

SK: AN AMENDMENT TO THE COMMERCIAL CODE ADDRESSES DUBIOUS DEALINGS WITH COMPANIES

The aim of the amendment to the Commercial Code is to strengthen the accountability of statutory bodies as well as of company partners. The amendment is intended to prevent damage to businesses as well as unfair mergers. At the same time, the conditions for the redistribution of so-called "other company equity" will become stricter.

1. ACTUAL STATUTORY BODY

The amendment introduces the so-called "actual statutory body". Persons who are not appointed to the statutory body, but who actually perform this function (i.e. manage a company) are liable for its actions as if they were the statutory body of the company.

2. OBLIGATIONS AFTER TERMINATION OF FUNCTION

The obligations of the statutory body do not end with the termination of its function. If the company does not have a registered statutory body and does not register the new statutory body in the Commercial Register within 60 days of the expiration of the three-month term for its appointment, the statutory body last performing this function is obliged to file a petition for the dissolution of the company within 30 days.

3. LIABILITY OF THE CONTROLLING PERSON FOR THE BANKRUPTCY OF THE CONTROLLED COMPANY

Another novelty is the introduction of liability of controlling persons for damage, i.e. majority partners and shareholders. If a company goes into bankruptcy, such partners or shareholders are liable to the company's creditors for damages if their actions substantially contributed to the bankruptcy of the company. The company is also considered to be in bankruptcy if, for example, an execution proceedings against such company has been cancelled due to lack of its assets.

4. LIABILITY FOR DAMAGE CAUSED BY FAILURE TO FILE A BANKRUPTCY PETITION

If the persons obliged to file a bankruptcy petition fail to fulfil this obligation on time, they shall be liable to the company's creditors for the damage caused. The petition is considered not filed on time if, for example, an execution proceeding against such company has been cancelled due to lack of its assets.



5. THE END OF UNFAIR MERGERS

Under the amendment, it will no longer be possible to join, merge or divide a company if it is **in liquidation, bankruptcy or restructuring, if the company is dissolved or if the liabilities of the successor company exceed the value of its assets**. The fulfilment of these conditions must be confirmed in an auditor's report at the same time. This regulation has been in effect since 8 November 2017.

6. REDISTRIBUTION OF CAPITAL FUNDS FROM PARTNERS' CONTRIBUTIONS

Until now, there was no legal framework regulating voluntary contributions by partners to company assets. The amendment introduces the **conditions for contributions** to the company's assets and for their **repayment** to the company's partners. If the legal terms of the return of contributions are violated, the **statutory body shall guarantee** the return of contributions to the company and its creditors.

7. UNFAIR LIQUIDATION

The amendment adds to the Criminal Code new factual elements of the criminal offence of unfair liquidation, the purpose of which is to prevent the due **liquidation of a business by transferring ownership to a straw man**. Such criminal offense may be committed by the straw man himself, the transferor, as well as the transfer agent. This regulation has been in effect since 8 November 2017.

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