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SLOVENIA AMENDS THE COMPANIES ACT: IMPLEMENTATION OF SHAREHOLDER RIGHTS DIRECTIVE II, AMENDMENT OF CORPORATE GOVERNANCE RULES

On **9 February 2021**, the long-awaited **amendment to the Slovenian Companies Act**[1] was published.[2] The majority of the changes concern the implementation of the **Shareholder Rights Directive II**[3] ("**SRD II**") and the **Commission Implementing Regulation (EU) 2018/1212**[4] ("**Implementing Regulation**"). The harmonisation of Slovenian corporate law with the SRD II has been overdue for some time.[5]

OVERVIEW OF IMPORTANT CHANGES

- Rules implementing SRD II introduce the right of companies to demand information about their shareholders ("**know your shareholder**") from the central depository company and other intermediaries; facilitate the **exercise of shareholder rights;** and improve the **access to information** between market participants in an international context.

- The amended law requires listed companies to establish a **remuneration policy** and expands **rules for the avoidance of conflicts of interest** in a joint stock corporation (d.d.). Institutional investors and asset managers are obliged to establish and disclose an **engagement policy**.

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[1] *Zakon o gospodarskih družbah* (ZGD-1; Official Gazette, No. 42/06, as amended) ("**Companies Act**").

[2] *Zakon o spremembah in dopolnitvah zakona o gospodarskih družbah*, Official Gazette, No. 18/21.

[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; https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017L0828&from=EN.

[4] Commission Implementing Regulation (EU) 2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC; https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1212&from=EN.

[5] SRD II came into force on 9 June 2017 and the majority of its provisions had to be implemented by EU Member States by **10 June 2019**. The SRD II provisions on shareholder identification, the transmission of information and the facilitation of the exercise of shareholders rights had to be implemented by **3 September 2020**.

- The new rules clarify the requirement of **corporate approvals** for agreements for the performance of the function of executive directors of joint stock corporations who apply the one-tier system and introduce **restrictions for severance payments** to managing / executive directors.

- With a view to restricting unfair commercial practices, Slovenia introduces further restrictions for the **establishment of companies / partnerships**. Foreign founders / acquirors of shares in Slovenian companies will need to prove that they have not violated tax rules or been sentenced to imprisonment for criminal offenses in connection with labour law, health, environment and general safety etc. or been convicted multiple times for misdemeanours in connection with illegal work or pay for work during the last 3 years, if the Slovenian authorities cannot obtain such proof directly from the authorities of the relevant other country.

The amendment will enter into force on **24 February 2021**. Provisions implementing SRD II will start to apply from **24 August 2021**; certain other changes (e.g., related to the establishment of companies or of a supervisory board in certain limited liability companies) will start to apply from **24 May 2021**, others **from 24 February 2022.** The provision regarding the qualifications of an internal auditor will apply **from 24 February 2024** onwards.

A. RULES IMPLEMENTING SRD II

1. Right of a company to know its shareholders

According to the SRD II, the identification of shareholders is a prerequisite to direct communication between the shareholders and a company and therefore essential to facilitating the exercise of shareholder rights and shareholder engagement. This is particularly relevant in cross-border situations and when using electronic means of communication.

Definition of a Shareholder: Vis-à-vis a Slovenian joint stock corporation, rights and obligations arising from shares may be exercised by the person who is entered as the holder of shares in the central register kept by the central depository company.[6] Any other person who is registered with an intermediary as holder of shares and is not an intermediary, is referred to as an **ultimate shareholder**.[7]

Joint stock corporations (listed and non-listed) with their seat in Slovenia have the **right to identify** their (direct) shareholders and their ultimate shareholders. They may request a shareholder / an ultimate shareholder to explain whether it holds shares for its own account or for a third party and, in such case, for whom.[8]

[6] Article 235 Companies Act.

[7] Article 235.a Para 1 Companies Act.

[8] Article 235.a Para 2 Companies Act.

Companies may request the following information on the identity of their shareholders (regardless of the type of shares and the number of shares[9]) from a **central depository company** or directly from other **intermediaries** (investment firms, credit institutions, fiduciary account holders, etc.) who provide custody and/or management of shares for their customers:

- name/company name, PIN/registration number, tax number, unique identifier in accordance with the law governing dematerialised securities, or other unique identifier,
- address of permanent or temporary residence or registered seat and business address,
- e-mail address (if the shareholder has it),
- the number and type of shares held by a shareholder, and
- the date from which the person has continuously held shares in the company.

Companies must use the form attached to the Implementing Regulation (Annex – Table 1) for their request to disclose information regarding shareholder's identity.

The company starts the enquiry with the **central depository company,** which is obliged without delay to communicate the information to the company. If shares are registered on a fiduciary account, the central depository company must forward the request to the member of the central depository company (the broker) holding the account. Such intermediary must communicate the information about the shareholder's identity to the company; if it does not have such information since another intermediary is registered as holder of the shares, it must forward without delay the request to such other intermediary. In the case of a **chain of intermediaries**, each **intermediary in the chain** is obliged without delay to **forward the company's request for information on the shareholder's identity to the nearest intermediary** in the chain until the request reaches the intermediary who holds the requested information**. Such intermediary must communicate this information directly to the company**.[10] **The central depository company / intermediary must use** the form attached to the Implementing Regulation as Annex – Table 2 for its response.

