

Company Law - Establishment of Companies in Iceland

[Unofficial translation from Icelandic]

ESTABLISHMENT OF COMPANIES IN ICELAND

(22 January 2013)

Foreigners have customarily established a branch of a limited company in Iceland. It is also possible to establish an independent company (subsidiary) in Iceland or buy stocks in Icelandic companies, though not in certain types of them such as those engaged in fisheries and primary fish processing.

Assistance to establish foreign companies in Iceland may, for instance, be sought by consulting a list of attorneys at the website of the Icelandic Bar Association, Álfamýri 9, 108 Reykjavík, that is, <http://www.lmfi.is> (e-mail: lmfi@lmfi.is, tel. (354) 568 5620, fax (354) 568 7057).

Icelandic company law is in line with the requirements of the company law provisions of the Agreement on the European Economic Area, and consequently EU company law.

The acts on public and private limited companies, respectively, are very similar to the Danish legislation on such companies. The main difference is the lack of provisions on employee participation in the Icelandic acts. As for the contents of the said acts the main difference is the size of the minimum stock, 4 million kronas in the case of public limited companies and 500,000 kronas for private limited companies (selling rate on 16 January 2012, 1\$= ISK 128.25). Under certain conditions the stock and accounts may be in foreign currency.

The public limited companies are mainly for many shareholders where the aim is to seek capital from the public, for instance on the stock market. Rules for the private limited companies are simpler than for the public ones. In public limited companies, the minimum is two founders, two shareholders, three directors on the board of directors, and a manager is obligatory. In private limited companies, on the other hand, the minimum is one founder, one shareholder, one director in case shareholders are four or less, and there is no obligation to have a manager. In one-party private limited companies meetings of the board of directors and shareholders are not held. The provisions on branches are similar for both types of companies except that disclosure requirements are somewhat stricter as concerns the public limited companies, and the private limited companies have to inform, upon establishment, whether there are one or more shareholders.

As for citizens of OECD countries not residing in Iceland but residing in one of those countries, they can, due to a general exemption of the Minister of Industries and Innovation, freely form limited companies in Iceland and be board members and managers (for further information, see on the website of the Ministry, Legislation/Company Law/Announcement No. 364/2009 respecting General Exemption from the Conditions of Residence of the Limited Liability Companies' Legislation).

Business operations may be conducted in a variety of forms. According to the Act respecting Firms the firm of an individual shall be his/her full name, but a first name may be abbreviated. It is also conceivable to register an **individual's firm** with District Commissioners (on an individual's identification number) and obtain a special name. The name must not be too similar to another registered name and it shall be in conformity with the Icelandic linguistic system. The Business Register at the Director of Internal Revenue, Laugavegi 166, 150 Reykjavik contains the clearest information as to which names have already been registered (e-mail: fyrirtaekjaskra@rsk.is). The registration of an individual's firm with a District Commissioner costs ISK (Icelandic kronas) 66,500. In addition thereto is a fee on account of notification of the registration of the individual's firm which shall be published in the "Legal Gazette", ISK 1,000. The individual's liability is unlimited. **General income tax** levied on individuals (including individual's firms) amounts to 22.90% for monthly income up to ISK 241,475 in 2013, 25.80% for the next monthly 498,034 and 31.80% for monthly income above 739,509. Thereto will be added **municipal tax** of 14.42% (prepayment rate). Accordingly, the tax percentage for individuals in prepayment, on the basis of monthly payments, is 37.32 % in the year 2013 for the first 241,475 kr., 40.32% of the next 484,034 kr. and 46.32 % above 739,509 kr.

Partnerships of two or more parties may be established with District Commissioners. The registration costs ISK 83,000 minimum but the fee on account of the publication of notification in the "Legal Gazette" costs to ISK 1,000. The identity number at the Director of Internal Revenue, Laugavegi 166, 150 Reykjavik, costs ISK 5,000. The liability of members of partnerships is in general unlimited, i.e. they guarantee the company's liabilities by means of their entire assets. The income tax levied on partnerships amounts to ISK 36% if it has upon request been registered as an independent taxpayer, but alternatively individual members are taxed according to shares owned in the partnership. Liability in private limited companies, on the other hand, is limited to the share capital, as will subsequently be discussed, and the income tax is 20%.

Private limited companies are registered with the **Register of Limited Companies** operated by the Director of Internal Revenue, Laugavegi 166, 150 Reykjavik (office hours 9.30 a.m. – 3.30 p.m. on weekdays, tel.:- (354) 442 1250, fax:- (354) 442 1279, e-mail: fyrirtaekjaskra@rsk.is). **The registration fee** amounts to ISK 130,500 including costs for the publication of notification in the "Legal Gazette". Identity number costs ISK 5,000. A single party may establish a private limited company and be a shareholder. In such instances a single principal may constitute the board of directors and then there is no need for holding board or shareholder meetings as is else the case (a simple entry of a decision in the company's record of minutes will do).

It is not obligatory to appoint a manager in private limited companies. **The share capital** must be paid into the company prior to its recording in the Register of Limited Companies. Liability is limited and confined to the share capital. The income tax is 20%.

