5.991$ . Taking into consideration  $X^2 < X^2_{0.05(2)}$ ,  $H_0$  – null hypothesis is not rejected, it means that between the mentioned signs there does not exist any dependency, i.e. the age of a business conducting natural person does not influence the willingness to change the legal form for business conduct.

## 5 DISCUSSION REGARDING CONCLUSIONS OF THE PERFORMED INVESTIGATION

Based on the performed questionnaire investigation and its evaluation through the method of dependency of quantitative signs of Pearson's chí-quadrade, one can conclude that the changes in the legal regulation of the limited liability company by the Act No. 90/2012 Sb., on commercial corporations will not really influence the interest in establishing the limited liability company and the willingness of business conducting natural persons to change the legal form for business conduct. An important fact influencing to some extent these conclusions is the age of the natural person. It was proven that the age factor has an influence on the increase of interest of business conducting natural persons, but it does not have an influence on the willingness to change the legal form for business conduct. This can be caused by the fact that especially the younger generation of natural business conducting persons is interested in use of other forms for business conduct, i.e. others than trade permission, but they are discouraged from the change of the legal form by the high administrative costs for the establishment of the limited liability company and the related financial expenses. It can be stated that the decision of the legislature to decrease the registered capital from CZK 200,000 to CZK 1 was not a negative step. Persons interested in establishing the limited

liability company can freely decide whether the registered capital will be only CZK 1 or much more. Arguments suggesting that such a legal move is negatively perceived and emphasizing that the

registered capital does not demonstrate anything about the solidarity/solvency of the limited liability company do not hold up.

### SUMMARY

The intention of the legislature was to create a modern and liberal form of company which will be able to reflect recent conditions in the world economy and which will facilitate and simplify the access to business conduct for a larger circle of natural persons than it has been to date. Only after the new legal introduction is established in praxis will it become clear whether these steps of legislation leading to such extensive and important changes in the field of the limited liability company were appropriate and correct.

From the completed search, it is obvious that persons conducting business based on the Trade Act, when they are liable with all their assets, do not show enough of an interest for the change of the legal form of the limited liability company. This would show, as the main consequence, the lack of their interest in the establishment of a limited liability company. At the same time, the prepared novelizations seem to be very actual for persons classified in certain age groups, i.e. it was established that the age factor contributes to the increase of interest of persons conducting business, but it does not have any impact on their willingness to change the legal form for business conduct.

It is possible to state that the act of the legislator to decrease the registered capital from the amount of CZK 200 000 to CZK 1, was not a negative step, because it allows the founders to freely determine whether the registered capital will be only CZK 1 or an amount significantly higher. Arguments about the negative perception of this legal form and about the incapacity of the registered capital to provide information about the solidarity of the limited liability company do not hold up.

### REFERENCES

- Důvodová zpráva k zákonu o obchodních korporacích, rok vydání 2012.
- HAVEL, B. et al., 2012: Zákon o obchodních korporacích s důvodovou zprávou a rejstříkem, 1. vyd., Praha, SAGIT, s. 550, ISBN 978-80-7208-9.
- HAVEL, B., 2011: Limited liability company na úsvitu rekodifikace. *Obchodněprávní Revue*, 12, 11: 10, ISSN 1211-0558.
- PELIKÁNOVÁ, I., ČERNÁ, S. et al., 2006: *Obchodní právo. Společnost obchodního práva a družstva*, II. Praha: ASPI, 600 s., ISBN 80-7357-149-8.

- ŠTENGLOVÁ, I., PLÍVA, S., TOMSA, M. a kol.,: *Obchodní zákoník. Komentář*. 13. vyd. Praha: C. H. Beck, 2010, s. 364., ISBN 978-80-210-5911-5.
- [www.epravo.cz](http://www.epravo.cz)
- <http://obcanskyzakonik.justice.cz/cz/uvodni-stranka.htm>
- Zákon č. 90/2012 Sb., Zákon o obchodních korporacích
- Zákon č. 513/1991 Sb., Commercial Code
- Zákon č. 40/1964 Sb., Občanský zákoník
- Zákon č. 89/2012 Sb., Občanský zákoník

### Address

JUDr. Ing. Eva Daniela Růžicková, Department of Law, Faculty of Business and Economics, Czech University of Life Sciences in Prague,, Kamýcká 129, Praha 6 - Suchbátka, Czech Republic, e-mail: [ruzickova@pef.czu.cz](mailto:ruzickova@pef.czu.cz), [eruzickova@email.cz](mailto:eruzickova@email.cz)