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Subject Comparative Company Law in the context of the EU Law was supported by project: Jean Monnet Actions - GRANT AGREEMENT - Project 101176603 — EU Tax and Corporate Law

COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

Course description, lectures and reading materials

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Comparative Company Law in the context of the EU Law – instructions:

Coursework:

Before each seminar, reading materials with guiding questions will be opened on a Moodle platform to each student. Each student is expected to read the assigned reading materials, as the class will be held in an active way through questions and discussions. Note that seminars are not a lecture, we will go through a topic that you have already read before, the teacher is a guide not a lecturer explaining the content of the reading materials during the seminar. It is recommended, especially if you have no previous experience with company law, to prepare answers to the questions in writing before the class. However, you cannot read your answers during the class as you need to be able to address the answer in your own words.

Classroom participation:

Students' participation will be checked in the beginning of each class. Students are expected to actively participate in the classroom discussions. Each student may be called upon to address specific questions raised by either the teacher or another student participating in the seminar. If the student is not sufficiently prepared for the class, additional work in a form of essay/case study may be assigned to this student by the teacher.

Students are allowed to be absent from the class during the semester based on the internal regulation of the Faculty of Law.

Classroom communication and participation in the discussions are considered when the student's coursework is evaluated.

Evaluation (continuous assessment):

Part A of the evaluation - 40% (40 points) of the student's grade depends on the student's performance in class, during each class you can gain 6 points (maximum 40 points)

Part B of the evaluation - 60% (60 points) of the student's grade depends on the final case study written during the class – 5 May 2026

To pass the class you need reach at least 60 points together from Part A and Part B of the evaluation.

UK Companies Act is available on this link:

<https://www.legislation.gov.uk/ukpga/2006/46/contents>

Company Law and Law on Cooperatives – General introduction to the topic and definition of basic terms:

https://www.flaw.uniba.sk/fileadmin/praf/Pracoviska/Katedry/KOPHP/rozne/KEGA_Ucebica_AJ_web.pdf

Slovak Commercial Code:

1st Assignment (Company Law And Sources Of Company Law)

After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

Dualistic Principle in Slovak Private Law – Explanation of the dualistic system and its implications for Slovak legal regulation.

Regulation and Sources of Slovak Company Law & EU Influence – Scope of Slovak company law, its sources, and the impact of EU law on Slovak company law.

Harmonization of Company Law in the EU – Analysis of harmonization through directives, regulations and Court of Justice of the European Union (CJEU) decisions to ensure legal consistency across Member States.

UK Company Law, Sources and Case Law – Overview of UK company law sources, the role of case law and key case law types.

Mandatory vs. Default Provisions in Slovak and UK Law – Definition, functions and methods for distinguishing these provisions in Slovak and UK legal systems.

Judicial Supervision and Gap-Filling in UK Law – The court's supervisory functions and the concept of gap-filling in UK company law.

Compulsory reading materials:

- Chapter from Škrinár, Nevolná, Kvokačka: Fundamentals of Slovak Commercial Law (Slovak Company law)
- Chapter from Mayson, French, Ryan: Company Law (UK Company law)
- Chapter III. / Mandatory and default provisions regulating not only business companies (pages 45-49) from textbook Patakyová et al. Company Law and Law on Cooperatives – General introduction to the topic and definition of basic terms
- Chapter 1.6.3 from Mayson, French, Ryan: Company Law (UK Company law)

After reading the chapter, find below some questions, which will help you to prepare for the discussion in the class. Be ready to address them independently:

1. Why is the Slovak private law based on dualistic principle?
2. What is the scope of regulation of the Slovak commercial law?
3. What are sources of the Slovak commercial law?
4. Is Slovak commercial code influenced by EU law?
5. What are sources of company law in UK?
6. Why was the company law reviewed in UK, what were the terms of reference for such a review? (Mayson, French, Ryan, p. 12)
7. What is the role of case law in UK company law?
8. What are the four main types of case law that can be distinguished in UK?
9. What are the court's supervisory functions in UK?
10. What is a gap-filling in UK company law?
11. Define a default provision and determine its functions (SVK and UK perspective).
12. Define a mandatory provision and determine its functions (SVK and UK perspective).
13. Characterize how to distinguish the mandatory and default provisions in the first and second parts of the Slovak Commercial Code (Sections 1 - 260 of the Slovak Commercial Code). When answering, refer to the specific provisions of the Slovak Commercial Code and the Slovak Civil Code.
14. Characterize how to distinguish mandatory and default provisions in the third and fourth parts of the Slovak Commercial Code (Sections 261-775 of the Slovak Commercial Code). When answering, refer to the specific provisions of the Slovak Commercial Code.



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COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

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1

SCOPE OF THE COURSE

- Comparative analysis of Slovak, UK, and EU company law systems and sources
- Core concepts: legal personality, corporate governance, and business entity forms (partnerships, LLCs, joint-stock companies)
- Regulatory frameworks for company formation, and business activities
- Case studies and comparisons to assess corporate structures and compliance across jurisdictions
- Practical skills for addressing cross-border company law issues in professional practice

2

CLASS SYLLABUS

1. Company law and sources of company law
2. Entrepreneurial (business) activity, entrepreneur (business owner), enterprise
3. Business name and trade secret
4. Legal personality of companies, group of companies
5. Creation of companies and purpose of their creation
6. Defining characteristics of a company
7. Partnership and Limited partnership
8. Limited liability company 1
9. Limited liability company 2
10. Joint stock company / Public limited company

3

I. Company Law and sources of company law, mandatory and default rules

Sources of company law:

- Slovak Commercial Code – ComC (513/1991 Z. z.)
- Slovak Act on Commercial Register (530/2003 Z. z.) – new Act on Commercial Register was approved by the National Council
- UK Companies Act 2006

4

Scope of the Slovak Commercial Code (ComC)



Section I (I)

- „This Act regulates the status of entrepreneurs, commercial obligations and some other relations relating to entrepreneurial activity.“

5

Structure of Slovak Commercial Code - Part one: general provisions



I. Basic provisions:

- Scope of the Act
- Entrepreneurial Activity
- Enterprise and Business Assets
- Branch of an Enterprise
- Business Name
- Entrepreneurial Conduct
- Business Secret

6

Part one: general provisions



**II. Entrepreneurial
activities of foreign
persons**



**III. Commercial
register**



**IV. Entrepreneurs'
bookkeeping**



**IV. Unfair
competition**

7

Part two: companies and cooperatives



- General provisions
- Partnership
- Limited liability partnership
- Limited liability company
- Company limited by shares (joint stock company)
- Simple joint stock company
- Cooperative

8

Part three: business contractual relations



- I. General provisions
- II. **Special provisions on certain business contractual relations:** purchase contract, credit contract, contract for work...
- III. Special provisions for contractual relations in international trade

Part four: common, transitional and final provisions

9

Principle of Slovak private law



- Civil Code – lex generalis
- Commercial Code – lex specialis
- Subsidiarity principle of the Civil Code

Section 1 (2) Com. Code

*The legal relations specified in Subsection 1 above are **regulated by the provisions of this Act**. Should it prove impossible to resolve certain issues according to the provisions of this Act, such issues shall be resolved in accordance with **civil law**. Should it prove impossible to resolve such issues in accordance with civil law provisions, they shall be assessed based on **commercial practice** and, in the absence of such, then on the **principles** upon which this Act is based.*

- Dualistic principle (recodification)

10

Principle of Slovak private law



- **Civil Law**
 - Civil Code (not only)
- **Commercial Practices**
 - widely accepted practices in a given trade/sector
 - standard contractual clauses or trade usages
 - practices known or expected between merchants
 - Function: reflects real commercial expectations and efficiency.
- **Principles**
 - Last resort: underlying principles of commercial law, e.g.:
 - freedom of enterprise and contract
 - protection of good faith and fair dealing
 - security and reliability of commercial transactions
 - professional diligence of entrepreneurs
 - equality of market participants

11

Transposition of EU Company law directives



- EU company law mainly harmonises national laws rather than creating a single EU company code
- Primary law: freedom of establishment (Arts 49 & 54 TFEU) shapes company mobility and recognition
- Member States must adapt national company law to EU requirements
- EU law promotes cross-border activity, investor protection, and market integration
- Strong influence on capital rules, disclosure, mergers, divisions, and digitalisation

12

Role of Directives, Regulations and CJEU Case Law



- **Directives (harmonisation):**
 - Bind Member States as to result; require national transposition
 - Align key areas (disclosure, capital, mergers, shareholder rights)
 - Allow national diversity in company forms and governance
- **Regulations (uniform EU forms):**
 - Directly applicable in Member States
 - Create supranational company forms (e.g., SE, SCE)
 - Enable cross-border corporate structures without re-incorporation
- **CJEU case law (interpretation & mobility):**
 - Interpretation of the EU Law
 - Freedom of establishment
 - Dyal Mail, Centros, Überseering, Inspire Art, Cartesio, VALE, Polbud

13

Areas of harmonization I.



- **Company disclosure and registers**
 - Mandatory disclosure of company data and documents
 - Public registers and register interconnection (BRIS)
 - Validity of company obligations and reliance by third parties
- **Formation and capital of public companies**
 - Minimum capital requirements (public companies)
 - Rules on contributions, distributions, maintenance of capital
 - Acquisition of own shares, financial assistance
- **Domestic mergers and divisions**
 - Procedures and safeguards for mergers/divisions of companies
 - Protection of shareholders and creditors
- **Cross-border mobility (EU)**
 - Cross-border mergers, conversions, and divisions
 - Transfer of registered office between Member States
 - Protection of employees, creditors, minority shareholders

14

Areas of harmonization II.



- **Single-member companies**
 - Recognition and rules for single-member private companies
 - Shareholder rights in listed companies
 - Voting, information, participation in general meeting
 - Related-party transactions, remuneration policy
- **Takeover bids (listed companies)**
 - Mandatory bid rule
 - Equal treatment of shareholders
 - Squeeze-out / sell-out rights
- **Accounting and reporting**
 - Annual accounts, consolidated accounts
 - Audit requirements
- **Digitalisation of company law**
 - Online incorporation and filings
 - Electronic copies and cross-border access

15

Transposition of EU Company law directives



- Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification)
 - Directive of the European Parliament and of the Council amending directive (EU) 2017/1132 as regards the use of digital tools and processes in company law
 - Directive of the European Parliament and of the Council amending directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions
- Thirteenth directive on takeover bids

16

Act on the Commercial Register – Scope of regulation



- I. the list of data to be entered in the Commercial Register,
- II. the contents of the collection of documents,
- III. the procedure for the entry of data in the Commercial Register; the entry of changes to the entered data and the deletion of the entered data ("registration"),
- IV. the conditions for the entry of data in the commercial register; the entry of changes to the data entered and the deletion of the data entered, (e) the deposit of documents in the collection of documents,
- V. inspecting the commercial register; making extracts, copies and certificates from the commercial register; as well as making copies of documents and certificates from the collection of documents.

17

Slovak Commercial Register and BRIS



- Slovak commercial register: <https://www.orsr.sk/Default.asp?lan=en>
- BRIS: https://e-justice.europa.eu/topics/registers-business-insolvency-land/business-registers-search-company-eu_en

18

Commercial Register – Section 27 ComC



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(1) The Commercial Register is a public list containing the data required by law (hereinafter referred to as “data entered”) and including a collection of documents required by law (hereinafter referred to as “Collection of Documents”).

(2) The following is registered in the Business register

a) legal persons established in accordance with this act, that is

- a. a public trading company,*
- b. a limited partnership company,*
- c. a limited liability company,*
- d. a simple joint stock company,*
- e. a joint stock company,*
- f. a cooperative,*

19

Commercial Register – Section 27 ComC



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b) corporate bodies established in accordance with the law of the European union, that is

- 1. European Economic Interest Grouping,*
- 2. European Cooperative Society,*
- 3. European company,*

c) legal persons, established by law or based on law, if a special law determines that these are registered in the Business register,

d) state-owned companies,

e) organizational units of the organizations of Slovak legal persons,

f) organizations of foreign legal entities and organizational units of organizations of foreign legal persons

20

General rule



- Data entered into the commercial register are effective in relation to third parties as from the date of their being published.

21

New Commercial Register Act (2026) – Overview



- Adopted by the Slovak Parliament on 3 Feb 2026; replaces the 2003 Commercial Register Act and amends the Commercial Code and Transformations Act
- Expected entry into force: 17 Aug 2026 (subject to presidential signature)
- Objectives: lower transaction costs, greater transparency, faster and more efficient registrations
- Expanded registrations via notaries (also for joint-stock and other companies) to reduce court workload
- Mandatory lawyer authorisation / notarial deed for several corporate documents
- Shorter deadlines for cross-border transformations (5 working days)

22

UK - Companies Act 2006



- Comprehensive consolidation of UK company law in a single statute
- Codification of directors' duties including "enlightened shareholder value"
- Simplified regime for private companies and capital procedures
- Strengthened shareholder rights and remedies
- Modern constitution (articles) and electronic corporate processes
- Implementation of EU directives (takeover, transparency)
- Single UK-wide company law framework

23

Company Registration Regime in the UK



- Authority:
 - Companies are registered centrally by Companies House, the UK registrar of companies.
- System characteristics:
 - Administrative (not court-based) registration system
 - Centralised national register (England & Wales, Scotland, N. Ireland divisions)
 - Incorporation by filing documents ("registration by delivery")
 - Legal personality arises upon registration
- <https://find-and-update.company-information.service.gov.uk>

24

Default provisions



- the parties have the possibility to agree on the **derogation** from the provision as a consequence of which the application of the default provision is **excluded**
- Section 2(3) of the Civil Code: the participants of the civil law relationships may regulate, based on the agreement, their mutual rights and obligations differently from the law if the law does not explicitly prohibit the derogation and if from the character of act's provision it does not arise that the derogation from the provision is not allowed

25

Default provisions



- The most frequently used phrases defining default provisions:
 - *“if it was not agreed otherwise”*
 - *“unless from the content of the legal action it does not result otherwise”*
 - *“may derogate from the act”*
 - *“unless it is agreed otherwise”.*

26

Functions of default provisions



(i) **corrective function:** in case that the contracting parties did not regulate a certain question in the agreement differently from the legal regulation, the default regulation will apply

(ii) **interpretative function:** default provisions help to interpret the content of the contract if the wording of the contractual provision is unclear or uncertain, the default provision is used as a lead for the interpretation of such contractual provisions

(iii) **preventive function:** default provisions determine boundaries of the freedom of contract

27

Mandatory provisions



- it is not permitted derogate from such provision
- limit the freedom of contract
- Part three of the ComC (Business Contractual Relations):
 - Section 263(1) of the Commercial Code, stipulating that: "Parties may derogate from provisions of this Part of the Act or exclude its individual provisions with the exception of the provisions..."
- Part two of the ComC (Companies and Cooperatives)
 - ?

28



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2nd Assignment (Entrepreneurial (Business) Activity, Entrepreneur (Business Owner), Enterprise)

After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

Legal Basis for Entrepreneurial Activity – The right to conduct entrepreneurial activity in EU law (Article 49 TFEU) and Slovak law, including the conditions for self-employment and company-based activities.

Entrepreneurial Activity Under Slovak Commercial Code – Definition and characteristics of entrepreneurial activity under the Slovak Commercial Code, focusing on continuous, autonomous and profit-driven aspects.

Entrepreneur and Enterprise Definitions – General and legal definitions of an entrepreneur and enterprise in Slovak law, including types of assets that can be part of an enterprise under Slovak Commercial Code and EU law.

Commercial Register and Entrepreneur's Conduct – Entities registered in the Slovak commercial register and the general conduct of an entrepreneur under Slovak law.

Statutory Body and Representation – The concept of a statutory body of a company and contractual representation of an entrepreneur in both Slovak law and EU context.

Compulsory reading materials:

- Part I. / The right to conduct business, definition of the terms “conducting business” and “business owner” (pages 8-21) from textbook Patakyová et al. Company Law and Law on Cooperatives – General introduction to the topic and definition of basic terms
- Chapters from Škrinár, Nevolná, Kvokačka: Fundamentals of Slovak Commercial Law (Slovak Company law)
- Moreover, for the EU law aspects research within the EU sources of law / use the lecture

Related cases studies (obligatory):

- Jany and others v Staatssecretaris van Justitie (C-268/99)

After reading the chapter, find below some questions, which will help you to prepare for the discussion in the class. Be ready to address them independently:

1. Where can we find the legal basis for the right to conduct entrepreneurial (business) activity in the EU law and the Slovak law?
2. Explain the relevance of the Article 49 TFEU for the right to conduct entrepreneurial (business) activity.
3. What is the difference between conducting entrepreneurial (business) activity as a self-employed person and through a company?
4. Define entrepreneurial (business) activity under the Slovak Commercial Code.
5. Elaborate on the aspect of “continuous activity” from the definition of the entrepreneurial (business) activity under the Slovak Commercial Code.
6. Elaborate on the aspect of “activity conducted autonomously” from the definition of the entrepreneurial (business) activity under the Slovak Commercial Code.
7. Elaborate on the aspect of “activity conducted in one’s own name” from the definition of the entrepreneurial (business) activity under the Slovak Commercial Code.

8. Elaborate on the aspect of "activity conducted at one's responsibility" from the definition of the entrepreneurial (business) activity under the Slovak Commercial Code.
9. Elaborate on the aspect of "activity conducted with the aim of achieving a profit" from the definition of the entrepreneurial (business) activity under the Slovak Commercial Code.
10. Define term entrepreneur in a general way.
11. Define term entrepreneur under the Slovak Commercial Code.
12. Which entities are registered in the Slovak business register?
13. Describe entrepreneur's conduct.
14. Define / elaborate on statutory body of a company.
15. Define / elaborate on contractual representation of an entrepreneur.
16. Define enterprise under the EU Law.
17. Define enterprise under the Slovak Commercial Code (name examples of tangible / intangible / personal assets that can be part of an enterprise).
18. Define branch / other organizational unit of a company.



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1

II. Entrepreneurial (business) activity, entrepreneur (business owner), enterprise

Outline of the lecture:

- The right to conduct entrepreneurial (business) activity
- Conducting entrepreneurial (business) activity
- Entrepreneur (business owner)
- Enterprise

2

Right to conduct entrepreneurial (business) activity



- EU law
 - EU Charter of Fundamental Rights – Article 16
 - Treaty on European Union – Article 49
- National law
 - Constitution

3

EU Charter of Fundamental Rights – Article 16



- The **freedom to conduct a business** in accordance with Union law and national laws and practices **is recognised**.

4

Constitution of the Slovak Republic



- Everyone has the right to choose freely his or her profession and to train for it, and the **right to engage in business** and other gainful activity.
- **Not a right to be protected from competition** (jurisprudence and doctrine).

5

Conducting entrepreneurial (business) activity – EU Law I.



- I. Article 49 TFEU: Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.
- II. Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

6

Conducting entrepreneurial (business) activity – EU Law II.



- The right of establishment includes the right to take up and pursue activities as a **self-employed person and to set up and manage undertakings**, for a **permanent activity of a stable and continuous nature**, under the same conditions as those laid down by the law of the Member State concerned regarding establishment for its own nationals.

7

Conducting entrepreneurial (business) activity – Slovak Commercial Code I.



- Section 2 (I) SCC: Entrepreneurial activity means **continuous activities independently conducted by an entrepreneur in their own name and on their own account for the purpose of making a profit or in order to achieve a measurable positive social impact** when it concerns the economic activity of a registered social enterprise under a special regulation.

8

Conducting entrepreneurial (business) activity - Slovak Commercial Code II.



- I. **continuous** activity,
- II. conducted **autonomously**,
- III. conducted **in one's own name**,
- IV. conducted **at one's responsibility**, and
- V. conducted with the **aim of achieving a profit (or in order to achieve a measurable positive social impact** when it concerns the economic activity of a registered social enterprise under a special regulation).

9

Continuous activity



- Uninterrupted activity
- Is met by seasonal activity as well – aim to carry on the activity repeatedly (ski lift, outdoor swimming pool, etc.)
- Cannot be an activity carried out – incidentally, exceptionally, occasionally
- Borderline between activity carried out exceptionally v. repeatedly (?)

10

Conducted autonomously



- Free will to conduct the entrepreneurial activity (individual or collective)
- No instructions from another entity
- Freedom to choose about the products sold / services provided
- Difference between the employment and entrepreneurial activity?

11

Conducted in one's own name



- **Business name**
 - Company name
 - Name and Surname of the sole trader
- Slovak Commercial Code: A business name means the name under which an entrepreneur undertakes legal acts in the course of their entrepreneurial activity.

12

Conducted at one's responsibility



- Responsibility – risk to one's personal assets
- Differs – different for sole trader, partnership, company
- Depends on the legal personality
- No one else is responsible for the activity

13

Conducted with the aim of achieving a profit



- Business effort towards achieving profit
- Intent to achieve profit
- It is not a crucial point if I do not actually achieve a profit
- OR achieve a **measurable positive social impact** when it concerns the economic activity of a registered social enterprise under a special regulation

14

Entrepreneur – general definition



- An entrepreneur is a natural / legal person who / which creates a new business, bearing the risks and enjoying most of the rewards. The process of setting up a business is known as entrepreneurship.
 - a. Sole trader
 - b. Partnership
 - c. Limited liability partnership
 - d. Limited company
 - e. Joint stock company
 - f. Other forms

15

Entrepreneur – Slovak Commercial Code



- Entrepreneur – not only a person conducting entrepreneurial activity
- Under the SCC, an entrepreneur means:
 - a. a person registered in the Commercial Register,
 - b. a person conducting entrepreneurial activity based on a trade licence,
 - c. a person conducting entrepreneurial activity based on an authorisation other than a trade licence under special regulations,
 - d. a natural person undertaking agricultural production who is registered in the respective register under a special regulation.