Special limiting rules apply to the payment of dividend out of private limited companies and in addition thereto there is a general prohibition against granting loans and the like to shareholders of private limited companies. Share certificates are not issued in private limited companies, but certificates from the company's share register concerning ownership and even

certificates of shareholdings, while these two are not negotiable instruments as are share certificates in public limited companies in general.

In the year **2006** some amendments were made to the Act on Private Limited Companies including allowing for electronic shareholder meetings, board meetings and exchange of documents as well as requiring the approval of a remuneration policy at annual general meetings of those companies required to have an authorized accountant. In **2007** European Economic Area (EEA) Directive on cross-border merger and division was incorporated into the act whereas legal provisions on employee participation, related to the Directive, were incorporated into a special act in autumn **2008**. Tax provisions were not amended in the process. EEA rules on an electronic register of limited companies were incorporated in 2008. It was furthermore decided in **2010** that, as from 1 September **2013**, private limited companies with over 50 employees (about 1% of private limited companies) shall observe special rules on the equality of genders on the board of the company and as regards managers. In 2010 some provisions on minority protection were added. As from **2012** the **Minister** of Industries and Innovation deals with company law including registration of companies.

Stricter requirements are in various ways laid down for **public limited companies** than for private limited companies, but the public limited companies are principally intended for business operations of many parties who even intend to have their shares admitted to trading on a regulated market. In case stock exchange trade be not aimed at there is no obstruction to prevent private limited companies from having numerous shareholders and a high share capital. **The minimum share capital** in public limited companies is ISK 4 million and share certificates shall be issued in the companies (electronic registration of shares possible on certain conditions). There shall be at least two founders, a minimum of two shareholders, at least one manager and no less than three persons on the board of directors. The registration of a public limited company with the Register of Limited Companies at Laugavegi 166, 150 Reykjavik costs ISK 256,000 including the costs for registration in the "Legal Gazette". **Income tax** is 20%. Identity number costs ISK 5,000. The liability of individual shareholders is limited to their share capital. Various other rules are similar to those of private limited companies.

In the year **2006** some amendments were made to the Act on Public Limited Companies including allowing for electronic shareholder meetings, board meetings and exchange of documents as well as requiring the approval of a remuneration policy at annual general meetings of those companies required to have an authorized accountant. In **2007** European Economic Area (EEA) Directive on cross-border merger and division was incorporated into the act whereas legal provisions on employee participation, related to the Directive, were incorporated into a special act in autumn **2008**. Tax provisions were not amended in the process. EEA rules on an electronic register of limited companies were incorporated in **2008**. It was furthermore decided in **2010** that, as from 1 September **2013**, public limited companies where there are more than 50 employees (about 10% of public limited companies) shall observe special rules on the equality of genders on the board of the company and as regards managers. In the year **2010** there were enacted special rules on the convocation of general meetings in companies which have their shares admitted for trading in regulated markets (a three-week minimum as a general rule according to European Economic Area rules). In 2010 some provisions on minority protection were added.

As from **2012** the **Minister** of Industries and Innovation deals with company law including registration of companies.

Co-operative Societies are recorded with the Register of Co-operative Societies operated by the Director of Internal Revenue (at the same place as the Business Register and the Register of Limited Companies). There shall be a minimum of fifteen founders. The liability of members will be limited to the payment of a membership fee and the share of ownership of the society's funds. The registration of a co-operative society at the Register of Co-operative Societies costs ISK 256,000 including the costs for registration in the "Legal Gazette". The identity number at the Director of Internal Revenue, Laugavegi 166, 150 Reykjavik, costs ISK 5,000. **Income tax** is 20%.

No account will be given here of **more forms** of business operations, e.g. associations and foundations, except that a European company and a European Co-operative Society can be established at the Director of Internal Revenue, Laugavegi 166, 150 Reykjavik. The registration of branches costs ISK 256,000 including the costs for registration in the "Legal Gazette".

In order to establish companies for business operations it is necessary, according to the foregoing, to apply to the **Register of Firms with the District Commissioner** concerning the establishment of individual's firms, partnerships, limited partnerships and European Economic Interest Groupings, **the Register of Limited Companies at the Director of Internal Revenue** at Laugavegi 166, 150 Reykjavik, on account of the establishment of public or private limited companies and European Companies, and the Co-operative Societies' Register, at the selfsame place, on account of the establishment of co-operative societies and European Co-operative Societies. In addition to going thus to the company registers concerned an **identity number** (5,000 kr.) needs to be obtained from the Business Register at the Director of Internal Revenue and thereupon a **value-added-tax number** from the Director of Internal Revenue, Laugavegi 166, 150 Reykjavik. **Special licences** may be necessary for the business operations, yet no longer a trading permit, but trade is now connected with registered firms and shall be registered e.g. in the Register of Firms or the Register of Limited Companies.

The text of laws respecting companies, in Icelandic, may be found on the **Althingi's** (Legislative Assembly) **home page** (www.althingi.is) under the heading of "Lagasafn" along with other relevant laws, i.a. the Act respecting Annual Accounts. For an **English translation** of the Act Respecting Public Limited Companies, the Act Respecting Private Limited Companies, and the Act Respecting Foundations Engaging in Business Operations, see the home page of the Ministry of Industries and Innovation, under "Legislation" and then "Company Law," even temporarily under the elder website of the Ministry of Economic Affairs.

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