



Twinning Czech Republic – Italy



Improvement of Legal and Institutional Environment for Business



COMPONENT E.1.2.

**REPORT ON THE REGULATORY
AND ADMINISTRATIVE BURDENS
FOCUSED ON THE LEGISLATION
ON BUSINESS LICENCES**

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Introduction

The aim of this report is to assess the regulatory and administrative burdens of the legislation on business activities. This report is the outcome of some missions of Italian experts in Prague at the Ministry of Industry and Trade, at the local Trade Licensing Office and at the Metropolitan Court of Prague.

In general, excessive regulatory burdens require businesses to bear costs in addition to ordinary business costs. This aspect could be considered a discriminatory measure for businesses and could render less advantageous the access in the Czech market for EU firms.

Small and medium firms are mostly affected by burdensome regulation, that forces them to bear additional costs for legal and other consultancy fees associated with understanding the requirements of the regulation and complying them. That means an additional cost, that joins up with business and financial costs deriving from the length of the administrative procedures.

Consequently we analyse the procedures followed by the Trade Licensing Office for the release of authorizations and licences.

The analysis has been divided into two chapters.

The first chapter contains general principles of business legislation, such as the definition of trades, the conditions to carry on a trade, the types of trade and the actors involved in the procedures.

The second chapter contains the assessment of the current administrative procedures for granting a trade certificate or a trade licence and the main critical issues of the two procedures. Moreover, it contains some suggestions to simplify them, in order to allow Czech Public Authorities to choose the instruments that could be adopted and that will be described in details in the next report.

Chapter 1 GENERAL PRINCIPLES

1.1. *Definition of Trades*

The BA in particular “*regulates the conditions for carrying on a trade, by which is understood systematic activity conducted independently, under the terms set by the BA, by an individual or legal entity, in his own name and at his own liability, for the purpose of making a profit*” (art.2 BA). The requested requisites are therefore five:

- the systematic character of the activity in question. This means that, in general, a one-time or occasional activity cannot be regarded as a trade;
- the independent decision-making on a certain activity and the independent organizing of such activity’s performance. The independence excludes a personal subordination of an entrepreneur to his contractual partner in practical conduct of a trade or a direct control of the relevant activity by such a partner. The independence also implies an independent provision of means used for carrying on a trade;
- the activity shall be conducted by the entrepreneur in his own name or in case of a company, commercial name, which is the name under which an entity is recorded in the Commercial Register or under which it was formed.
- the activity shall be conducted by the entrepreneur at its own liability (at its own account and at its own risk). This means an entrepreneur’s responsibility for the compliance with legal regulations and assumed obligations, as well as responsibility for the results of the business activity;
- the entrepreneur shall carry on a trade for the purpose of making a profit. The decisive factor is not whether a profit is or is not achieved but whether a certain activity is conducted for the purpose of making a profit.

The BA states rules for trades not for the entrepreneur. Therefore each trade must be authorized by state administration, instead of a general authorisation to exercise the right of entrepreneurship. According to art. 16 BA, an entrepreneur must apply for a trade authorisation each time he/she wants to carry on a new or different business object.

Each request for a new trade authorisation implies the submission of the required documents proving the possession of both general and special conditions.

Held by the Ministry of Industry and Trade, the Trade Register shows a higher number of trade authorisations than the number of entrepreneurs.

The BA sets the legal framework of every trade and according to other specific provisions, there are no requirements for exclusive right during a work relationship. Therefore in the Czech Republic many employees are providing some extra works for their employer on a self-employed basis. For this purpose, the employees ask for a business licence. This procedure has contributed to increase the number of business entities inscribed at the Trade Licensing Register (which are circa 2 millions) and the number of licences (that are more then 3 millions).

Art.3 of the BA indicates which are the activities that do not constitute a trade according to this Act (e.g. pharmacist, dentist, lawyer, auditor, the activities of banks, insurance companies, the stock exchange, lotteries, generation and distribution of electricity, agriculture, radio etc.) Specific laws regulate these activities.

This provision, although it mentions the activities to be left out of the BA, reveals an extremely diversified framework for the exercise of the above-mentioned activities, which implies different qualifications and administrative procedures for carrying on these activities.

1.2. Conditions to carry on a trade

A trade may be carried on by any individual or legal entity that meets the general and specific conditions set in the Business Act.

Conditions are divided into general (provided in art.6 BA) and special (articles 7, 19-27 BA and their annexes), which differ, as we will see in the next paragraph 1.3, according to the different kind of trades and licenses.

The general conditions for carrying on a trade include having reached the age of 18, the capacity to perform legal acts, a clean criminal record and the absence of tax arrears to the local tax authority. In the case of a legal entity, an individual who acts as its responsible representative must fulfill such general conditions.

Special conditions for carrying on a trade apply to the personality of the entrepreneur (art.7 BA), who must prove his professional or other skills for the conduct of the trade concerned before entering into business, i.e. when notifying a trade or applying for a license.

On the basis of a trade authorization document, the trade concerned may be carried on in more than one establishment (premise or plant). "Establishment" means the space where the trade is carried on, including stands or similar facilities, especially for the purpose of sale (art.17 BA)¹. The commencement and termination of the conduct of a particular trade in an establishment must be notified by the entrepreneur to the competent TLO². An entrepreneur is fully responsible for ensuring that his establishment qualifies for the carrying on of the trade in question, which means ensuring that the establishment meets the requirements determined by special regulations, especially in the area of construction, hygiene or safety. When requesting a trade authorization document, the entrepreneur does not have to provide the TLO with the documents proving the establishment's qualification, but he is obliged to prove such qualification to an inspection body when conducting the trade concerned. The entrepreneur must also ensure that a particular person has been appointed to be responsible for the operation of each of his establishments.

¹ *At the request of the TLO, the entrepreneur is obliged to prove his ownership title or right of use to buildings or premises at any of his establishment. If an establishment is located in a flat, which is not owned by the entrepreneur concerned, he may carry on such trade in the flat only with the approval of the owner, co-owner or manager of the flat or building where the flat is located, provided that the manager is authorized to grant the approval.*

² The TLO competent, according to the BA (see footnote 7), will notify, without delay, the commencement or termination of activity in a particular establishment to the TLO in the district where the establishment is located.

1.3. *Types of trade*

According to the Business Act (Part II, artt. 19-27), *trades* are classified into 4 categories on the basis of the trade authorisation:

1. Regulated trade, that is commercial trade, manufacturing trade and service-rendering trade requiring a trade notification to be submitted at the local competent TLO, the possession of general (art. 6 BA) and special conditions (art. 24 BA and Annex 2 BA) and the effectiveness of trade authorisation as of the date of application, except for the case of foreign individuals non EU citizens or legal entities which must be entered in the Commercial Register before starting a new business activity;
2. Crafts, requiring: general conditions and special qualification skills, according to section 21 e 22 BA and Annex 1; an application for trade notification to the competent TLO; the effectiveness of trade authorisation as of the date of application, except for the case of foreign individuals non EU citizens or legal entities which must be entered in the Commercial Register before starting a new business activity;
3. Unregulated trades, to be performed under application for trade notification to the competent TLO and the possession of general conditions, the effectiveness of trade authorisation as of the date of application, except for the case of foreign individuals non EU citizens or legal entities which must be entered in the Commercial Register before starting a new business activity;
4. Licensed trades, to be carried on upon notice of a trade licence approval (see section 53 BA), the possession of general and special conditions (art. 27 BA and Annex 3); the start-up is expected to be at the trade licence notification.

According to the abovementioned classification, trades can be divided into 2 types, on the basis of the date of the start-up of activities:

- *Notifiable trade* (trade authorisation with reference to point 1, 2, 3 previous paragraph)
- *Licensed trade* (trade licence at point 4 previous paragraph).

In Chapter 2 we will describe the procedure for the authorisation of notifiable trades and the procedure for trade licence.

1.4. *Actors involved in the procedures*

1. **Trade Licensing Offices (TLOs)**

The TLOs are organized at local level (410 municipalities, which are usually in charge only for receiving notification of unregulated trades), and at district level. The District Offices are competent for the issue of trade certificates related to regulated trades, crafts and licensed trades (they are 98 in the Czech Republic, 22 of them are located in Prague). The Parliament has recently approved the law, no. 1160, which provides for the elimination of the district offices (in conformity with the process of devolution and of the establishment and operation

of territorial self-governing units, see in particular Acts No. 132/2000 and No. 147/2000) and transferring their competence to 205 Municipalities. The 14 Regions will be competent on the appeals against the municipalities' decisions.

2. Regional and Metropolitan Courts

These offices are responsible for the Commercial Register and are organized in 7 courts (1 metropolitan court in Prague and 6 regional courts). They enforce the Commercial Code and the Civil Proceeding Code for the activities related to the registration of legal entities.

3. Individuals and legal entities

Application for a trade certificate or a trade licence can be made by Czech individuals, foreign individuals, Czech legal entities and foreign legal entities, meeting the general and special conditions stated in section 6, 7, 19-27 BA and their annexes).

