



**SILESIA
UNIVERSITY**

SCHOOL OF BUSINESS
ADMINISTRATION IN KARVINA

International Business Law

Organizational forms of entering foreign markets

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Organizational forms

More extensive prospectus

- **Advantage:**

- More accurate operating and controlling of company activities – unlike operating of contract partners
- First-hand contact with customer

- **Disadvantage:**

- High cost for maintenance
- Impact of foreign revenue tax measure
- Foreign jurisdiction – czech company can be sued abroad
- Possibility to highly protect employees by labour-law provisions
- Plenty of formalities – foundation, during operating

Organizational forms of entering foreign markets

- **joint venture**
- **Subsidiary company establishment**
 - Establishment of organizational branch abroad
 - Establishment of foreign form of corporation abroad
- **Establishment of community interest company**
- **Acquisition**
- **Merger**

Joint ventures

Form of business or production agreement between subjects from at least two countries, co-venturers share revenues, expenses and assets and also losses

Corporate ventures

- Creates incorporate person
(most commonly corporate enterprise and single-person corporation)
- **Advantages:** stability, often bigger capital
- **Disadvantages:** long time and expensive founding of a company, rigidity and time-intensive concerning changes and liquidation

Joint ventures

Contractual ventures

- Doesn't create incorporate person
 - investors just signed up to cooperate and their discretions and duties are regulated
- **Advantages:** elasticity and less financial costingness
- **Disadvantages:** some of field of international business can be reserved only for incorporate person

Joint ventures examples

Partners who take benefit from their the other partner

- Foreign company can offer e.g. Financial capital, well-known brand...
 - Domestic company puts in knowledge of local market – very often in the area of electrotechnics
 - **KONE – TELC** (institutional joint venture)
 - Finnish KONE and Japanese Toshiba Elevator and Building Systems Corporation (TELC)
 - Establishment of independent corporation „Joint-venture“ in China
 - Kone - production line
 - TELC - technology
 - KONE has 70 % and TELC 30% of shares
 - Toshiba lets KONE produce high-speed double-floor lifts with technology based on proven brand of Toshiba and Toshiba gets access to new markets
 - **Škoda - Volkswagen**