16

Entities registered in business register



- Sec. 27(2)SCC The following is registered in the Business register
 - a. legal persons established in accordance with this act, that is
 - 1. a partnership, 2. a limited partnership, 3. a limited liability company, 4. a simple joint stock company, 5. a joint stock company, 6. a cooperative,
 - b. corporate bodies established in accordance with the law of the European union, that is
 - 1. European Economic Interest Grouping, 2. European Cooperative Society, 3. European company,
 - c. legal persons, established by law or based on law, if a special law determines that these are registered in the Business register,
 - d. state-owned enterprises,
 - e. organizational units of the organizations of Slovak legal persons,
 - f. organizations of foreign legal entities and organizational units of organizations of foreign legal persons (hereinafter only referred to as the “registered person”).

17

Entrepreneur's conduct



- **Direct actions**
 - Legal entity – statutory body
 - Natural person – in person
- **Indirect actions**
 - Legal representation
 - Contractual representation

18

Entrepreneur's conduct – Slovak Commercial Code



Section 13

(1) If an entrepreneur is a natural person, he/she shall act either in person or through his/her representative. A legal entity shall act through its statutory body or its representative.

(2) The provisions of the SCC governing the various forms of companies and cooperatives set out the statutory body whose acts are deemed to be the acts of the entrepreneur.

19

Enterprise – EU Law



- EU law: an enterprise is 'any entity engaged in an economic activity, irrespective of its legal form'. The wording is not new. It reflects the terminology used by the European Court of Justice in its decisions.

20

Enterprise – Slovak Commercial Code



- Section 5: For the purposes of the SCC, an enterprise means the **aggregate of tangible, personal and intangible components of entrepreneurial activity**. Items, rights and other property values which belong to the entrepreneur and which serve or, considering their nature, are intended to serve the operation of an enterprise belong to the enterprise.
- Examples of tangible / personal / intangible components ?

21

Entrepreneurial (business) activity – UK



- In UK law, "business activity" is not defined by a single statutory provision. The key conceptual term is "carrying on a business."
- **Partnership Act 1890, sec. 45**
 - The expression "business" includes every trade, occupation, or profession.
- **Smith v. Anderson (1880)**
 - The expression 'carrying on' implies **a repetition of acts and excludes the case of an association formed for doing one particular act which is never to be repeated**. That series of acts is to be a series of acts which constitute a business.

22

Entrepreneur (Business Owner) – UK



- Instead of an abstract legal definition of an "entrepreneur," English law distinguishes between the specific legal structures used by the owner:
 - a. Sole Trader (kontextual definition)
 - b. Partnership (Partnership Act 1890)
 - No separate legal personality
 - c. Companies (Companies Act 2006)
 - Salomon v A Salomon & Co Ltd [1897] AC 22. This is the cornerstone of UK company law. It established the principle of separate legal personality (the "Corporate Veil")—the company is an "artificial person" distinct from its owner/entrepreneur.

23

Enterprise – UK



- In Continental law (e.g., Slovakia), an "enterprise" (podnik) is viewed as a collection of assets (an object of law). In UK law, the term "Enterprise" is used more in an economic, competitive, or statistical sense.
- Enterprise Act 2002, Sec. 129:
 - "enterprise" means the activities, or part of the activities, of a business
 - "business" includes a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge;

24



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3rd Assignment (Business Name And Trade Secret)

After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

Business Name Protection and Restrictions – Legal definition, principles, and protection of business names under Slovak law, including rules for transferability and restrictions in the UK.

Trade Secret and Legal Framework – Definition of trade secrets according to Slovak Commercial Code, owners and violators and legal measures for protection against violations.

Legal Measures for Trade Secret Protection – Urgent and remedial measures for trade secret protection, including court decisions publication and protection under both Slovak and UK law.

Trade Secrets in the UK – Definition and infringement of trade secrets under UK law, actions constituting infringement, and specific legal remedies and interim measures available in case of violations.

Compulsory reading materials:

- Chapters from Škrinár, Nevorná, Kvokačka: Business name and Trade secret
- Part 5 of the Companies Act 2006: <https://www.legislation.gov.uk/ukpga/2006/46/part/5>
- The Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015: <https://www.legislation.gov.uk/uksi/2015/17/contents/made>
- The Trade Secrets (Enforcement, etc.) Regulations 2018: <https://www.legislation.gov.uk/uksi/2018/597/contents/made>

Related cases studies (obligatory):

- Pfleiderer (C-360/09)
- Akzo Nobel (C-550/07 P)

After reading the chapter, find below some questions, which will help you to prepare for the discussion in the class. Be ready to address them independently:

1. Define the business name and its legal restrictions according to Slovak law.
2. What are the principles of business name according to Slovak law?
3. How is the business name protected according to the Slovak Act on Commercial register?
4. How is the business name protected according to the Slovak Commercial Code?
5. What do you know about the transferability of business name according to Slovak Commercial Code?
6. What is the definition of business secret according to Slovak Commercial Code?
7. Define the Owner of a business secret and the Violator of a business secret according to Slovak Commercial Code.
8. Define urgent measures for the purpose of protection against the violation of business secret according to Slovak Commercial Code.
9. Define remedial measures for the purpose of protection against the violation of business secret according to Slovak Commercial Code.
10. What are the conditions for publication of court decisions in relation to the protection of business secret according to Slovak law?
11. Which are the most important restrictions of the free choice of a company's name according to UK law?

12. Under what circumstances can a private company limited by guarantee apply to be exempt from the requirement to include 'limited', 'ltd', 'cyfyngedig' or 'cyf' in its company's name according to UK law?
13. To determine whether a name is the same as another name, the The Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 (schedule 3) set out the words and expressions that must be disregarded and the words, expressions, signs and symbols that are to be regarded as the same. What does this mean in practice? Give please some examples. What are the exceptions to the „Same as' rule“?
14. Define company's names that includes sensitive words as well as names that are protected or regulated by other legislation.
15. How are trade secrets defined according to UK law?
16. What actions constitute infringement of trade secrets according to UK law?
17. What specific interim measures and remedies are available in the event of infringement of trade secrets according to UK law?
18. What specific final measures and remedies are available in the event of infringement of trade secrets according to UK law?



Subject Comparative Company Law in the context of the EU Law was supported by project: Jean Monnet Actions - GRANT AGREEMENT - Project 101176603 — EU Tax and Corporate Law

COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

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1

III. Business Name / Trade Secret

Slovak republic:

2

Business name – Definition



- the name under which an entrepreneur undertakes legal acts in the course of their entrepreneurial activity (§ 8 ComC)
- natural person - the person's first name and surname; the business name of a natural person may include a suffix to distinguish the person of the entrepreneur or the type of entrepreneurial activity (§ 9 sub 1 ComC)
- business name of companies and cooperatives - the name under which they are registered in the Commercial Register; the business name of a legal entity shall also include a suffix designating its legal form (§ 9 sub 2 ComC)
- An entrepreneur is obliged to state their business name together with the suffix designating their current legal status, in particular, with the suffixes "in liquidation" (v likvidácii), "in bankruptcy" (v konkurze) or "under restructuring" (v reštrukturalizácii) - (§ 9 sub 4 ComC)

3

Requirements for the business name



- A business name
 - may not be such as to be confused with the business name of another entrepreneur and
 - may not give rise to any misleading idea of the entrepreneur or their subject of entrepreneurial activity (§ 10 sub 1 ComC)
- In special situations: consent of the shareholder is necessary (§ 11 sub 5 ComC):
 - if the business name of a legal entity includes the name of a shareholder or member that ceased to be a shareholder or member of the legal entity - the legal entity may continue using such shareholder's or member's name only with their consent
 - in the event of the death of a shareholder or member - the consent of his/her heir shall be required

4

Business name



- the business names of several legal entities may express the common capital interest of the shareholders/members provided the names are distinguishable one from another (§ 10 sub 2 ComC)
- a different designation of legal form is not sufficient to differentiate the business name of a legal entity (§ 10 sub 3 ComC)

5

Business name and transformation of companies (§ 11 sub 4 ComC)



- the transfer of a business name without the simultaneous transfer of the respective enterprise is inadmissible
- the transfer of a business name along with the transfer of only a part of the enterprise is possible if the entrepreneur intends to operate the remaining part of the enterprise under another business name or if the remaining part is dissolved by liquidation

6

Protection of business name – ex ante



- **§ 7 sub 12 Act on Commercial register:**
 - before registering a business name - the registry court shall verify from the documents submitted that it is not proposed to register a business name identical to the business name already registered in the commercial register
 - suffix indicating the legal form is not relevant

7

Protection of business name – ex post



- **§ 12 ComC:**
 - right to demand that the unauthorised user refrains from any further use of the business name
 - right to demand the destruction of any goods made without authorisation that violate the right to the business name
 - right to demand the recall of such goods from circulation, or
 - right to demand the destruction of any materials and tools used in violating the right to the business name
 - right to demand the surrender of unjust enrichment and the granting of appropriate compensation which may also be monetary
 - compensation for damage
 - right to have the court's judgment published at the losing participant's expense

8

Business secret – Definition (§ 17 sub 1 ComC)



Business secrets comprise all facts of a commercial, manufacturing and technical nature relating to the enterprise which have actual or at least potential material or nonmaterial value, are not readily available in the respective business circles, and are to be kept confidential upon the will of the owner of a business secret; the owner of a business secret shall provide for the adequate protection of their business secrets.

- Owner of a business secret: a natural person or legal entity that rightfully handles the business secret that relates to the enterprise operated by such a person or entity in the pursuit of an entrepreneurial activity (§ 17 sub 2 ComC)
- Violator of a business secret: a natural person or legal entity that violates or endangers a business secret activity (§ 17 sub 3 ComC)

9

Protection against violation of business secrets



Violation of a business secret is the conduct of a violator of the business secret, which consists in unauthorised obtaining, using or disclosing the business secret (§ 51 sub 1 ComC)

I. Urgent Measures (§ 55b)

- petition of the owner of a business secret
- court decision:
 - ending or prohibiting the use or disclosure of the business secret,
 - prohibiting the production, offering, placing on the market or using any goods violating the right to the business secret,
 - prohibiting the import, export or storage of any goods violating the right to the business secret for the purposes of their producing, offering, placing on the market or using,
 - seizing or handing over any goods violating the right to the business secret, including imported goods, in order to prevent their placing on the market or circulation in the market.

10

Protection against violation of business secrets



II. Remedial Measures (§ 55c ComC)

- petition of the owner of the business secret
- court decision:
 - ending or prohibiting the use or disclosure of the business secret,
 - prohibiting the production, offering, placing on the market or using any goods violating the right to the business secret,
 - prohibiting the import, export or storage of any goods violating the right to the business secret for the purposes of their producing, offering, placing on the market or using,
 - destroying all documents, items, materials, substances or electronic files or parts thereof that contain or form the business secret, or handing them over to the owner of the business secret.

III. Publication of Court Decisions (§ 55d ComC)

11

III. Business Name / Trade Secret

United kingdom:

12

Company's name - Legal sources



- Companies Act 2006
- the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 (SI 2015/17)
- Company, Limited Liability Partnership and Business (Sensitive Words and Expressions) Regulations 2014 (SI 2014/3140)

13

Most important restrictions of the free choice of a company's name I.



I. compulsory expressions of the company form or its official abbreviation (can only be used at the end of a company's name):

- private company limited by shares or guarantee : 'limited' or 'Ltd' (the name of a Welsh company may instead end with 'cyfyngedig' or 'cyf')
- public company: 'public limited company' or 'plc' (the name of a Welsh company may instead end with 'Cwmni Cyfyngedig Cyhoeddus' or 'ccc')

14

Exemption from including 'limited', 'ltd', 'cyfyngedig' or 'cyf' in a company name for private companies limited by guarantee



Data The articles of association:

- state that the objects of the company are the promotion or regulation of commerce, art, science, education, religion, charity or any profession incidental or conducive to any of those objects
- require its income to be applied in promoting its objects
- prohibit the payment of dividends, or any return of capital, to its members
- require all the assets that would otherwise be available to its members generally and transferred on its winding up – either to another body with similar objects or to another body with charitable objects
- application for the exemption

15

Most important restrictions of the free choice of a company's name II.



II. a name which is the 'same as' an existing name on the index

- Words, expressions, signs and symbols that are to be regarded as the same:

Column 1 (permitted characters)	Column 2 (to be treated the same as)
ĀĀĀĀĀĀĀĀĀ	A
ÆĖ	AE
ĈĈĈĈĈ	C
ĎĎĎ	D
ĒĒĒĒĒĒĒĒĒ	E
ĜĜĜĜ	G
ĤĤ	H
ĬĬĬĬĬĬĬĬĬ	I
Ĵ	J
Ķ	K
ĹĹĹĹ	L
ŃŃŃŃŃĎ	N
ŌŌŌŌŌŌŌŌŌŌŌ	O
Œ	OE CE
ŔŔŔŔ	R
ŜŜŜŜ	S
ŢŢŢ	T
ŬŬŬŬŬŬŬŬŬŬŬ	U
ŴŴŴŴŴ	W
ŶŶŶŶŶ	Y
ẐẐẐ	Z

16

Most important restrictions of the free choice of a company's name



- Words and expressions that must be disregarded:
 - Limited; Unlimited; Public Limited Company; Community Interest Company; Community Interest Public Limited Company Right to Enfranchisement; Right to Manage; UK EEIG; Investment Company with Variable Capital; Limited Partnership;
 - When preceded by a blank space, a full stop or '@' the following: & co; & company; and co; and company
- Examples of 'same as' names
 - REAL COFFEE CAFÉ LTD' is the same as the 'REAL COFFEE CAFE LTD'.
 - PLUM TECHNOLOGY LTD' is the same as 'PLUM TECHNOLOGY & COMPANY LTD'

17

Exceptions to the „Same as' rule“



- the proposed company is intended to be part of the same group as an existing 'same as' company
- the existing company consents to the registration of the proposed name
- the application to register includes a letter from the existing company confirming that it consents to the registration of the proposed name and that it will form part of the same group

18

Most important restrictions of the free choice of a company's name III.



III. Name that includes sensitive words

- names that could imply a connection with government and words protected under other legislation
- names that include 'British', 'Institute' or 'Tribunal'
- names that include a word that implies a connection with the UK government, a devolved administration or a local or specified public authority
 - approval by the relevant state body is necessary

19

Most important restrictions of the free choice of a company's name IV.



- **IV. names protected or regulated by other legislation**
- **Doctor of medicine**
 - protected by The Medical Act 1983 – an evidence of inclusion on the GMC Medical register is necessary
- **Solicitor**
 - regulated by the Solicitors Regulation Authority (SRA) - an email or letter from the SRA confirming that the applicant is authorised to use this title is necessary

20

Most important restrictions of the free choice of a company's name V.



V. Offensive name

- a name that, in the opinion of the Secretary of State, is intended to facilitate the commission of an offence involving dishonesty or deception

21

Most Trade secret – Legal sources



- Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (“Trade Secrets Directive”)
- Trade Secrets (Enforcement, etc) Regulations 2018 (SI 2018/597)

22

Definition of Trades Secret



- An information that:
 - is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question;
 - has commercial value because it is secret; and
 - has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret

23

Actions that constitute infringement of trade secret



- Trade Secrets are infringed through their:
 1. unlawful acquisition
 2. unlawful use or
 3. unlawful disclosure
- only one of these three acts need occur for infringement

24

Measures and remedies available in the event of infringement of trade secrets



- **Interim measures:**

- the cessation of, or (as the case may be) the prohibition of, the use or disclosure of the trade secret on a provisional basis;
- the prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes; and
- the seizure or delivery up of the suspected infringing goods, including imported goods, so as to prevent the goods entering into, or circulating on, the market

25

Measures and remedies available in the event of infringement of trade secrets



- **Final measures:**

- the adoption of corrective measures with regard to infringing goods, including where appropriate: (i) recall of the infringing goods from the market; (ii) depriving the infringing goods of their infringing quality; and (iii) destruction of the infringing goods or their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question; and
- the destruction of all or part of any document, object, material, substance or electronic file containing or embodying the trade secret, or where appropriate, the delivery up to the applicant of all or part of that document, object, material, substance or electronic file

26



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4th Assignment (Legal Personality Of Companies, Group Of Companies)

After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

Salomon v. Salomon Case – Facts, main issues, ruling and implications for company law, focusing on legal personality and the corporate veil.

Legal Personality and Piercing the Corporate Veil – Understanding the concept of legal personality, corporate veil, and circumstances under which it may be pierced in company law.

Company Theories – Fiction theory vs. reality theory on legal personality of companies, their historical backgrounds, and weaknesses, with a focus on the theory favoured by Slovak law.

Groups of Companies – Historical evolution, reasons for the creation of company groups, and the need for regulation, including EU and Slovak law approaches.

Regulation of Group Companies – Liability of controlling entities, definitions of control (de jure, de facto).

Compulsory reading materials:

- Part IV. / Legal personality (pages 50-63) from textbook Patakyová et al. Company Law and Law on Cooperatives – General introduction to the topic and definition of basic terms
- Case Salomon v. Salomon
- Relevant sections of the Slovak Commercial Code based on the lecture
- EMCA (European Model Company Act) – chapter 15

Related cases studies (obligatory):

- Salomon v. Salomon
- Überseering (C-208/00)

After reading the chapter, find below some questions, which will help you to prepare for the discussion in the class. Be ready to address them independently:

1. Salomon v. Salomon – introduce the main facts of the case and identify the main issues.
2. Salomon v. Salomon – describe the ruling and the implications of the ruling.
3. Describe the legal personality of the companies and the concept of piercing the corporate veil.
4. How does fiction theory explain the legal personality of a company, what is its historical background and what are its weaknesses?
5. How does the theory of reality explain the legal personality of a company, what is its historical background and what are its weaknesses?
6. Which company theory does Slovak law favour?
7. What was the historical evolution of groups of companies?
8. Why are groups of companies created?
9. Why do we need regulation for group of companies?
10. What is the approach of EU law towards the regulation of groups of companies?
11. What is the approach of Slovak corporate law towards the regulation of groups of companies?
12. Which entity is considered to be the controlling entity and what is the controlled entity under the Slovak Commercial Code? Which factors are taken into account?

13. What are the conditions to establish liability of the controlling entity for the bankruptcy of the controlled entity? Which aspects may be problematic in the practical application of the controlling entity's liability for the bankruptcy of the controlled entity?
14. Definition of control (including de jure and de facto) in group of companies and how is the participation calculated under EMCA (European Model Company Act) (Sections 15.04-15.07).
15. Describe right of a parent company to give instructions to the management of a subsidiary under EMCA (Section 15.09).
16. Describe interest of a group under EMCA (Section 15.16).
17. Describe parent liability under EMCA (Section 15.17).
18. Describe right to sell-out (Section 15.15) and squeeze-out (Section 15.11) in group of companies under EMCA, why are these rights important within a group of companies



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IV. Legal personality of companies, group of companies

Outline of the lecture:

- **Legal personality of companies**
 - Salomon v. Salomon
 - Company as a fiction
 - Company as a nexus of contracts
 - Company as a “real being”
- **Group of companies**
 - International level
 - European level
 - Slovak law

Legal personality of companies



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- One of the basic characteristic features of companies
- Kraakman et al.: ...*property autonomy, which ensures the protection of (assets) corporation against claims of company creditors (entity shielding), represents the core feature of the legal personality. In other words, the core function of this separate patrimony involves **shielding the assets of the entity** – corporation – **from the creditors or the entity's owners***
- Company's right
 - i. to enter into relationships of obligations in its own name;
 - ii. to be an owner of moveable and immovable assets;
 - iii. to sue and be sued in its own name;
 - iv. to empower other persons to act in its name

Salomon v. Salomon – Facts of the Case I.



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- Mr. Salomon made leather boots or shoes as a sole proprietor
- His sons wanted to become business partners, so he turned the business into a limited liability company.
- Under the Companies Act 1862, at least seven shareholders were required to form a company.
- His wife and five elder children became shareholders and the two elder sons became directors as well.
- Mr. Salomon took 20,001 of the company's 20,007 shares which was payment from A Salomon & Co Limited for his old business.
- The company also issued to Mr. Salomon £10,000 in debentures (secured debt).

Salomon v. Salomon – Facts of the Case II.



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- Soon after Mr. Salomon incorporated his business into LLC there was a decline in boot sales.
- The company failed, defaulting on its interest payments on its debentures and was put into liquidation.
- One of the debenture holders was repaid his £5,000. This left £1,055 company assets remaining, of which Salomon claimed under the retained debentures he retained.
- If Salomon's claim was successful this would leave nothing for the unsecured creditors.

Salomon v. Salomon – Issues



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- The case concerned claims of certain unsecured creditors in the liquidation process of Salomon Ltd., a company in which Salomon was the majority shareholder, and accordingly, **was sought to be made personally liable for the company's debt**
- Whether, regardless of the separate legal identity of a company, a **shareholder/controller could be held liable for its debt, over and above the capital contribution**, so as to expose such member to unlimited personal liability.

Salomon v. Salomon – Ruling



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- The Court of Appeal: **company is a myth**, reasoned that Mr. Salomon had incorporated the company contrary to the true intent of the then Companies Act (1862), and that the company had conducted the business **as an agent of Salomon**, who should, therefore, be responsible for the debt incurred in the course of such agency.
- The House of Lords: reversed the above ruling, and unanimously held that, as the **company was duly incorporated**, it is an independent person with its rights and liabilities appropriate to itself, and *“the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are”*.
- Thus, the legal fiction of “corporate veil” between the company and its shareholders was firmly created by the Salomon case.

Salomon v. Salomon – Implications I.



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- The **legal fiction of corporate veil** - a company has a legal personality separate and independent from the identity of its shareholders
- Any rights, obligations or liabilities of a company are discrete from those of its shareholders, where the latter are responsible only to the extent of their capital contributions, known as “limited liability” (Slovakia – in LLC only if fully paid)
- This corporate fiction was created to enable groups of individuals to pursue an **economic purpose as a single unit**, without exposure to risks or liabilities in one’s personal capacity

Salomon v. Salomon – Implications II.