A trade may be carried on through a responsible representative (Section 11 BA), in case the individual does not fulfill the special conditions for carrying on a trade. A responsible representative is an individual appointed by the entrepreneur. He is in charge of proper conduct of the trade in question and for the observance of trades licensing regulations. A responsible representative must comply with both general and special conditions for carrying on a trade, reside in the territory of the Czech Republic, give evidence of the knowledge of the Czech or Slovak language, and be able to take part in the operation within the necessary scope. Nobody can be appointed as a responsible representative for more than two entrepreneurs.

The personal representative should have a working relationship (which not imply necessarily that he should be employed by the entrepreneur) with the entrepreneur (art.11, par.1 BA). According to art. 31 the entrepreneur must ensure that the personal representative takes part in the carrying on of the trade. It should be pointed out however that the TLOs do not request the proof of a contractual engagement with the entrepreneur.

The duty to appoint a responsible representative shall apply to:

- An entrepreneur who is an individual who does not comply with the conditions for carrying on a trade (art.7 BA), unless it concerns a reportable industrial manner;
- An entrepreneur who is a foreign individual and does not have permission to stay on the territory of the Czech Republic;
- A legal entity, which has a registered office (seat) in the Czech Republic. A member of its statutory organ, or the statutory organ complying with the conditions prescribed for the function of responsible representative under this Act, will be appointed as the responsible representative. If he cannot be appointed from among these individuals, the entrepreneur shall appoint another individual as responsible representative;
- A foreign legal entity (notably a legal entity whose seat is outside the territory of the Czech Republic). The manger (head) of the foreign legal entity's organizational component located on the territory of the Czech

Republic who meets the conditions prescribed for performance of the function of responsible representative will be appointed as the responsible representative. If the manager of the organizational component does not comply with such conditions, the entrepreneur will appoint another individual as the responsible representative.

* * * *

Chapter 2 PROCEDURES

2.1. Trade certificate granting procedure

2.1.1. Description of the trade certificate granting procedure

This procedure is similar for the 3 types of notifiable trades. In fact, it starts from a request of trade notification (input) to the competent TLO and is ended by the issue of a trade certificate (output). It differs only in the case of legal entities or foreign individuals who are requested to enter in the Commercial Register. In these cases the trade notification is effective on the day of the registration at the Commercial Register. Of course this happens only for legal entities or individuals which are not already entered in the Commercial Register. On the contrary, the procedure is the same as the one for individuals.

2.1.2. Trade certificate granting procedure - Individuals

Trade certificate granting procedure involving individuals can be described according to Flowchart 1. For a better comprehension of the symbols in the following graphic representations, see Shape Description on page 12.

The individual, a Czech or foreign person, starts the procedure by preparing all prescribed documents listed in section 46 BA, which include an extract from criminal register, a document proving the absence of tax arrears to the local tax authority, documents as a proof of special qualifications (for regulated trades and crafts) and the proof of payment of administrative fees. The documents submitted by a foreign person (including EU citizens), proving certain facts to a TLO, e.g. the documents proving skills (qualifications), etc., must include a certified Czech translation (art.5 BA). Also, such a person is obliged to prove the authenticity of signatures and stamps on the originals of the submitted documents, a special approval (in Czech “*superlegalizace*”) given by the appropriate consular office is therefore needed.

This phase can last long, because of various state administrations involved and the difficulties in collecting documents, especially for foreign persons.

Then businessman must present at the relevant TLO the documentation and fill in the trade notification application form. As stated in Report on Commercial Register by Component C, application forms vary accordingly to the person and output required. They are 8, in details:

- NOTIFIABLE TRADES
 - for a Czech physical person
 - for a foreign physical person
 - for a Czech legal person
 - for a foreign legal person

- LICENSED TRADES
 - for a Czech physical person
 - for a foreign physical person
 - for a Czech legal person
 - for a foreign legal person

In the application form the individual must specify the object of the trade accordingly, in full or in part, with the classification of the Annex 1 for crafts, Annex 2 for regulated trades (almost 60 different types) and Decree 140/2000 for unregulated trades (124 “free” activities). As treated hereinafter, the extremely detailed classification of trades causes strong burdens on business activities, taking into account that the main reason of this accurate classification is a statistical purpose.

For a description of application procedures for licensed trades see paragraph 2.2.

The TLO receives the application form and the documentation and proceed to immediate control of completeness and correctness of it. Then it gives an identification number at the file and issues a copy of the application form to the applicant immediately.

Once the person has received this document, he/she can go on with the activities for the start-up of the business. If everything is ready, he/she can start the trade.

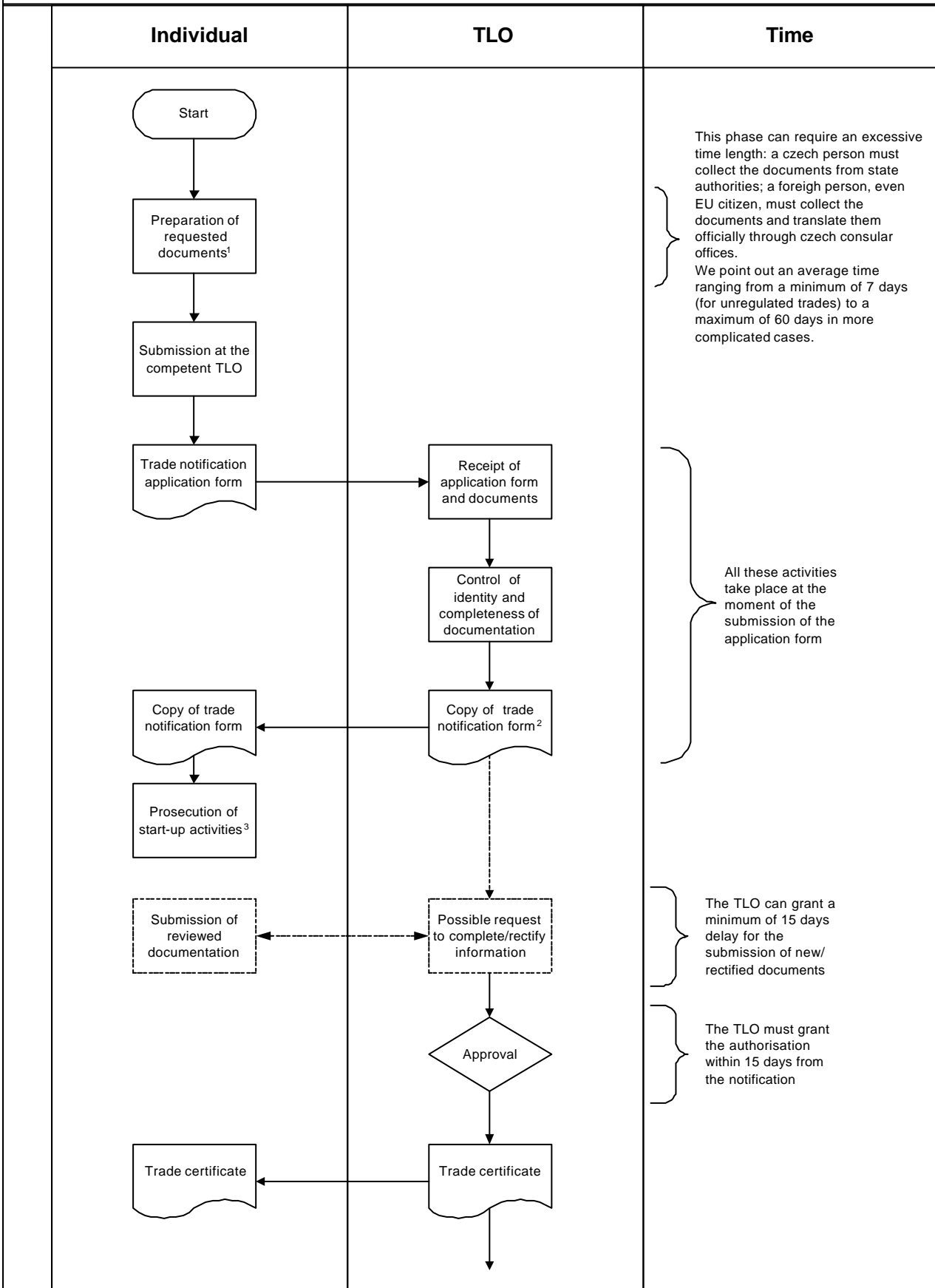
It is even possible that the documentation is incorrect and must be rectified or reissued. In this case the TLO communicates to the person this fact and gives a 15 days delay for the submission of new/rectified documents.

Then the TLO decides to grant the trade certificate (within 15 days from the trade notification) and sends it to the concerned person.

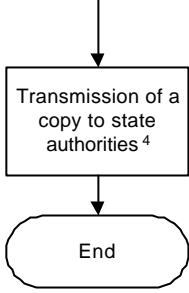
Section 47 states that if the local TLO establishes that a particular trade certificate was issued contrary to law, it shall advise the entrepreneur concerned accordingly and revoke the trade certificate and the notification shall be considered anew under Section 47. Depending on the circumstances of the case, the Trade Licensing Office shall rule that the authorization of the trade did not arise or it shall grant a new trade certificate.