Establishing of subdivision abroad

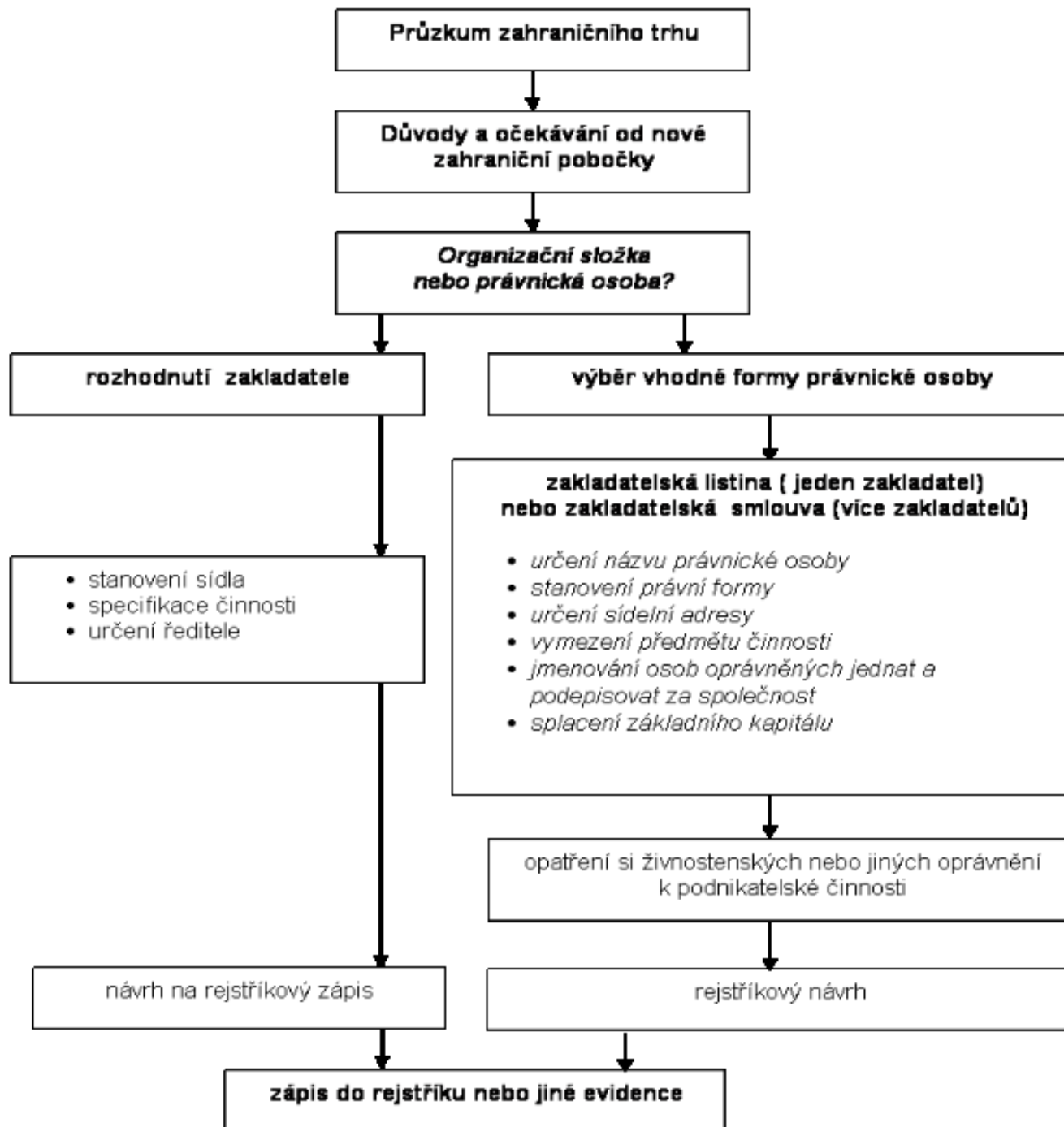
Non-independent subdivision - branch (organisation unit)

- Legal entity identical with the exporter
- Contractual relations with foreign business partners are concluded through an organisational unit. The **contractual party is always the czech exporter.**
- Subdivision which is driven by a leader represented the parent company is “only” a mediator in closing deals (concluding, mediate)

Establishing of subdivision abroad

Independent subdivision (local business company)

- Independent foreign legal entity - „daughter company“
- Not only negotiating but also entering into contracts on its behalf and on its own responsibility
- Subdivision doesn't have to be established only by one czech founder but also can be established in cooperation with other entities. They will be participating on its activity financially or otherwise



Widespread legal forms of business companies in Europe

Favorite versions of Czech „s.r.o.“

- German „GmbH“,
- Minimal basic capital 25 000 EUR
 - British „Ltd.“
- Minimal basic capital 1 GBP
 - Dutch „B.V.“
- Basic capital 18 000 EUR

Favorite versions of czech „a.s.“

- German „AG“
- Minimal basic capital 50 000 EUR
 - British „Plc“
- Minimal basic capital 50 000 GBP
 - Dutch „N.V.“
- Minimal basic capital 45 000 EUR

Current situation of corporate law in EU

- The EU single market:
 - Guarantee for all companies which are established under the law of EU member states, so called “**national treatment**”
 - Entrepreneurs have the same rights as national entities
- Legal regulations of member states are **harmonised** (european standards)
 - E.g. publicity of index data, consumer protection, protection of minority shareholders

Enterprise of foreigners in accordance to Trade and Commercial Code (national treatment)

Entrepreneurship – Trade Code (§5/2)

- *Foreign person can do business under the same conditions as citizen of the Czech republic*
 - te. Has to obtain business license in Czech
 - If the person is not from EU: there is need to document a proof of visa or residence permit

Entrepreneurship - Commercial Code (§ 21/4)

