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2/10/2021

SLOVENIA – AMENDMENTS TO THE COMPANIES ACT

General Overview

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On 27 January 2021, the Slovenian National Assembly adopted the Act Amending the Companies Act (the “Amending Act”),¹ which was published in the Official Journal on 9 February 2021 and will apply from 24 February 2021.

The Amending Act is the sixteenth amendment to the Companies Act² since its entry into force almost 15 years ago. The latest amendment was adopted with the ambition of (i) implementing the Directive (EU) 2017/828³ into Slovenian corporate legislation, (ii) upgrading the restrictions that prevent the establishment of new companies to entities pursuing unfair commercial practices, (iii) improving the corporate governance and the laws protecting the interests of minority shareholders and creditors, and (iv) supplementing the provisions on misdemeanours. To achieve these goals, the Amending Act sets forth additional restrictions for the establishment of companies (including mandatory verification of foreign entities’ compliance with such restrictions) and re-establishes the provisions on execution of agreements with board members and related parties. Additionally, the Amending Act requires the companies to register their e-mail address in the Commercial Register within one year from the day the Act enters into force (i.e. by 24 February 2022).

The key amendments are further outlined below.

1. Restrictions on establishment of new companies

The Amending Act imposes new restrictions on the incorporation of new companies and the acquisition of the status of the company’s shareholder. From 24 February, any entity (whether legal or natural person) for which any of the following applies will not be able to establish a new company, acquire business interest, or become sole proprietor (article 10a of the Companies Act – the amendments are in bold):

- (i) the entity was sentenced to a prison sentence by a final judgement due to criminal offence against the economy, labor relations and social security, legal transactions, environment, space and natural resources, **human health, or the general safety of people and property**. This restriction applies until the **sentence is deleted from criminal records** (before the amendment the restriction applied for five years after the sentence became final);
- (ii) in the past 12 months, the entity was published on the list of entities that failed to submit mandatory returns for tax under the Tax Procedure Act,⁴ or was identified as tax debtor, **or was published on the list of taxable entities that have been *ex offo* stripped of VAT registration due to suspected misuse thereof or because the tax authorities have determined that the entity misused the VAT registration to enable other taxable entities to unlawfully reclaim VAT**. This restriction applies until the Slovenian Financial Administration can confirm that the entity’s unpaid tax liabilities **do not exceed EUR 50** and the entity has submitted all relevant tax returns;

¹ Zakon o spremembah in dopolnitvah Zakona o gospodarskih družbah (Official Gazette of the Republic of Slovenia, no. 18/2021).

² Zakon o gospodarskih družbah (Official Gazette of the Republic of Slovenia, no. 42/2006 *et seq.*)

³ Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (Official Gazette of the EU, L 132 of 20 May 2017).

⁴ Zakon o davčnem postopku (Official Gazette of the Republic of Slovenia, no. 117/2006 *et seq.*).

- (iii) the entity directly or indirectly holds more than 25% of share capital of a company, which was in the past 12 months published on the list of entities that failed to submit mandatory returns for tax under the Tax Procedure Act, or was identified as tax debtor, **or was published on the list of taxable entities that have been *ex offico* stripped of VAT registration due to suspected misuse thereof or because the tax authorities have determined that the entity misused the VAT registration to enable other taxable entities to unlawfully reclaim VAT.** This restriction applies until the Slovenian Financial Administration can confirm that the company's unpaid tax liabilities **do not exceed EUR 50** and the company has submitted all relevant tax returns;
- (iv) within the past three years, the entity has been fined with an administrative fine for a misdemeanor concerning the payment of employees or undeclared work by a final decision of the Labor Inspectorate or Slovenian Financial Administration. This restriction applies for three years after the decision becomes final;
- (v) the entity directly held more than 50% of share capital in a limited liability company, which was dissolved without liquidation according to the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (the "Insolvency Act").⁵ The restriction applies for one year after the company's dissolution and deregistration from the Commercial Register;
- (vi) **in the past three years, the entity has been fined with an administrative fine for a misdemeanor concerning the share capital decrease performed in breach of article 372 of the Companies Act** (article 685 (1) (26) of the Companies Act). This restriction applies for three years after the decision becomes final.

The restriction of the successive establishment of new companies remains in force: an entity which established a new limited liability company (*družba z omejeno odgovornostjo*, d.o.o.) within the past three months or that has acquired a business interest in a limited liability company which is not older than three months, is prohibited from establishing a new company or acquiring a business share. However, the Amending Act provides for additional exceptions to such prohibition, especially for the establishment of special purpose vehicles (SPVs) by special alternative investment funds and their managers.

Under the Amending Act, the compliance of **foreign entities** intending to establish a company, acquire a business interest or commence operations as a sole proprietor, with restrictions from sections (i) through (iv) above will now also have to be verified. In practice, foreign entities (including those from other EU Member states) will have to prove that they comply with statutory restrictions by presenting any of the following certificates (issued within the past 30 days):

- (i) regarding sections (i) and (iv): certificate from the relevant register or equal document, issued by a competent governmental authority or court, confirming that no restrictions apply;
- (ii) regarding sections (ii) and (iii): certificate of the competent governmental authority, that the entity has paid all tax liabilities in the country of its residence or registered seat.