The TLO shall send a copy of the trade certificate to various state administrations, even by electronic data transmission.

FLOWCHART 1
Trade certificate granting procedure - individuals



Trade certificate granting procedure - individuals

Individual	TLO	Time
	 <pre> graph TD Start(()) --> Step[Transmission of a copy to state authorities 4] Step --> End([End]) </pre>	<p data-bbox="1225 398 1390 517">This activity takes place within 30 days from the issue of the trade certificate</p>

NOTES

1 Before going to the local TLO, the involved person must collect a certain number of documents, as stated in Section 46 BA:

"...(a) an extract from the Criminal Register which is no more than three months old (hereafter referred to as "a Criminal Register extract") and, if a responsible representative has already been appointed, a Criminal Register extract relating to the responsible representative; a foreign individual shall also enclose documents under Section 6;

(b) a document confirming the skills (qualifications) of either the entrepreneur or his responsible representative;

(c) in the case of a foreign individual, documents on his stay under section 5, unless he is a citizen of one of the European Union member countries or of a country (state) with which the Czech Republic has an agreement (treaty) which does not admit any restriction under section 5, or unless he is a citizen of the Czech Republic who does not reside (stay) on the territory of the Czech Republic; a foreign individual setting up an organizational component on the territory of the Czech Republic shall also enclose a document proving that he has a business (an enterprise) outside the territory of the Czech Republic and documents on its operation;

(d) documentary evidence of the ownership title or some other right to use the buildings and/or premises where his place of business is (to be) located, if this place differs from his residential address [section 5(2)], or documentary evidence of the right to use the building or premises in which the organizational component of the foreign individual is (to be) located;

(e) an extract from the Commercial Register which is not more than three months old, if the individual is entered therein;

(f) a document proving that his trade is (or will be) carried on in an industrial manner;

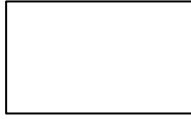
(g) an affidavit (a declaration statement) made by the responsible representative that he agrees to his appointment and the assumption of duties within the scope stipulated in this Act and stating any other entrepreneur for whom he has been appointed as responsible representative. The signature on the affidavit shall be officially authenticated, unless it is made in person before the Trades Licensing Office."

2 The competent TLO makes a copy of the application form with the receipt number and date upon it.

3 Activities can start, in principle, immediately after having handed in the trade notification application form. In most cases, the start-up process requires many other duties involving other administrative bodies, i.e. all necessary permission for buildings, hygienic measures and so on. However, individuals wait for the trade certificate before carrying on with the start-up of the business.

4 The TLO shall send a copy of trade certificate to the local tax administration office, to the czech statistical office, to the local labour office, to the social security administration, to the health insurance department and to the TLO in the district where the entrepreneur has his place of business (art. 48 BA). The trade certificate copy is sent by mail or by electronic data transmission.

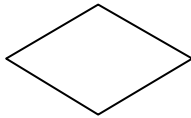
SHAPE DESCRIPTION



This symbol represents every kind of processing function, such as activities, manual operations, human actions.



This symbol represents a printed document.



This symbol represents a decision.

2.1.3 Trade certificate granting procedure - Legal entities

Trade certificate granting procedure involving legal entities can be described according to Flowchart 2. For a better comprehension of the symbols in the following graphic representations, see Shape Description on page 12.

The legal entity, a Czech or foreign one, starts the procedure by preparing all prescribed documents listed in section 46 BA, which include an extract from criminal register, a document proving the absence of tax arrears to the local tax authority, documents as a proof of special qualifications (for regulated trades and crafts) and the proof of payment of administrative fees. Obviously the whole documentation is referred to the responsible representative of the legal entity. The documents submitted by a foreign legal entity, proving certain facts to a TLO, e.g. the documents proving skills (qualifications), etc., must include a certified Czech translation (art.5 BA). Also, such a person is obliged to prove the authenticity of signatures and stamps on the originals of the submitted documents, a special approval (in Czech “superlegalizace”) given by the appropriate consular office is therefore needed.

This phase can last long, because of various state administrations involved and the difficulties in collecting documents, especially for foreign persons.

Then the responsible representative must present at the competent TLO the documentation and fill in the trade notification application form.

In the application form the responsible representative must specify the object of the trade accordingly, in full or in part, with the classification of the Annex 1 for crafts, Annex 2 for regulated trades (almost 60 different types) and Decree 140/2000 for unregulated trades (124 “free” activities). As treated hereinafter, the extremely detailed classification of trades causes excessive burdens on business activities, taking into account that the main reason of this accurate classification is a statistical purpose.

The TLO receives the application form and the documentation and proceeds to immediate control of completeness and correctness of it. Then it gives an identification number at the file and issues a copy of the application form to the applicant immediately.

It is even possible that the documentation is incorrect and must be rectified or reissued. In this case the TLO communicates to the person this fact and gives a 15 days delay for the submission of new/rectified documents.

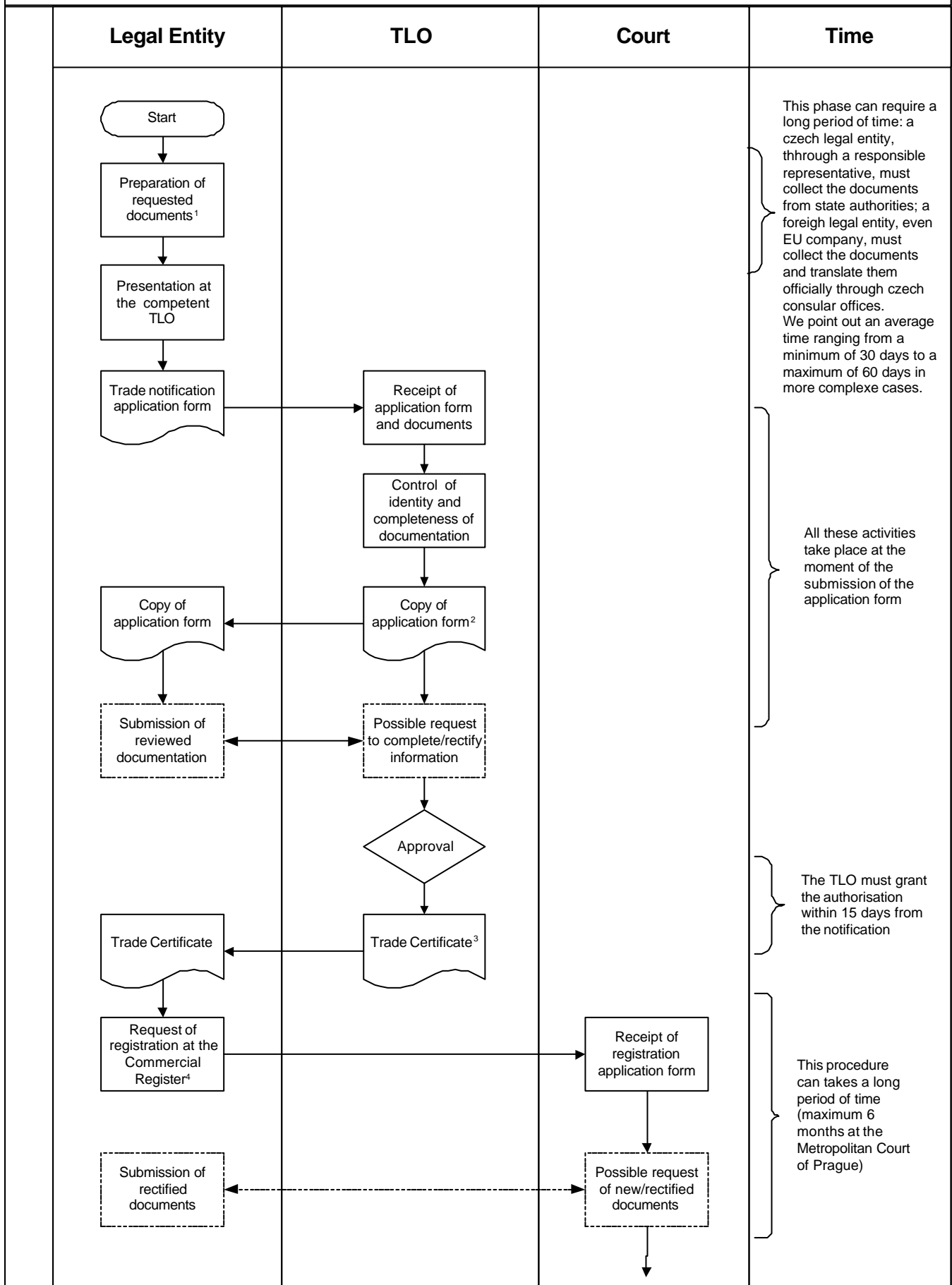
Then the TLO decides to grant the trade certificate (within 15 days from the trade notification) and sends it to the concerned person.

