



SK Legal Alert

December 2022

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Legislative News Summary

Amendment to the Commercial Code

The establishment of an enterprise or an organizational unit of an enterprise of a foreign legal entity ("**Enterprise of a foreign entity**") and the establishment of a limited liability company ("**s.r.o.**") will now be considerably easier, provided that certain conditions are met. Ministry of Justice of the Slovak Republic has prepared a draft act amending Act No. 513/1991 Coll., the Commercial Code and certain other acts (**Draft Act**). The Draft Act, which, in addition to regulating the establishment of a foreign entity's enterprise and the establishment of an s.r.o. in a simplified manner, will also bring changes to the system of the interconnection of registers, is scheduled to take effect on 1 January 2023.

Conditions for establishment of Enterprise of a foreign entity and s.r.o. in a simplified manner

The Draft Act should allow the establishment of Enterprise of a foreign entity and establishment of s.r.o. in a simplified manner, i. e. without the obligation to apply to the Trade Licensing Office for the issuance of a certificate of trade licence.¹

It will be possible to set up an in a simplified manner only if:

- ▶ it is established for the purpose of carrying out business;
- ▶ its scope of business includes only activities corresponding to the new list of free trades according to the Annex

No. 4a to Act No. 455/2991 Coll., on Trade Business ("**Trade Licensing Act**") ("**New list of free trades**")²;

- ▶ its scope of business does not consist of more than 10 selected activities from the New list of free trades;
- ▶ the head of the Enterprise of a foreign entity is a person of integrity³ registered in the register of natural persons⁴; and
- ▶ the foreign legal entity has an account with a bank or branch of a foreign bank within the Single Euro Payments Area (SEPA).

Establishment of an s.r.o. in a simplified manner will be possible by means of a model memorandum of association designated for this purpose, which will be published by the Ministry of Justice on its website, and if the following conditions are met:

- ▶ s.r.o. has no more than five shareholders;
- ▶ s.r.o. is established for the purpose of doing business;
- ▶ s.r.o.'s scope of business consists of a maximum of 10 activities from the New list of free trades;
- ▶ the shareholders' contributions are exclusively monetary;
- ▶ the Executive is the contribution administrator;
- ▶ s.r.o. does not have a Supervisory Board;
- ▶ s.r.o.'s Executive is registered in the register of natural persons;
- ▶ only persons who have an account with a bank or a branch of a foreign bank within the Single Euro Payments Area (SEPA) are s.r.o. shareholders;

¹ The trade licence will be issued by the relevant trade licensing office without delay on the basis of data from the information systems of public administration authorities. This will eliminate one of the intermediate steps in the process of registration in the commercial register, where it is necessary to apply to the competent trade licensing authority for a trade licence certificate.

² The New list of free trades can be found in Annex 4a of the Draft Act available at <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2022-429>

³ For the purpose of verifying integrity, a natural person who is a citizen

of the Slovak Republic shall provide the data necessary to request an extract from the criminal register and a person who is not a citizen of the Slovak Republic shall provide an extract from the criminal register of the State of which he or she is a citizen.

⁴ The register of natural persons contains data on (i) citizens with permanent residence in the territory of the Slovak Republic, (ii) citizens who do not have permanent residence in the territory of the Slovak Republic, (iii) foreigners registered for residence in the territory of the Slovak Republic, etc.



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- ▶ s.r.o.'s shareholders are not represented at the incorporation of the company.

Jurisdiction of the registry court

The registry court competent for the first registration of the data on the Enterprise of a foreign entity and s.r.o., which are established in a simplified manner, in the Commercial Register ("CR") will be exclusively the District Court of Žilina.

However, for the registration of changes to data and the deposit of related documents in the collection of deeds, the competent court of registration will be the court of registration in which district the foreign company/legal entity, registered in a simplified manner, has its registered office.

Exchange of information through the system of interconnection of registers

The amendment to the Commercial Code should also interconnect Slovak and foreign company registers. The interconnection is to enable the exchange of information between these registers.

The registration of a change of data or deletion of an Enterprise of a foreign entity by the registry court will now be carried out without a petition if the foreign commercial register or other registry notifies via the system of interconnected registers that a change of data or deletion of the entity has been registered.

Act on Actions for Protection of Collective Consumer Interests

The Ministry of Justice of the Slovak Republic has submitted a draft Act on Actions for Protection of Collective Consumer Interests and on amendments and supplements to certain

acts ("**the Act**"), which is intended to enable authorised persons to bring actions for protection of collective consumer interests in order to protect them.

The action for protection of collective consumer interests (the "Action") is brought by an authorised person as a plaintiff on behalf of consumers or by a supervisory authority (e. g. the National Bank of Slovakia) with a view to obtaining a court decision by way of a corrective action or an abstract review procedure (see below).