⁵ Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju (Official Gazette of the Republic of Slovenia, no. 126/2007 *et seq.*).

2. Language, registered seat, business and e-mail address

The mandatory use of Slovenian language in all communications with employees about their work, decision-making process regarding employees' rights, and employees' participation in company's administration remains in force (in areas with Italian and Hungarian ethnic minorities, the use of Italian and/or Hungarian language is also permitted). However, according to the Amending Act, the company is now also **explicitly permitted to use in its communications with the employees, along with Slovenian language, any other language understood by the employees. In exceptional circumstances that endanger employees' life, the company is permitted to communicate in a foreign language only** (article 11 of the Companies Act).

The Amending Act clearly defines the difference between the registered seat and registered address of the company and **mandates that the company must register its e-mail address at incorporation in the Commercial Register** (article 47 of the Companies Act). Existing companies are required to **register their e-mail address in the Commercial Register within one year (i.e. until 24 February 2022)** (article 72 of the Amending Act).

3. Relations between a joint-stock company and its shareholders

The question of whether the company's share register is maintained by the company itself or the central securities depository is now solved in favor of the latter.

According to the new articles 235a through 235e of the Companies Act, the company has the right to identify its shareholders and ultimate shareholders (i.e. entities that are registered with the intermediaries – investment companies, credit institutions, and central securities depository – as holders of company's shares) and request therefrom to declare, whether they hold the shares on their behalf or behalf of any third party. If the company does not receive the requested information within 14 days (or within the deadline set forth in the company's articles of association), the voting rights from such shares are suspended until the company receives all relevant and requested information.

The shareholder has the right to request from the company a confirmation that its vote in the general meeting was accepted and counted; the right may be executed within 30 days following the general meeting. The company must immediately respond to the request unless such information is already available to the shareholder (article 304 (7) of the Companies Act).

4. Agreements with board members

Any rights and obligations of **members of the management board and executive directors** not explicitly governed by the Companies Act, ought to be stipulated in an agreement therewith; consent of the company's supervisory board or board of directors⁶ is mandatory for the agreement to become legally effective. The agreement ought to be concluded with the board of directors' members as well (if the company with one-tier management system does not have executive directors), with the general meeting approving such agreements. If the agreement is not approved by the relevant corporate body, the respective member of the management board and/or executive director must reimburse the company with all the benefits received under such agreement (article 262 of the Companies Act).

⁶ Board of directors' consent is only required if the agreement is concluded with an executive director, who is not a member of the board of directors. If the executive director is a member of the board of directors, the consent should be given by the general meeting.

Consulting agreements, whereby a member of the company's supervisory board or board of directors (or their family member) undertakes to perform consulting services beyond the scope of their supervisory role to the company or its associated company, are governed in article 262a of the Companies Act. **Such consulting agreement only has legal effects if it is approved by the supervisory board or board of directors.** The same applies to consulting agreements with other companies, controlled by the board member or their family member.

The service provider must reimburse the company for all payments received under the unapproved agreement unless the agreement is subsequently approved by the supervisory board or board of directors. Although the service provider has a claim against the company from unjust enrichment, such a claim cannot be set-off against the company's claim for the payments' reimbursement.

Henceforth, the members of the management board will no longer be entitled to receive payment of severance pay, if they terminate the agreement or if they are recalled due to (i) material breach of their obligations, (ii) their incompetence to manage the company's operations, or (iii) vote of no confidence by the general meeting (unless the no-confidence vote is based on *prima facie* unsubstantiated reasons) (article 270 of the Companies Act).

Legal transactions between the company and the members of its management board (including proxies) and their family members (including companies under their control or management) are governed anew in article 270a of the Companies Act. All legal transactions between the company and such persons, pursuant to which an item or any other asset of value is transferred from the company to such person for or without consideration, require the consent of the supervisory board. **Supervisory board's consent is mandatory for all transactions regardless of their value;** however, the supervisory board's consent is not mandatory, if:

- (i) the transaction is performed within the ordinary course of business and under market terms unless stipulated otherwise in the company's articles of association, or
- (ii) the company is private and the members of the management board, proxies, and their family members are its only shareholders.

The same requirements also apply to transactions between the company and the members of its supervisory board or executive directors (and their family members), *mutatis mutandis* (articles 284a and 290a of the Companies Act). The consent to such agreements is issued by the general meeting or board of directors, respectively.

5. Remuneration policy

The remuneration policy, now governed by a separate article 294a of the Companies Act, will now be **mandatory for all public companies** (adoption of the remuneration policies by the private joint-stock companies will be mandatory only if required by the companies' articles of association or decisions of their general meetings). The company must submit the remuneration policy to its general meeting for verification in an advisory vote at least every four years. Rejection of remuneration policy by the general meeting is not binding for the company; nevertheless, the company must submit an amended policy at the next general meeting and all payments to its board members must be made per the submitted (albeit rejected) remuneration policy.