Once the responsible representative has received the trade certificate, he/she can go to the metropolitan or regional court to comply with the duty of registration in the Commercial Register within 90 days (art. 10 BA). In this case, the trade authorisation will not attribute the right to start the business activity immediately. The authorisation becomes effective only when the legal entity has been entered in the Commercial Register.

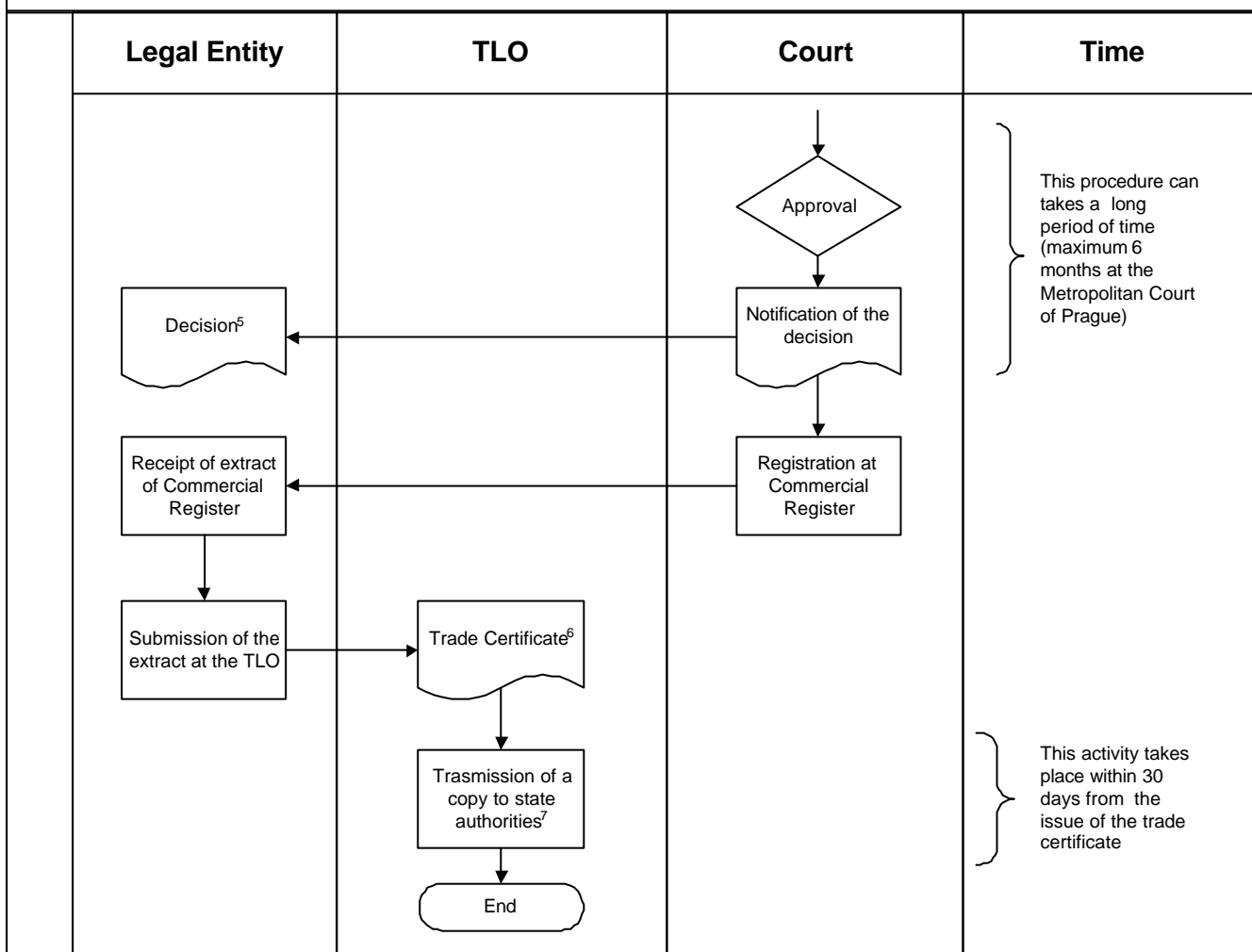
In most cases, this phase lasts long, according to the different state administration performing particular civil proceeding rules.

The TLO shall send a copy of the trade certificate to various state administrations, even by electronic data transmission.

FLOWCHART 2 Trade certificate granting procedure - legal entities



Trade certificate granting procedure - legal entities



NOTES

1 Before going to the local TLO, the involved person must collect a certain number of documents, as stated in Section 46 BA:

".... A legal entity shall enclose with its notification the following:

- a Criminal Register extract relating to its responsible representative, which is not more than three months old;
 - a document confirming the skills (qualifications) of its responsible representative;
 - documentary evidence that the legal entity in question has been established or founded, if it is the kind of legal entity to which entry in the Commercial Register or a similar register is not applicable, or if such entry has not yet been made, or a document confirming this entity's entry into the Commercial Register, if it has already been entered therein; in the case of a foreign legal entity, an extract from the Commercial Register or a similar register maintained in the country (state) where the legal entity has its registered office (seat) and a document confirming that its organizational component (office) in the Czech Republic has been entered into the Commercial Register, if such entry has already been made, and documentary evidence of the operation of an enterprise (business) abroad; an extract from the Commercial Register or similar register may not be more than three months old;
 - a document confirming the ownership title or right to use the building or premises where the legal entity has its registered office (seat);
 - a document confirming either ownership or right to use the premises where the organizational component of the foreign legal entity in question is (to be) located;
 - documents proving that the trade in question is (to be) carried on industrially;
 - an affidavit (a statement, declaration) made by the responsible representative that he agrees to his appointment and the assumption of duties within the scope stipulated in this Act and stating any other entrepreneur for whom he has been appointed as responsible representative. The signature on the affidavit (statement, declaration) shall be officially authenticated, unless it is made in person before the Trades Licensing Office.
- (3) If a notification is submitted by the legal (statutory) representative of an individual who is not fully competent to perform acts in law, the representative shall also enclose the appropriate court's approval (section 12)."

2 The competent TLO makes a copy of the application form with the identification number and date upon it.

3 If the legal entity has not already been entered in the Commercial Register at the competent metropolitan or regional court, the trade certificate doesn't attribute the right to start business activities immediately. The authorisation becomes effective only when the legal entity will be entered in the Commercial Register.

4 The concerned person submits at the competent court the request of registration of the new legal entity within 90 days from the issue of the trade certificate.

5 The concerned person can appeal the decision within 15 days from the notification.

6 The concerned person, once he/she has obtained the registration at the Commercial Register, can go to the competent TLO and ask for a new trade certificate with the effective date (date of registration at the Commercial Register) from which he/she can start business activities. Often it happens that the concerned person doesn't ask a new trade certificate, but keeps the old one together with the Commercial Register extract.

7 The TLO shall send a copy of trade certificate to the local tax administration office, to the Czech statistical office, to the local labour office, to the social security administration, to the health insurance department and to the TLO in the district where the entrepreneur has his place of business (art. 48 BA). The trade certificate copy is sent by mail or by electronic data transmission.

2.1.4 Trade certificate granting procedure. Analysis of Critical issues

A. CLASSIFICATION OF BUSINESS ACTIVITIES

The requirement of trade classification is quite an obstacle to the freedom of business activities. In the case of regulated trades the classification in almost 60 types (Annex 2 BA) increases bureaucratic burdens and hinder the exercise of freedom of trade. Even in the case of unregulated trades the BA requires the notification and the classification into 124 categories (Decree n. 140/2000), which is not supported by a real interest, except for statistical purposes. Unregulated trades must be classified in an excessive number of trades, which paradoxically reduces freedom of trade.

B. TRADE NOTIFICATION

Trade notification implies an assessment of all general and special conditions ending in an authorisation. This administrative activity can be simpler but effective, if trade notification will be substituted by other forms of assessment. Moreover, effectiveness of trade notification is immediate at the moment of the submission of the application. This aspect can create legal uncertainty in the case that a trade authorisation is not granted by the TLO, after having done all the required controls.

C. EXCESSIVE DOCUMENTATION

The BA requires an excessive number of documents, which extends the phase of collecting documents and hinders a quick start-up of business activities. Moreover, the provisions regarding the professional qualification must be in compliance with the acquis communautaire and further the right of establishment (see Report D.1.2 submitted in June on the Business Act).

Another critical aspect is the requirement in general terms of a Czech official translation for all documents to be obtained through appropriate Czech consular offices.

D. TRADE NOTIFICATION AND LEGAL ENTITIES

Art.10 BA provides that the trade authorization given to a company becomes effective only when the legal entity has been registered at the Commercial Register. This rule, although indistinctly applied, could be seen as a cause of the excessive time length for requests for the start-ups of a company in the Czech Republic (which vary from a minimum of 2 months, in case of free trades, till one year or more in case of licensed trades), which puts at greater risk the remuneration of the capital invested and less attractive the exercise of the right of establishment. Lengthy procedures, in fact, and the number of different awarding authorities can constitute a disincentive to business. Moreover, this procedure creates a sort of legal uncertainty about the status of the company, which asks for an authorization or license for the first time. In fact before the registration at the Commercial Register, the company has no legal capacity and therefore cannot, in theory, accomplish any act with legal implications. Therefore it is not clear, from a legal point of view, how such a (still unrecognised) company can accomplish those preliminary acts required for the grant of a trade certificate/license.

