

AMENDMENT TO THE COMMERCIAL CODE

Kindly let us briefly inform you on changes introduced by the latest amendment to the Commercial Code (the **Amendment**).

Main themes of the Amendment include:

1. violation of trade secret: definition and procedural remedies
2. restrictions and additional obligations applicable to mergers
3. liability of controlling shareholders for bankruptcy of the company
4. company's own resources: capital funds
5. other changes.

Most of these changes will come into force on 1 January 2018. Few exceptions became effective (a) on the date of publishing the Amendment in the Collection of Laws, i.e. on 8 November 2017, or (b) will become effective on 1 September 2018.

I. Violation of trade secret: definition and procedural remedies

Definition of trade secret violation. The Amendment elaborates in more detail a definition of *violation of trade secret* by specifying types of actions constituting the violation of trade secret as well as stating what is not deemed as unlawful acquisition, unlawful use and unlawful disclosure of trade secret.

Preliminary protection of trade secret. Specific means of preliminary trade secret protection are introduced. These include (a) interim injunctions (in Slovak *neodkladné opatrenia*) and (b) security for damages (in Slovak *zábezpeka na zabezpečenie náhrady škody*). The regulation on interim injunctions contained in the Commercial Code (i) suggests specific obligations that a court may impose on a trade secret violator, (ii) enables a court to require an owner of trade secret to provide a security for damages which might occur in connection with application of interim injunction and (iii) represents *lex specialis* to a general regulation on interim injunctions stipulated in the Civil Dispute Code (in Slovak *Civilný sporový poriadok*). Instead of applying an interim injunction, a court may oblige a violator of trade secret to provide a security for damages caused by violation of trade secret.

Corrective measures (in Slovak *nápravné opatrenia*). The Amendment sets out a catalogue of corrective measures that a court may apply in decision on the merits (in Slovak *meritórne rozhodnutie*) in proceedings on trade secret violation. Besides one or more corrective measures, the claim for damages, financial compensation for non-material damage and unjust enrichment remains also available to an owner of violated trade secret. As to a damage claim, two changes are introduced: (1) the method of determination of damage compensation that might be requested is now provided and (2) an objective limitation period (in Slovak *objektívna premlčacia doba*) is shortened from 10 to 6 years.

II. Restrictions and obligations applicable to mergers

Conditions of merger. The Amendment introduces following general conditions that must be met as of effective date of a merger: (a) the value of surviving entity's liabilities may not exceed

the value of its assets, (b) none of merging companies may be in liquidation (in Slovak *likvidácia*), (c) on none of merging companies, the effects of bankruptcy or restructuring may apply and (d) proceeding on dissolution of a company by a court decision may not be conducted *vis-à-vis* any of merging companies (the **Conditions of merger**).

Auditor's Report. In the period between (a) adoption of resolution on merger and (b) submission of application for registration of the merger in the Commercial Registry, an Auditor's Report must be prepared. The aforementioned period is limited to 30 days, therefore parties to the merger will need to act promptly in order to timely obtain the report. An Auditor's Report must include confirmation that Conditions of merger are (are to be) met as of decisive date of the merger. If financial statement of non-surviving entity does not need to be audited by law, the Auditor's Report must also contain Auditor's certificate that receivables and payables of non-surviving entity correspond to economic reality as of a date preceding a decisive date of merger.

Notifications. Each non-surviving entity shall notify respective Tax Authority that draft of Merge be made not later than 60 days before a date of general meeting on which the draft should be are pledged, even respective pledgee must be notified accordingly.

Special liability of statutory body. Members of statutory body of each merging company will be held liable *vis-à-vis* the creditors for damage caused by not refraining from any actions leading to merger when the Conditions of merger are not met.

III. Liability of controlling shareholder for bankruptcy of the company

Liability for damage. A controlling shareholder is liable *vis-à-vis* company's creditors for damage caused by bankruptcy of a company (in Slovak *úpadok*) provided that the shareholder has substantially contributed (by his/her active conduct) to the bankruptcy. The controlling shareholder may exculpate by proving his/her conduct being informed and in a good faith that it was in favour of the controlled company.

Damage determination. Determination of the amount of damages is based on a rebuttable assumption that the damage amounts to the claim that has not been satisfied upon termination of bankruptcy, enforcement or other similar proceeding due to lack of assets or upon termination of the company without legal successor. Damage claim against the controlling shareholder is subject to a specific 1-year time limitation period.

IV. Company's own resources: capital funds

Creation of capital funds. The Amendment clarifies a manner of creation and usage of capital funds consisting of shareholders' contributions. Creation of capital funds must be envisaged in Memorandum of Association or By-laws of the company. From the time perspective, capital funds might be created at the moment of establishment of a company as well as at any time throughout its life. Provisions of the Commercial Code on contributions to registered capital apply accordingly to contributions to capital funds (including provisions on non-monetary contribution).

Usage of capital funds. The Amendment states explicitly that capital funds might be used (a) in order to increase a company's registered capital or (b) for redistribution to shareholders, unless a company is in crisis. Redistribution of the funds to the shareholders must be published at least 60 days in advance.

V. Other changes

Liability of “shadow managers”. A person who actually runs the company despite not being officially appointed as a statutory body (the “shadow manager”) bears a liability in the same extension as ascribed to a statutory body. Mainly, the “shadow manager” shall act diligently and in compliance with company’s and its shareholders’ interests.

Period for approval of financial statement. A period for capital companies, cooperatives (in Slovak *družstvá*) and state enterprises to have the financial statement (each regular and extraordinary) approved by a respective corporate body is extended from 6 months to 12 months following a date as of which the financial statement is prepared. Generally, the aforementioned entities are obliged to submit the financial statement to the Collection of Deeds maintained by the respective district court not later than 9 months from a date as of which the respective financial statement is prepared.

Obligations of ex-member of statutory body. If the sole member of statutory body is not registered in the Commercial Registry, the latest member of the statutory body is obliged to submit an application for dissolution of the company. Furthermore, each ex-member of statutory body shall cooperate with courts, tax authority, social security authority and other entities in a reasonable extent and at the expense of the company.

Restrictions applicable to transfer of participation interest. Shareholder shall not transfer its participation interest if there is a proceeding on dissolution of the company, the company is dissolved by the court, or effects of bankruptcy or restructuring apply to the company.

Simplification applicable to transfer of majority participation interest. In case of transfer of majority participation interest, the consent of respective Tax Authority is required only if (i) majority shareholder as a transferor or (ii) a transferee is listed in the list of tax debtors.

Kindly note that this alert does not contain a comprehensive overview of all legislative changes implemented by the Amendment but only a general overview of those which we consider to be the most significant. At the same time, this alert reproduces neither exhausting nor verbatim text of the legislation in question.