



November 2011

Amendment to the Commercial Code effective on 1 January 2012

On 1 January 2012, Act No. 351/2011 Coll. amending the Commercial Code comes into effect.

From the most important changes introduced by this amendment we choose the following:

1. Legal reason for using the premises of the registered office or of the place of business

Both entrepreneur – natural person and entrepreneur – legal entity are newly explicitly obliged to have a legal title (e.g., ownership, lease or sublease title) for the use of the premises registered as their place of business or registered office for the entire period for which these premises are registered as their place of business or as registered office.

2. Entry of the birth number in the Commercial Register, specimen signatures

In the Commercial Register, the birth numbers (if assigned) of the registered natural persons (e.g., shareholders of companies, members of their statutory bodies) will still be registered; however, these birth numbers will be no longer publically accessible, as they will not be contained in the excerpts from the Commercial Register and will not be published in the Business Journal. However, if a birth number is stated in documents deposited to the Collection of Deeds of the Commercial Register (e.g. in the resolution of the general meeting on election of a member of a statutory body), these documents will be published in the Collection of Deeds including the birth number.

The obligation to deposit specimen signatures of persons authorized to act in name of the company and as well as specimen signatures of the directors of foreign person's enterprises will be abolished. At the request of affected persons, the Commercial Register court will remove specimen signatures from the Collection of Deeds, provided that these documents were deposited to the Collection of Deeds prior to 1 January 2012.

3. Delegation of business management (concurrence of functions)

The amendment introduces new law institute of delegation of business management with the aim to enable one person to be, at the same time, a statutory body (a member of the statutory body) and a managerial employee.

The statutory body of a company or corporation (e.g., an executive director of a s.r.o. or a board of directors of an a.s.) will have the right to delegate the business management (partly or in the full scope) to another person, including to an employee of the company. Such employee can be, at the same, a statutory body or a member of the statutory body of the company. The delegation of the business management does not comprise participation in the meetings of the statutory body, taking decisions on delegation of business management, taking decisions on primary focus of the activity of the company or other activities within the business management of the company which the Commercial Code or another legal regulation entrusts to the exclusive competence of the statutory body.

However, the liability of the persons who are statutory bodies of the company or members of the statutory bodies of the company for the breach of the obligation to act upon execution of their position with due managerial care, as stipulated by the Commercial Code, will not be affected by the delegation of the business management.

If the activities falling within the scope of the business management are performed by a person who is, at the same time, an employee of the company, his/her salary will be negotiated or determined by the body of the company which has the power to decide on remuneration of the statutory body or its member (i.e., in principle, by the general meeting or by the sole member or shareholder).

4. Measures against conflict of interest (section 196a of the Commercial Code)

A company can secure obligations of linked persons (i.e., of persons enumerated in section 196a paragraphs 1 and 2 of the Commercial Code) with an approval of the general meeting only; it will be therefore no longer required that such security is provided “under the terms customary in business transactions”. The approval of the general meeting (as has been the case already under the current legislation) is not required if the controlling entity is to secure obligations of the controlled entity.

If a company transfers its property to a linked person in breach of the conditions set out in section 196a of the Commercial Code and such linked person further transfers the property to a third party, the good faith of such third party is newly explicitly protected. The third party acquires ownership title to such property, unless at the time when the third party was to acquire ownership title to the property, the third party knew or should have known and could have known that upon the first transfer (i.e., upon the transfer from the company to the linked person) the conditions set out in section 196a of the Commercial Code have not been met.

5. Possibility to limit the right to damages

In the relationships governed by the Commercial Register the right to damages may be newly waived by an agreement even prior to the breach of an obligation from which damage may arise. However, the right for compensation for damage caused intentionally can be neither waived nor limited in such way.