Finally it seems that the fact that the judge at the Commercial Court must verify, during the registration procedure of the Company, that the submitted trade notification/licence corresponds to the activity indicated in the Deed of incorporation, can determine a further delay in the final judgment of the Court concerning the registration (art. 30 of the Commercial Code).

E. CONTROLS

As a consequence of the complicated rule framework of each business activity, public controls on the exercise of business activities become more difficult. This fact doesn't allow the state administration bodies to verify the respect of stated requirements in the specific field and to find out any violation of rules. Moreover, the lack of controls leads to an insufficiently up-to-date knowledge of the real number of existing business activities. The Ministry of Industry believes that only 600,000 of 2 millions of entrepreneurs resulting from Trade Register are currently carrying on business.

The BA states that the trade certificate can be revoked after 4 years inactivity. But without any advice of the termination of the trade, the Register cannot be kept up-to-date. Therefore it holds the number of trade authorisations, not the current number of active entrepreneurs.

2.1.5. Trade notification. Proposals of simplification

From this study it is possible to suggest some simplification tools which can further business activities in the Czech Republic.

1. REDUCED NUMBER OF TRADE CATEGORIES

According to previous critical issue under item A, it is important to reduce into few greater categories all the sectors of activities listed in the Annexes of BA and in the Decree no. 140/2000 (at present almost 200). A further analysis could point out an appropriate set of business sectors, so as to classify activities more flexibly. For unregulated trades we suggest to follow the Italian experience in the commercial sales regulation (Decree no. 114/1998), which divides commercial trades into 2 great sectors: food trades and non-food trades or to look at the Austrian model, which divides trades into 2 categories (free and regulated, the latter requiring proof of qualification).

2. SUBSTITUTIVE FORMS OF TRADE NOTIFICATION

The critical issue stated under item B can be solved by introducing other forms of trade notification, ranging from a minimum to a maximum degree of intervention.

2.1. Minimal solution

The effectiveness of trade notification is postponed to a further date, for instance after 15 days from the submission of the application and documentation. In this way there isn't any legal uncertainty for those activities accomplished by the individual or legal entity through the notification, which are not de facto fulfilling the required conditions. This solution corresponds to Italian "Start declaration" (*denuncia di inizio attività*) stated in art. 19

Administrative Procedure Law (Law no. 241/1990). This proposal will be suitable for every kind of notifiable trade (regulated, unregulated, trades).

2.2. Intermediate solution

In this case, submission of an application and requested documents will be sufficient to carry on the requested trade, provided that the competent TLO has checked the completeness and correctness of documentation.

2.3. Maximum solution

The trade notification implies an application with no other documents than a self-certification. Moreover, the constitutive effects of trade certificate will be postponed of 15 days time, to let the TLO making all necessary controls.

3. “SILENCE IS CONSENT RULE”

The above mentioned proposal can be supported by another simplification tool, the “silence is consent rule”. That is, if the state authority does not reject a request after a certain time limit, the applicant can consider it authorised. In the case of trade authorisation, it means that no certificate will be issued after a certain period of time from the trade notification. The public office will issue a formal answer only in the case of illegal activities.

4. SELF-CERTIFICATION

As to the critical issue under item C, we suggest the introduction of Self-certification of the required documents issued by state administration. Following the Italian model, all written documents concerning personal status, facts or quality can be “self-certified” by the possessor. In other word, the state trusts the citizen, and performs ex post checks to verify information. The self-certification mechanism has created the possibility of using private certifications in technical assessment cases, that is citizen can substitute the administrative certification with a statement of a private professional.

The introduction of self-certification requires to amend the articles of BA that prescribe a public certification and article 27 A, par. 1, of the Commercial Code.

5. PREVIOUS REGISTRATION AT THE COMMERCIAL REGISTER

To solve the problems explained under item D, it shall be required a previous registration at the Commercial Register of a new legal entity. The duty of the trade notification will be accomplished after being entered in the abovementioned Register. This is a minimal solution to be implemented in a short period of time, by amending article 10 BA and article 30 Commercial Code, and in accordance with the improvements of the Commercial Register suggested by Component C.

6. ONE-STOP-SHOP

The one-stop-shop model is one of the best way to achieve a great level of simplification in administrative provisions for business. This model concentrates in helping businesses to get information and delivering all necessary authorisation on localisation, expansion, upgrading, restructuring, are coordinated. In Italy municipalities are in charge of implementing the programme. Municipalities are encouraged to use notification, self-certification and the “silence is consent rule”, as well as setting up conferences of services between public administrations for complex authorisations. One-stop-shops can facilitate the process for starting a new business. These bodies, which are locally based, are in charge of co-ordinating all authorisations for starting, expanding or restructuring a business. They thus reduce the procedures for setting up a business to one formality since they are in charge of obtaining authorisations from all relevant administrations. For complex cases, the shop can resort for conferences of services, which bring together all public authorities involved in the procedure and set up deadlines.

7. INTRODUCTION OF AN ANNUAL FEE

As to the critical issue under item E, we suggest the introduction of an annual fee for every entrepreneur entered in the Trade Register, so as to keep the register updated.

8. SUBSEQUENT NOTIFICATION

Every business activity requires an autonomous trade notification, which causes excessive bureaucratic burdens; in fact the documents must be submitted again. We suggest to avoid this duty for the trade notification subsequent to the first one, introducing a simple declaration of document duty accomplishment in the subsequent application for trade authorization.

2.2. Trade Licence granting procedure

2.2.1. Licensed trade

Definition:

(Sec. 9, Sec. 26 and Annex 3 BA)

Licensed trade (*živnosti kocesovane'*): is a trade that can be carry on only after the trade license has been acquired.

These trades are mainly those activities whose conduct (under special regulation) is subject on the approval by the competent public administration and require specific skills or qualifications. Among these activities, which are listed in the Annex n.3 of the Business Act, are included those of tour operators, transport, taxi service, medical substances, research, production and sale of explosives or weapons, etc.

Procedural description - flowcharts n. 3 and n. 4³

(Sec. 45-58 BA)

- Phase 1: This phase refers to the activity of collecting all the various documents stated in Section 46 (1), (2) and (3) BA plus, if the established conditions of carrying on a trade are of a professional or other type of qualification: in the case of an individual, a document proving the individual's professional and other qualifications, or if necessary, a document proving the professional capabilities of a personal representative, in the case of a legal entity, documentary evidence of the specialist and other skills (qualifications) of its personal representative. Section 50 (3) and Annex 3 BA;
An applicant must also include the data required under other statutory provisions in his licence application and submit documents which enable the competent state authority to form an opinion on the matter according to Section 52 (1).
A Czech person must collect the documents from state authorities; a foreign person (even EU citizen), must collect documents and translate them officially trough Czech consular offices.
We point out an average time ranging from a minimum of 15 days to a maximum of 60 days.
- Phase 2: the application to obtain a licensed trade must be made by filling the specific form at the Trade Licensing Office (District Business Offices) that is locally competent in accordance with the residential address or seat of the entrepreneur in question. The District Offices are only 97 at the moment but after the reform in public administration some changes will be made.
- Phase 3: the Trade Licensing Office (TLO), prior to its decision to grant the license (which is constitutive), shall ascertain whether all the general and specific conditions for carrying on the trade have been satisfied and whether any impediment to the conducting of the trade exists

³

For a better comprehension of the symbols in the following graphic representations, see Shape Description on page 12.

- Phase 3.1 the TLO (within 30 days) may ask for some more documents or to rectify some defects in the application, setting appropriate time-limit for compliance (minimum 15 days but the limit could be extended repeatedly and during the time-limit set by the TLO the time-limit for the issue of a decision doesn't run).
- Phase 3.2 in certain cases (according to specific legislation and to the Annex 3) the TLO shall wait for the authorization or opinion of another public offices.
The Trade Licensing Office shall submit a copy of the trade licence application to the state authority concerned. This authority must express its opinion within 30 days from receipt of application and may ask for more data or documents.
Its opinion shall be binding on the Trade Licensing Office but there is no evidence of which is the consequence if the opinion is not issued on time.
- Phase 4 the Trade Licensing Office shall decide on a trade licence application within 60 days from its submission (with the possibility of an agreed extension), unless the appendix 3 provides otherwise.
The TLO shall give the applicant a document containing the final decision to grant the trade licence (needed to apply for registration in Commercial Register - see phase 5) where are listed all the relevant information including the period for which the concession is granted
- Phase 5 a legal person (or certain individuals), not already registered in the Commercial Register, after the decision (to make effective the concession) shall ask for registration at the Commercial Register, within 90 days, according to a judicial procedure regulated by the Civil procedure Code and the Commercial Code. The licence will become effective as of the day of entry in the Commercial Register (sec.10 BA).
- Phase 6 the TLO shall issue a trade licence to the entrepreneur within 15 days of the day the decision become effective and replace the above mentioned document. If the entrepreneur doesn't notify to the TLO the registration number in the Commercial Register, the TLO (after 90 days from the decision) should verify at the Commercial Register.
- Phase 7 the TLO must send a copy of the licence to the entrepreneur then a copy of the trade licence to the authority which provided its opinion, and to the local tax administrator, to the local labour office and social security administration and (in case) to the foreign person's organizational unit, and to the health insurance authority.

