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SLOVAKIA: new rules governing the liquidation of companies are intended to offer more protection for creditors

On 1 October 2020, a new amendment to the **Commercial Code** and related laws became effective in Slovakia, introducing, among other things, several important changes concerning the liquidation of companies. The purpose of this article is to provide an overview of the changes and to briefly discuss the rationale of the legislator behind the amendments.

The underlining aim of the amendments, related to the liquidation of companies, is to **improve transparency and to combat deceptive practices** in relation to the process of winding up of a company.

The changes to the liquidation of Slovak companies effective from 1 October 2020 will arguably approximate, to an extent, the legal regime of liquidation with that of insolvency, with the aim of **affording more protection to creditors**. As a result, the process of liquidation is **becoming more structured, longer and more costly and perhaps will act as a disincentive to liquidate for speculative reasons**. Also, it is yet to be seen how the courts will manage their new and greater powers in policing the corporate housekeeping of companies.

Pursuant to the amendments, the following key changes have been introduced.

COMMENCEMENT AND NOTIFICATION OF ENTRY INTO LIQUIDATION

The process of liquidation of a company will **commence as of the day of registration of the liquidator into the Companies Registry**. This is a substantial change compared to the past, where liquidation started by the decision of the company's general meeting and the registration in the Companies Registry was only declaratory.

Subsequently, the liquidator will have to **inform all known creditors** about the company's entry into liquidation and publish 1) a notice that the company has entered into liquidation and 2) a call for the company's creditors and other persons and bodies concerned by the liquidation of the company to file their receivables and other rights.

The amendment further lays out the concept of the **additional liquidation** of a company, in the event that the company was de-registered from the Companies Registry without a legal successor, but *new assets of the company are discovered*. The Courts have the discretion to commence the additional liquidation concerning the newly found assets of the company based on the submission of the person who proves legal interest in the commencement of the additional liquidation.

APPOINTMENT OF THE LIQUIDATOR

The liquidator, who may be appointed by the shareholders or by the general meeting of the company may be:

- a bankruptcy trustee registered by the Ministry of Justice, or
- a natural person registered in the Registry of natural persons by the Ministry of Interior of the SR (in other words, a Slovak resident, whether national or not). However, the registration of natural persons other than a bankruptcy trustee is conditional on that individual otherwise meeting the requirements for being a director of a Slovak company.

This will have an impact on the previous practice of appointing, as a rule of thumb, the company's director as liquidator. To the extent the director does not meet the requirements for being appointed (in particular, if he/she is not a resident of Slovakia), the local liquidator will have to be appointed.

MANDATORY DEPOSIT

In the event that the shareholders or the competent body of the company decide to appoint a liquidator, a **deposit of EUR 1.500** for remuneration and expenditures of the liquidator, shall be submitted before the liquidator is registered in the Companies Registry. The amendment recognises that it is essential to cover the basic expenses related to liquidation up front. The deposit, which is exempt from the enforcement proceedings, serves as a guarantee that at least the basic expenses of the liquidator related to the case will be covered.

EXTENDING THE MINIMUM DURATION OF LIQUIDATION

The **minimum** duration of the liquidation process extends **from 3 months to 6 months**. By extending the duration of liquidation, the amendment aims to ensure that the liquidator is not able to speed up the process of liquidation to the extent that the interests of creditors could be negatively affected.

UNILATERAL ACTS OF THE LIQUIDATED COMPANY CEASE TO EXIST

All unilateral acts of the company will cease to exist when the company enters into liquidation. All powers to act on behalf of the company will expire by operation of law. This will have an impact, in particular, on powers of attorney. However, it may also affect other unilateral documents, such as guarantees. An exception applies to **procedural powers of attorney**, because in the event of court-appointed liquidators, such situations

could create legal uncertainty for third parties, stemming from multiple persons having the powers to represent the company.

DISPOSING OF COMPANY ASSETS

Companies will be **considered to be in "crisis"** from the time the decision on winding up is taken by the Company's general meeting until the time of its entry into liquidation. Accordingly, provisions related to "companies in crisis" will be applicable, which generally restrict the company's ability to pay its affiliates any amounts that are considered equity replacing.

In addition, during the period after the company's general meeting resolves to wind up and until registration of the liquidation with the Companies Registry, **disposing of assets of the company** with a value exceeding 10 percent of the value of the share capital of the company is conditional upon an expert valuation by the approval of the company's general meeting. Such legal actions would not become effective before they are publicized in the Collection of Deeds, along with the expert opinion.

Furthermore, the amendment brings about an important change regarding the liquidator's ability to operate the business during liquidation. Under the regime prior to 1 October 2020, the liquidator was able to conclude new contracts exclusively in connection with the **termination of the outstanding business transactions**. This wording was open to the interpretation that the liquidator could also enter into new agreements (e.g. continue to accept purchase orders from customers during liquidation). The amendment changed this wording in a way that the liquidator can now conclude new contracts exclusively in relation with the **termination of the existing legal relations**. This wording may lead to the interpretation that only settling existing business is permissible, but that the liquidator will not be able to operate the business during the liquidation. While this change is still subject to interpretation by the courts and doctrine, an impact on the timing of liquidations can already be foreseen.

LIST OF RECEIVABLES

The amendment introduces an obligation of the liquidator to **make a list of receivables registered after the liquidator's call to known creditors** (see above). The liquidator continuously adds the registered receivables to the list of receivables. The basic list of registered receivables shall be made by the liquidator based on the information available as of 45 days since the notice of entry into liquidation was published. Subsequently, the liquidator is obliged to submit the list of registered receivables into the Collection of Deeds, no later than 30 days since compilation of the list of receivables. The purpose of this amendment is to **increase transparency in the process of liquidation and to verify whether the liquidator is fulfilling its obligations**.

OBLIGATION TO SUBMIT FINANCIAL STATEMENTS

Outside of the context of liquidation, as a general rule, all companies are obliged to submit their financial statements into the Collection of Deeds within nine-months from the day they were drawn up. In the past, this obligation was not policed by Slovak courts very

rigorously. Effective from 1 October 2020, the court will have to wind up a company in the event that the company is delayed with filing its financial statements in the Collection of Deeds for more than six (6) months. The amendment recognises that the **obligation to submit financial statements to the Companies Registry is a key obligation of companies.**

DELETION OF INACTIVE COMPANIES FROM THE COMPANIES REGISTRY

One of the important aims of the amendment is to remove inactive companies from the Companies Registry. The competent courts will have additional powers to delete inactive companies from the Companies Registry for example, those companies which do not fulfil the obligation to convert the nominal value of the share capital from Slovak Crowns to Euros by 1 December 2020.

In addition, **foreign companies pursuing business in Slovakia** as a registered branch will have the **obligation to confirm**, and where applicable, supplement the data registered with the Companies Registry (without limitation, with respect to the identifiers of branch managers, etc.) **by 30 September 2021**. Failure to make the update will result in court-ordered deletion from the Companies Registry.

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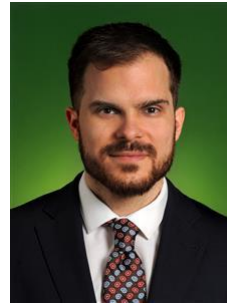


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