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# News Flash

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**Amendment to the Commercial Code  
in Slovakia effective as of January 1,  
2018**

## Amendment to the Commercial Code

Hereby, we would like to notify you about a prepared amendment to the Commercial Code which should enter into force from **January 1, 2018** (hereinafter referred to as Amendment). The aim of the Amendment is the improvement of the business environment and the key changes which should be established by the Amendment are mainly:

### Stop to “straw men”

The Amendment tries to end the use of so-called “straw men” (persons who only give their name and identity to assume rights and obligations of the statutory body of the company but they do not have a real interest to execute these rights and obligations).

For the appointment of a statutory body or its member it is required to have the **permission of that person with notarized signature**.

### New criminal offence: Unlawful liquidation

The criminal offense of unlawful liquidation is propounded by the planned legislation in the same manner as the aim to combat the „straw men“.

The criminal offense intends to punish persons involved in actions concerning the transfer of company’s ownership to “straw men” in order to **thwart the proper liquidation**.

The penalty rate can be up to 15 years.

### Increased responsibility of the statutory bodies

The Amendment extends the responsibility of statutory body, members of statutory body and liquidators of companies, mainly in the case of a:

- failure to timely file a petition for a bankruptcy
- failure to cooperate during bankruptcy or execution proceedings or during tax inspection.

Breach of the obligation may mean a **disqualification of the statutory body** and the disqualified statutory officer will not be able to become a statutory officer in any company for 3 years.

Furthermore, the obligation to provide cooperation applies also to **persons whose function in the company terminated**, for the period in which they acted as a statutory body or a member of the statutory body of the company.

### Increase of shareholders’ responsibility

The Amendment also introduces the shareholders’ responsibility, mainly if the:

- company has rendered security in favour of the shareholder or concluded an agreement in his favour and by the implementation of the security or of the agreement deteriorated the enforceability of receivable of the creditor of the company
- shareholder enforced the decision resulting in deteriorating the enforceability of the company’s creditors’ receivables.

## Merger and split of the companies

The planned legislation introduces several new obligations and constraints as:

- **prohibition of these corporate changes** if:
  - equity of successor's company is negative
  - participating companies are in liquidation or in bankruptcy or the court proceeding on dissolution of the companies has been initiated
- obligation to prepare an **audit report** certifying that the value of the successor's equity will not be negative
- obligation of company to submit a draft of the contract of the merger / project of the split to the tax administrator not later than 60 days before its approval by the company's bodies
- obligation to file a petition for the registration of the merger/split in the Commercial Registry not later than 30 days.

## Transfer of a business share in a limited company

The tax authority's permission will be required for all business transfers and not only for

**transfer of a majority ownership** (as at present).

Plus, the Amendment introduces a ban on the transfer of an ownership interest, mainly if the company

- has not complied with the obligation to deposit the Financial Statements to the Collection of Deeds of the Commercial Registry
- has not registered its bodies in the Commercial Registry.

## Capital funds

Capital funds have not been regulated in Slovakia properly. The Amendment introduces the concept of capital funds including the creation as well as the usage of the capital funds.

## Other proposed changes

Other proposed changes should concern mainly

- Financial Statements
- Maturities of invoices to subcontractors in case of public contracts
- violation of trade secret.

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