2. Exercise of Shareholder Rights

The same mechanism applies for the transfer of information relevant to the **exercise of the shareholder's corporate rights** and the transfer of **instructions** given by the shareholder to exercise his/her rights. Intermediaries must transmit to the shareholders without delay the following information for the exercise of shareholder rights:

- Information which the company is required to provide to the shareholder to enable him/her to exercise his/her shareholder rights, or

[9] Slovenia has not made use of the option of Art 3a Para 1 SRD II according to which Member States may prescribe that companies are only allowed to request the identification of shareholders holding more than a certain percentage of shares or voting rights, which shall not exceed 0.5%.

[10] Article 235.b Para 3 Companies Act.

- where the information from the preceding line is available on the company's website, the company's notice of new information and the indication of the company's website.[11]

The company sends the information for the exercise of shareholder rights directly to the shareholders or, in standardised form, to the central depository company or other intermediaries which must transmit the information through other intermediaries in the chain. This obligation ensures that the company can share important information directly with shareholders or use the chain to provide this information to shareholders, while allowing the shareholder to exercise his / her shareholder rights vis-à-vis the company directly or to authorise intermediaries to do so.

This mechanism also applies for companies with their registered seat in another Member State whose shares are traded on a regulated market in Slovenia, and for the request for information on the shareholder submitted by a company with its registered seat in another Member State through a nominated proxy.[12]

3. Consequences of non-compliance

- **Voting rights are suspended:**
  If a company does not receive information on the shareholder's identity within **14 days** after a proper request or a longer period specified in the articles of association, **voting rights from shares held by the relevant shareholder shall be suspended** until the request is fulfilled. The same applies for the company's request to a shareholder to declare whether it holds shares for its own account or for another person.

- **Fines:**
  A fine of between **EUR 6,000 to EUR 30,000** may be imposed on an intermediary if it does not comply with the request to provide information or to forward information / instructions. A responsible person at an intermediary (managing director / executive directors in a board of directors / members of a management board) may be fined with a fine of between EUR 300 and EUR 2,500.

4. Remuneration Policy

A company whose securities are traded on a regulated market **must establish a remuneration policy for all members of management and supervisory bodies** as well as **executive directors.** The remuneration policy shall specify the various components of remuneration provided by the company, including all fixed and variable elements of the compensation, all financial and non-financial factors to establish a manager's success, periods for which variable compensation is deferred, equity incentive schemes, stock option plans, contractually agreed severance packages, etc.[13]

[11] Article 235.c Para 1 Companies Act.
[12] Article 235.b Para 6 Companies Act.
[13] Article 294.a Para 2 Companies Act.

Shareholders are given the opportunity to express their views on the remuneration policy at the **general meeting** (at each significant change or at least every 4 years). The vote is of a consultative nature. If the general meeting rejects a remuneration policy, an amended policy must be submitted to the next general meeting for approval. The remuneration policy must be published on the company's website.[14]

Listed companies must compile a **report on the remuneration of members of management and supervisory bodies**, which **must be in accordance with the remuneration policy**. The report must be reviewed by an auditor and confirmed by the general meeting[15].

5. Related Party Transactions

Transactions concluded by a **listed company** with **related parties** must be approved by the company's supervisory board, if the value of an individual transaction exceeds 2.5 percent of the value of assets shown in the last approved balance sheet. The same applies if the value of all transactions with one individual counterparty during the last 12 months exceeds the mentioned threshold. The approval is not required, *inter alia,* for transactions carried out in the ordinary course of business and under normal market conditions.

Listed companies must **publish** a related party transaction immediately after its conclusion, in the manner as prescribed by the Market in Financial Instruments Act.[16]

6. Transparency of Institutional Investors, Asset Managers and Proxy Advisors

Institutional investors (undertakings carrying out activities of life insurance and reinsurance, institutions for occupational retirement provision) and **asset managers** (investment firms as defined in the Financial Instruments Market Act; AIFMs; fund management companies)[17] must prepare and publish an **engagement policy** that describes how they:

- integrate shareholder engagement in their investment strategy;
- monitor investee companies on relevant matters (strategy, financial and non-financial performance, risk, structure of the share capital, environmental and social impact and corporate governance);
- conduct dialogues with the corporate bodies and other stakeholders in the investee companies;
- exercise shareholder rights;
- cooperate with other shareholders of the investee companies; and

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[14] Companies whose shares are not listed on the regulated market may opt into the rules on remuneration policy (in their articles of association or by a decision of the general meeting). See Article 294.a Para 6 Companies Act.

[15] Such confirmation is not necessary in small and medium sized companies in which the report on the remuneration of the management is presented for discussion as a separate point on the general meeting's agenda.