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- A company can own property, execute contracts, raise debt, make investments and assume other rights and obligations, independent of its members, can then sue and be sued on its own name, it facilitates legal course too and a company survives the death of its members.
- The rule in the Salomon case has been followed in several subsequent cases: Macaura v Northern Assurance Co., Lee v Lee's Air Farming Limited, and the Farrar case.
- Will the case be decided in the same way today?
- Piercing the corporate veil?
- Shareholder as a creditor

Company as a fiction I.



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- The theory of fiction is the oldest one among the existing theories and characterizes the corporation as *persona ficta*
- Friedrich Carl von Savigny - legal persons may have only those rights and obligations which are given to them by state
- the corporation is a creation of the legislative, whereby it is the legislative which gives legal personality to the corporation
- Czech Republic

Company as a fiction II.



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- John Marshall as Chief Justice of the United States in case of Trustees of Dartmouth College v. Woodward came up with one of the fundamental definitions of the corporation as persona ficta:

*“The corporation is an artificial person who is invisible and intangible and exist only through the **intervention of the law**. Due to the fact that the society is a creation of the law, it has only those attributes which the specific legislative attributes to it.”*

- The limitation of the legal personality is reflected mainly in the subject of the company’s **business activity** and the related conduct of the company
- If the company acts through its statutory body and exceeds the scope of the subject of its business activity, such conduct, pursuant to this theory, would be considered as conduct **ultra vires**, meaning that such conduct would be invalid

Company as a nexus of contracts



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- The basis of this nexus of contractual relationships is a contract between the company’s founders who decided to establish the company
- Subsequently, secondary contracts, which includes contracts concluded between:
 - i. managers and the company to ensure functioning of the company;
 - ii. employees and the company to ensure workforce for the company;
 - iii. creditors and the company to ensure external financing of the company;
 - iv. and others, are linked to this contractual relationship of founders of the company
- The theory of contract fails to justify the essence of the legal personality’s creation
- Economic understanding of a company

Company as a “real being”



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- The beginnings of the theory of reality may be dated back to the 19th century, when German historian and academic Otto von Gierke gave his opinion that the **company should not be perceived as an artificial but a real person**
- This theory has become significant with the incorporation of large corporations when the ownership of the company was separated from its management (separation of ownership and control)
- The problem of this theory built on the hypothesis that the **company is a real person was the demonstration of the company’s ability to act individually**
- This stumbling block was overcome with the argument that the bodies of the company reflect its mind and activity and thus are considered as its “hands and mouth”

Legal personality and theories of the legal personality of business companies in the context of Slovak law



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- Under Section 18(1) and 19a(1) of the Civil Code, legal persons have the competence to have rights and obligations (**the legal personality**) as well as the competence to acquire rights and obligations (**the legal capacity to act**), while this competence to acquire rights and obligations by own actions may be limited only by legal acts.
- The doctrine of **ultra vires** characteristic connected with the theory of fiction has not been applied in the Slovak company law since the Economic Code has been repealed

Moving from individual view to a “group view” of corporations



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- Assets and organizational and decision-making structure of companies are interconnected and corporations create so-called **groups**
- A group of companies is understood to mean a number of corporations that are **economically or organizationally linked** to the extent that, although they are separate legal entities, **they externally (especially in economic terms) act as a unified entity**

Why are groups of companies created?



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- **division of the risk** when new corporations (within the group) are established in order to isolate the bankruptcy of this corporation only to the corporation itself
 - riskier business activities within a group can be realized through a corporation that has a smaller amount of assets, while other corporations within the group can be used as a “repository” of assets
- **tax reasons**, the possibility of easier management and segmentation by business type and geographical distribution of business activities

Structure of the group and control



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- there is one major parent (controlling) company that creates subsidiaries (controlled companies) which are further structured
- “horizontal” groups of companies may be created that have more than one parent company
- The degree to which subsidiaries and subsidiaries of subsidiaries are controlled by the parent are also different
 - the parent company, through its management powers, can directly control the subsidiaries, or leave these corporations a relative discretion in their management.

The need to regulate groups of companies I.



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- Tensions
 - the interests of the minority shareholders in the controlled companies and the interests of the creditors of those companies may be contrary to the interests of the controlling companies
 - between the statutory obligations of the directors of the controlled companies (which, when deciding, should take into account the interests of the corporations for which they are acting) and compliance with the instructions of the controlling companies.
- Conflicts of interest arise in the management of a group of companies

The need to regulate groups of companies II.



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- there is rather a motivation for the preservation of the group as such, the interest in the functioning and maintenance of its individual components (corporations that are part of a group of companies) may not exist in a particular case
- if a company that is part of a group is in a situation where it would be necessary to invest capital on the part of the controlling entity for its continued operation, or if it is evident that such a corporation will not be able to continue to operate with the current economic development, the controlling entity may decide that the controlled entity will no longer be financed and will go bankrupt (sacrifice)

Regulation of the group of companies on the international level



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- **OECD Guidelines for Multinational Enterprises:** Their aim is to support the adoption of national legislation, whereby multinational corporations are committed to respecting certain fundamental principles and rules in different areas of law (e.g. environmental law, competition law, consumer protection, labour law, human rights and tax law) and did not misuse corporate structures to circumvent the set minimum standards for example in the event of a violation benefiting the entire multinational group, whereby the corporation operating at the national level will bear all the adverse consequences and its creditors (injured parties) will not be fully compensated for any damage.

Regulation of the group of companies on the EU level I.



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- In 1998, a group of law professors under the name Forum Europaeum Konzernrecht prepared a draft directive on European corporate group law - based on the so-called **Rozenblum doctrine**
- **Rozenblum doctrine** - a group of companies may pursue a common, clearly defined interest that is not consistent with the interests of individual members of that group, as long as the group is rationally structured and if the directors of a particular corporation that is a member of such a group can assume that the possible harm will be remedied in due time
- concept was created by the French courts in order to prevent abuse of the group management in a way that damages individual members of the group and their creditors.

Regulation of the group of companies on the EU level II.



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- High Level Group of commercial law experts created by the European Commission in 2001 to prepare a modern corporate law regulation
- The group concluded that it does not recommend comprehensive regulation of groups of companies at the European level
- The group suggested that problems created by groups of companies be dealt with partially (transparency of the structure and relationships within the groups, the conflicts of interest between the group and its individual members, and the specific problems related to the so-called pyramid structures)
- The conclusions of this commission were not generally accepted.

Regulation of the group of companies on the EU level III.



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- The issue of regulation of groups of companies was also addressed by the European Model Company Act (EMCA) – serves as a model for member states to inspire them to implement the regulation at a national level
- Chapter 16 of this model act deals with groups of companies.
- Member states have different levels of regulation that can be classified into 4 categories:
 - i. comprehensive regulation (e.g. in Germany, Portugal, Hungary, Czech Republic and Slovenia);
 - ii. partial regulation (e.g. in Italy),
 - iii. recognition of the group's specific interest based on case law (e.g. in France) and
 - iv. absence of regulation (except as required by the EU directives mentioned below for specific areas, e.g. in the UK or Slovakia)

Regulation of the group of companies on the EU level IV.



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- achieving a unified regulation of all aspects of groups of companies under corporate law on the level of European Union is currently not realistic
- number of rules have been adopted at the Union level to deal with the existence and functioning of groups of companies
 - Transparency Directive which introduced more detailed financial reports for issuers of shares admitted to trading on a regulated market which should increase transparency and allow investors to evaluate the issuer's situation on the basis of better information
 - Directive on Annual Financial Statements, which also aims at protecting shareholders, members and third parties through the coordination of national provisions concerning the presentation and content of annual financial statements and management reports, the measurement bases used therein and their publication in respect of certain types of undertakings.

The concept of controlling and controlled entity and the group of companies from the perspective of Slovak corporate law I.



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- Slovak corporate law is dominantly based on the concept of separate legal personality of corporations - each corporation is treated as a separate legal entity and only exceptionally it is considered that a corporation is part of a group of companies that are jointly managed and which, from an economic point of view, form a single entity
- Pursuant to Section 66a(1) of the Commercial Code a controlled entity is a corporation in which a person has a majority of the voting rights because it has a share in the company which is linked with a majority of the voting rights, or because it can exercise the majority of voting rights under an agreement with other authorized persons, irrespective of the validity or invalidity of such agreement.

The concept of controlling and controlled entity and the group of companies from the perspective of Slovak corporate law II.



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- The voting rights are increased by the voting rights
 - i. associated with the shares of the controlled entity that are owned by other persons controlled directly or by the controlling entity,
 - ii. executed by other persons in its own name and on behalf of the controlling entity.
- The controlled entity is subsequently defined as a person which has the above-mentioned status in the controlling entity.
- Only the exercise of voting rights is taken into account.
- The exercise of voting rights may be **de iure** (on the basis of corporate documents that grant the controlling entity majority of voting rights) or **de facto** (by virtue of agreement with other persons the controlling entity factually exercises a majority of the voting rights).

The concept of controlling and controlled entity and the group of companies from the perspective of Slovak corporate law III.



- No consideration is given to the fact whether the controlling entity manages and influences the controlled entity in a manner other than the exercise of the majority of the voting rights (e.g. under a contract on the basis of which the controlling entity directs the controlled entity).
- The concept of controlling entity implements “direct” as well as “indirect” control of the controlled entity by a majority of voting rights - the controlling person does not have to be a direct shareholder in the controlled entity but may also be at a “higher level” of corporate group structure.

The concept of controlling and controlled entity and the group of companies from the perspective of Slovak corporate law IV.



- Section 66aa of the Commercial Code, introduced a new legal principle, also referred to as piercing of corporate veil in Slovak law.
- The basic conditions of this concept are defined in Section 66aa(1) of the Commercial Code as follows: *“The controlling entity is liable to the controlled entity’s creditors for damage caused by the bankruptcy of the controlled entity if, by its conduct, it contributed substantially to the bankruptcy of the controlled entity. This liability does not arise if the controlling entity proves that it has acted based on relevant information and in good faith that it is acting for the benefit of the controlled entity.”*

The concept of controlling and controlled entity and the group of companies from the perspective of Slovak corporate law V.



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- The liability of the controlling entity for the bankruptcy of the controlled entity significantly disrupts the liability concept existing within the corporate law system
- The corporation is no longer viewed just as a separate legal entity but as part of a group of companies.
- It might be an improvement in the position of creditors in the event of the debtor's bankruptcy, since creditors may also enforce their claim against the controlling entity under the conditions stipulated by law.

The concept of controlling and controlled entity and the group of companies from the perspective of Slovak corporate law VI.



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- the amount of the damage is presumed, which means that the amount of damage corresponds to the unenforced part of the creditor's claim and is the controlling entity who needs to prove a different amount of damage was sustained
- there is a "mitigated" form of causality where it is sufficient if the creditor proves that the controlling entity has contributed to the bankruptcy
- it is not required to prove a 100% causal link and provide evidence that without the interference of the controlling person the bankruptcy of the controlled entity would not take place
- contribution to bankruptcy may be caused due to any controlling entity's actions; liability is therefore not linked to specific (illegal) types of conduct.

The concept of controlling and controlled entity and the group of companies from the perspective of Slovak corporate law VII.



- One of the decisive criteria for establishing liability is the fact that the controlling entity has at least indirectly a majority of the voting rights in the controlled entity. This does not take into account the fact that a shareholder with a much smaller number of votes may have an impact on the real functioning of the company.
- The amount of damages that have been sustained will not be fixed until after the bankruptcy proceedings have been completed, i.e. only after several years. The creditors may not be motivated to use this concept in case of such a long “waiting period”.
- In practice, it could be difficult to prove that the controlling entity has contributed substantially to the bankruptcy of the controlled entity. A number of factors (including market-related factors) affect the functioning of the corporation and it is expected that in the event of a dispute it will be difficult to establish which of the factors has contributed to the bankruptcy.



THANK YOU FOR YOUR
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5th Assignment (Creation Of Companies And Purpose Of Their Creation)

After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

Foundation and Incorporation of Companies – Conditions for company foundation and incorporation under Slovak, UK and EU law, including differences between the two processes.

Legal Capital and Contributions – Rules on monetary and non-monetary contributions, the purpose of minimum capital requirements, and EU restrictions on contributing with services/work into legal capital.

Company Formation Documents – Mandatory content of articles of association and certificate of incorporation, and the role of notarial deeds.

Pre-Incorporation Obligations and Liabilities – Acting on behalf of a company before incorporation.

Company Nullity and Legal Consequences – Regulation of company nullity under EU law and the legal effects of registration and nullity in different jurisdictions.

Compulsory reading materials:

- Chapter 4 and 5 from Cahn/Donald: Comparative company law
- Chapter 1 and 3 from Nevolan/Skrinar: Fundamentals of Slovak Commercial Law

Related cases studies (obligatory):

- Khan v Miah
- Ebrahimi v Westbourne Galleries Ltd

After reading the chapter, find below some questions, which will help you to prepare for the discussion in the class. Be ready to address them independently:

1. What are the conditions for the foundation of a company according to Slovak law?
2. Describe the foundation of private limited liability companies in a simplified manner according to Slovak law.
3. What do you understand under "notarial deed on a legal act" according to Slovak law?
4. What is the mandatory content of the agreement of association of a private limited liability company according to Slovak law?
5. Under what conditions a non-monetary contribution can be made to the company's legal capital according to Slovak law?
6. How much of each monetary contribution must be paid up before the incorporation of a private limited liability company according to Slovak law?
7. What is the difference between the foundation and the incorporation of a company?
8. What review obligation does the Registry Court in Slovakia have before registering a private limited liability company?
9. What do you know about the acting on behalf of a company before its incorporation according to Slovak law?
10. What are the conditions for the foundation of a company according to UK law?
11. What do you know about the articles of association and certificate of incorporation according to UK law?
12. Describe the conditions for payment of the initial shares according to UK law.

13. Describe the liability of the promoters before the incorporation of a company is complete according to UK law.
14. What is the legal effect of registration of a company according to UK law?
15. What is the purpose of requiring a minimum legal capital? Does the required minimum capital successfully achieve this purpose?
16. Pursuant to the European law, services cannot be contributed into the legal capital of a public limited liability company. What is the reason for this rule?
17. How are the conditions for nullity of a company regulated according to European law?
18. What are the legal consequences of nullity of a company according to European law?



Subject Comparative Company Law in the context of the EU Law was supported by project: Jean Monnet Actions - GRANT AGREEMENT - Project 101176603 — EU Tax and Corporate Law

COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

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V. Creation and purpose of creation

Outline of the lecture:

- **Foundation of a Company**
 - Content of the agreement of association
 - Legal capital
 - Acting on behalf of a Company before Incorporation
- **Incorporation of a company**
 - Commercial Register
- **Nullity of a company**

Slovak republic:

Foundation of a Company I.

- § 63 ComC:

„Legal acts related to the foundation, incorporation, change, winding-up or dissolution of a company must be made in writing; the law stipulates which legal acts shall be made in the form of a notarial deed.“



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Foundation of a Company II.



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- a company is founded under an agreement of association signed by all its founders
- in cases where the foundation of a company by a single founder is possible, the agreement of association shall be replaced by a deed of association
- the founders' signatures must be officially verified (§ 57 ComC)
- public limited liability companies: the agreement of association or deed of association must be drawn up in the form of a notarial deed on a legal act; the memorandum of association or deed of association shall include the draft articles of association (by-laws)

Foundation of private limited liability companies in a simplified manner



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European law:

- Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law:

„In particular, Member States should provide specific information about online procedures provided for in this Directive and models of instruments of constitution (‘templates’) on the websites accessible by means of the Single Digital Gateway.“

- Article 13h: Templates for online formation of companies

Slovak transposition



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- § 57 (4) ComC:

„Where permitted by this Act, a company may also be founded in a simplified manner by means of a designated electronic form for the production of an agreement of association.“

- § 110a ComC:
 - Special Provisions on the Foundation of a Private Limited Liability Company in a Simplified Manner

Content of the agreement of association – private limited liability company (§ 110 ComC) I.



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- the business name and registered office of the company
- identification of the shareholders by stating the business name and registered office of a legal entity or the name and residential address of a natural person,
- the subject of entrepreneurial activity (business objects)

Content of the agreement of association – private limited liability company (§ 110 ComC) II.



- the amount of registered capital and the amount of investment contribution of each shareholder and the amount of investment contributions paid up upon the company's incorporation, including the method and period for paying up such investment contributions, and in the case of non-monetary contributions, also their object and the financial sum in which the non-monetary contribution shall be included in the shareholder's investment contribution to which they have committed

Content of the agreement of association – private limited liability company (§ 110 ComC) III.



- The names, residential addresses and birth registration numbers of the company's first executive officers and the method by which they will act in the name of the company; for a foreign natural person, his/her date of birth shall be stated, if no birth registration number was allocated
- The names, residential addresses and birth registration numbers of members of the first supervisory board, if a supervisory board is established; for a foreign natural person, his/her date of birth shall be stated, if no birth identification number was allocated,

Content of the agreement of association – private limited liability company (§ 110 ComC) IV.



- The amount of reserve fund, if the company creates a reserve fund upon its incorporation, and the amount up to which the company is obliged to supplement the reserve fund, and the method of such supplementation

Legal capital - private limited liability company I.



- = the total of all its shareholders'/members' monetary and non-monetary contributions to the company, as expressed in money (§ 58 ComC)
- at least EUR 5,000 (§ 108 (1) ComC)

Legal capital - private limited liability company II.



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- **Non-monetary contributions (§ 59 ComC)**
 - may only be property with an economic value which can be determined
 - it is prohibited to make non-monetary contribution in the form of commitments to perform work or supply services
 - must be paid up before the amount of registered capital is entered in the Commercial Register
 - in general: The value of the non-monetary contribution shall be determined on the basis of an expert opinion

Legal capital - private limited liability company III.



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- **Monetary contribution**
 - the value of a shareholder's monetary contribution must be at least EUR 750 (§ 109 (1) ComC)
 - before filing an application for registration of a company in the Commercial Register, at least 30% of each monetary contribution must be paid up
 - the total value of paid-up monetary contributions increased by the value of provided non-monetary contributions must be at least 50% of the minimum amount of the registered capital (§ 111 (1) ComC)

Incorporation of a company



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- a company enters into existence upon the day it is registered into the Commercial Register
- an application for registration in the Commercial Register must be filed within 90 days of the company's foundation or from the date of delivery of a document establishing a trade licence or other entrepreneurial license

Review obligation of the Registry Court – private limited liability company (§ 7 (3) Act on Commercial Register) I.



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- Before registering a private limited liability company, from the submitted documents, the Registry Court has to prove whether:
 - a. the articles of association or the deed of association contain requirements according to the law
 - b. no more than 50 shareholders are listed in the articles of association

Review obligation of the Registry Court – private limited liability company (§ 7 (3) Act on Commercial Register) II.



- c. the amount of the share capital, the amount of the contribution of each shareholder and the amount of the paid-up contribution of each shareholder specified in the articles of association is in accordance with the law

Review obligation of the Registry Court – private limited liability company (§ 7 (3) Act on Commercial Register) III.



- d. a limited liability company, which is the sole founder of the company, has more shareholders
- e. a natural person who is the sole founder of the company is not the sole shareholder in more than two limited liability companies
- f. whether the articles of association were signed by all shareholders and whether the authenticity of the signatures of all shareholders is verified

Acting on behalf of a Company before Incorporation (§ 64 ComC) I.



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- Persons acting on behalf of a company before its incorporation shall be bound by such acts jointly and severally
- if within three months of the company's incorporation the shareholders/members or the competent body of the company approve such acts taken on behalf of the company, the company is deemed to have been bound thereby from the beginning.

Acting on behalf of a Company before Incorporation (§ 64 ComC) II.



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- a company may not accept any obligations other than those related to the company's incorporation and those by which the founders or the statutory body or the statutory body's members are bound, except for obligations accepted by the company with a condition precedent where the effectiveness of a legal act is subject to additional approval by the shareholders/members or the competent body of the company
- persons that have accepted other obligations on behalf of the company shall be liable for any damage thereby caused and are personally bound by such acts

United kingdom:

Company's constitution



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- the company's articles
- any resolutions and agreements to which Chapter 3 applies (supplementing resolutions)

Method of forming company



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- A company is formed by one or more persons by:
 - subscribing their names to a memorandum of association
 - complying with the requirements of sections 9 to 13 CA 2006:
 - a. Registration documents
 - b. Required information about the subscribers
 - c. Statement of capital and initial shareholdings
 - d. Statement of guarantee
 - e. Statement of proposed officers
 - f. Statement of initial significant control
 - g. Option to provide ID verification information about PSCs
 - h. Statement of compliance

Articles of association – 18 CA



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- a company must have articles of association prescribing regulations for the company
- duty to register the articles of association unless it is a limited company to which model articles apply (default application of model articles it must register articles of association)
- formal requirements: articles of association registered by a company must
 - be contained in a single document
 - be divided into paragraphs numbered consecutively

Certificate of incorporation



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- the name and registered number of the company,
- the date of its incorporation,
- whether it is a limited or unlimited company, and if it is limited whether it is limited by shares or limited by guarantee,
- whether it is a private or a public company, and
- whether the company's registered office is situated in England and Wales (or in Wales), in Scotland or in Northern Ireland

Effect of registration I.



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- the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the certificate of incorporation
- that body corporate is capable of exercising all the functions of an incorporated company
- in the case of a company having a share capital, the subscribers to the memorandum become holders of the shares specified in the statement of capital and initial shareholdings

Effect of registration II.



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- the persons named in the statement of proposed officers (as director, or as secretary or joint secretary of the company, are deemed to have been appointed to that office (unless ineligible for appointment to that office by virtue of any enactment)

Liability of promoters before incorporation is complete



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- **Pre-incorporation contracts, deeds and obligations:**

A contract that purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.

- pre-incorporation contracts are binding on the persons concluding them

Constituting the company's share capital



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- **Cash payments/In-kind payments**
 - a public company must not allot a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it
 - relatively expansive definition of „Cash“ (for example promises to pay and release of liability toward the company)
 - in principle: In-kind payments for the shares of a public company must be officially appraised, reported and filed with the registrar

***European Union
Law:***

Conditions for nullity of a company I.