**General condition for carrying on a licensed trade
(Sec. 50 and Sec. 45 (2) through (4), Sec. 46 (1),(2), (3))**

Ar.50 BA determines which are the requisites that an applicant must provide to obtain a Trade License.

If the established conditions of carrying on a trade are of a professional or other type of qualification (in addition to the conditions set on Sec.45 and 46) the entrepreneur must submit:

- in the case of an individual, a document proving the individual's professional and other qualifications, or if necessary, a document proving the professional capabilities of a personal representative,
- in the case of a legal entity, documentary evidence of the specialist and other skills (qualifications) of its personal representative.

An applicant must also include the data required under other statutory provisions in his licence application and submit documents which enable the competent state authority to form an opinion on the matter according to Section 52 (1).

This phase can require an excessive length of time: a Czech person must collect the documents from state authorities; a foreign person (even EU citizen), must collect documents and translate them officially through Czech consular offices. We point out an average time ranging from a minimum of 30 days to a maximum of 60 days.

Particular condition.

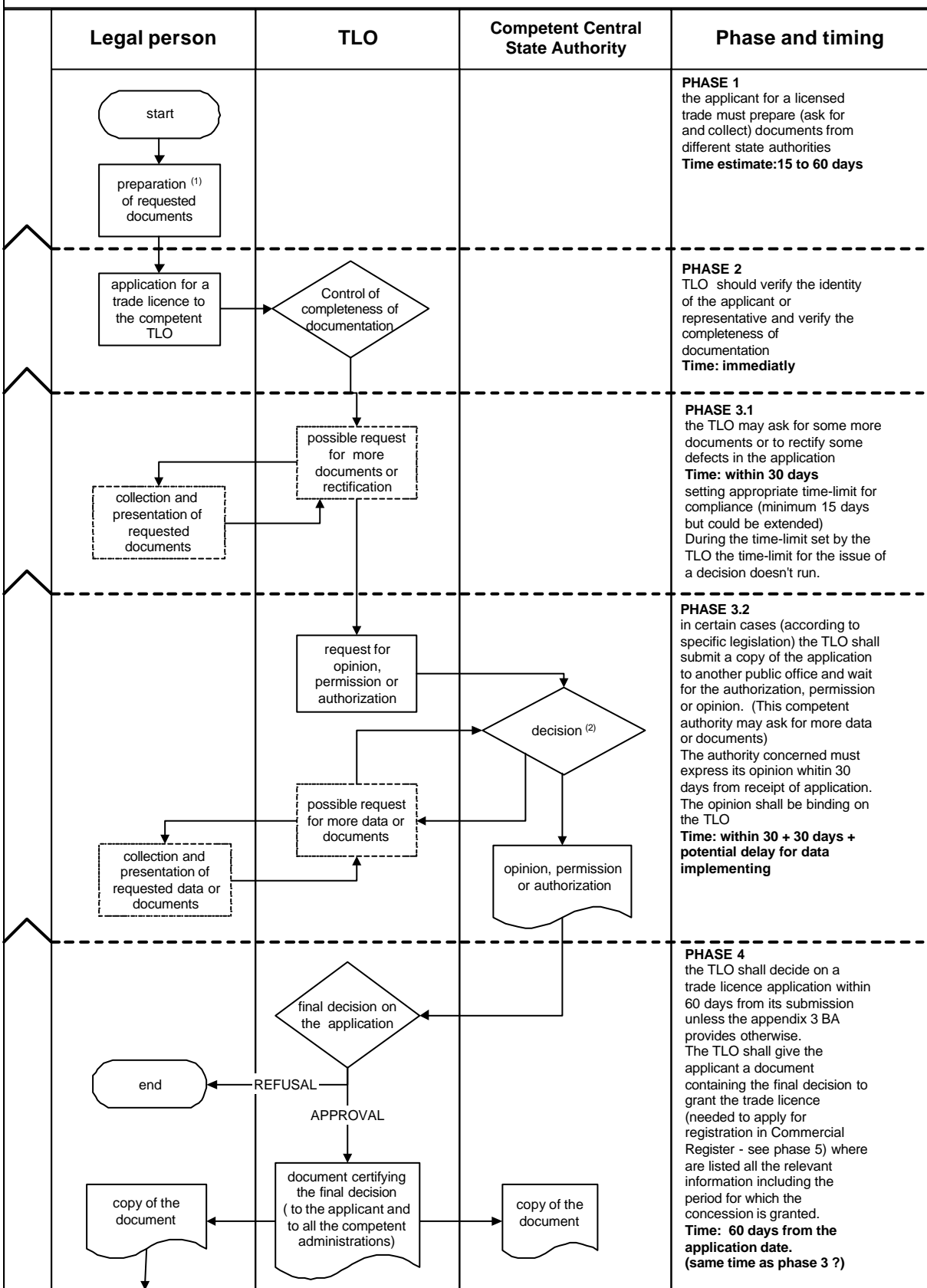
When a legal person (or certain individuals), not already registered in the Commercial Register, applies for a trade license (or notify for a free trade, craft or regulated trade) the delivering of a license will not grant the authorisations to start immediately the business activity. The authorisation became, in fact, effective only, according to article 10 BA, when the legal entity has been registered at the Commercial Register according to a judicial procedure. The company shall ask for registration with the Court in the jurisdiction of which the company is located. The Registration is constitutive, meaning that the legal person can function legally and sue and be sued only after that registration (That means that the company when notifies or asks for a licence at the TLO has not legal capacity). Upon registration the entrepreneur can start its commercial activities (the legal person must nevertheless immediately after also applies for the registration at other Offices, e.g. Tax Office and in certain cases fulfil some administrative tasks in particular connected with the premises e.g. in the area of hygiene, safety, environmental etc.).

The procedure to obtain the registration at the Commercial Register is regulated by the Civil procedure Code and the Commercial Code. The Commercial Code sets, for instance, which entrepreneur must be registered and the conditions which the entrepreneur has to fulfil.

EU and EEA individuals are subject to the same rules applying to Czech physical persons, which means that in general, apart from some exceptions, they can start their activity on the sole basis of a trade authorization issued by the TLO. EU individuals, furthermore, unlike other foreign individuals, can carry on a business activity in the Czech Republic without having a long term residence permit (art.5 BA). Foreign persons (physical and legal persons), if they are not fulfilling the conditions and skills required for a certain activity must appoint a personal representative, who is usually a Czech citizen, due to the fact that he must prove, if it is not a Czech, his knowledge of the Czech or Slovak language and must have a long-term residence permit (which is granted according to Chapter IV of the Act on Foreigners' Stay and residence, No. 326/1999 coll.). These conditions apply also to EU Member States individuals who are appointed as personal representative.

