

Major Amendment to Commercial Code Effective from 1 October 2020

From 1 October 2020, several significant changes in the institutes and provisions of the Commercial Code and the Commercial Register Act, which have been introduced by an amendment (Act no. 390/2019 Coll.), enter into force. Below, we have prepared an overview of selected changes, including new obligations that entrepreneurs must take into account.

Electronization of Commercial Register

The Commercial Register, including the collection of documents, will only operate electronically; it will thus now be possible to submit proposals and documents only in electronic form.

Registration of additional data on registered natural persons

In the case of shareholders (or the sole shareholder of a joint stock company) who are natural persons, there will be an obligation to register in the Commercial Register, in addition to one's name, surname and residence, also the date of one's birth and birth number, or other identification data.

This "other identification data" will also have to be registered for statutory bodies or members of statutory bodies, heads of organizational units of enterprises, proxies, members of the supervisory body, liquidators, administrators for the performance of compulsory administration and their representatives, heads of enterprises or organizational units of enterprises of foreign legal entities. These will most often involve foreign-born natural persons (who are already registered in the Commercial Register) who have not been assigned a birth number.

In principle, there should be other identification data of a foreign-born natural person assigned to him/her by his/her country of origin which is by its meaning and nature equivalent to the Slovak birth number, thus data that allows unambiguous identity. In situations where such data in the country of origin is not allocated, it is possible to mention, i.e., the number of the identity card or travel document (passport), or on the alien residence document, even if these do not meet the criterion of "permanence".

The harmonization of the registration of the new data will have to be done together with the submission of the next proposal for the registration of a change in the entered data after 30 September 2021, but no later than 30 September 2022.

If the next submission for registration of a change of the entered data does not harmonize the entry in this way, the registry court shall disregard the submission and invite the petitioner to eliminate the deficiencies within 15 days of receipt of the request with instructions on the consequences of non-rectification. The expiration of this period, in vain, has the effect that the court will not take the submission into account and the proceedings will be deemed to be suspended for lack of jurisdiction.

In addition, a natural person authorized to act on behalf of a registered legal entity is exposed to a risk of a fine of up to EUR 3,310 that can be imposed by the registry court for failure to file an application for registration of a change in registered data within the time limit set by law.

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Removal of restricted action of statutory body

Although the Commercial Code stipulates that a restriction on the conduct of a company's statutory body does not have legal effects vis-à-vis third parties, many companies have such a restriction registered also in the Commercial Register, in the section regarding the manner of acting on behalf of the company.

Pursuant to the amendment, the companies that have such restriction on the conduct of a company's statutory body registered in the Commercial Register, must remove such restriction when submitting the next proposal to register a change in the registered data, but no later than 30 September 2021.

If the next submission for registration of a change in the entered data does not harmonize the entry in this way, the registry court shall invite the petitioner to eliminate the deficiencies within 15 days of receipt of the request with instructions on the consequences of non-rectification. The expiration of this period, in vain, has the effect that the court will not take the submission into account, and the proceedings will be deemed to be suspended for lack of jurisdiction.

Also in this case, a natural person authorized to act on behalf of a registered legal entity faces a risk of a fine of up to EUR 3,310 for non-compliance with the obligation to file a proposal for entry of changes in the Commercial Register within the statutory time limit.

Cancellation of company in case of breach of obligation to file financial statements on time

The obligation to deposit individual financial statements in the Commercial Register on time will be stricter. At present, there is a risk of cancellation of a company if the company does not submit its individual financial statements in the register for at least two consecutive accounting periods. According to the new regulation, if the company does not manage to submit the financial statements in due time (no later than 9 months from the preparation of the financial statements) and is in delay with fulfilment of this obligation by more than 6 months, the court will decide to cancel the company even without a proposal.

Restrictions for persons against whom enforcement is being conducted (establishment of limited liability company (s.r.o.), transfer of business share in s.r.o., and function of executive director of s.r.o.)

Until now, it has been the case that a limited liability company cannot be established by a person who is on the list of tax debtors or has registered arrears on social insurance premiums. After the amendment, a limited liability company cannot be established even by a person who is registered as an obligor in the register of issued authorizations to carry out enforcement, which means the person against whom enforcement is sought.

The person against whom enforcement is sought cannot:

- transfer his/her share in a limited liability company to another shareholder or another person,
- acquire a share in a limited liability company, or,
- be an executive director of a limited liability company, if at the time of making the entry in the Commercial Register the person is being kept as an obligor in the Register of Enforcement.