- Authorisation of foreign person to enterprising in territory of the Czech republic is created at the day of registration the person (or organisation unit) to the Commercial Register
 - *exception.: doesn't apply to natural person which is citizen of EU member states or EC or Switzerland.*

Cross border services providing

- Act. No. 222/2009 Coll., on the free movement of services
- The cross border services principle
 - Allows provider to provide services temporarily and occasionally on territory of another member state (using business license from home country)
- **Providing services by entrepreneur which has not been settled in country where the service is provided**
 - E.g. **interpreter**, who gets an offer from spanish company to interpret for czech visitor in their spanish branch; or czech carpenter who is supposed to manufacture beams in the construction of church in Slovakia

Cross border services providing

- Self-employed persons **do not have to** apply for **qualification recognition** if they want to provide cross-border service
 - It's enough is they have permission to provide those services from home country
 - Some services were excluded (permanently)
 - E.g. postal, transport and financial services, providing of health care
- Law has a system of approving **documents and meeting the criteria**
- Law also principle of **silent partnership**
 - If **trade license office** won't respond within the deadline, it's understood that the permission is approved

Participation of foreign subject in legal entity

- § 24/1 Commercial Code: A foreign person can for business purposes:
 - Participate in formation of Czech legal entity or
 - Participate as partner or member in czech legal entity already established
 - Also can establish czech legal entity by itself

In practise it's the most common form of contributing foreign capital to Czech republic

Place of business relocation

- Favorable **tax conditions**
- **Better position of majority partner** towards minority one
- **Less strict liability** of partners
- Weaker or no **participation of employees** in Supervisory Board



- ✓ of
- **workforce**
 - Lower **labour** costs
 - Financial support from local **agencies**
 - **Providing better access** to local market
 - More flexible and quality **legal system**

Possibility of place of business relocation within the EU area ?

The question of harmony with Community law – i.e. freedom of establishment

Addressed to the European Court of Justice (ECJ) several times

Daily Mail case 1988

- It was about the possibility to relocate the place of business **because of tax reasons**. From United Kingdom to Netherlands. European Court of Justice excluded this **possibility**. The primary freedom of establishment belongs only to individuals.

Centros case 1998

- **It's not possible impose a ban on registration of a brand** with justifying that the company was established according to legal order of country (in this case UK) where has no activity

Inspire Art case 2003

- Member state of EU where the branch of the company is cannot change or regulate any law concerning **minimum capital of partners** of that company

Competition of legal order in EU

Conclusion of ECJ decisions:

1. Relocation of **settlement** abroad is **not possible**
2. Establish a **company** abroad is **possible**
3. Locate a **branch** of a company abroad is **possible** =>

Decision of ECJ allowed so called **competition of legal orders**

- **entrepreneur chooses** a legal order which suits him the best for the establishing (e.g. requires the lowest minimal capital, etc.)
- Entrepreneur **moves** his activity to other country by establishing there a branch which performs subject of business.
 - *E.g. Czech entrepreneur formally established company in UK. Also establish one branch in Germany where will be actually operating the business.*

How to proceed with “relocating settlement” according to valid Czech legal order?

- Fundamental for **establishing new business company** according to legal order of member state which suits the entrepreneur the best:
 - Relocate the place of business of the company is not possible, i.e. it's necessary to cancel the company in Czech and establish a new one in another country
- **Putting in of a company (assets)** into national company to capital of new company
- Establishing some of **supranational companies** (Societas Europaea)

European supranational companies

- **Advantage:** possibility to move the settlement within EU
- Forms of European supranational companies
 - **European Economic Interest Grouping**
 - **Societas Europaea**
 - **European Cooperative Society**
- In future: **European Private Company**

European Economic Interest Grouping

Legally

- EEC Council Regulation No. 2137/1985 on the European Economic Interest Grouping
- Act No. 360/2004 Coll. On the European Interest Grouping

The purpose of this grouping is **to make easier or develop economic activity** of its members