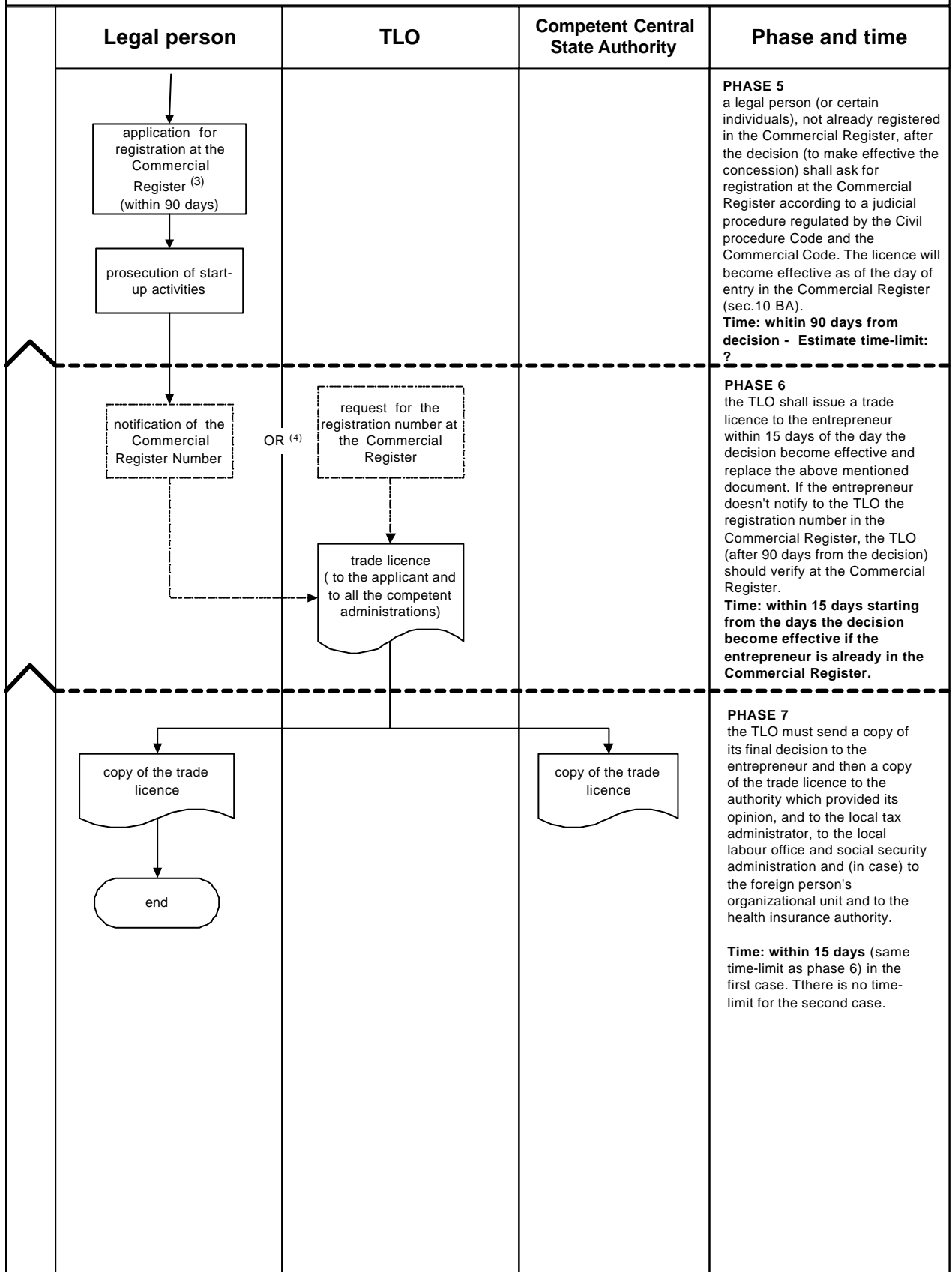
The documents submitted by a foreign person or legal entity, proving certain facts to a TLO, e.g. the documents proving skills (qualifications), etc., must include a certified Czech translation (art.5 BA). Also, such a subject is obliged to prove the authenticity of signatures and stamps on the originals of the submitted documents, a special approval (in Czech “*superlegalizace*”) given by the appropriate consular office is therefore needed.

FLOWCHART 3 Trade licence granting process - legal person (page I)



FLOWCHART 3

Trade licence granting process - legal person (page II)

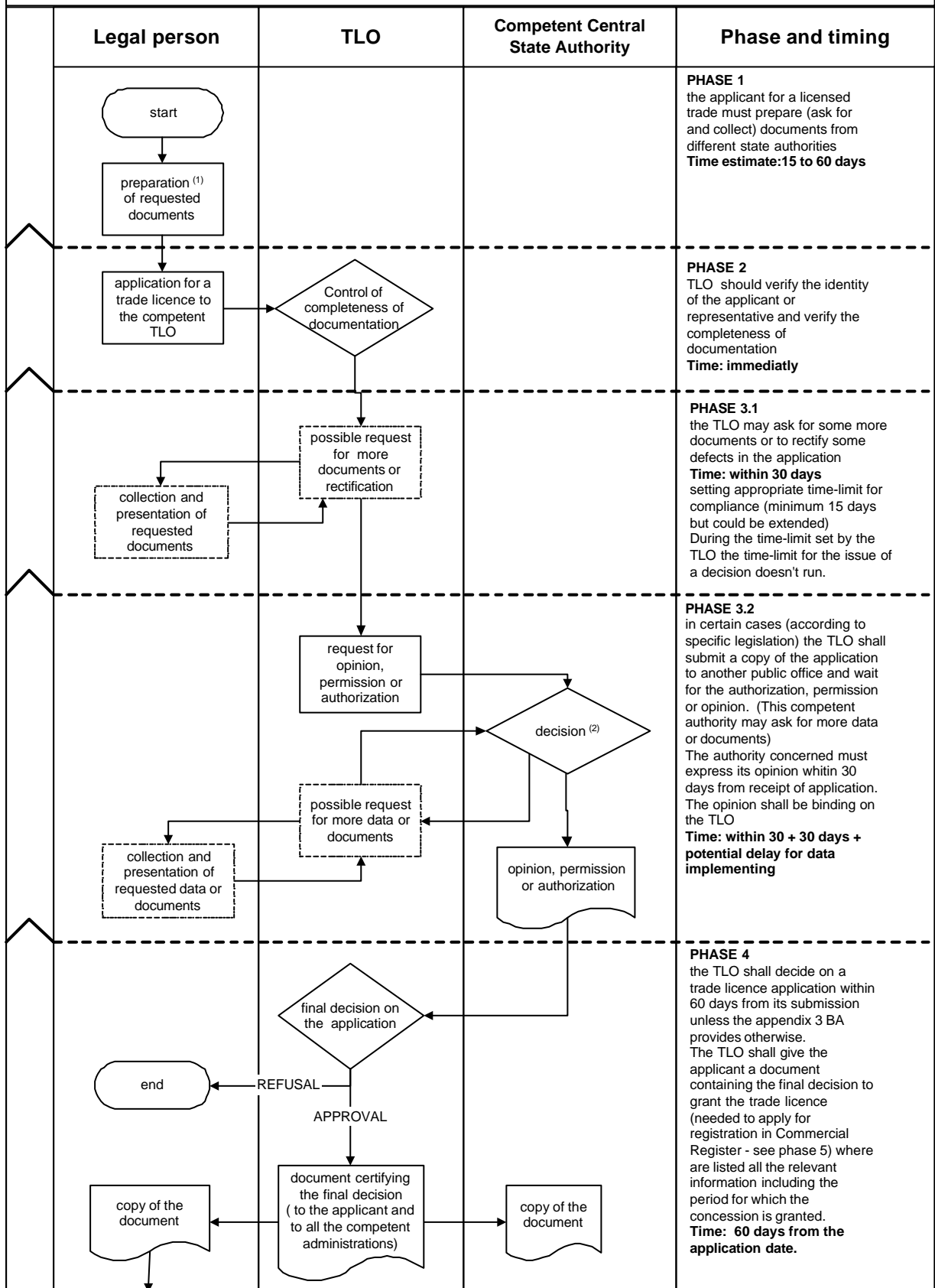


NOTES:

- (1) This action refers to the activity of collecting all the various documents stated in Section 46 (1), (2) and (3) BA plus Section 50 (3) BA, if the established conditions of carrying on a trade are of a professional or other type of qualification:
- in the case of an individual, a document proving the individual's professional and other qualifications, or if necessary, a document proving the professional capabilities of a personal representative,
 - in the case of a legal entity, documentary evidence of the specialist and other skills (qualifications) of its personal representative.
- An applicant must also include the data required under other statutory provisions in his licence application and submit documents which enable the competent state authority to form an opinion on the matter according to Section 52 (1). This phase can require a lot of time: a czech person must collect the documents from state authorities; a foreign person (even EU citizen), must collect documents and translate them officially trough Czech consular offices. We point out an average time ranging from a minimum of 15 days to a maximum of 60 days.
- (2) If, under other statutory provisions or Schedule No. 3 to the B. A., a state administrative authority's authorization, approval, permission or opinion is required for the carrying on of a certain trade, the Trade Licensing Office shall submit a copy of the trade licence application to the state authority concerned, which must express its opinion within 30 days of the receipt of the application, unless stipulated otherwise in Schedule No. 3. Its opinion shall be binding on the Trade Licensing Office but there is no evidence of which is the consequence if the opinion is not issued on time. For exemple if during this time the time-limit for the issue of the final decision doesn't run
- (3) Phase 5 refers to a different process: a legal person (or certain individuals), not already registered in the Commercial Register, after the decision (to make effective the concession) shall ask for registration at the Commercial Register according to a judicial procedure regulated by the Civil procedure Code and the Commercial Code, within 90 days. The company, when notifies or asks for a license at the TLO for the first time, has not legal capacity, because the Registration is constitutive and could be done only when a trade authorization or license is granted. The procedure to obtain the registration at the Commercial Register is regulated by the Civil procedure Code and the Commercial Code.
- (4) The TLO shall issue a trade licence to the entrepreneur within 15 days of the day the decision become effective and replace the document that certifies the decision of granting the licence. Because the trade licence must include the registration number in the Commercial Register the TLO (after 90 days from the decision) should verify at the Commercial Register, if the entrepreneur himself doesn't notify the number to the TLO. There is no evidence of obligation in that sense.