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- **Article 11 of the Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law**
 - the laws of the Member States may not provide for the nullity of companies otherwise than in accordance with of the Directive (EU) 2017/1132
 - nullity must be ordered by decision of a court of law

Conditions for nullity of a company II.



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- nullity may be ordered only on the grounds:
 - that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with
 - that the objects of the company are unlawful or contrary to public policy
 - that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company
 - of failure to comply with provisions of national law concerning the minimum amount of capital to be paid up
 - of the incapacity of all the founder members
 - that, contrary to the national law governing the company, the number of founder members is less than two

Conditions for nullity of a company III.



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- Apart from the grounds of nullity referred to in the first paragraph, a company shall not be subject to any cause of non-existence, absolute nullity, relative nullity or declaration of nullity.

Consequences of nullity I.



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- where the national law entitles a third party to challenge the decision of nullity pronounced by a court, he/she may do so only within six months of public notice of the decision of the court being given
- nullity shall entail the winding-up of the company, as may dissolution
- nullity shall not of itself affect the validity of any commitments entered into by or with the company, without prejudice to the consequences of the company's being wound up

Consequences of nullity II.



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- the laws of each Member State may make provision for the consequences of nullity as between members of the company
- holders of shares in the capital of a company shall remain obliged to pay up the capital agreed to be subscribed by them but which has not been paid up, to the extent that commitments entered into with creditors so require

Secondary law I.



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- First Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community
- Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (Codified version)

Secondary law II.



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- **Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law**
- **Chapter II: Incorporation and nullity of the company and validity of its obligations (Art. 2-12)**
 - Article 11: Conditions for nullity of a company
 - Article 12: Consequences of nullity
- **Chapter III: Disclosure and interconnection of central, commercial and companies registers (Art. 13-43)**

Marleasing – Case; C-106/89



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- Marleasing SA - La Comercial
- Marleasing SA claimed before the Spanish national courts that the formation of La Comercial should be nullified on the grounds that its establishment "lacked cause, was a sham transaction and was carried out in order to defraud the creditors of Barviesa (a co-founder of La Comercial)".
- Articles 1261 and 1275 of the Spanish Civil Code stated that "contracts without cause or whose cause is unlawful have no legal effect".
- La Comercial argued that the action should be dismissed in its entirety on the grounds that article 11 of the First Council Directive 68/151/EEC provided an exhaustive list of the cases under which the nullity of a company may be ordered and that "lack of cause" was not a ground listed therein.

Question the Spanish court referred to the European Court of Justice



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- Is Article 11 of [the] Council Directive 68/151/EEC of 9 March 1968, which has not been implemented in national law, directly applicable so as to preclude a declaration of nullity of a public limited liability company on a ground other than those set out in the said article?

Decision of the European Court of Justice



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“...it should be observed that ... the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty (article 4(3) TEU now) to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts. It follows that, in applying national law, whether the provisions in question were adopted before or after the directive, the national court called upon to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter and thereby comply with the third paragraph of Article 189 of the Treaty.”

With other words...



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- The Courts of MS have the duty to interpret national law in a way that gave effect to European law even though the directive in question has not been adopted yet.

Nullity of a company



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- nullity may be ordered only on the grounds:
 - that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with
 - that the objects of the company are unlawful or contrary to public policy
 - that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company
 - of failure to comply with provisions of national law concerning the minimum amount of capital to be paid up
 - of the incapacity of all the founder members
 - that, contrary to the national law governing the company, the number of founder members is less than two

Secondary law III.



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- Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent

Secondary law IV.



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- Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (recast)

Secondary law IV.



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- **Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law**
- **Chapter IV: Capital maintenance and alteration (Art. 44-86)**
- **Art. 45 (1):** *The laws of the Member States shall require that, in order for a company to be incorporated or obtain authorisation to commence business, a minimum capital shall be subscribed the amount of which shall be not less than EUR 25 000.*
- **Art. 46:** *Subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of those assets.*

Secondary law V.



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- **Art. 48:**
 - *Shares issued for consideration shall be paid up at the time the company is incorporated or is authorised to commence business at not less than 25 % of their nominal value or, in the absence of a nominal value, their accountable par.*
 - *However, where shares are issued for consideration other than in cash at the time the company is incorporated or is authorised to commence business, the consideration shall be transferred in full within five years of that time.*
- **Art. 49:**
 - *Experts' report on consideration other than in cash*



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6th Assignment (Defining Characteristics Of A Company)

After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

Company Definition and Legal Forms – Definition of a company under EU and Slovak law, including supranational legal forms and the aim of the *Societas Unius Personae* directive.

Types of Business Entities in Slovak Law – Overview of unlimited companies, limited partnerships, limited liability companies, joint-stock companies, simple joint-stock companies and cooperatives.

Foreign Entrepreneurs and Company Classification – Regulations on foreign business activities in Slovakia, characteristics of personal vs. capital companies, and distinctions between public and private companies.

Corporate Structure and Legal Characteristics – Separate legal personality, limited liability of shareholders and the separation of ownership from control and transferability of shares in capital companies.

Shareholding and Transferability – Differences between UK companies limited by shares and guarantee, and rules on share/business share transferability in capital companies.

Compulsory reading materials:

- Part VI. Defining characteristics of a company from textbook Patakyová et al. Company Law and Law on Cooperatives – General introduction to the topic and definition of basic terms
- Relevant sections from the Slovak Commercial Code, EU Law, UK Companies Act

Related cases studies (obligatory):

- Royal British Bank v Turquand
- Inspire Art (C-167/01)

After reading the chapter, find below some questions, which will help you to prepare for the discussion in the class. Be ready to address them independently:

1. How is company defined under the EU law?
2. What are supranational legal forms under the EU law?
3. What was the aim to adopt directive on "Societas Unius Personae" in the EU? Was the project successful?
4. How does Slovak law define a company?
5. What is a basic description of unlimited company under the Slovak law?
6. What is a basic description of limited partnership under the Slovak law?
7. What is a basic description of limited liability company under the Slovak law?
8. What is a basic description of joint stock company under the Slovak law?
9. What is a basic description of simple joint stock company under the Slovak law?
10. What is a basic description of cooperative under the Slovak law?
11. How are entrepreneurial activities performed by foreign persons under the Slovak law?
12. What are the basic characteristics of personal companies? And which companies are classified as personal companies under the Slovak law?
13. What is the difference between public and private companies?
14. What is a company limited by shares and company limited by guarantee under the UK Companies Act?
15. Describe separate legal personality of companies.
16. Describe the limited liability of shareholders in the context of the characteristics of capital companies.

17. Describe the transferability of the business share / shares in the context of the characteristics of capital companies.
18. Describe the separation of ownership from control in the context of the characteristics of capital companies.



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COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

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VI. Defining characteristics of a company

Outline of the lecture:

- **Definition of a company**
 - EU Law
 - Slovak Law
 - UK Law
- **Categorization of companies**
- **Characteristic features of companies**
 - Characteristic features of personal companies
 - Characteristic features of capital companies
 - Legal personality of a capital company
 - Limited liability of shareholders
 - Transferability of business share/shares
 - Separation of ownership from control of a company

European Union Law:

Company under EU Law I.

- Article 54 of the TFEU constitute a legal basis of the company and provides the following definition:

„ Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

‘Companies or firms’ means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.”



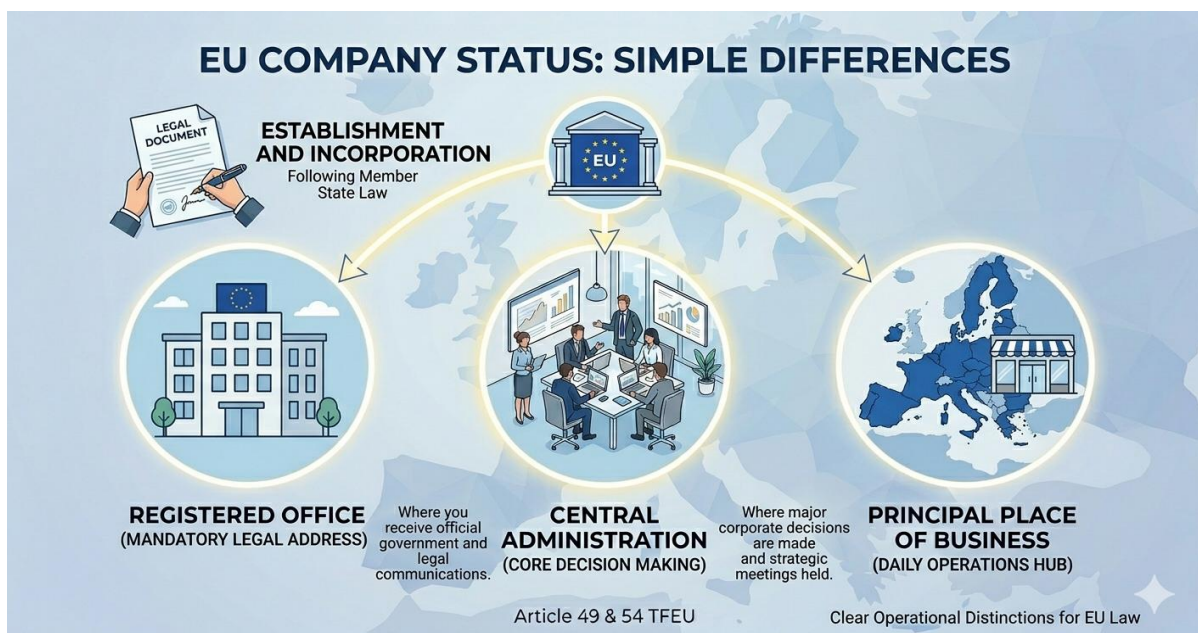
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Company under EU Law II.



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- According to the first sentence of Article 54 of the TFEU
 - companies having their **registered seat, central administration or principal business** within the territory of any Member State, may rely on the freedom of establishment.
- Three types of **connecting factors** enable the companies to use the freedom of establishment guaranteed by European Union law in the same way as **natural persons having the nationality of one of the Member States**.
- These connecting factors determine the **personal status (lex societatis)** of the company, therefore, determine the national law applicable to this company.



Company under EU Law III.



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- The second sentence of Article 54 refers to national laws of the Member States **regarding the definition of the company.**
- Under European Union law, the company means a company **constituted under civil or commercial law including cooperative societies, and other legal persons established under public or private law, excluding non-profit-making entities.**
- According to the stated, the **company must fulfil the characteristics required by national law of a Member State to become a company under European Union law.**
- There is no “general company” under the European Union Law, there are supranational legal forms.

Company under EU Law IV.



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- The concept of the company under European Union law **is broadly defined**
- Broad interpretation of the company is also confirmed **by case law of the Court of Justice of the European Union**, mainly by its decision in **Cartesio**.
 - Cartesio was a company established under Hungarian law - an entity with a similar status as the **limited partnership under Slovak law.**
 - This kind of company **was not a separate legal entity**, however, it had a legal personality in the same extent as legal persons.
 - The Court of Justice of the European Union in its decision Cartesio declared that **despite of the specific status of this company, the matter in question concerns Hungarian companies having its own legal personality**, and therefore, it is essential to interpret the concept of the company in a broad way.

Supranational forms under the EU Law



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- a. **European economic interest grouping**
 - b. **European company**
 - c. **European cooperative society**
-
- Adopted by regulation

European Economic Interest Grouping



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- Council regulation on the European Economic Interest Grouping (EEIG)
- The European economic interest grouping was introduced **in order to simplify the cross-border cooperation of entrepreneurs** and the legal regulation as such was inspired by or arose from the French legal form Groupement d'intérêt économique.

European Company



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- Council Regulation on the Statute for a European company.
- A European company is a supranational form of a company which may be established under European Union law.
- The main purpose of introducing this legal form was to provide a **suitable legal form that eliminates potential obstacles for entrepreneurial activities arising from the cross-border operations of entrepreneurial legal entities**

European Cooperative Society



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- Council Regulation on the Statute for a European Cooperative Society.
- The regulation of a European cooperative society is similar to the regulation of a European company.

European Private Company



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- Was proposed by the European Commission and submitted to the European Parliament.
- The proposal was designed to **ensure better competitiveness for small and medium size enterprises within the European Union by the modification of the mechanism for the establishment and functioning of these companies.**
- This proposal was withdrawn.

Societas Unius Personae I.



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- The aim was to **facilitate the establishment of single-member private limited liability companies, or SUPs (Societas Unius Personae).**
- It provided an **alternative approach to the former legislative proposal for a European private company statute (SPE)**
- The intention was to make the setting up of companies across the EU **less complicated and cheaper**, especially for SMEs looking for a foothold in a market in another Member State, by establishing a small subsidiary.

Societas Unius Personae II.



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- No new legal form would be created at EU level, rather the proposal is limited to harmonising existing national laws.
- The proposal suggests a company law form – SUP (Societas Unius Personae) – in each Member State, with identical requirements across the EU concerning:
 - i. **registration** (preferably with the possibility to register electronically),
 - ii. a **uniform template for articles of association**,
 - iii. a **minimum capital requirement of €1**, and
 - iv. **adequate creditor protection**.
- The Commission announced that the proposal would be withdrawn, which it formally did on 3 July 2018.

EU INC.



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- A new, optional EU-wide corporate legal form designed to sit alongside (not replace) 27 national regimes.
- Primarily innovative startups and scale-ups, but open to all founders.
- Official Commission proposal launched March 18, 2026; targeted for adoption by the end of 2026.
- "Once-Only" Principle: Companies submit data once via a central EU interface; information is automatically shared with tax and social security offices.
- Harmonized Stock Options (EU-ESO): Simplifies attracting global talent by taxing options only at the point of sale, regardless of which Member State the employee is in.
- Simplified Exit & Restart: Introduces fast-track, fully digital liquidation and insolvency procedures to reduce the "cost of failure" for entrepreneurs.
- Investment Ready: Specifically designed to be compatible with standard venture capital instruments (SAFEs).

EU INC.: A UNIFIED PAN-EUROPEAN CORPORATE FORM (PROPOSAL FOR A 28th REGIME)

 Feature	 Traditional National Route	 EU Inc. Proposal
Incorporation Time	 Weeks or months	 < 48 hours
Registration Cost	 Variable (often high)	 < €100
Minimum Capital	 Varies by country	 €0 (No minimum)
Format	 Often requires in-person/notary	 100% Digital-by-default

Detailed Comparison based on the March 18, 2026 COM Proposal.

Highlights show the proposed advantages of the new regime.

EMCA



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- “Company”: A limited liability company formed and registered under the EMCA.
- A limited liability company is a company in which the liability of members is limited by its instrument of incorporation.
- A company may be public or private.
- The shares of a private company may not be offered to the public.
- Unless otherwise prescribed, this Act shall apply to private as well as public companies.

Slovak Law:

Company under Slovak Law I.



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- Section 56(1 and 2) of the Commercial Code represent the basis for defining a company under the Slovak law.
- Section 56(1) of the Commercial Code defines **a company as a legal person established for the purpose of conducting business activities** (a limited liability company and a joint stock company are exceptions, as they may also be established for other purposes than entrepreneurial activity, unless a specific act states otherwise)
- Sections 18 – 21 of the Civil Code – general legal regulation of legal persons.
 - No complete definition of the legal person.
 - Section 18 of the Civil Code only enumerates the individual types of legal persons and Sections 19 – 20 of the Civil Code supplement some characteristics/defining features of legal persons.
 - The Civil Code gives legal persons the competence to have rights and obligations and to conduct legal acts

Company under Slovak Law I.



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European Union

- The enumeration of individual types of legal persons may be found in Section 56(1) of the Commercial Code
 - a. an unlimited company/partnership,
 - b. a limited partnership,
 - c. a limited liability company,
 - d. a joint stock company, and
 - e. a simple joint stock company.
- This enumeration constitutes an exhaustive enumeration of companies which may be established under the Commercial Code due to the mandatory character of Section 56 of the Commercial Code.
- Moreover, legal entities established under the law of the European Union have a position similar to the position of companies

Unlimited Company / Partnership I.



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- An unlimited company (partnership) is regulated by Sections 76 -92 of the Commercial Code and represents one of the legal forms of companies within which **at least two persons** (either natural or legal persons) pursue their entrepreneurial activities under a joint business name.
- **An unlimited company (partnership) is responsible for the breach of its obligations with its entire property/assets.**
- **Partners are jointly and severally liable for obligations of the unlimited company (partnership) with their entire property.**
- An unlimited company is **not under the obligation to create legal capital.**

Unlimited Company / Partnership II.



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- **Every partner is entitled to manage (govern) the company.** Partners may fully or partially entrust the management of the company to one or several partners, while in such case, the other non-entrusted partners lose the entitlement to manage the company in this scope.
- **Every partner of an unlimited company (partnership) is entitled to act on behalf of the company independently** if the foundation document does not state that only one or several partners are entitled to act on behalf of the company or that they may only act together.

Limited Partnership I.



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- The legal regulation of the limited partnership is covered by Sections 93 – 104 of the Commercial Code. Unless stated otherwise, the provisions of the Commercial Code covering an unlimited partnership will primarily apply to a limited partnership and the provisions regulating a limited liability company will apply to the unlimited partners of a limited partnership
- A limited partnership is a company established by one partner with the status of a **limited partner** and one partner with the status of an **unlimited partner**.
- The maximum number of partners is not set by law.
- Limited partners of a limited partnership are under the obligation to make a **minimum contribution to the company of EUR 250**.

Limited Partnership II.



Funded by the
European Union

- **A limited partnership is responsible for the breach of its obligations with its entire property/assets.**
- **Limited partners** are liable for the partnership's obligations up to the amount of their unpaid contribution registered in the Commercial Register.
 - Limited partners are liable for the partnership's obligations with their entire property if the business name of the partnership contains their name.
- **Unlimited partners** are liable for the partnership's obligations with their entire property.

Limited Liability Company I.



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- The legal regulation of a limited liability company is covered by Sections 105 – 153 of the Commercial Code.
- A limited liability company is a legal form of a company with an obligation to create **legal capital in the minimum amount of EUR 5 000** while the minimum amount of the contribution of one shareholder is EUR 750.
- Shareholders are liable for the obligations of the company during its existence up to the **amount of their unpaid contribution registered in the Commercial Register.**
- The amount of a shareholder's unpaid contribution is registered in the Commercial Register.

Limited Liability Company II.



Funded by the
European Union

- The **business share** of a limited liability company represents the rights and obligations of its shareholders and their corresponding participation in the company.
- The amount of the business share is determined as a proportion of the shareholder's contribution to the legal capital unless the foundation document states otherwise.
- **Company's bodies:**
 - a. General meeting
 - b. Director / Board of directors
 - c. Supervisory board (voluntary)

Joint Stock Company I.



Funded by the
European Union

- A joint stock company is regulated by Sections 154 – 220g of the Commercial Code.
- A joint stock company is a company whose **legal capital is allocated to a certain number of shares with the specific nominal value**.
- The articles of association of the joint stock company shall determine the **specific nominal value of all types of shares which are supposed to be issued by the company**.
- A joint stock company is responsible for a breach of its obligations with its entire property, shareholders – no responsibility.
- Shares of a joint stock company may be issued in **book-entry form or as listed shares**.

Joint Stock Company II.



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European Union

- The total nominal value of all of these shares must correspond to the amount of the company's legal capital. The nominal value of a share must be expressed as a whole number unless a specific legal act states otherwise.
- It may be a **private** joint stock company or a **public** joint stock company.
 - A public joint stock company is considered a company, some or all of whose shares are publicly traded on a **regulated market located in one of the member states of the Agreement on the European Economic Area**.
- **Company's bodies:**
 - a. General meeting
 - b. Director / Board of directors
 - c. Supervisory board

Joint Stock Company III.



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- Pursuant to Act No. 361/2015 Coll. amending Act No. 203/2011 Coll. on Collective Investment, as amended the joint stock company with **variable legal capital** was transposed into our national legislation (Sections 220b – 220g of the Commercial Code) – SICAV (société d'investissement à capital variable).
- The legal capital of joint stock company with variable legal capital is allocated to a **certain number of shares without a nominal value**. The minimum amount of the legal capital of a joint stock company with variable legal capital is **EUR 125 000** unless a specific act stipulates otherwise. A joint stock company with variable legal capital may only be established for the purpose of undertaking a **collective investment**.

Simple Joint Stock Company I.



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European Union

- The legal regulation of a simple joint stock company is set by Sections 220h – 220zl of the Commercial Code, while, under legal conditions, the provisions regulating the joint stock company, in the alternative, apply to a simple joint stock company.
- The legal capital of a simple joint stock company is allocated to a certain number of **shares with a specific nominal value**.
- The **minimum amount of the legal capital** which a simple joint stock company must create is **EUR 1**.
- The company **may not be established based on a call for a subscription of shares**.

Simple Joint Stock Company II.



Funded by the
European Union

- Before the company is incorporated, the entire amount of the **company's legal capital must be subscribed and all of the shareholders' contributions to the company must be paid**.
- A simple joint stock company is responsible for a breach of its obligations with its entire property, while shareholders are not responsible or liable for them.
- Shares of a simple joint stock company may only be issued in **book-entry form and as registered shares**.

Simple Joint Stock Company III.



Funded by the
European Union

- The foundation document or the articles of association of the company may state that the nominal value of shares is expressed in eurocents or in a combination of eurocents and euros.
- Shareholders of a simple joint stock company may agree on an ancillary arrangement, specifically known as a drag-along right, a tag-along right, or a right of shout out.
- **Company's bodies:**
 - a. General meeting
 - b. Director / Board of directors
 - c. Supervisory board (voluntary)

Cooperative I.



Funded by the
European Union

- The legal regulation of a cooperative is contained in Sections 221 – 260 of the Commercial Code.
- **A cooperative is not one of the legal forms of companies; on contrary, it is a society of an unrestricted number of persons established for the purpose of performing business activities or meeting the economic, social or other needs of its members.**
- A cooperative is a society established on the **principle of membership**. The minimum number of members of a cooperative is 5, however, this does not apply if at least two of its members are legal persons.

Cooperative II.