The company's report on the remuneration of its board members is also mandatory for public companies only, or if required under the company's articles of association or the decision of its general meeting (article 294b of the Companies Act).

6. Transactions with related parties

Transactions with related parties (as defined in the IFRS) are now governed in new articles 281b through 281d of the Companies Act.

Transactions with related parties are legal transactions and company's actions (including transactions and actions of associated companies), according to which an item or any other asset of value is transferred to a related party for or without consideration (article 281b of the Companies Act). The following are not considered as transactions with related parties:

- (i) the omission of action,
- (ii) transactions within the ordinary course of business and under market terms,
- (iii) transactions with associated companies in which the company (in)directly holds 100% share,
- (iv) transactions and actions which require consent or authorization of company's general meeting (e.g. agreements with funding members (article 188 of the Companies Act), acquisition of treasury shares (article 247 (1) (8) of the Companies Act), transfer of at least 25% of company's assets (article 330 of the Companies Act), actions related to the increase and/or decrease of company's share capital, intercompany agreements (and any transactions completed thereunder), squeeze-out of minority shareholders, company reorganization transactions, etc.),
- (v) transactions of credit institutions if requested by the regulator,
- (vi) transactions offered to all shareholders under the same conditions, if equal treatment of shareholders and protection of the company's interests are duly ensured.

Prior approval of the transaction with a related party by the supervisory board is mandatory for public companies, if the value of the transactions exceeds 2.5% of the asset value outlined in the balance sheet of the last confirmed annual report, or if the value of the transaction, along with other transactions with the same related party in the past 12 months, exceeds this threshold (article 281c of the Companies Act). If the supervisory board rejects the approval, the management board may request the general meeting to decide on the approval; a majority of 3/4 of the votes cast is required.

The information on the transactions with the related parties must be published immediately upon their execution unless such information on the transaction is published as inside information according to article 17 of the Regulation (EU) 596/2014.⁷

7. Limited Liability Companies

The supervisory board in a limited liability company is not mandatory unless the company is an entity of public interest under the Auditing Act.⁸ The latter companies are required to appoint a supervisory board unless the company (i) is a mid-sized company and is an associated

⁷ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (Official Journal of the EU, no. L 173 of 12 June 2014).

⁸ Zakon o revidiranju (Official Gazette of the Republic of Slovenia, no. 65/2008 *et seq.*).

company, or (ii) is an associated company with a management agreement. The supervisory board of a company of public interest must appoint an audit committee (article 514a of the Companies Act).

In mid-sized and large limited liability companies, article 270a of the Companies Act on the mandatory approval of the supervisory board applies to transactions with company's directors, proxies, and their family members, mutatis mutandis. If the company does not have a supervisory board, the approval of the transaction is left to the general meeting (article 515a of the Companies Act).

8. Other amendments

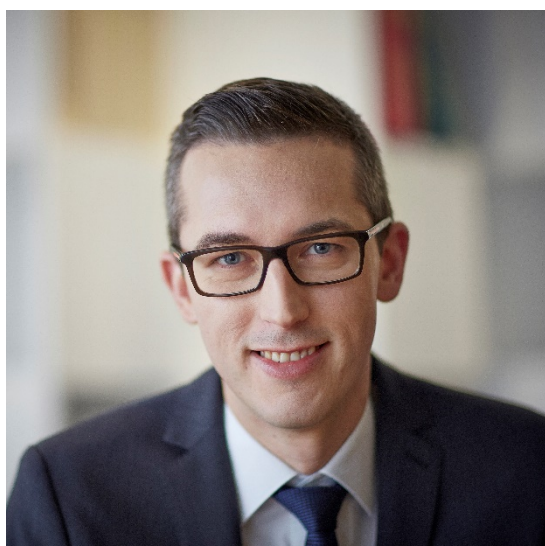
Henceforth, the audited annual reports have to contain a statement of comprehensive income (article 60 of the Companies Act) and a comprehensive description of the company's diversity policy (article 70 of the Companies Act).

Sole proprietors will no longer be required to publish their intention to transfer their enterprise to another proprietor (article 72a of the Companies Act) or to cease their business operations (article 75 of the Companies Act) on the AJPES website.

Convocations of joint-stock company's general meetings should be published on the company's website or another information system, which enables easy readability of publications if the company maintains them (article 296 of the Companies Act).

According to the new section titled "*Transparency of institutional investors, asset managers, and voting advisors*", along with new articles 317a through 317č of the Companies Act, the institutional investors, assets managers, and voting advisors are not required to prepare and publish their cooperation policies, to disclose the consistency of their investment strategies with the profile and term of their liabilities, as well as to disclose their codes of conduct.

For more information and for assistance please contact:



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