- Its purpose is not to make profit for use of the grouping
 - Any profits arising from grouping activity is considered as profit of its members
 - **EIG cannot:**
 - Perform directly or indirectly controlling or managing authority over activities of its members or activities in different company
 - Hold shares or stocks of any kind of form in member company
 - To employ more than five hundred people
 - To be used by company for provide loans to CEO or any person connected with CEO, if those loans are limited or anyhow controlled by legal acts of member states relating to companies
 - Be member of another European Economic Interest Grouping

Establishing and settlement of EEIG

- **Establishing** by contract on grouping
- **Created** by the day of notation to certain registration list in country where is the settlement (member state of EU)
- In Czech it's **Commercial Register**
- Prerequisite for creation of EEIG is that it consists of two members (individual and legal entity) from different countries of EU
- **Settlement of the grouping can be replaced within the EU area**

Example

Inter Pool Cover Team, European economic interest grouping

The IPC Team is a European Economic Interest Grouping (EEIG), an alliance of 15 European Companies which have agreed to act in partnership to secure and fulfil contracts throughout Europe. Offers telescopic, rotated and fixed enclosures, 25 shapes, super flat and safe ground rails, the World novelties 3Seasons, Universe T, Neo Line - dome-shape & oval spa enclosures from IPC Team.

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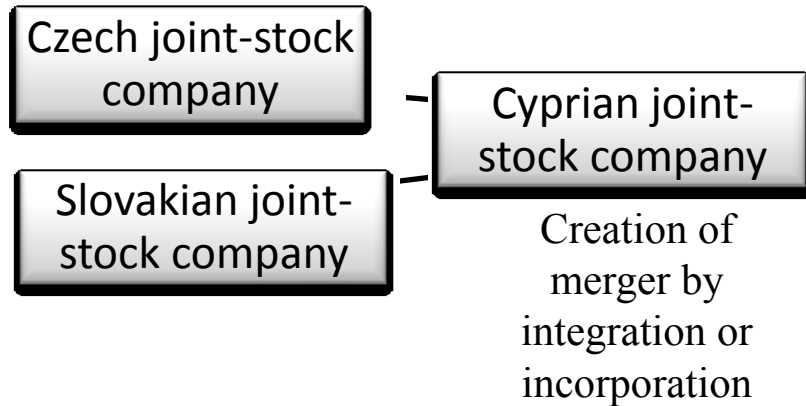


Societas Europaea

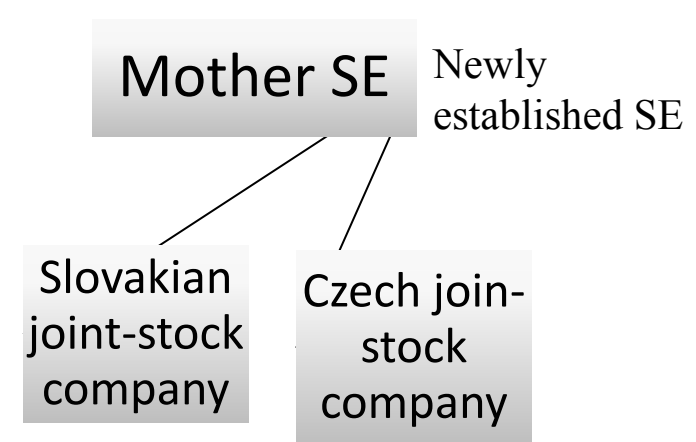
- *Legislation of Societas Europea (SE)*
 - *EU Council Regulation no. 2157/2001 – 8th of October 2001 on the European Company Statute (hereinafter only “SE Regulation”)*
 - *Act No. 627/2004 Coll., on European companies*
- Cannot be so-called “Greenfield project”
- European company prerequisite is already built business structure exceeding borders of one member state.
- E.g. cross-border **mergers** – min. 2 joint-stock companies, establishing cross-border mother holding company, **transformation** of joint-stock company which has a daughter company at least for two years on the territory of another country
- Registration takes place in the country of settlement
- **SE can relocate to another member state of EU**