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European Union

- The cooperative is responsible for a breach of its obligations with its entire property.
- Members of a cooperative are not liable for the cooperative's obligations. A cooperative is obliged to **create legal capital in the minimum amount of EUR 1 250.**
- The legal capital of a cooperative is comprised of the sum of all of the contributions which the members have committed to pay. Every member of a cooperative is obligated to pay a membership or entrance contribution in the amount set by the cooperative's articles of association.

Entrepreneurial activities performed by foreign persons I.



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- Slovak legislation recognizes the **principle of reciprocity** regarding entrepreneurial activities performed by foreign persons within the territory of the Slovak Republic.
- **Foreign persons conduct their entrepreneurial activities under the same conditions as Slovak legal persons** (the principal of national treatment).

Entrepreneurial activities performed by foreign persons II.



- **A foreign person is**
 - a. a natural person whose permanent residence is outside the territory of the Slovak Republic or
 - b. a legal person whose registered seat is outside the territory of the Slovak Republic
- The entrepreneurial activity of a foreign person on the territory of the Slovak Republic means that this person has an **enterprise or a branch** on the territory of the Slovak Republic.
- The enterprise and the branch are registered in the Commercial Register - the foreign person acquires the entitlement to perform entrepreneurial activities in the Slovak Republic based on the registration.
- Natural person – business licence or other licence.

Entrepreneurial activities performed by foreign persons III.



- Sections 22 and 23 of the Commercial Code also stipulate that “***a foreign person other than a foreign natural person has the same legal capacity under Slovak law as under the law under which such person was established the law under which such person was established also governs the foreign person’s internal legal relations and their members’ or shareholders’ liability for the person’s obligations***” and “***foreign persons having the right to conduct entrepreneurial activity abroad are considered to be entrepreneurs under this act.***”
- Declaration of the theory of incorporation as the legal basis for the determination of a legal person’s personal status in the Slovak Republic (versus real seat theory)

Entrepreneurial activities performed by foreign persons IV.



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- Under the provisions of the Commercial Code, and for the purpose of its entrepreneurial activity, a foreign person may
 - i. participate in the founding of a Slovak legal person (together with other founders),
 - ii. become the sole founder of a Slovak legal person,
 - iii. participate as a shareholder or a member in an already existing Slovak legal person,
or
 - iv. become the sole shareholder of an already existing Slovak legal person.
- Foreign persons have the same rights and obligations as Slovak persons.
- The Commercial Code also states that a Slovak person may only be established under Slovak law unless a legal act or European Union law states otherwise.

***United kingdom
Law:***

Company – UK Law



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- In the Companies Acts, unless the context otherwise requires
 - “company” means a company formed and registered under Companies Act, that is
 - a company so formed and registered after the commencement of this Part, or
 - a company that immediately before the commencement of this Part
 - a. was formed and registered under the Companies Act 1985 (c. 6) or the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)), or
 - b. was an existing company for the purposes of that Act or that Order, (which is to be treated on commencement as if formed and registered under this Act).

Private companies



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European Union

- **Limited by Shares:** The most popular for-profit structure. Ownership is divided into shares. If the company fails, shareholders are only liable for the amount unpaid on their shares (usually **£1**).
- **Limited by Guarantee:** Common for non-profits and charities. There are no shares or shareholders; instead, "guarantors" agree to pay a small fixed amount (often **£1**) if the company is wound up.
- A private company **cannot** offer its shares to the general public.

Public companies



Funded by the
European Union

- **Capital Requirement:** Must have a minimum allotted share capital of **£50,000**, with at least 25% (**£12,500**) paid up.
- **Governance:** Requires at least **two directors** and a **qualified company secretary**.
- **Public Trading:** Only PLCs can list on a stock exchange (like the London Stock Exchange) to sell shares to the public.

Community interest companies



Funded by the
European Union

- A type of limited company designed for social enterprises. It has an "asset lock," ensuring that profits and assets are used for the benefit of the community rather than private gain.

Characteristic features of companies:

Characteristic features of companies I.



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- Slovak legal theory categorizes companies as **personal** and **capital**
- The typical features of **personal companies** mainly include
 - partners' joint and unlimited liability for obligations of the company and partners' entitlement to act on behalf of the company arising from their position as partners.
 - The existence of a company usually depends on the existing partners' participation in the company.
 - The obligation to provide a contribution to the company and the obligation to create registered capital are not required for a company's establishment.

Characteristic features of companies II.



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- Capital companies are characterized by
 - The limited liability or non-liability of shareholders for the company's obligations.
 - The shareholders' participation in a company as such does not entitle them to act on behalf of the company.
 - The obligation to make a contribution to a company in a set amount, by which the registered capital of the company is created is one of the conditions for a shareholder's participation in the company.
 - Creation of company's bodies.

Characteristic features of companies III.



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- An unlimited company belongs to the group of personal companies.
- A limited liability company, a joint stock company, and a simple joint stock company are categorized as capital companies.
- A limited partnership has a combined character because it has features of a personal and capital type of a company.

Characteristic features of companies IV.



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- Kraakman et al. identifies these five characteristic features of the modern capital company:
 - separate legal personality,
 - limited liability or non-limited liability of partners /shareholders,
 - transferability of business shares and shares,
 - centralized management governed by directors/members of the board of directors, and
 - (residual) ownership of the company based on legal capital contributions

Characteristic features of companies V.



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- legal personality,
- limited liability of shareholders,
- transferability of business shares,
- separation of ownership from management (the separation of ownership from management and actions conducted on behalf of the company toward external entities).

Legal personality I.



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- The character of a capital company depends on its legal personality, which represents one of its main features.
- The legal personality of a capital company is separate from the legal personality of its founders, partners/shareholders. According to Kraakman et al., **equity autonomy ensuring the protection of (the equity of) the company against the claims of the company's creditors (entity shielding) is the core of its legal personality**
- In general, the legal personality allows the company:
 - i. to enter into contractual relationships in its own name,
 - ii. to own movable and immovable assets,
 - iii. to sue and be sued in its own name,
 - iv. to empower other persons to act on its behalf, and others

Legal personality II.



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- Fiction theory
- Contractual theory
- Realist theory
- Salomon v Salomon & Co Ltd
- Foundation stone of the company law
- Who acts on behalf of the company?
- Corporate law permits a corporation to operate as a single contracting party that is distinct from the various individuals who own or manage the corporation
- Corporation is the owner of assets that are distinct from other assets owned by the corporation's owners (the shareholders)

Limited liability I.



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- The limited liability of a company's partners/shareholders is one of the defining features of the modern capital company.
- The core of this defining feature is the fact that the company's creditors **may only assert claims against the property of the company and not its partners/shareholders**
- The concept of limited liability ensures the **protection of the property of partners/shareholders against the claims of the company's creditors (owner shielding)** and represents a mirror concept for the protection of (the property) the company against the claims of the company's creditors (entity shielding).

Limited liability II.



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- The concept of partners/shareholders protection (owner shielding) as the basis of the limited liability and the concept of the protection of (the property) the company (entity shielding) as the basis of the legal personality together represent the regime of the equity separation (asset partitioning) of partners/shareholders and the company.
- The defining feature of a limited liability company is its equity autonomy built on the basis that the company is responsible for its obligations with its entire property.
- **Company's creditors shall assert their claims primarily against the limited liability company and its property**, whereas contractual relationships are concluded between a company and a specific creditor

Limited liability III.



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- The liability of partners/shareholders is established by law.
 - They are liable for the company's obligations in the amount of their unpaid contribution registered in the Commercial Register as stipulated by Section 106 of the Commercial Code.
- **! The concept of limited liability does not work in the case of qualified misuse of the corporate form by the shareholders – in that case the shareholders can be also held liable for the debts of the corporation = *piercing the company veil*!**
- Case law / statutory basis
- De facto and shadow directors
- Liability matters in a group of companies

Transferability of shares I.



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- **Transferability of shares**
 - permits the corporation to conduct business uninterruptedly as the identity of its owners changes so that a member withdrawal is not necessary
 - makes it easier for shareholders to construct and maintain diversified investment portfolios
 - enables the free transferability of all of a corporations' contracts taken together in case all the shares are transferred to a third party

Transferability of shares II.



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- Public v private company
- Free tradability
 - maximizes the liquidity of shareholdings and the ability of shareholders to diversify their investments
 - gives the company maximal flexibility in raising capital
 - makes it sometimes difficult to maintain negotiated arrangements for sharing control in participating in management
- Limitations on transferability?

Transferability of shares – UK Law



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- **Transferability of shares**
 - The shares or other interest of any member in a company are transferable in accordance with the company's articles.
 - This is subject to—
 - the Stock Transfer Act 1963 (c. 18) or the Stock Transfer Act (Northern Ireland) 1963 (c. 24 (N.I.)) (which enables securities of certain descriptions to be transferred by a simplified process), and
 - regulations under Chapter 2 of Part 21 of this Act (which enable title to securities to be evidenced and transferred without a written instrument).
- See Part 21 of this Act generally as regards share transfers.

Separation of ownership from control of a company I.



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- The partner/shareholder is in the position of residual owner, whereas it achieves benefits from the company only if the claims of the company's creditors, employees, state and of other entities are met.
- The company's statutory body interpreting the will of the company to external entities, acts on behalf of the company towards such external entities, whereas the company as a legal entity does not have "hands and mouth."
- The mechanism **creating the will of the company** depends on the specific form of the company.
- The concept of the separation of ownership and control was described in detail by Berle and Means who determined that the **governance and control of a company are in the hands of those persons who do not own the company and are not its majority partners/shareholders.**

Separation of ownership from control of a company II.



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- The control and ownership of a capital company are separated.
- In the context of Slovak company law, it means that the ownership of the company is separated from the management of the company and from acting on behalf of the company towards external entities, whereas it is a capital and not personal company.
- Only a natural person may be the statutory body of a limited liability company, joint stock company and simple joint stock company, but this person does not have to be a shareholder (typical for a cooperative)

Separation of ownership from control of a company III.



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- The management of a company may be determined as an internal competence, within which the will of the company is created and subsequently reflected in legal acts taken by the company's directors as statutory bodies or by other persons acting on behalf of the company on the basis of a legal or contractual empowerment.
- Although the management of a company is the main element of the company's conduct towards external entities, not every company's management is reflected in legal acts conducted towards external legal entities.

Separation of ownership from control of a company IV.



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- It is not possible to define **management in the context of companies**.
- Its content varies depending on the size of the company or the size of the company's enterprise, the subject of the entrepreneurial activity, the organizational structure, and others, and therefore, it constitutes an open concept of company law.
- To define and precisely determine the concept of the company's management would lead to the limitation of the necessary openness of this concept which is essential with regard to the various creations of the will within a company.



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THANK YOU FOR YOUR
ATTENTION!

Subject Comparative Company Law in the context of the EU Law was supported by project: Jean Monnet Actions - GRANT AGREEMENT - Project 101176603 — EUTax and Corporate Law

7th Assignment (Partnership And Limited Partnership)

After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

Characteristics and Structure of Partnerships – Definition and types of partnerships under Slovak law, including general partnerships (GP) and limited partnerships (LP).

Liability of Partners – Differences in liability between general and limited partners, and whether liability can be contractually excluded.

Governance and Membership – Statutory bodies in GPs and LPs, rules for admitting new partners, and their roles in decision-making.

Formation and Legal Requirements – Formalities of the partnership agreement, key contents, and compliance requirements.

Comparison with UK Law – Key differences between Slovak partnerships and UK partnerships.

Compulsory reading materials:

- Chapte 2 and 3 from Nevolan/Skrinar: Fundamentals of Slovak Commercial Law
- Cahn/Donald: Comparative company law

After reading the chapter, find below some questions, which will help you to prepare for the discussion in the class. Be ready to address them independently:

1. Describe the partnership according to Slovak law.
2. Describe the liability of members (partners) in a partnership according to Slovak law. Can this liability be contractually excluded?
3. Who is the statutory body of the partnership according to Slovak law?
4. Is it possible for a new member to join a partnership according to Slovak law?
5. Describe grounds for dissolution of a partnership.
6. Describe basic characteristics of a limited partnership (LP).
7. Describe the status and the liability of the limited partner and general partner in LP.
8. What are the contents and formalities of a partnership agreement (agreement of association) in a LP.
9. Who is the statutory body of the LP?
10. Describe partnership under UK law and compare it with Slovak GP.



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COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

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VII. Partnership, Limited partnership

Outline of the lecture:

- **Partnership**
 - Slovak law
 - Characteristic, Business name, Agreement of Association, Registration, Contributions,
 - Management, Distribution of profit, Statutory body, Liability, Winding-Up
 - UK law
- **Categorization Limited partnership**
 - Slovak law
 - Characteristic, Business name, Agreement of Association, Registration, Contributions,
 - Management, Distribution of profit, Statutory body
 - UK law

Slovak Law:

Partnership – Characteristics (§ 76 ComC)



- a company – legal person
- at least two persons
 - conduct entrepreneurial activity under common business name
 - are jointly and severally liable for the company's obligations with their entire property

! A natural person or legal entity may become a member with unlimited liability in only one company (§ 56 (5) ComC)!

Partnership – Business name (§ 77 ComC)



- either designation “verejná obchodná spoločnosť”
- or abbreviation “ver. obch. spol.” or “v.o.s.”
- or if the business name contains the surname of at least one of the members, it is sufficient to add “a spol.”

Partnership – Agreement of Association (§ 78 (I) ComC)



- the business name and the seat of the company,
- identification of the members by stating the business name and the seat of a legal entity or the name and residential address of a natural person,
- the company’s subject of entrepreneurial activity

!The consent of all members is required for any change of the agreement of association, unless ComC or the agreement of association stipulates otherwise! (§ 79 ComC)

Partnership – Registration in the Commercial Register



- application for registration of the company in commercial register shall be filed and signed by all members (§ 78 (2) ComC)
- Register Court has to verify from the documents submitted whether:
 - the agreement of association contains all essential elements
 - at least two shareholders are named in the agreement of association
 - the agreement of association has been signed by all the members and the authenticity of the signatures of all the members is certified (§ 7 (1) Act on the Commercial Register)

Partnership – Contributions (§ 80 ComC)



- not mandatory
- the duty of members to make contribution may be regulated by the agreement of association; in this case: the members are obliged to pay up their contributions within the period determined in the agreement of association or without undue delay after the company's incorporation
- the monetary and non-monetary contributions of members become the company's property

Partnership – Management (§ 8I ComC)



- each member is entitled to manage the business of the company within the scope of the principles agreed upon by the members
- should one or more members be authorised by the other members to manage the business of the company wholly or in part under the agreement of association, the remaining members shall lose this authority to such extent
- the authorised member is obliged to follow members' decisions made by a majority of votes; unless the agreement of association stipulates otherwise, each member shall have one vote

Partnership – Management (§ 8I ComC)



- the authorisation of a member may be withdrawn if so agreed by the other members unless the agreement of association stipulates otherwise
- the member authorised to manage the business of the company is obliged, upon request, to inform the other members on all of the company's affairs
- each member is entitled to inspect all of the company's documents

Partnership - Distribution of profit



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- profit intended for distribution shall be distributed among the members in equal proportions
- the share of profit is to be determined on the basis of the annual financial statements
- the share of profit is payable within three months of their approval

Partnership - Changes in the persons of shareholders



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- change of the agreement of association
 - another member may join the company
 - an existing member may leave the company
- ! at least two members must remain in the company!

Partnership - Statutory body



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- each of the members, unless the agreement of association stipulates that they shall act jointly
- if the agreement of association authorises only certain members to act in the name of the company in all company matters, only such members shall be the statutory body of the company and only such members are entered into the Commercial Register

Partnership - Liability



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- partnership is liable for its obligations with its entire property – direct liability
- the members are jointly and severally liable for the company's obligations with their entire property – indirect liability

Partnership - Liability in the case of a change in the persons of the members



- a member that joins a company shall also be liable for those of the company's obligations which arose before they joined the company
- in the case that a member fulfils these obligations, he/she may demand compensation from other members and reimbursement of the related costs
- if a member terminates their participation while the company is in existence, they are only liable for the obligations which arose prior to the day their participation was terminated.

Partnership - Winding-Up I.



- by a court decision
- upon the death of one of the members, unless the agreement of association permits that a deceased member's heir becomes a member, and provided that the heir claims his/her right to participation and at least two other members remain in the company,
- upon the dissolution of a legal entity which is a member,

Partnership - Winding-Up I.



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- upon declaration of bankruptcy against the property of any of the members, or upon the dismissal of a petition in bankruptcy due to lack of property,
- upon the deprivation or limitation of the legal capacity of any of the members,
- for other reasons determined in the agreement of association

Limited partnership – Characteristics



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- a partnership in which one or more members are liable for the partnership's obligations up to the amount of the unpaid parts of their investment contributions as entered in the Commercial Register (**limited partners**), and one or more members are liable for the partnership's obligations with their entire property (**general partners**)
- unless ComC stipulates otherwise, the provisions on partnership shall apply accordingly to limited *partnerships*, and the provisions on limited liability companies shall apply accordingly to the legal status of *limited partners*

Limited partnership – business name



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- either designation “komanditná spoločnosť”
- Or abbreviation “kom. spol.” or “k. s.”

! if the business name of a limited partnership contains the name of a limited partner, such limited partner shall be liable for the partnership’s obligations as a general partner !

Limited partnership – Agreement of Association I.



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- the business name and the seat of the partnership,
- identification of the members by the business name and seat of a legal entity or the name and residential address of a natural person,
- the subject of entrepreneurial activity,

Limited partnership – Agreement of Association II.



- designation of the general partners and the limited partners; for persons that are general partners, the information provided shall also include their birth registration number, if they are a natural person, or the identification number, if they are a legal entity, provided that such number was allocated; for a foreign natural person, his/her date of birth shall be provided if no birth registration number was allocated,
- the amount of each limited partner's investment contribution

Limited partnership – Agreement of Association III.



! The consent of all members is required for any change of the agreement of association, unless the law stipulates otherwise!

! The agreement of association may stipulate that the transfer of a limited partner's share to another person does not require the consent of the other members; in this case: the provisions on the transfer of shares of a private limited liability company shall apply accordingly!

Limited partnership - Registration



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- application for the registration of a limited partnership in the Commercial Register shall be filed and signed by all of its members
- Register Court has to verify from the documents submitted whether:
 - the agreement of association contains all essential elements
 - according to the agreement of association, at least one of the partners is a general partner and at least one of the partners is a limited partner,
 - the amount of the contribution of each limited partner, as determined in the agreement of association, is in accordance with the ComC,
 - the agreement of association has been signed by all the partners and the authenticity of the signatures of all the partners is certified

Limited partnership - Contributions



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- duty of contribution – only the limited partner
- the amount of contribution shall not be less than EUR 250
- the contribution shall be paid up within the period determined in the agreement of association, otherwise without undue delay after the limited partnership's incorporation or after such limited partner's participation in the limited partnership originates

Limited partnership – Management I.



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- only the general partner(s) are entitled to manage the day-to –day business of the limited partnership
 - limited partner is entitled to inspect the accounting books and accounting documents of the limited partnership and has the right to receive a counterpart of the annual financial statements
- matters other than day-to-day business shall be decided jointly by the general partners and limited partners by a majority of votes, unless the agreement of association stipulates otherwise
- each member shall have one vote, unless the agreement of association stipulates a different number of votes

Limited partnership – Distribution of profit



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- profit shall be distributed into a part intended for the limited partners and a part intended the general partners in the proportion designated in the agreement of association; otherwise it shall be distributed into two halves between them
- the part of profit intended for the general partners shall be distributed among/between them in equal proportions (unless the agreement of association stipulates otherwise)
- the part of profit intended for the limited partners shall be distributed in proportion to their paid-up contributions (unless the agreement of association stipulates otherwise)

Limited partnership – Statutory body



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- only the general partners
- unless the agreement of association stipulates otherwise, each general partner is entitled to act independently on behalf of the limited partnership

UK Law:

Partnership – legal sources



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- Partnership Act 1890 (PA)
- *Partnership is the relation which subsists between persons carrying on a business in common with a view of profit. (1(1) PA)*
 - no formal requirements for the partnership agreement
 - no register in which the existence of a partnership can be entered
 - no legal person
 - no structural separation of ownership and control
 - a mere aggregate of its partners

Partnership I.



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- the partnership property belongs to its partners; BUT: „All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.“ (20 (1) PA)
- the obligation of the partnership are obligations of the partners

Partnership II.



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- Liability (17 PA):
 - (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.*
 - (2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.*
 - (3) A retiring partner may be discharged from any existing liabilities, by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.*

Limited partnership – legal sources



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- Limited Partnership Act 1907 (LPA)
- a limited partnership must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm and one or more persons to be called limited partners (4 (1) LPA)
- is established through registration
- until the registration – is deemed a general partnership



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THANK YOU FOR YOUR
ATTENTION!

Subject Comparative Company Law in the context of the EU Law was supported by project: Jean Monnet Actions - GRANT AGREEMENT - Project 101176603 — EU Tax and Corporate Law

8th Assignment (Limited Liability Company 1)

After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

Founding and Capital Requirements in Slovak limited liability company (SLLC) and UK limited liability company (UK PLLC)– Minimum share capital, shareholder contributions, and pre-registration payment requirements.

Legal Framework and Restrictions for Shareholders– Founder restrictions in SLLC, their application to foreign persons and additional shareholder obligations.

Corporate Documents and Governance– Articles of association requirements, bylaws in SLLC, and their purpose.

Shareholder Rights, Obligations, and Agreements– Rights and duties in SLLC, shareholders' agreements, and additional obligations under Slovak law.

Business Shares and Share Transferability– Differences in share structures, transferability rules, and recognized share types in SLLC and UK PLLC.