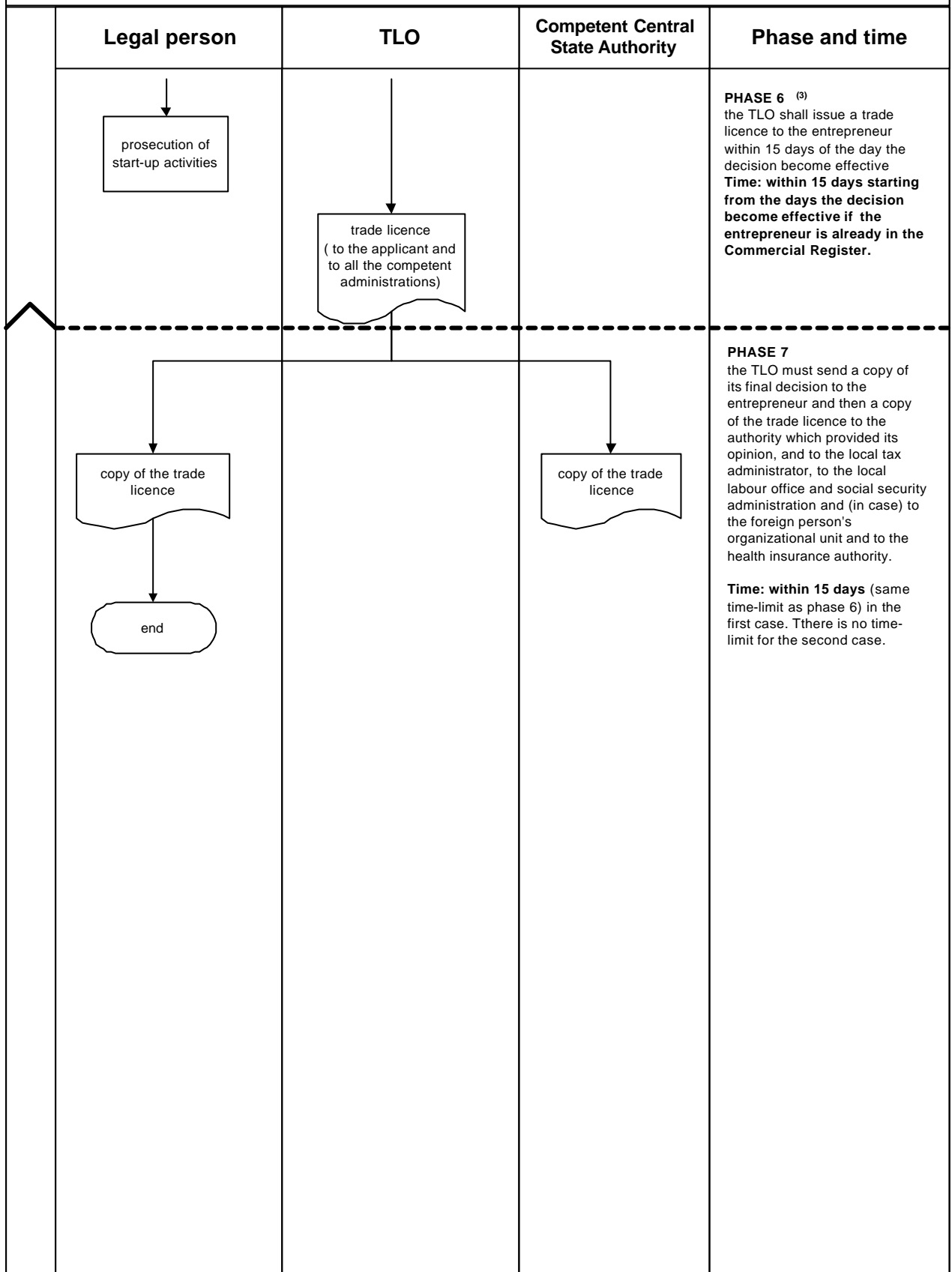
FLOWCHART 4

Trade licence granting process - individual (page I)



FLOWCHART 4

Trade licence granting process - individual (page II)



NOTES:

- ⁽¹⁾ This action refers to the activity of collecting all the various documents stated in Section 46 (1), (2) and (3) BA plus Section 50 (3) BA, if the established conditions of carrying on a trade are of a professional or other type of qualification:
- in the case of an individual, a document proving the individual's professional and other qualifications, or if necessary, a document proving the professional capabilities of a personal representative,
 - in the case of a legal entity, documentary evidence of the specialist and other skills (qualifications) of its personal representative.
- An applicant must also include the data required under other statutory provisions in his licence application and submit documents which enable the competent state authority to form an opinion on the matter according to Section 52 (1). This phase can require a lot of time: a czech person must collect the documents from state authorities; a foreign person (even EU citizen), must collect documents and translate them officially trough Czech consular offices. We point out an average time ranging from a minimum of 15 days to a maximum of 60 days.
- ⁽²⁾ If, under other statutory provisions or Schedule No. 3 to the B. A., a state administrative authority's authorization, approval, permission or opinion is required for the carrying on of a certain trade, the Trade Licensing Office shall submit a copy of the trade licence application to the state authority concerned, which must express its opinion within 30 days of the receipt of the application, unless stipulated otherwise in Schedule No. 3. Its opinion shall be binding on the Trade Licensing Office but there is no evidence of which is the consequence if the opinion is not issued on time. For exemple if during this time the time-limit for the issue of the final decision doesn't run
- ⁽³⁾ The process of granting a trade licence to an individual does not imply phases 4 and 5 as described in chapter 2.2.1.

2.2.2. Analysis of Critical issues and proposals of simplification

A. Classification of business activities

The classification of licensed trades is set in Annex 3 BA, according and referring to different legislation.

Since the specific requirements to run a licensed trade are enclosed in other normative texts, the Business Act can only make references in the Annex while the TLO must verify the correspondence between the documents presented and the requisitioned requests from the competent administrations.

B. Opinion given by the competent State Administration

According to specific legislation and to the Annex 3 the TLO shall wait for the authorization or opinion of another public offices.

The Trade Licensing Office shall submit a copy of the trade licence application to the state authority concerned. This authority must express its opinion within 30 days from receipt of application and may ask for more data or documents.

Its opinion shall be binding on the Trade Licensing Office but there is no evidence of which is the consequence if the opinion is not issued on time. For example if during this time the time limit for the issue of the final decision doesn't run or if the TLO must reject the submission.

C. Excessive documentation

The BA requires an excessive number of documents, which extends the phase of collecting documents and hinders a quick start-up of business activities. Moreover, the provisions regarding the professional qualification must be in compliance with the *acquis communautaire* and further the right of establishment (see Report D.1.2 submitted in June on the Business Act).

Another critical aspect is the requirement in general terms of a Czech official translation for all documents to be obtained through appropriate Czech consular offices.

D. Trade notification and legal entities

Art.10 BA provides that the trade authorization given to a company becomes effective only when the legal entity has been registered at the Commercial Register. This rule, although indistinctly applied, could be seen as a cause of the excessive time length for requests for the start-ups of a company in the Czech Republic (which vary from a minimum of 2 months, in case of free trades, till one year or more in case of licensed trades), which puts at greater risk the remuneration of the capital invested and less attractive the exercise of the right of establishment. Lengthy procedures, in fact, and the number of different awarding authorities can constitute a disincentive to business. Moreover, this procedure creates a sort of legal uncertainty about the status of the company which asks for an authorization or license for the first time. In fact before the registration at the Commercial Register, the company has no legal capacity and therefore cannot, in theory, accomplish any act with legal implications. Therefore it is not clear, from a legal point of view, how such a (still unrecognised) company

can accomplish those preliminary acts required for the grant of a trade certificate/license. Finally it seems that the fact that the judge at the Commercial Court must verify, during the registration procedure of the Company, that the submitted trade notification/license corresponds to the activity indicated in the Deed of incorporation, can determine a further delay in the final judgment of the Court concerning the registration (art. 30 of the Commercial Code).

2.2.3 Licensed trades. Proposals of simplification

It is possible to point out some simplification tools which can make easier the starting up of business activities in the Czech Republic when subjected to licence.

It is also possible to implement the “competition principle” by eliminating administrative concessions (where possible) and replacing them with administrative authorizations.

This kind of suggestion needs a careful study of the law ruling the specific area and needs a wider point of view than the simple procedural simplification. The final aim could be to maintain a special rule only for the activities where the evaluation about granting or not the license depends on variable factors and consequently is not only “checking the correlation between submitted documents and law”.

Suggestions about procedures:

1. Self-certification

We suggest to reduce duplication of documents introducing self-certification of the required documents when issued by State Administrations (see par. 2.1.5 page 17)

2. ‘Silence is consent’ rule

To implement the “silence is consent rule” could be useful in particular to set a more clear time-limit to the permission or opinion that the TLO must ask in almost all the trade licence application.

The “silence is consent rule” means that if the authority does not reject a request (e.g. in 30 days) the applicant can consider it authorised.

Applying such concept to the opinion given by the competent administration means that the opinion is expressed only in the occurrence when the activity is not legitimate, in the other occurrences the silence has the same legal value than the formal assent and the TLO can proceed and issue the license.

3. Previous registration at the commercial register

To reduce steps in the procedure we suggest that the legal persons could apply for the registration in the Commercial Register before applying for a trade licence, as suggested under paragraph no. 5 of the proposals of simplification for trade certificate.

4. One-stop-shop

See paragraph no. 6 of the proposals of simplification for trade certificate.

5. Subsequent notification

We suggest to eliminate the duty of notifying every change in trade licence to all the administrative authorities implementing the information technology.

* * * * *