AUDITOR
Audit ▪ Tax ▪ Accounting

Information for clients No. 2

Slovakia
November 2017

Changes to the Commercial Code

On 8 November 2017, an amendment to the Commercial Code was published in the Collection of Laws of the Slovak Republic. The Act shall enter into force as of 1 January 2018, or alternatively, 1 September 2018. However, selected provisions on business combinations of trading companies shall enter into force as of the day of declaration. Thus, we provide you with a list of the most important alterations and new provisions introduced by the amendment.

Restrictions on Business Combinations

The amendment to the Commercial Code introduces a number of restrictions and new obligations for mergers, amalgamations, or demergers of companies:

• Companies may not participate in mergers, amalgamations, or demergers if:
  - the value of the successor company's equity is negative;
  - they are in liquidation;
  - declaration of bankruptcy, initiation of restructuring proceedings or permission for restructuring have effects on the companies; or
  - proceedings on winding-up are conducted against the companies.

• The obligation of the company being dissolved to deliver a notice of drafting a merger agreement, an amalgamation agreement, or of drafting a demerger plan to the relevant **tax administrator.** The notice shall be delivered **no later than 60 days** prior to the date of the general meeting to approve the draft merger or amalgamation agreement, or the draft demerger plan.

• The obligation to prepare an audit report in which the auditor confirms that the value of the successor company's equity will not be negative as at the effective date of the merger, amalgamation, or demerger.

• For companies which are not subject to audit under the Accounting Act, the obligation to prepare an audit report in which the auditor confirms that receivables and payables of the company being dissolved correspond to economic reality.

• The obligation to file a motion to enter the merger, amalgamation, or demerger of the company in the Commercial Register no later than 30 days after the approval of the merger or amalgamation agreement, or the company's demerger plan.

The new rules shall apply if the draft merger agreement, draft amalgamation agreement, or the draft company's demerger plan was approved **after 8 November 2017.**

Capital Fund

With effect from 1 January 2018, the amendment to the Commercial Code introduces the concept of capital fund. Despite the fact that this institute is often used in business practice to increase companies' equity, until now it has not been subject to any commercial legal regulations.

Creation of the Capital Fund

Under the newly introduced amendment, a joint-stock company may create a capital fund from shareholders' contributions and a limited liability company from partners' contributions. A person other than a shareholder or a partner is not entitled to make a contribution. However, the creation of a capital fund must be set forth in the company's Memorandum or Articles of Association.

The capital fund can be created from shareholders' or partners' contributions from the founding of the company. In this case, it must be approved by the founders of the company. If the capital fund is created during the existence of the company, it must be approved by the general meeting.

The contribution of a shareholder or a partner is deemed to be the capital fund only upon its actual repayment, i.e. an assumption of the obligation to repay the contribution is not sufficient.

Use of the Capital Fund

The capital fund may be distributed exclusively among shareholders or partners or used to increase registered capital if the Memorandum or Articles of Association so provide. The use shall be decided by the general meeting.

Capital fund distribution among shareholders or partners is subject to:

• the fulfilment of a notification obligation (publication of the notice **within 60 days** in advance);

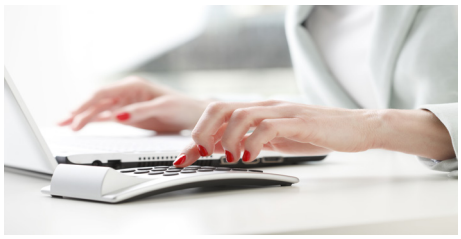
• the absence of a company crisis, including a crisis that the company may have suffered as a result of the capital fund distribution.

Other Major Changes

The amendment also covers other areas, such as:

• extending the liability of statutory bodies, liquidators and partners in the event of a failure to timely file a bankruptcy petition;

• introducing the controlling entity's liability towards the creditors of the controlled subsidiary for damage caused by its bankruptcy as a result of the controlling entity's own active business;



• alterations to the regulations on trade secret;

• extending the provisions concerning the deletion of the company from the Commercial Register by the approval of the Social Insurance Agency if the company is included in the list of its debtors;

• restrictions on the transfer of a business share in companies which are subject to proceedings on winding-up or effects of declaration of bankruptcy or permission for restructuring.

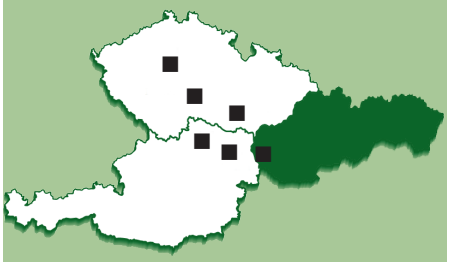
If you have any questions, we will be happy to answer them.

Ing. Jana Sadloňová
Head of the Tax Department
T: +421 2 544 14 660
jana.sadlonova@auditor.eu

AUDITOR in Central Europe

AUDITOR is an audit and tax consulting company with an international focus that has been providing services for 15 years in **audit, tax consulting, personel** and **payroll administration, financial accounting** and **business consulting**.

The company provides complex consultancy in Central European countries via sister companies in the Czech Republic and Austria (using **Stöger & Partner** as a brand name). For solving global consultancy issues, Stöger & Partner is an independent consultancy companies in more than 80 countries of the world.



Mag. Georg Stöger
International Tax issues

Ivana Kováčová
Payroll

Ing. Eva Lenorovičová
Accounting

Ing. Jana Sadloňová
Tax Advisory

Office Bratislava
Fraňa Kráľa 35
811 05 Bratislava

T: +421 2 544 14 660
bratislava@auditor.eu