Compulsory reading materials:

- Attached chapters from the text book: Company law
- Sections 105 – 124 of the Slovak Commercial Code
- Relevant sections of the UK CA 2006 based on the reading

Related cases studies (obligatory):

- Hickman v Kent or Romney Marsh Sheep-Breeders' Association

After reading the chapter, find below some questions, which will help you to prepare for the discussion in the class. Be ready to address them independently:

1. Basic characteristics of Slovak Limited Liability Company (SLLC)
2. Restrictions for founders / shareholders of SLLC – interpretation of Sections 105a and 105b Commercial Code (CC). Do these restrictions also apply to founders who are foreign persons within the meaning of Section 21(2) CC?
3. What is the minimum share capital of the SLLC? What is the minimum amount of the contribution of a single shareholder? Does this minimum amount of contribution apply if the SLLC has only two founders / shareholders?
4. What is the minimum share capital in UK private LLC (PLLC)? What is the minimum contribution of a founder / shareholder in PLLC?
5. In what amount must the shareholder's contribution to the SLLC be paid before registration of the SLLC in the Commercial Register (remember to distinguish between monetary contributions and non-monetary contributions)? In what amount must be paid the share capital before registration of the SLLC in the Commercial Register? Does anything change if the SLLC is established by a sole shareholder?
6. What are the formal and substantive requirements of the agreement of association of an SLLC?
7. What are substantive requirements of articles of association in PLLC?
8. Can SLLC issue bylaws? What is their purpose in the SLLC?
9. Who signs and submits the registration form of the SLLC for the Commercial Register?

10. What are the rights and obligations of a shareholder in SLLC?
11. Describe the additional obligation of the shareholders under Section 121 of the CC.
12. What is a shareholders' agreement?
13. Describe business share in SLLC and share in PLLC.
14. Describe transferability of the business share in SCCL and transferability of the share in PLLC.
15. What types of shares can we recognize in the PLLC?
16. What are class of shares in PLLC?

After reading the chapters and the relevant sections from the Slovak Commercial Code, please, solve two cases studies that I have uploaded in the section. Answer all the questions with proper argumentation and make reference to the Slovak Commercial Code and UK CA 2006. Please submit your written analyses of the case studies no later than 24 hours before our next class via Moodle. No other way of submission is possible.



Subject Comparative Company Law in the context of the EU Law was supported by project: Jean Monnet Actions - GRANT AGREEMENT - Project 101176603 — EU Tax and Corporate Law

COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

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VIII. Limited Liability Company part I

Outline of the lecture:

- **Slovak LLC / UK private LLC**
 - Constitutional documents
 - Shareholders' agreement
 - Share capital
 - Contributions
 - Business share / share
 - Transfer of business share / share
 - Shareholder rights

Slovak Law:

Slovak LLC – General description



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- LLC is a legal person (Section 56(I) CC) and it is a private company
- LLC is a company whose **share capital capital is made up of shareholders' contributions** (monetary / non-monetary)
- LLC may be founded by one person (natural and legal) and it may have a maximum of 50 founders/shareholders
- The business name of LLC must contain the designation “spoločnosť s ručením obmedzeným” (limited liability company) or abbreviations “spol. s r. o.” or “s. r. o.”

Slovak LLC – Limitations on establishment I.



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- Max. **50** shareholders
- A **single member/shareholder LLC** may not be the **single founder or single shareholder of another LLC** (applicable to foreign founders and shareholders) – will be abolished from summer 2026
- Barbora Grambličková --- BG, s.r.o. ---- GB, s.r.o. (X)
- A natural person may be a single shareholder of **not more than three LLCs** (applicable to foreign founders and shareholders) - will be abolished from summer 2026

Slovak LLC – Limitations on establishment II.



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- LLC cannot be established by a person who
 - is in the list of **tax debtors** under a special law or has registered arrears on **social contributions** under a special law;
 - this does not apply if the competent authority grants this person an approval to establish such LLC
 - is registered as an obliged party in the **register of issued authorizations to perform execution** under a special law
 - (not applicable to foreign founders and shareholders)

Slovak LLC – Liability of company and shareholders



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- **LLC** is liable for breaches of its obligations **with all of its assets**
- A **shareholder** is liable for the company's obligations **up to the amount of the unpaid proportion of their contribution entered in the Commercial Register**
 - very rare to have unpaid contribution
 - secondary liability
 - first the creditor needs to claim the debt from the LLC (not to the level of execution)
- Any consideration made by the shareholder on behalf of the LLC on the grounds of liability **shall be credited as part of the contribution of the shareholder**
- Otherwise, the shareholder may claim **reimbursement from the company**, if that is not possible from **each of the other shareholders** to the extent of their investment contributions into the registered capital of the company

Slovak LLC – Share capital and contributions I.



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- Minimum share capital is **EUR 5.000**
- Minimum contribution of shareholder is **EUR 750**
- Monetary / non-monetary contribution
 - If non-monetary contribution is made Sections 59 and 59b CC apply
- A **shareholder may not make a unilateral legal act to set off their receivable towards the LLC against the LLC's receivable regarding the paying up of the contribution** to which such shareholder has committed themselves

Slovak LLC – Share capital and contributions II.



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- **Principle of single contribution** - each shareholder may participate in the company's foundation with only one contribution (this contribution may be increased – purchase of other business share or increase of the share capital of the company)
- **Amounts of individual shareholders' contributions may be determined differently**, but each such amount must be expressed with a **positive number**, unless a special act stipulates otherwise (change from Slovak crown to EUR)

Slovak LLC – Share capital and contributions III.



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- The total value of all **individual contributions** must correspond to the value of the **company's share capital**
- If a shareholder commits themselves to making a **non-monetary contribution** to the company, the articles of association must designate the object of such non-monetary contribution and the financial sum in which the non-monetary contribution is to be included in the shareholder's contribution to which they have committed
 - Additional rule to the rules stipulated in Section 59 / 59b CC

Slovak LLC – Share capital and contributions IV.



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- Sec 59
- A shareholder's/member's investment contribution shall be the aggregate of funds (hereinafter referred to as "**monetary contribution**") and other assets that may be expressed in monetary terms (hereinafter referred to as "**non-monetary contribution**") which such shareholder/member invests in the company and through which they participate in the result of the company's entrepreneurial activity.
- A **non-monetary contribution** may only be **property with an economic value** which can be determined. It is prohibited to make investment contributions in the form of commitments to perform work or supply services.
 - Tangible / intangible assets
- **A non-monetary contribution must be paid up before the amount of registered capital is entered in the Commercial Register.**

Slovak LLC – Share capital and contributions V.



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- Sec 59
- The value of the non-monetary contribution shall be determined on the basis of an **expert opinion** which shall include a description of the non-monetary contribution, the method of valuation applied, and information whether the value of the contribution corresponds to the issue rate of the shares subscribed that are being paid up through such contribution or to the value of an accepted obligation to pay an investment contribution to the company.
- If an investment contribution or part thereof to a company is in the form of **assigning a receivable**, the provisions on assigning receivables shall apply accordingly. A shareholder/member that assigns a receivable to a company as their investment contribution is liable for the recoverability of such receivable up to the amount of their contribution. A non-monetary contribution may also be a receivable towards the company.

Slovak LLC – Share capital and contributions VI.



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- Sec 59 b
- The company's body entitled to decide on changing the amount of registered capital may decide that the value of the non-monetary contribution does not have to be determined by means of an expert opinion **if the value of the non-monetary contribution has been determined by means of an expert opinion in accordance with the legal regulations applying to valuation, where this expert opinion was not drawn up earlier than six months prior to the day when the non-monetary contribution was paid up.**
- The company's body entitled to decide on changing the amount of registered capital may decide that **the value of the non-monetary contribution does not have to be determined by means of an expert opinion if the value of the contribution is derived separately for each non-monetary contribution from the annual financial statements for the preceding accounting period, providing they were audited without reservations under a special regulation.**

Slovak LLC – Share capital and contributions VII.



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- Before filing an application for registration of a company in the Commercial Register, at least **30% of each monetary contribution** must be paid up (if there is a non-monetary contribution – in full)
- The total value of paid-up monetary contributions increased by the value of provided non-monetary contributions must amount to at least **50% of the minimum amount of share capital**
- If a LLC was founded by a **single founder**, the company may only be registered in the Commercial Register if its **share capital has been fully paid up**

Slovak LLC – Corporate documents



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- Agreement of association (2 plus more shareholders)
- Memorandum of association (single shareholder)
- Bylaws (not obligatory)
- Shareholders' agreement
- Other documents

Slovak LLC – Agreement of Association I.



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- **business name and registered office** of the company,
- **identification of the shareholders** by stating the business name and registered office of a legal entity or the name and residential address of a natural person,
- **the subject of entrepreneurial activity** (business objects),

Slovak LLC – Agreement of Association

II.



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- **the amount of share capital and the amount of contribution of each shareholder** and the amount of contributions paid up upon the company's incorporation, including the method and period for paying up such investment contributions, and in the case of non-monetary contributions, also their object and the financial sum in which the non-monetary contribution shall be included in the shareholder's contribution to which they have committed,
- names, residential addresses and birth registration numbers of the company's **first managing directors** and the **method by which they will act in the name of the company**; for a foreign natural person, his/her date of birth shall be stated, if no birth registration number was allocated,

Slovak LLC – Agreement of Association

III.



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- names, residential addresses and birth registration numbers of members of the **first supervisory board members**, if a supervisory board is established; for a foreign natural person, his/her date of birth shall be stated, if no birth identification number was allocated,
- identification of the **administrator of contributions** (Section 60 (I) CC),
- amount of **reserve fund**, if the company creates a reserve fund upon its incorporation, and the amount up to which the company is obliged to supplement the reserve fund, and the method of such supplementation,

Slovak LLC – Agreement of Association IV.



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- **benefits provided to persons participating in the company's incorporation** or in any activities aimed at obtaining a licence to conduct its activity,
- **estimated amount of the company's costs** connected with its foundation and incorporation,
- further data, if stipulated by law.

Slovak LLC – Simplified LLC I.



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- A limited liability company may also be established in a simplified manner by means of a designated **electronic form for the production of a memorandum/agreement of association**, which the Ministry of justice shall publish in the national language and in English on its website: <https://sluzby.orsr.sk/Sluzby/En/MemorandumOfAssociationSimplifiedProcedure>

Slovak LLC – Simplified LLC II.



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- Conditions :
 - the company has **no more than five founders**,
 - the company is established for the **purpose of conducting business**,
 - the company's business is limited to **selected business activities** corresponding to the list of unqualified trades pursuant to the special regulation on trading,
 - the company's business does not consist of more than **15 selected business activities** corresponding to the list of unqualified trades according to the special regulation on trading,
 - the company's **business name must include a suffix 's.r.o.'** indicating it is a limited liability company,
 - the **contributions** of the company's members shall be exclusively **monetary**,
 - the **administrator of contributions** shall be the executive / managing director;
and
 - the company **does not have a supervisory board**.

Slovak LLC - Bylaws



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- Voluntary document
- Not publicly available (opposite in joint stock company)
- Agreement of association may determine that the company shall issue bylaws to regulate its **internal organisation** and **provide more detailed regulations** relating to particular matters included in the agreement of association

Slovak LLC – Shareholders agreement



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- Section 66c CC
- By a **written agreement** between the shareholders, the parties may agree on the **mutual rights and obligations** arising from their participation in the company, especially
 - the manner and conditions of the exercise of **rights connected with their participation in the company (business shares / shares)**,
 - the manner of the exercise of rights **connected with the administration and management of the company**,
 - the conditions and extent of participation in **changes to the share capital**, and
 - collateral agreements relating to the **transfer of participation** (business share / share) in the company.
- Private and contractual agreement (different from AoA / bylaws)

Slovak LLC – Business share I.



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- It is not a property
- Other proprietary right / value
- Business share represents the **shareholder's rights and obligations** and their corresponding **participation in the company**
- The amount of the business share is determined by the proportion of a particular **shareholder's contribution** to the **company's share capital**, unless the **agreement of association stipulates otherwise**
- **Example? (SC: EUR 5000, SH 1: EUR 2500, SH 2: 2500)**
- Each shareholder may have only one **business share** (may be increased by purchase of another business share / increase of the share capital)
- A single business share may be held by **several shareholders**

Slovak LLC – Transfer of the business share I.



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- **Transfer between shareholders** - with the consent of the general meeting, a shareholder may transfer their business share to another shareholder, unless the agreement of association stipulates otherwise
- **Transfer to a third person** - A shareholder may transfer their business share to another person if the agreement of association **so permits**, the agreement of association may stipulate that the transfer of a business share to another person requires the consent of the general meeting

Slovak LLC – Transfer of the business share II.



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- A shareholder may not transfer their business share to another shareholder or another person if:
 - proceedings for winding up the company are being conducted against the company,
 - the company has been wound up by a court or under a court decision, or
 - the declaration of bankruptcy or a restructuring permit are in effect against the company.

Slovak LLC – Transfer of the business share III.



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- A shareholder **is not allowed to pass his/her business share to another shareholder or other person** even if s/he is registered as an obliged party in the register of issued authorizations to perform execution under a special law
- A person who is registered as an obliged party in the register of issued authorizations to perform execution under a special law **is not allowed to acquire a business share** in a limited liability company; this applies equally regardless of the fact of whether the acquirer of the business share shall be another shareholder of the company or a third person

Slovak LLC – Transfer of the business share IV.



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- A **contract on the transfer of a business share** must be made in **writing**, and **signatures attached thereto must be verified**
- A transferee that is not a shareholder **must declare therein that they accede to agreement of association or bylaws, if adopted**
- The transferor shall be liable for the paying up of the investment contribution by the transferee
- The **effects of a transfer of business shares** shall occur **against the company from the date of delivery of the contract on the transfer of the company's business shares**, if they do not occur until the later effect of the contract, however, not before the general meeting has approved the transfer of the business shares, if the general meeting's consent for the transfer of business shares is required by law or the agreement of association
- Different from effects of a transfer between the contracting parties

Slovak LLC – Business share II.



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- Upon the dissolution of a legal entity which is a shareholder, **the business share shall pass to its legal successor, the agreement of association may prohibit such transfer of a business share to a legal successor (mergers)**
- Business share **may be inherited**, the agreement of association may prohibit inheriting a business share, unless a single-shareholder company is concerned
- A business share may **only be divided in the case of its transfer or assignment to a shareholder's heir or legal successor**. The approval of the general meeting is required for the division of a business share.
- A **lien may be established on a business share**, the provisions of a special Act shall apply to the lien on a business share (Civil Code)

Slovak LLC – Shareholders' rights and obligations I.



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- A shareholder is obliged to **pay up their investment contribution** under the conditions and within the period stipulated by law or determined in the agreement of association, but not later **than within five years after the company's incorporation** or after the shareholder's entry into the company or after a commitment by the shareholder to make a new investment contribution – shareholder might be expelled from the company
- An agreement of association may stipulate that the general meeting is entitled to impose an **obligation on shareholders to contribute in covering the company's losses by a monetary payment** above the amount of their investment contributions up to one-half of the registered capital according to the amount of their investment contributions

Slovak LLC – Shareholders’ rights and obligations II.



Funded by the
European Union

- Shareholders shall exercise their **rights to manage the company and to supervise its activity through the general meeting** to the extent and in the manner set out in the agreement of association or bylaws
 - Jurisprudence – **broader interpretation** – not only through the general meeting
- Shareholders are **entitled to demand information on the company’s affairs** from its executive officers and to inspect the company’s documents – **duty of the directors for protection of the confidential information**

Slovak LLC – Shareholders’ rights and obligations III.



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- Shareholders are entitled to a **profit share** in proportion to the amount of their paid-up investment contribution, unless the agreement of association stipulates otherwise
- A company may pay out profit shares or distribute other resources it has only if the **conditions set out in Section 179 Subsection 3 and 4** are fulfilled and if, taking account of all the circumstances, this **does not cause the bankruptcy of the company**
- The company **must not pay interest on investment contributions to the company or advances on profit shares**

Slovak LLC – financing of the LLC



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Share capital



**Increase of the share
capital**



Debt financing

Loans / bonds



Hybrid financing

Slovak LLC –alteration of share capital



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- **Increase of the share capital**
 - Pre-emption rights
 - Effective increase – monetary / non-monetary contribution
 - Increase from profit / other own resources – equity is not increased
 - Decision of the general meeting
- **Decrease of the share capital**
 - Decisions on reducing the share capital shall be made by the general meeting. The value of the company's share capital and the amount of each shareholder's investment contribution must not be reduced to less than EUR 5.000
 - Protection of creditors

UK Law:

UK LLC – constitution

- Memorandum of association
- Articles of association
- https://www.cr.gov.hk/en/electronic/docs/M&A_SampleB-e.pdf
- https://www.cr.gov.hk/en/electronic/docs/M&A_SampleC-e.pdf
- CA 2006 reduced the significance of the MoA
- Information that were previously in MoA are in AoA



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UK LLC – Art. 17 CA 2006 – Constitution



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- Company's constitution include
 - the company's articles, and
 - any resolutions and agreements to which Chapter 3 applies (see section 29).

UK LLC – Art. 18 CA 2006 – Articles of association



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- **Articles of association**
 - prescribing regulations for the company
- Unless it is a company to which model articles apply by virtue of section 20 (default application of model articles in case of limited company), it must register articles of association.
- Articles of association registered by a company must:
 - be contained in a single document, and
 - be divided into paragraphs numbered consecutively.

UK LLC – Content of AoA



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- the appointment, removal and remuneration of directors
- the authority and power of directors
- decision- making by directors and shareholders (meetings, resolutions and voting rights)
- shares (types, rights and transfers) and dividend distributions
- administrative arrangements (means of communication, inspection of books and records, directors' indemnity and insurance)

UK LLC – Shareholders' agreement



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- Additional to AoA
- Agreement made between all or some of the shareholders and others (directors)
- Enforceable as an ordinary contract
- Only binding to the parties
- Problem – transfer of the shares – new shareholder will not be automatically party to the SHA (condition of the SPA)
- Suitable for small private companies

UK LLC – Financing/share capital



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- Capital
 - Issuing equity securities – shares
 - Borrowing
- Shareholder – undertake to contribute an agreed amount of capital
- Application for company's registration must contain information on share capital

UK LLC – Share capital



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- The statement of capital and initial shareholdings required to be delivered in the case of a company that is to have a share capital must state
 - the total **number of shares of the company** to be taken on formation by the subscribers to the memorandum of association,
 - the **aggregate nominal value of those shares**,
 - the aggregate amount (if any) to be **unpaid on those shares** (whether on account of their nominal value or by way of premium), and
 - details in respect to **each class of shares**
 - prescribed particulars of the rights attached to the shares,
 - the total number of shares of that class, and
 - the aggregate nominal value of shares of that class,

UK LLC – Alteration of share capital



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- Under s 617 CA 2006 share capital may be altered in number of ways:
 - New shares may be allotted to **increase the share capital**
 - **Reduction of share capital**
 - **Subdivision** (£1 share subdivided into 50p shares)
 - **Consolidation** (two 50p shares consolidated into (£1 share)
 - **Redenomination** (shares are denominated in a different currency)

UK LLC – Pre-emption rights



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- **Raising further capital**
- If company already has ordinary shares – **shares must be first offered in proportion to their existing holdings to these shareholders before shares are offered to outsiders** – right of first refusal or right of pre-emption
- Influence of the shareholders depends on the proportion of the shares held
- These rights prevents **dilution of shareholders' holding**

UK LLC – Share I.



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- Share is a form of property – s 541 CA 2006
 - The shares or other interest of a member in a company are **personal property** (or, in Scotland, moveable property) and are not in the nature of real estate (or heritage)
- If the company is limited by shares – this is the limit of the shareholders' liability
- Share is the way to measure the **member's interest in the company**
- Shares in a limited company having a share capital must each have a **fixed nominal value** (not the same as the market value)

UK LLC – Share II.



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European Union

- Shares may be issued in exchange for monetary or non-monetary contributions
- Shares **cannot be allotted at discount** (company must receive at least nominal value for shares)
- Shares in a limited company having a share capital may be **denominated in any currency**, and different classes of shares may be denominated in different currencies.

UK LLC – Types of shares



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1. **Ordinary shares** – one vote per share
2. **Preference shares** – priority payment of dividends
3. **Deferred shares** (founders' share) – no dividend payment until ordinary shareholders receive dividend payment – rare
4. **Redeemable shares** - shares issues with a provision that the shares may be bought back at the later date (by company or by shareholders)
5. **Non-voting shares** – similar to ordinary, but without voting rights

UK LLC – Class of shares



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- For the purposes of the Companies Acts shares are of one class if the rights attached to them are in all respects uniform (s 629 CA 2006)
- Rights connected to shares depends on the class of shares
 - Specified in AoA, terms of issue or SHA
- Generally, the rights connected to shares are:
 - i. Right to vote
 - ii. Right to dividend (when declared)
 - iii. Right to return of contributed capital and surplus assets on winding up
- Different classes of shares carry different rights

UK LLC – Transferability of shares



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- The shares or other interest of any member in a company are transferable in accordance with the company's articles
- It is typical to restrict transferability of shares in private LLC



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THANK YOU FOR YOUR
ATTENTION!

9th Assignment (Limited Liability Company 2)

After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

General Meeting in Slovak and UK LLCs – Definition, decision-making scope, quorum requirements, voting majorities, and shareholder decision-making outside the meeting.

Governance Structures, One-Tier vs. Two-Tier Systems – Differences in governance models in Slovak and UK LLCs, roles of statutory bodies, appointment and dismissal procedures.

Directors in UK and Slovak LLCs – Roles, differences between executive and non-executive directors, and distinctions between de jure, de facto, and shadow directors.

Duties and Liabilities of Managing Directors – Duty of care and loyalty, liability for breaches, contractual limitations on liability, and waiver of claims by the company.

Supervisory Board in Slovak LLCs – Necessity, scope of powers, appointment and removal of members, and relationship with the company.