The most used types in practice

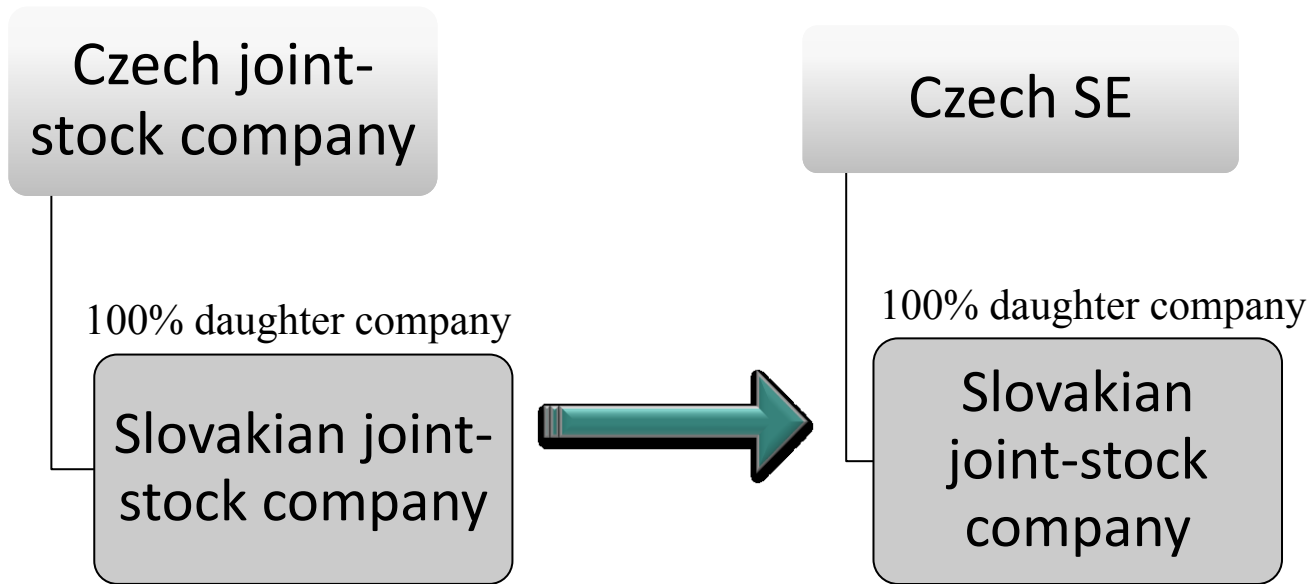
MERGER



HOLDING

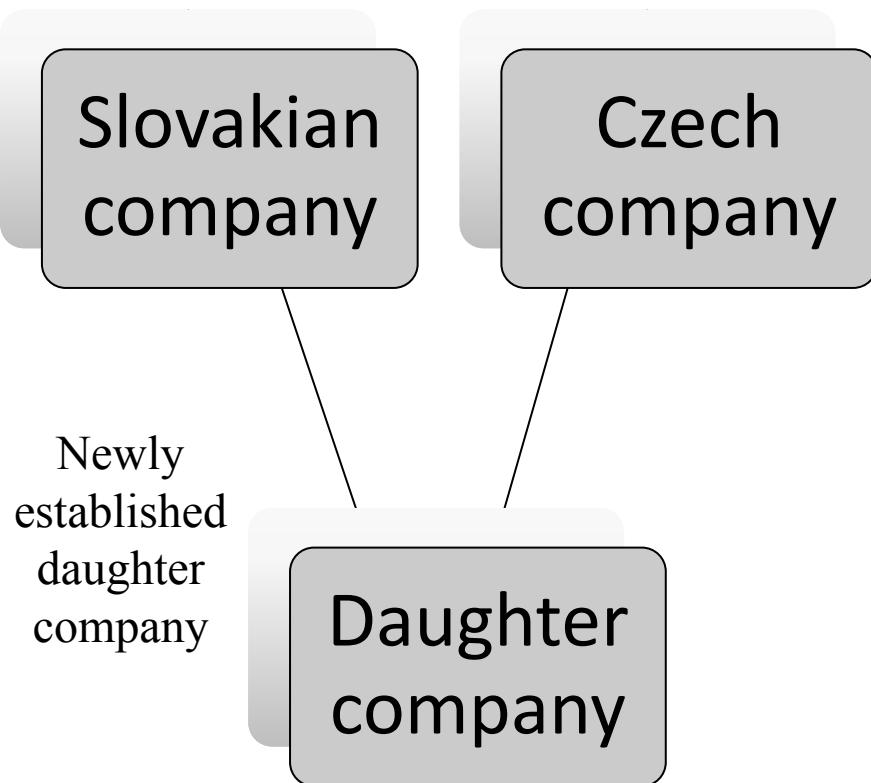


CHANGE OF LEGAL FORM

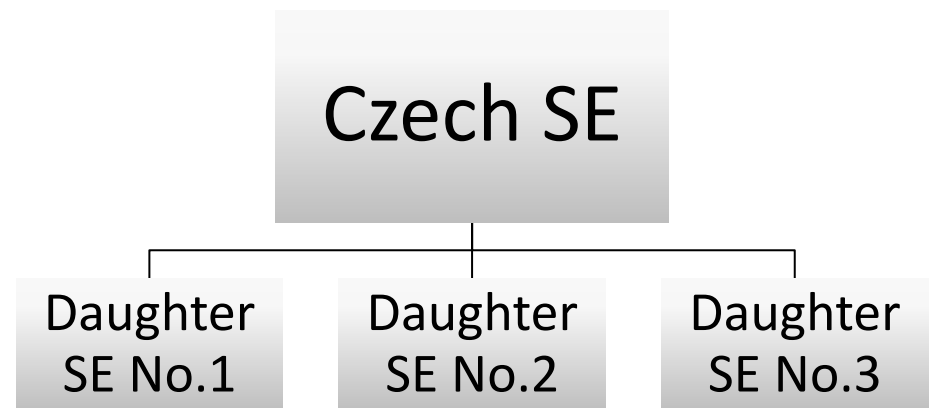


Less used types in practice

CREATING OF DAUGHTER COMPANY



DAUGHTER COMPANY OF OTHER SE



Conditions for SE

- Capital in amount of 120 000 EUR
- Liability in the amount of subscribed capital
- Possibility of choosing internal bodies of SE
 - **Monistic model** – Management Board with authority of Board of Directors and Supervisory Board headed by Chairman
 - **Dualistic model** (Board of Directors and Supervisory Board)
 - In both is minimum required member one person
- Among the biggest European companies are:
Allianz, BASF, Strabag or Porsche Automobil Holding

European Cooperative Society (ECS)

- Council regulation No. 1435/2003 on European Cooperative Society Statute
- Act No. 307/2006 Sb., on European Cooperative Society
- Main purpose:
 - Meeting the need of its members and developing their activities abroad, esp. by concluding contracts with members to deliver goods or provide services
- Minimal capital is 30 000€
- **It is possible to relocate the settlement** without liquidation

Other forms of entering new markets

- **Acquisition**

- Take over a fully operating business or part of it
 - Buying a company (e.g. buying shares) or majority of shares enough to control
- Acquisitions of competitive companies or service organisations are quite often

- **Merger**

- Can be by integration
 - or incorporation



Ex. 1 / chap. 2

Partner of domestic Ltd. (seller) Mr. Adam signed 26.1.1994 during meeting with foreign partner in Dijon, FR a contract. It was about delivering goods in fourth quarter of the year 1994. Buyer urged this deliver in January 1995 by phone and fax. After what buyer claimed his right to compensation of loss, Mr. Adam who was supposed to deliver the goods rejected it with reasoning that the contract was not legally concluded, because partner exceeded the limit of own authority while signing the contract. Buyer insisted on proceeding and when even after other negotiations the Mr.Adam's opinion didn't change, he turned to the Regional Court in České Budějovice. The Court recognized the contract as valid. Executive Director then lodged a claim to Mr. Adam for loss compensation as a result of his unlawful behavior towards the buyer.

Answer these questions:

- 1.How and under what legal standards would you judge this case?
- 2.How and under what legal standards would you decide the dispute between domestic Ltd. And acting partner – Mr.Adam?