[16] *Zakon o trgu finančnih instrumentov* (ZTFI-1; Official Gazette, No. 77/2018, as amended) ("**Financial Instruments Market Act**").

[17] Article 317.a Para 1 Companies Act.

- manage actual and potential conflicts of interest.

Institutional investors and asset managers must, on an annual basis, publicly disclose how their engagement policy has been implemented, including a general description of their voting behaviour and the use of proxy advisors.

A **proxy advisor** (defined as a legal entity that analyses, on a professional and commercial basis, the disclosures and other information about listed companies with a view to informing investors' voting decisions by providing research, advice or voting recommendations) shall disclose which **code of conduct** it applies and whether and for which reason it deviated from such code of conduct. In addition, a proxy advisor shall publicly disclose, on an annual basis, information in relation to the preparation of its research, advice and voting recommendations.[18]

B. AGREEMENTS WITH BOARD MEMBERS / EXECUTIVE DIRECTORS

1. Contracts with managers

A **contract for performance of a function** (management (employment) contract) regulates the rights and obligations of a member of the management board / executive director which are not determined by corporate law.

The **supervisory board** (in a two-tier system) or, if the contract is concluded with an executive director who is not a member of the board of directors, the **board of directors** (in a one-tier system) must approve such contract. If a company does not have an executive director, or if the executive director is at the same time a member of the board of directors, the **general meeting** must approve the contract.

If the required approvals are not granted, the relevant managing director / executive director / board member must return the benefits received under the agreement to the company.

2. Consultancy agreements

A **consultancy agreement** is defined as an agreement pursuant to which a member of the supervisory board / board of directors or his/her family member or company (directly or indirectly) controlled by a member, undertakes to provide advisory services to the company which exceed the scope of the member's supervisory function. The contract is valid only if the **supervisory board / board of directors** has granted its **consent**. If the consent is not granted, any payments received based on the consultancy agreement must be returned to the company.

[18] Article 317.č Para 2 Companies Act.

3. Restrictions / caps for severance payments for managing directors

Severance payments can only be paid to managing directors in the event of **early termination of the contract**. No severance may be paid to a managing director if he/she is dismissed due to a serious violation of obligations, on grounds of incompetence, if a vote of no confidence has been expressed by the general meeting, or if he/she terminated the contract. The general meeting may set the maximum amount of severance pay.[19]

C. AMENDMENTS RELEVANT FOR LIMITED LIABILITY COMPANIES (D.O.O.)

A person who has, in the **past 3 months**, established, or acquired a share in, a limited liability company, must not establish or become a shareholder of another limited liability company. Several exceptions apply to this rule.

Companies qualifying as **public interest entities**[20] (with certain exceptions) must establish a **supervisory board** and an **audit committee**.

The rules regarding the avoidance of conflicts of interests, as stipulated for joint stock corporations (Art 270.a), apply also to transactions between limited liability companies who qualify as **mid-sized or large companies**, and their managing directors and procurators and certain family members. Such transactions must be approved by the company's supervisory board or (if the supervisory board has not been established) its general meeting.

D. OTHER CHANGES

1. Diversity Policy, Gender Ratio

Companies whose accounts must be **audited**, must disclose a description of their **diversity policy** which aims at achieving equal representation of different genders, ages, education and experience in their management and supervisory bodies. The **gender ratio** in supervisory and management bodies must be appropriate for a company of its size and the objectives of the company.

2. Registration of Business Address

Companies must register their **business address** (which **must be located in the place of their registered seat**) with the court register. Companies must update the registered information within **1 year** after the amendment enters into force. A company may be fined if the information on the business address registered in the court registry is not correct.

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[19] Article 270 Para 2 Companies Act.

[20] As defined in the Slovenian Auditing Act (*Zakon o revidiranju*), Official Gazette No. 65/08, as amended) (*inter alia*, listed companies; credit institutions; insurance companies; pension funds).

3. Language Spoken in a Company

The communication with employees in connection with work instructions, procedures which determine their rights, and co-determination of employees in management (business-related communication) must be done in Slovene (in the area of minorities, also Italian or Hungarian). **Translations** of business-related communication may be provided to employees who do not speak Slovene (or, in the area of minorities, Italian or Hungarian), into the language spoken by such employees. Only if somebody's **life is in danger**, the management may procure direct communication with foreign employees in a language spoken by them.

4. Restrictions on the Establishment of Companies

Slovenian authorities must obtain information from foreign authorities whether foreign persons fulfil the conditions in **terms of impunity** (for criminal offenses or misdemeanours in connection with labour law, health, environment and general safety, etc.) **and tax compliance** which are required for them to establish a company in Slovenia.
If no adequate system of exchange of relevant information is established between Slovenia and the relevant other country, the foreign person must provide an official certificate by the competent authority which is considered as a proof of no restrictions on setting up a company or the acquisition of a share in a company in Slovenia. Such certificate must not be older than 30 days.

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