Compulsory reading materials:

- Attached chapters from the text book: Company law
- Sections 125 – 153 of the Slovak Commercial Code
- Relevant sections of the UK CA 2006 based on the reading

Related cases studies (obligatory):

- Percival v Wright
- Re Smith & Fawcett Ltd

After reading the chapter, find below some questions, which will help you to prepare for the discussion in the class. Be ready to address them independently:

1. Define the general meeting in Slovak LLC (SLLC) and its scope of decision making.
2. Can there be an expansion/narrowing the statutory competence of the general meeting in SLLC (Interpret Sections 125 (1) (k) and 125 (3) of the Slovak CC)?
3. Is there a quorum required for general meeting in SCCL and UK LLC?
4. By what majority does the general meeting decide in SLLC? How do we determine the number of votes of the shareholders?
5. What is an ordinary and special resolutions in UK LLC?
6. Who convenes the general meeting in SLLC and how often? How is it in UK LLC?
7. Can shareholders in SLLC make decisions outside the general meeting? What are conditions for such decision making.
8. What is a difference between one-tier and two-tier system of governance? Which is followed in UK LLC and SLLC?
9. Who is the statutory body of the SLLC? Can the statutory body in SLLC be a legal entity person? Who appoints and dismisses the statutory body in SLLC?
10. Who is a director in the UK LLC?
11. What is the difference between executive and non-executive directors in the UK LLC?

12. How is the relationship between the company and the statutory body (managing director) regulated in SLLC? (Interpret Section 66 (6) CC)
13. What is the difference between shadow director/de facto director and de jure directors?
14. What are the duties of the managing directors? Define the duty of care and duty of loyalty in SLLC?
15. What are the duties of directors in UK LLC?
16. Describe the liability of the managing directors in the event of breach of their duties in SLLC?
17. Is it possible to limit or exclude the liability of managing directors by contract in? Is it possible to a company waive its claim for damages against the directors? Under what conditions? (answer both for SLLC / UK LLC)
18. Describe the non-compete in the context of SLLC (Section 136 CC).
19. Must a supervisory board be established in SLLC?
20. Describe the scope of powers the supervisory board in SLLC.
21. Who appoints and removes the members of the supervisory board in SLLC? How is the relationship between the company and the supervisory board member regulated? (Section 66 (6) CC)

After reading the chapters and the relevant sections from the Slovak Commercial Code, please, solve two cases studies that I have uploaded in the section. Answer all the questions with proper argumentation and make reference to the Slovak Commercial Code and UK CA 2006. Please submit your written analyses of the case studies no later than 24 hours before our next class via Moodle. No other way of submission is possible.



Subject Comparative Company Law in the context of the EU Law was supported by project: Jean Monnet Actions - GRANT AGREEMENT - Project 101176603 — EUTax and Corporate Law

COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

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VII. Limited Liability Company part II

Outline of the lecture:

- **Slovak LLC / UK private LLC**
- **General meeting**
- **Board of directors**
- **Supervisory board**

Slovak Law:

Slovak LLC – Company's bodies



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General meeting



Board of directors /
managing director



Supervisory board
(voluntary)



Two-tier system of
governance – BoD
and SB

Slovak LLC - General meeting I.



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- The GM is the supreme body of a company
- Deciding about the **core issues relevant for shareholders**
- Its powers include (Section 125 (1) Commercial Code):
 - a) the approval of the conduct of persons acting in the name of the company before its incorporation,
 - b) the approval of individual annual financial statements and individual extraordinary financial statements, and decisions on the distribution of profit or payment of losses,
 - c) the approval of the articles of association and changes thereto, unless the law stipulates otherwise,
 - d) decisions on changing the agreement of association (Section 141), provided that such decisions are entrusted to the powers of the general meeting by the law or agreement of association,
 - e) decisions on increasing or reducing the share capital, and decisions on non-monetary contributions,
 - f) the appointment, removal and remuneration of directors,
 - g) the appointment, removal and remuneration of members of the supervisory board,
 - h) the expulsion of a shareholder under Section 113 and 121, and decisions on filing a petition under Section 149,
 - i) decisions on winding up the company or changing its legal form, if permitted by the agreement of association,
 - j) decisions on the approval of a contract on sale of an enterprise or a contract on sale of a part of an enterprise,
 - k) other issues entrusted to the powers of the general meeting by the law, agreement of association or articles of association of the company.
- **The general meeting may reserve decision-making rights in matters which would otherwise fall within the powers of other bodies of the company**

Slovak LLC - General meeting II.



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- **Representation at the GM:**
 - in person or through
 - an authorised representative based on written power of attorney
 - an authorised representative must not be any of the company's director or members of the supervisory board
- online – during covid
- **GM can be called by**
 - Directors
 - Shareholders, whose contributions amount to 10% of the share capital - if the directors do not convene a general meeting to be held within one month of the delivery of such request, the shareholders are entitled to convene the general meeting themselves
 - Supervisory board, if created

Slovak LLC – General meeting – quorum/majority



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- **Quorum (to hold a GM):** If shareholders are present who hold at least one half of all votes, unless the agreement of association stipulates otherwise
- **Voting rights:** Number of votes of each shareholder shall be determined by the proportion of the value of their contribution to the amount of the company's share capital, unless the agreement of association determines a different number of votes
- **Majority (quorums to decide on a GM):**
 1. **Simple:** GM shall decide by a simple majority of votes of shareholders present, unless the law or the agreement of association requires a higher number of votes
 2. **Qualified:** specific decisions require approval by at least two thirds of all votes of shareholders. The agreement of association may determine a higher number of votes required for adoption of such decisions.
 3. Section 125 (1) a) c) d) e) Commercial Code

Slovak LLC – General meeting – notice / written invitation



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- GM should be held at least once a year
- **Notice / written invitation**
 - date and agenda of the general meeting shall be announced to shareholders within the period determined by the agreement of association, or at least 15 days before the date of the meeting
 - the general meeting shall be convened by means of a written invitation / notice, unless the agreement of association stipulates otherwise

Slovak LLC – Resolution



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- GM decides with **resolutions**
- Validity of a GM resolution might be challenged
 - by shareholder (also former), director (also former), liquidator, bankruptcy trustee, settlement administrator or member of the supervisory board
 - if it is contrary to the law, agreement of association or articles of association.
- However, such right shall expire if the entitled person fails to exercise the right within **three months from the adoption of the general meeting's decision**, or if the general meeting was not duly convened, then from the date when such person could have learned of the decision.
- Upon the petition of a shareholder, the court may rule a general meeting's decision invalid only if such violation of law, agreement of association or articles of association could limit the rights of the shareholder petitioning for such a ruling.

Slovak LLC – Shareholders' decisions outside GM



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- Director or shareholder/shareholders, whose contributions amount to 10% of the share capital, or supervisory board
 - shall submit the proposed decision to the shareholders for expressing their opinion, stating the period within which **shareholders should send their written opinion to the address of the company's registered office**
 - if a shareholder **fails to provide a statement** within the period, it applies that they **do not consent**
 - directors shall then announce the results of voting to individual shareholders - a **majority shall be counted from the total number of votes belonging to all shareholders.**
- The AoA may determine that a shareholder whose contribution amounts to less than 10% of the share capital shall also have such right.

Slovak LLC – Directors I.



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- **LCC is a legal person**, legal person acts through
 1. **directors** (direct action) or
 2. **representatives** (legal / contractual)
- LLC's statutory body **consists of one or more directors**
 - If there are several directors, each of them is entitled to act in the name of the company independently, unless the agreement of association stipulates otherwise.
 - Entered into the Commercial Register

Slovak LLC – Directors II.



Funded by the
European Union

- Director of a company may only be a **natural person** who is not registered as an obliged party in the Register of issued authorizations to perform execution under a special law at the time of making an entry in the Commercial Register
- First directors – stipulated in AoA
- Subsequent directors – resolution of the GM – simple majority needed

Slovak LLC – Directors III.



Funded by the
European Union

- **Directors' powers may be limited only by**
 1. the agreement of association or
 2. general meeting
 3. such limitation is ineffective with respect to third parties.
- Directors are appointed by the general meeting from among shareholders or other natural persons
- Decisions falling within the powers of directors on the company's business management require the consent of a **majority of directors, unless the AoA stipulates a higher number of votes.**

Slovak LLC – Directors IV.



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European Union

- **Day to day business** – management of the company – depends on the size of the company
- ComCode - directors are obliged to ensure:
 - due administration of the prescribed records and accounting,
 - to keep a list of shareholders and
 - inform shareholders about the company's affairs.
- Directors shall submit for the general meeting's approval individual annual financial statements, individual extraordinary financial statements and a proposal for the distribution of profit or payment of losses in accordance with the agreement of association or memorandum of association

Slovak LLC – Directors’ duties



Funded by the
European Union

- Directors are obliged to exercise their powers with:
 - **professional care and (due care)**
 - **in accordance with the interests of the company and all of its shareholders (loyalty)**
- Directors are obliged:
 - to obtain and take into account in their decision-making all available information relating to the subject of their decision,
 - to keep in **confidence confidential information** and facts whose disclosure to third parties could cause harm to the company or endanger its interests or the interests of the company’s shareholders, and while exercising their powers,
 - must not give priority to their own interests, the interests of only certain shareholders or the interests of third parties over the company’s interests.

Slovak LLC – Liability



Funded by the
European Union

- Directors who breach their obligations while exercising their powers are obliged to **jointly and severally compensate the damage thus caused to the company**
- **Liability for the result or for the process?**
- **Liability for absence?**

Slovak LLC – Limitation of liability



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European Union

- **Directors shall not bear liability for damage if they can prove that they proceeded in exercising their powers with**
 - professional care and
 - in good faith that they were acting in the company's interest(BJR)
- Directors shall not bear liability for any damage caused to the company by their conduct in executing a decision of the general meeting
 - this shall not apply if the general meeting's decision is contrary to legal regulations, the agreement of association or articles of association or if it concerns the obligation to file the petition in bankruptcy.
- If the company has established a supervisory board, approval of the executive officers' conduct by the supervisory board shall not relieve them of liability.

Slovak LLC – Agreements to limit liability



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European Union

- **Agreements between the company and its directors that exclude or limit the directors' liability are prohibited**
- **Neither the agreement of association nor memorandum of association may limit or exclude an directors' liability**
- **Waiver:** A company may waive claims for damages it has against its directors, or may conclude a settlement agreement with them only after three years since such claims arose, provided that the general meeting consents to such waiver and that no shareholder or shareholders whose investment contributions amount to 10% of the registered capital register their protest against such decision at the general meeting in the minutes.

Slovak LLC – Non-compete



Funded by the
European Union

- Unless additional limitations arise from the agreement of association or memorandum of association, directors must not:
 - conclude, in his/her own name or on his/her own account, **business deals related to the company's entrepreneurial activity,**
 - **mediate the company's business deals for other parties,**
 - participate in the entrepreneurial activity of another company as a member with unlimited liability, and
 - perform activities as the statutory body or a member of the statutory body or another body of another legal entity with a similar subject of entrepreneurial activity...
- The agreement of association or memorandum of association may determine the scope in which the ban on competition also applies to shareholders
- **No waiver**

Slovak LLC – Shadow / de facto director



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- Section 66 (7) Commercial Code:
 - The person who exercises the powers of the statutory body (meaning director) or member of the statutory body in actual fact **without having been appointed or designated to perform such function also has the obligations of a mandatary.** Such a person is particularly obliged to act with professional care in accordance with the interests of the company and all shareholders/members thereof. When breaching such obligations, they shall hold the same liability as the statutory body or a member of the statutory body.

Slovak LLC – Contract for the directors



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European Union

- **No employment contract (may be changed in recodification)**
- Section 66 (6) Commercial Code
 - The relationship between the company and a member of the company body or a shareholder/member involved in arranging the company's affairs shall be subject, as appropriate, to the provisions on **mandate agreements**, unless the rights and obligations are stipulated otherwise by law or by an **agreement on performance of an office** concluded between the company and the member of the company body or the shareholder/member if such an agreement on performance of an office was entered into. An agreement on performance of an office must be in writing and must be approved by the company's general meeting or in writing by all the shareholders/members who hold unlimited liability for the company's obligations. The articles of association of a joint stock company or a simple joint stock company may stipulate that an agreement on performance of the office of a member of the board of directors shall be approved by the supervisory board.

Slovak LLC – Supervisory board I.



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European Union

- The supervisory board:
 - supervises the activities of directors,
 - inspects the business and accounting books as well as other documents and checks the data contained therein,
 - reviews the financial statements which the company is obliged to draw up under a special regulation as well as proposals for the distribution of profit or payment of losses, and submits its opinion to the general meeting,
 - submits reports to the general meeting within the period determined by the agreement of association, otherwise once a year.

Slovak LLC – Supervisory board II.



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- Members of the supervisory board have the right to demand that **directors provide them with information and explanations** on all company matters, and to inspect all business and accounting books and other documents of the company
- Members of the supervisory board are elected by the general meeting
- A company's director may not be a member of the supervisory board
- The supervisory board must have at least three members
- Non-compete and liability clauses from the regulation of directors shall apply to members of the supervisory board accordingly
- Members of the supervisory board attend the general meeting. They must be given the floor whenever they request it.
- The supervisory board shall convene a general meeting if required in the company's interest

UK Law:

UK private LLC – Meetings and resolutions



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- LLC has a separate legal personality – can act only through its agents
- Delegated management – shareholders do not exercise day-to-day business, management is delegated to directors
- Usually, the business of the company shall be conducted by the board of directors (AoA)
- Some decisions must be approved by the general meeting (decisions important for the shareholders)

UK private LLC – Scope of decisions approved by shareholders



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European Union

- Alteration of company's articles (s 21 CA 2006)
- Change from private to public company (s 90 CA 2006) or vice versa (s 97 CA 2006)
- Ratification of the directors' breach of duty (s 239 CA 2006)
- Decision to wind up a company
- Shareholders play an important role in the governance of companies
- Real power and influence over the conduct of directors is more theoretical especially in bigger companies with dispersed ownership

UK private LLC – General meeting I.



Funded by the
European Union

- No requirement for private LLC to hold an annual general meeting unless the AoA provide so (obligatory for public companies)
- A private LLC is required to hold a general meeting in order to:
 - Remove a director or dismiss an auditor before the end of his / her term of office

UK private LLC – General meeting II.



Funded by the
European Union

- **GM can be called by directors at any time or by shareholders**
 - representing 10% of the voting shares
 - representing 5% of the voting shares if GM has not been held for more than 12 months
- **GM can be ordered by court**
 - For any reason if it is impractical for a GM to be called or conducted in the ordinary way

UK private LLC – General meeting III.



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European Union

- **GM can be held**
 - a. In person
 - b. By telephone (Re Associated Colour Laboratories Ltd.)
 - c. In different rooms with audio-visual links between them (Byng v. London Life Association Ltd.)
- **Proxy can be appointed – human representative**

UK private LLC – Notice I.



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European Union

- s 307 CA 2006
- More relevant in public LLC
- 21 days for Annual GM
- 14 for another GM
- 28 to remove auditor
- No business may be brought to GM unless notice is given
- Form of the notice
 - Hard copy, electronic form, website, combination

UK private LLC – Notice II.



Funded by the
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- Place, date and time
- Agenda
- Statement on the shareholders' right to appoint a proxy to attend and vote
- Notice plus circular describing the matters on the agenda – so the shareholder is able to decide whether to attend the GM
- In case of a special resolution, the full text of the resolution must be part of the notice

UK private LLC – Quorum



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- Case law – one person cannot constitute a GM, this rule was varied by the CA 2006
 - Class meeting on which only one member of the class is present
 - GM ordered by the court and the quorum will be fixed at one
- One member for companies with one member
- Two and more for other companies
- Unless AoA provide otherwise
- Quorum needs to be present in order to be able to proceed with the business of the GM (quorum to hold a GM)

UK private LLC – Resolutions



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- Decisions of the GM are expressed in resolutions
- In private LLCs resolutions are passed by GM or by written resolution procedure
- Resolution is validly passed
 - Notice of the meeting and resolution is given
 - The meeting was held in accordance of the CA 2006
- Ordinary resolution (simple majority)
- Special resolution (75% of the votes)

UK private LLC – Resolutions (special)



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- Alteration of AoA
- Change of the company's name
- Reduction of the share capital
- Voluntary liquidation
- Compulsory winding up

UK private LLC – Resolutions (written)



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- Proposed by the directors and the shareholders (members)
 - Shareholders with 5% of voting rights may require directors to circulate a resolution
- Resolution must be delivered to all of the shareholders via
 - Hard copy
 - Email
 - Website
 - Combination
- Resolution
 - How the agreement is signified
 - Period in which the resolution needs to be passed (if no time on the resolution or AoA – 28 days)

UK private LLC – Interference of the GM to management



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- LLC will usually delegate powers of management to the board, extent of such powers is determined by the AoA
- **Where such delegation of powers happened, shareholders have no power by ordinary resolution to give directions or to overrule business decisions of the board**
- By a special resolution
 - the members (shareholders) may direct the directors to take or refrain from taking a specific actions
 - No invalidation of previous actions
- The courts have taken restrictive view on the power of members to interfere into the management of the company

UK private LLC – Directors I.



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European Union

- Directors are the agents of the company
- Private LLC must have at least one director
- No definition in the CA 2006 – s 250 states: *In the Companies Acts “director” includes any person occupying the position of director, by whatever name called.*
- This term includes shadow directors
- Register of directors must be kept and Registrar of Companies must be notified of any change within 14 days

UK private LLC – Directors II.



Funded by the
European Union

- One-tier system of governance
 - **Executive directors**
 - Usually full time employees on contract of employment
 - **Non-executive**
 - Appointed to the boards of larger companies
 - Part time – independent contract rather than an employee
 - Independent view on the strategy, performance and remuneration of the executive directors

UK private LLC – Directors III.



Funded by the
European Union

- Managing director is also known as chief executive officer (CEO)
 - Responsible for day to day management of the company
- Larger companies may appoint chairman
 - This person will chair the directors and the shareholders as well
 - Chairman cannot be the CEO
- De jure director
 - Director that has been legally appointed

UK private LLC – Directors IV.



Funded by the
European Union

- De facto director
 - Has not been formally appointed but acts as a director
 - Own duties to the company
- Shadow director
 - Give instructions to directors
 - They are "lurking in the shadows"
 - Extend of the duties owed to the company are unknown

UK private LLC – Appointment of directors



Funded by the
European Union

- Appointment of directors, maximum and minimum numbers, quoracy, casting vote of the chairman – AoA
- S 157 CA 2006 – minimum age – 16
- First directors are appointed by a statement in the prescribed form
 - Signed by members
 - Signed by the directors
- Subsequent directors
 - Ordinary resolution of the GM
 - Or if stated in the AoA – decision of directors
- Act of the director is valid despite invalidity in his/her appointment

UK private LLC – Directors' duties I.



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- CA 2006 – codified the duties of the directors owed to the company
- Previously
 - Complex, web of common law, fiduciary and statutory rules and principles
 - Lack of consistency
- CA 2006 sets out 7 general fiduciary duties
 - Duty to act within powers
 - Duty to promote success of the company for the benefit of its members as a whole
 - Duty to exercise independent judgement
 - Duty to exercise reasonable care, skill and diligence
 - Duty to avoid conflicts of interest
 - Duty not to except benefits for third parties
 - Duty to declare an interest in a proposed transaction with the company

UK private LLC – Directors’ duties II.



Funded by the
European Union

- Directors owe duties to the company not the individual shareholders
- Directors owe a duty of loyalty which underprints the 7 fiduciary duties
- Duties are owned by de facto directors as well

UK private LLC – Duty to act within powers



Funded by the
European Union

- Act in accordance with the LLC’s constitution
- Only exercise powers for the purpose for which they are conferred
- AoA may restrict the powers and directors must not act outside these powers
- Misuse of powers – breach of duty – despite the action was in the interest of the company
- Acts in breach of the proper purpose can be ratified by the shareholders

UK private LLC – Duty to promote success of the company I.



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- Stems from the equitable principle that directors act - bona fide – in the best interest of the company as a whole
- s 172 (1) CA 2006: A director of a company must act in the way he considers, **in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—**
 - the likely consequences of any decision in the long term,
 - the interests of the company's employees,
 - the need to foster the company's business relationships with suppliers, customers and others,
 - the impact of the company's operations on the community and the environment,
 - the desirability of the company maintaining a reputation for high standards of business conduct, and
 - the need to act fairly as between members of the company.

UK private LLC – Duty to promote success of the company II.



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European Union

- **The duty is subjective**
 - Whether the director honestly believed that their decision - action / omission was at the time in question in the best interest of the company as a whole
- **The court will not seek its own commercial judgement but will consider all the evidence to determine what the director believed**
- No only the success of the company as a whole
- Interest of the creditors?
 - Not directly mentioned in s 172 (1) CA 2006, but in s 172 (3): The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, **to consider or act in the interests of creditors of the company.**
 - Not only the single creditor but creditors as a class

UK private LLC – Duty to exercise independent judgement



Funded by the
European Union

- s 173 CA 2006
- Duty to exercise independent judgement
- **May be considered as part of their general duty to act bona fide in the interest of the company as a whole**
- Conflicts in the case of nominations in group of companies
 - Director nominated by the holding company / mother company (outsider)
 - Interest of the company of which he / she is a director; he / she may take into account the interest of the outsider as long as this is not incompatible with his / her primary duty

UK private LLC – Duty to exercise reasonable care, skill and diligence I.



Funded by the
European Union

- Historically the standard of care was undemanding
 - Directors appointed based on their social status
 - Courts did not wish to deter people from becoming a director
- Developed by case law
 - **Director was expected to show degree and skill as may be reasonably expected from a person of his / her knowledge and experience (subjective test, no particular skills were required)**
 - Director is not bound to give continuous attention to the affairs of the company
 - Subject to normal business practice, directors may leave routine conduct of business affairs in the hands of management

UK private LLC – Duty to exercise reasonable care, skill and diligence II.



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- Case law developed robust approach to this duty
- The test shifted from a subjective test to an objective test
 - **General knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company**
 - General knowledge, skill and experience that the director has
- **Directors are obliged to acquire enough knowledge and understanding of the company's business which enable them to exercise their duties properly**
- Certain functions might be delegated – but the supervision remains
- Extent of the duty depends on the particular case

UK private LLC – Duty to exercise reasonable care, skill and diligence III.



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- Development of the duty is influenced by:
 - Expectations for more professional approach of directors towards the company
 - It is more usual to appoint qualified people
 - Contract with directors require additional skills
- However – being a director carries high risk

UK private LLC – Duty to exercise reasonable care, skill and diligence IV.