Registration and deletion of companies

The amendment exhaustively determines which entities are registered in the Commercial Register. These are:

- legal entities established under the Commercial Code,
- legal entities incorporated under EU law,

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- legal entities established by law or on the basis of law, if a special law provides that they are entered in the Commercial Register,
- state-owned enterprises,
- organizational units of enterprises of Slovak legal entities,
- enterprises of foreign legal entities and organizational units of enterprises of foreign legal entities.

Other persons will be deleted from the Commercial Register; these are, the following entrepreneurs:

- persons who have been kept in the Commercial Register on the basis of their entry in the company register pursuant to previous legislation,
- natural persons registered in the Commercial Register voluntarily,
- enterprises and organizational units of foreign natural persons,
- persons who entered into liquidation before 1 October 2016, and are expected to go bankrupt,
- persons who have not fulfilled the obligation to convert the nominal value of deposits and the nominal value of the registered capital from the former Slovak currency, the crown, to the euro, according to special regulations even by 1 December 2020,
- enterprises and organizational units of enterprises of foreign and Slovak legal entities that do not confirm the data entered in the Commercial Register by 30 September 2021 or do not propose their change – see below.

The Ministry of Justice of the Slovak Republic will publish in the Commercial Journal for a period of six months a list of registered entities to be deleted from the Commercial Register. A registered entity may submit a reasoned proposal (if it has been entered in the list unreasonably).

For organizational units of enterprises of registered Slovak legal entities and enterprises/organizational units of registered foreign legal entities, there is an obligation to submit a prescribed form to the Commercial Register by **30 September 2021**, by which they confirm their registered data in the Commercial Register. It should only be a formal confirmation of the "accuracy and timeliness" of the data already entered. Confirmation of data submitted within the above period is not subject to a fee. In the event that the data entered in the Commercial Register do not correspond to the current situation, it is necessary for such units/enterprises to submit a standard proposal for the registration of a change in the data entered in the Commercial Register by **30 September 2021**.

Organizational units of enterprises of Slovak legal entities and enterprises/organizational units of foreign legal entities that do not confirm the data entered in the Commercial Register or do not change the data entered in the Commercial Register in the sense of the above by 30 September 2021, shall be deleted from the Commercial Register by the registry court.

Liquidation of companies and cooperative societies

The amendment significantly changes the procedure of the liquidation process. With effect from 1 October 2020, a company will enter into liquidation only after the liquidator has been registered in the Commercial Register, not on the day of the decision to dissolve the company (or on the day specified in the decision).

The obligation of the company to deposit the advance for liquidation in a notarial custody, which will be used to cover the remuneration and expenses of the liquidator, is also introduced.

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Only a person who is registered in the list of bankruptcy trustees or another natural person registered in the register of natural persons may be a liquidator, provided that such person also meets the conditions set for the performance of the function of a statutory body.

The amendment also regulates the procedure for creditors to lodge claims in the liquidation, how the claims are satisfied and how the liquidation will be completed. According to the amended legislation, it is not possible to complete the liquidation earlier than six months after the announcement that a company is entering into liquidation. If the liquidator finds that the company has tax arrears or is subject to a tax audit at the date of preparation of the financial statements and the final report on the course of liquidation, this period is extended by another six months.

Consent of property owner with establishment of registered seat

The written consent of the property owner with the registration of a property as the registered seat of the company in the Commercial Register must be officially certified, otherwise the proposal to register the data in the Commercial Register will be rejected. In the case of several co-owners of a property, it is sufficient for the consent to be signed by a majority of them. The majority is calculated according to the size of the co-ownership shares.

Written consent will not be required if the right to use the property or its part as the registered seat arises from the real estate cadastre.

Business activities of foreign persons

The amendment specifies the moment of commencement and termination of the authorization of a foreign natural person to conduct business in the Slovak Republic, specifically “on the date of origin of a trade licence or other than a trade licence according to special regulations of a foreign natural person, to the extent of the subject of business registered in the trade register or other records established by a special law”.

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Should you need our assistance in relation to the abovementioned obligations or have any questions regarding this topic, please do not hesitate to reach out to your contact lawyer at the Slovak office of PETERKA & PARTNERS.

The selection of legislative changes described in this document is not exhaustive. This summary is for informational purposes only and may not be considered a legal opinion or advice on how to proceed in a particular case. The summary reflects the status as of 29 September 2020.