- s 174 CA 2006
- A director of a company must exercise reasonable care, skill and diligence.
- This means the care, skill and diligence that would be exercised by a reasonably diligent person with—
 - the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and
 - the general knowledge, skill and experience that the director has.

UK private LLC – Duty to avoid conflicts of interest I.



- Stemming from a general duty of loyalty
- s 175(1) CA 2006: *A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.*
- s 175 (2) CA 2006: *This applies in particular to the exploitation of any*
 - a. *property,*
 - b. *information or*
 - c. *opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity).*
- s 175 CA 2006 covers non-compete of directors

UK private LLC – Duty to avoid conflicts of interest II.



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- **Authorization by directors might be given in case of such a conflict**
 - Director / directors in question do not take part in such a decision
- Breach of this duty
 - Contract might be voidable
 - Director must account for any gains

UK private LLC – Duty not to except benefits for third parties



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- s 176 CA 2006
- A director of a company must not accept a benefit from a third party conferred by reason of—
 - his being a director, or
 - his doing (or not doing) anything as director.
- Simple terms – duty not to accept bribes
- Benefit
 - Financial
 - Non-financial

UK private LLC – Duty to declare an interest in a proposed transaction with the company



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- s 177 CA 2006:
 - *If a director of a company is in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company, he must declare the nature and extent of that interest to the other directors.*
 - *Any declaration required by this section must be made before the company enters into the transaction or arrangement.*
- Disclosure can be made
 - Written notice / general notice / at the meeting of the directors

UK private LLC – Ratifying a breach of duty



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- s 239 CA 2006 – the members can ratify a conduct by a director amounting to negligence, breach of duty or breach of trust in relation to the company
- If a director is also a member / shareholder – neither his / her votes nor the votes of any members connected with them can be included in the resolution

UK private LLC – Exception from liability



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- Any attempt to exempt a director from a liability for breach of a duty in AoA or another document is void (s 232 CA 2006)
- Insurance – s 234 CA 2006 – a company can insure its directors against liability incurred to a person other than the company for a breach of a duty, but not for the liability to pay a fine in a criminal proceedings
- Court may relieve a director of a liability
 - Whole in a part if the director has acted honestly and it appears to the court that he or she should be excused in the light of all circumstances



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THANK YOU FOR YOUR
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After completing this seminar, students should have acquired knowledge in the following main issue of the topic:

Formation and Capital Requirements – Minimum share capital for private and public joint-stock companies (JSCs), shareholder contributions, and pre-registration payment obligations.

Legal Framework and Shareholder Restrictions – Founder and shareholder restrictions in Slovak and UK JSCs, including foreign shareholder considerations.

Corporate Governance Structures – One-tier vs. two-tier governance models, roles of statutory bodies, board of directors, and supervisory boards in Slovak and UK JSCs.

Shareholder Rights, Obligations and Agreements – Shareholder rights and duties, voting rights, shareholders' agreements, and additional obligations under Slovak and UK law.

Shares, Share Classes and Transferability – Types of shares, class distinctions, and rules on transferability in Slovak and UK private and public JSCs.

Duties and Liabilities of Directors and Executives – Fiduciary duties, duty of care and loyalty, liability for breaches and limitations or exclusions of liability in Slovak and UK JSCs.

General Meeting and Decision-Making Processes – Scope of decision-making, quorum requirements, voting majorities, and the role of resolutions in Slovak and UK JSCs.



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COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

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X. Joint stock company / Public limited company

Outline of the lecture:

- **Slovak law**
 - **joint stock company** (*akciová spoločnosť*)
 - **public joint stock company** (*verejná akciová spoločnosť*)
- **UK law**
 - **public limited company**

Slovak Law:

Basic Characteristics (§ 154 ComC)



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- A joint stock company is a company
 - whose registered capital is distributed into a certain number of shares with a certain nominal value,
 - is liable for breaches of its obligations with its entire property.
- A shareholder is not liable for the company's obligations.
- Exception: piercing of corporate veil.

Public joint stock company



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- all or some of the shares of the company have been accepted for trading on a regulated market situated or operated in any of the State Parties to the Agreement on the European Economic Area
 - Slovakia: Burza cenných papierov v Bratislave (*Bratislava Stock Exchange*)
 - <https://www.bsse.sk/bcpb/>

Delisting



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- removal of a listed security from a stock exchange
- requirements for a voluntary delisting:
 - general meeting - consent of a two-third majority vote of attending shareholders
 - deposition of the decision that the company stops trading its shares on the regulated market in the Collection of Documents
 - publication of the notice of the adoption of such decision in a national periodical publishing exchange reports

Company's business name



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- must contain the designation “akciová spoločnosť” or
- the abbreviation “akc. spol.” or
- the abbreviation “a.s.”

Foundation of the Company



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- by a single shareholder - the founder is a legal entity - deed of association
- otherwise by two or more founders – memorandum of association
 - by-laws
 - a notarial deed on a legal act
- the value of the registered capital of a company - at least EUR 25,000

Mandatory content of the by-laws



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- a) the business name and registered office (seat) of the company,
- b) the subject of entrepreneurial activity (business objects)
- c) the amount of registered capital and the manner of paying up the shares
- d) the number of shares and their nominal value and form
- e) the manner of calling the general meeting, its powers and manner of decision-making,
- f) the number of members of the board of directors, supervisory board or other bodies, as well as a definition of their powers and manner of decision-making,

Mandatory content of the by-laws



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- g) the amount of the initial reserve fund and the amount the company is obliged to supplement it with, and the manner of supplementation,
- h) the manner of distributing profit,
- i) the consequences of breaching the obligation to pay subscribed shares in time,
- j) the manner of increasing and reducing registered capital, and
- k) the procedure for amending and changing the by-laws,
- l) other information, if stipulated by law.

Share



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- represents following rights of a shareholder:
 - right to participate in a company's management,
 - right to obtain profit
 - right to obtain liquidation balance in case of winding-up of the company with liquidation
- may be issued in the form of a certificated security ("certificated share"- *listinná akcia*) or in the form of a book-entered security ("book-entered share" – *zaknihovaná akcia*)
- may be issued as a registered share (*akcia na meno*) or as a bearer share (*akcia na doručiteľa*)

Priority share



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- the by-laws may determine the issuance of a type of share to which priority rights concerning dividends are attached
- the total of the nominal value of all priority shares must not exceed half of the registered capital

Transferability of shares



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- the by-laws may limit (but not exclude) **only** the transferability of **registered** shares
 - if the by-laws condition the transferability of registered shares on the company's consent, they must also set out the reasons for which the company may refuse its consent and the period in which the company is obliged both to decide in respect of the shareholder's request for consent and to notify the shareholder of such decision
 - the decision on granting consent to the transfer of registered shares shall be made by the board of directors, unless the by-laws stipulate otherwise
 - the company shall notify the shareholder in writing of the company's decision on whether consent to the transfer of shares by the shareholder has been granted
- the transferability of shares that have been accepted for trading on the registered market may not be limited

Incorporation of the Company



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- prior to company incorporation:
 - the entire value of registered capital must be subscribed
 - and at least 30% of monetary contributions must be paid up
 - a non-monetary contribution must be paid up before the amount of registered capital is entered in the Commercial Register
- the application for registration in the Commercial Register shall be filed by the board of directors and signed by all members of the board of directors

General meeting



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- the supreme body of a company
- shall be held at least once a year
- the board of directors shall send the invitation to all shareholders to the address of their registered office or residential address indicated in the list of shareholders at least 30 days before the general meeting is held; in the case of book-entered share: publication in a national periodical publishing exchange reports

The powers of the general meeting



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- a) changing by-laws, unless the law stipulates otherwise,
- b) deciding on the increase or reduction of registered capital, on the authorisation of the board of directors to increase the registered capital
- c) electing and removing members of the board of directors, unless the by-laws determine that they are elected and removed by the supervisory board
- d) electing and removing members of the supervisory board and other bodies designated by the by-laws, with the exception of members of the supervisory board elected and removed by the employees,

The powers of the general meeting



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- e) approving individual annual financial statements and individual extraordinary financial statements, deciding on the distribution of profit or payment of losses, and determining directors' fees
- f) deciding on the transformation of shares issued as certificated securities to book-entered securities and vice versa,
- g) deciding on winding up the company and on changes of legal form,
- h) deciding on stopping trade in the company's shares on an exchange and deciding on the company ceasing to be a public joint stock company,

The powers of the general meeting



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- i) approving the policy on the remuneration of members of the company's bodies and its changes; the by-laws of the company that is not a public joint stock company may stipulate that the remuneration policy is approved by the supervisory board,
- j) deciding on the approval of a contract on the transfer of an enterprise or a contract on the transfer of a part of an enterprise,
- k) deciding on other issues, which ComC or the by-laws include into the powers of the general meeting,
- l) decision to grant financial assistance.

Mandatory two-thirds majority vote of attending shareholders



- changing of the by-laws
- increasing or reducing the registered capital, authorising the board of directors to increase the registered capital
- winding up the company
- delisting
 - a notarial deed must be drawn up concerning such approval
 - by-laws may determine a higher number of votes required for the adoption of a decision by the general meeting

Special Provisions for Participation in and Voting at the General Meeting of Public Joint Stock Companies



- Voting by Correspondence
- Participation and Voting of a Shareholder at the General Meeting through Electronic Means
- Participation of a Shareholder at the General Meeting through a Representative based on a Power of Attorney

Board of directors



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- statutory body of the company
 - manages the company's activity and
 - acts in its name
- decides on all company matters, provided these are not reserved by ComC or the by-laws to the powers of the general meeting or of the supervisory board
- each member of the board of directors is entitled to act in the name of the company unless the by-laws determine otherwise
- members of the board of directors who act in the name of the company and the manner in which they do so are entered in the Commercial Register
- **By-laws, decisions of the general meeting or of the supervisory board may limit the board of directors' right to act in the name of the company, but these limitations are not effective with respect to third parties!**

Supervisory Board



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- at least 3 members
- supervises the performance of the board of directors' powers and the operation of the company's entrepreneurial activity
- members of the supervisory board are entitled to inspect all documents and records concerning the company's activities and check whether accounting records are being duly administered in accordance with the actual facts and whether the company's entrepreneurial activity is conducted in accordance with legal regulations, the by-laws and the instructions of the general meeting

UK Law:

Public limited company



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- is a company limited by shares or limited by guarantee and having a share capital
 - a) whose certificate of incorporation states that it is a public company, and
 - b) in relation to which the requirements of the Companies Act 2006, or the former Companies Acts, as to registration or re-registration as a public company have been complied with on or after the relevant date
- the name of a limited company that is a public company must end with “public limited company” or “p.l.c.” (in the case of a Welsh company, its name may instead end with “cwmni cyfyngedig cyhoeddus” or “c.c.c.”)

Minimum share capital



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- The authorised minimum capital in relation to the nominal value of a public company's allotted share capital is
 - a) £50,000, or
 - b) the prescribed euro equivalent.

Appointment of directors of public company to be voted on individually



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- at a general meeting of a public company a motion for the appointment of two or more persons as directors of the company by a single resolution must not be made unless a resolution that it should be so made has first been agreed to by the meeting without any vote being given against it
- a resolution moved in contravention of this provision is void, whether or not its being so moved was objected to at the time (but where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment applies)

Shares and contributions



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- shares **taken by a subscriber to the memorandum** of a public company in pursuance of an undertaking of his in the memorandum, and any premium on the shares, must be paid up in cash
- a public company must not accept at any time, in payment up of its shares or any premium on them, an undertaking given by any person that he or another should do work or perform services for the company or any other person
- a public company must not **allot** a share except as paid up at least as to one-quarter of its nominal value and the whole of any premium on it

Shares and contributions



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- a public company **must not allot** shares as fully or partly paid up (as to their nominal value or any premium on them) otherwise than in cash **unless**
 - a) the consideration for the allotment has been independently valued in accordance with the provisions of this Chapter,
 - b) the valuer's report has been made to the company during the six months immediately preceding the allotment of the shares, and
 - c) a copy of the report has been sent to the proposed allottee.
- duty of directors to call meeting on serious loss of capital

Secretary



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- a public company must have a secretary
- if it appears to the Secretary of State that a public company is in breach of the requirement to have a secretary, the Secretary of State may give the company a direction, which must specify:
 - a) what the company must do in order to comply with the direction, and
 - b) the period within which it must do so

Secretary



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- if a company fails to comply with the direction, an offence is committed by:
 - a) the company, and
 - b) every officer of the company who is in default
 - for this purpose a shadow director of the company is treated as an officer of the company
 - “shadow director”: a person in accordance with whose directions or instructions the directors of the company are accustomed to act



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COMPARATIVE COMPANY LAW IN THE CONTEXT OF THE EU LAW

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**XI. Proposal for a Regulation of the
European Parliament and of the Council on
the 28th Regime Corporate Legal
Framework - 'Eu Inc.'**

Reasons for and objectives of the proposal



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- need for focus on regaining competitiveness
- closing the innovation gap with other major economies
- start-ups and scale-ups – through their agility, risk-taking nature and focus on scalability - important role in driving innovation and economic growth = shaping the business landscape, increase of competition and providing a major source of job creation
- need for predictable legal framework that is conducive to growth and adapted to face the new economic challenges in an increasingly digital world
- problem: fragmentation of rules, including corporate rules, across Member States and the resulting obstacles for companies across the single market

Solution: ‘Simplified European Company’



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- a new harmonized company legal form to be introduced in the national legal orders of all Member States
- a new legal framework for innovative companies” called for a 28th regime that should:
 - introduce a new corporate form into national laws, with simplified company formation and registration
 - facilitate employee stock ownership, mechanisms to ensure more efficient dispute resolution and strong safeguards to protect employee participation rights
 - harmonize rules to enable companies to attract private investment through common fast, digital and cost- effective procedures, which would make it easier for high-growth companies to scale up in the single market and enable both the EU and third country investors to invest in companies

Main features of the harmonised limited liability company (EU Inc.)



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- EU Inc. companies are limited liability companies that can be formed by one or more natural or legal persons, from scratch or through domestic or cross-border conversions, mergers or divisions
- those companies acquire a legal personality by virtue of registration in the business register of the Member State where they have their registered office and they are recognised by every Member State.
- EU Inc. is governed by the Regulation, by its articles of association and for other matters, by national law, including the provisions implementing Union law, which applies to relevant national legal forms in the Member State in which the EU Inc. has its registered office

Main features of the harmonised limited liability company (EU Inc.)



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- a shareholder shall not be liable for the obligations of the company
- EU Inc. shall be set up for an unlimited period of time, unless provided otherwise in the articles of association

Name of the EU Inc.



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- a distinct and clear name, followed by the mention “EU Inc.” and the same principles shall apply to names of the EU Inc. branches

Articles of Association



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- need to be machine- readable and store information in structured data
- need to be drawn up in the official language or languages of the Member State of the registration and in a language customary in the sphere of international business and finance
- can be either standardised or tailor-made

Registration and Digitalisation



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- main rule: EU Inc. Companies are entitled to carry out all procedures within the scope of the Regulation fully online
- a physical presence can be requested by a public authority only in exceptional and duly justified circumstances for a legitimate objective, such as to prevent identity misuse or ensure compliance with the rules on legal capacity.
- the communications between the EU Inc. company and its shareholders including subscribers and purchasers of shares should in principle be also carried out fully online
- all company law procedures applying to an EU Inc. during its life cycle, including payments needed for these procedures, are designed to be carried out fully online, without requiring physical presence, except in exceptional and justified circumstances

Formation of an EU Inc. company



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- either through an online EU central interface, based on BRIS, allowing for a “fast-track” formation procedure within 48 hours and with a maximum cost of EUR 100
- or through a fully online formation with the national business register
- in both cases: an application form has to be submitted.
- in the case of fast-track” formation procedure - standardised articles of association are mandatory
- in other cases: standardised or tailor-made articles of association can be used
- a director who is disqualified in one of the Member States cannot become a director of an EU Inc.

Preventive control



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- Member States shall ensure that the articles of association at the time of the formation of the EU Inc. and any amendments to the articles of association shall be subject to preventive administrative, judicial or notarial control, or any combination thereof
- the control shall verify that:
 - a. the formal requirements for the articles of association are fulfilled
 - b. EU templates are used correctly
 - c. the mandatory minimum content is included
 - d. the name and the object of the EU Inc. comply with the requirements of this Regulation

Preventive control



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- the control shall verify that:
 - e. the applicants have the necessary legal capacity and have authority to represent the EU Inc. company
 - f. any considerations that are to be contributed to capital have been provided in accordance with Article 64 (4) = any part of the consideration that is to be contributed to capital shall be fully provided upon issue of the shares
 - g. the additional requirements for considerations in kind have been met in accordance with Article 65

Requirements for in-kind considerations



- considerations in kind may be contributed to capital, unless they take the form of an undertaking to perform work or supply services
- all in-kind considerations for shares shall have a determinable value
 - the value of in-kind considerations for the first shares shall be specified in the articles of association
 - where new shares are issued against a consideration in kind, the value of the consideration shall be specified in the decision on the issuance of the shares
- a report by one or more independent experts appointed or approved by an administrative or judicial authority shall be drawn up before the issuance of shares against a consideration in kind

Requirements for in-kind considerations



- the articles of association or a decision of the general meeting adopted with the same majority as required for amendments to the articles of association may waive the requirement for the experts' report for in-kind considerations or parts thereof that are not to be contributed to capital
- a decision to waive the experts' report shall be filed and made publicly available in the business register
- where an in-kind consideration has been significantly overvalued in relation to its fair value on the date on which the shares were subscribed, the shareholder who has provided such consideration shall compensate the company for the shortfall

Registered shares



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- the shares of the EU Inc. shall be dematerialised and recorded into a digital register of shares. The registration of shares into the digital register of shares shall have constitutive effect and evidence the ownership of the shares.
- shareholder rights related to a share shall take effect upon entry into the digital register of shares
- the articles of association may provide that shares are issued, recorded and transferred using distributed ledger technology or other digital solutions
- the EU Inc. company shall not have bearer shares

Transfer of shares



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- shares in the EU Inc. shall be freely transferable unless otherwise provided by the articles of association
- the transferee and the transferor shall be jointly liable to the company for any consideration for shares that is still outstanding at the time of transfer
- the transfer of shares and the registration of a transfer of shares in the digital register of shares may be concluded fully online

Transfer of shares



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- Member States shall not impose any requirements or conditions restricting the ability to conclude the transfer of shares and the registration of a transfer of shares fully online
- Member States shall not impose any additional formalities, including a requirement for a notarial deed, for the transfer to be legally valid
- the transfer of shares shall only become effective once it has been recorded in the digital register of shares

Access to public markets for shares



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- Member States shall not prohibit an EU Inc. company from seeking admission to trading of its shares on a multilateral trading facility, provided that the company complies with the applicable requirements under Union and national laws
- an EU Inc. company may seek admission to trading of its shares on a regulated market where Member States provide for that possibility in their national legislation and subject to compliance with the applicable requirements under Union and national laws

Voting rights



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- one share shall always carry one vote unless otherwise provided in the articles of association
- a shareholder may not vote differently on different shares, unless otherwise provided in the articles of association
- the articles of association may provide that a share carries no voting rights or that a share does not carry a vote in certain matters dealt with by the general meeting
- in a matter where a share does not carry a vote, that share shall not be taken into account when calculating the quorum and majority required for a decision of the general meeting

Board of directors



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- the EU Inc. company is managed by a board of directors, which can be composed of one or several directors
- at least one of them must be a Union resident
- directors are appointed by the general meeting, which may also give them binding instructions
- directors are in charge of representing the company.

Board of directors



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- they are subject to a set of duties, including the duty to act in the best interests of the company and in accordance with the articles of association
- directors are liable to the company for any breach of duty that causes loss or damage to the company
- Business judgment rule: where directors take business decisions in good faith and with reasonable care, they are protected from liability by the business judgment rule.
- directors cannot be held liable by the company where they act upon a lawful resolution of the general meeting

Meeting and voting by electronic means



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- general meetings, meetings of the board of directors and voting procedures may be organised and held fully or partly online
- as regards decisions of the shareholders, a simple majority is generally sufficient for their adoption
- as regards amendments to the articles of association and decisions affecting class rights, the Regulation provides for specific majority or approval requirements

Amendments to the articles of association



- amendments to the articles of association shall be adopted by a qualified majority of two-thirds of the votes cast, unless the articles of association provide otherwise
- in case an amendment increases the financial commitments or liability of a shareholder, such an amendment shall also require the express consent of that shareholder

Protection of class rights



- where a decision of the general meeting or of the board of directors would modify or alter the specific rights, preferences, or privileges attached to a class of shares, such decision shall not take effect without the approval of the holders of that class:
 - reducing the nominal value (if any) or the dividend rights of that class;
 - altering the order of priority for distribution of profits or liquidation proceeds
 - creating a new class of shares having rights superior to the rights attached to an existing class
- the approval shall require the qualified majority of two-thirds of the votes cast within the impacted class of shares unless the articles of association provide otherwise

Withdrawal of a shareholder



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- upon application by a shareholder of an EU Inc. company, the competent court shall order the EU Inc. and the other shareholders to acquire that shareholder's shares **if it finds that the company's affairs are being or have been conducted in a manner oppressive to him or her**
- the application referred to shall be filed against the EU Inc. company and all other shareholders
- where the competent court finds in favour of the applicant, the EU Inc. company shall, on the account of the other shareholders and in proportion to the number of shares they hold, purchase the shares held by the applicant at a price corresponding to the fair value within the period determined by the court
- the EU Inc. and the other shareholders are jointly and severally liable for the payment of the share price

Amount of capital



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- the company is not required to have a minimum amount of capital nor is it required to build up capital or legal reserves over time
- the capital of the company shall be expressed in euro or, in Member States in which the official currency is not the euro, the official currency of the Member State of registration
- where the company issues shares with a nominal value, the contribution to capital for each share shall be equal to its nominal value
- the capital shall be fully subscribed



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