The District Court Banská Bystrica is competent for proceedings in disputes arising from the Action.

Authorised person

An authorised person is a legal person representing the interests of consumers who has been entered in the list of authorised persons⁵ as a person entitled to bring Claims or a person who is designated in another Member State of the European Union as a person entitled to bring cross-border Claims.

The legislator made the registration of a person in the list of authorised persons subject to the fulfilment of several conditions. A legal person will be entered in the list only if it:

- ▶ is established under the law of the Slovak Republic;
- ▶ is not established for the purpose of business;
- ▶ carries out activities aimed at promoting and protecting the interests of consumers;
- ▶ accounts in the double-entry book-keeping system, etc.

According to the Act, the authorised person will be obliged to provide information on its website about:

- ▶ the statement of claim (see below);
- ▶ actions brought before the court;
- ▶ the state of the actions it has brought to the court;

⁵ The list of authorised persons will be maintained and published on

the website of the Ministry of Economy of the Slovak Republic.



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- ▶ the results of the actions brought.

The authorised person shall also be obliged to inform in a timely manner and by appropriate means the affected consumers who will be affected by the forthcoming or ongoing proceedings in the Action so that they have the opportunity to expressly express their wish to participate in the proceedings in question. The costs of informing the consumers concerned as well as the claim for remuneration⁶ may be recovered by the person entitled from the defendant business operator, but only, of course, if he or she is successful in the proceedings in the Action.

Proceedings for the issue of a corrective measure

Corrective measure proceedings are proceedings in which the court may impose one or more remedies on the trader, consisting in particular of an obligation to compensate the consumers concerned, to repair or replace the product, to discount the purchase price, to terminate the contract or to refund the purchase price paid, in addition to an obligation to pay appropriate financial compensation ("**Corrective measure proceedings**").

Before filing an action for a corrective measure, the authorised person will be obliged to publish in the Commercial Bulletin a statement of claim, to which consumers will sign up by application, even after the commencement of the proceedings (pending the conclusion of the evidence in the court of first instance).

A consumer who enrolls to a statement of intent will not be able to participate in other nor individual actions for injunctive

relief in the same case and against the same trader.

The authorised person will only be able to bring an action for a corrective measure if at least ten affected consumers sign up to the plan of action within two months of its publication.

The condition for the application to be effective will be not only its delivery to the authorised person, but also the payment of a fee of EUR 10. If no action is brought, the fee shall be promptly refunded to the consumer concerned by the person entitled.

The consumer involved in the corrective action procedure shall not bear the costs of the procedure.⁷

Procedure on abstract control

Proceedings on abstract review in consumer matters ("**procedure on abstract control**") are proceedings in which the court will examine:

- ▶ the inadmissibility of a contractual term in a consumer contract or in other contractual documents relating to a consumer contract ("**contractual term**");
- ▶ unfair commercial practices; and
- ▶ other breaches of consumer protection legislation, irrespective of the circumstances of the specific case.

Before bringing an action in the case of an abstract control, the authorised person or the supervisory authority shall enter into consultation with the trader concerned with a view to obtaining him to desist from the infringement of consumer protection legislation; if the trader does not desist from the infringement within 14 days of receipt of the request for consultation, the authorised person or the supervisory authority

⁶ In the case of proceedings for the issuance of a corrective measure, the remuneration is graded on a percentage basis, ranging from EUR 50 to EUR 100,000; in the case of proceedings for abstract control,

up to EUR 10,000, depending on the circumstances and the complexity of the case.

⁷ However, the participating consumer may exceptionally be required to pay the costs incurred as a result of his or her fault.

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shall be able to bring an action without delay.

Consumers will not have to be present when this action is brought. The authorised person or the supervisory authority will not be required to prove actual loss or damage to individual consumers caused by the breach of consumer protection legislation or the trader's intent or negligence.

If the court determines an unfair contract term, an unfair commercial practice or a breach of consumer protection legislation, it will prohibit the trader from:

- ▶ using a given contract term;
- ▶ using an unfair commercial practice; or
- ▶ violating consumer protection laws.

Effectiveness of the act

Upon approval by the National Council of the Slovak Republic, the Act should enter into force on 25 June 2023, however, the provisions of the Act will apply to proceedings on action commenced after 25 June 2023.

Amendment to the Civil Dispute Procedure Code

Act No. 160/2015 Coll., the Civil Dispute Procedure Code will be amended by Act No. 150/2022 Coll. on amendments and supplements to certain acts ("**CDPC Amendment**") in connection with the new seats and districts of district courts, with effect from 1 June 2023. The CDPC Amendment shall bring a new court map. With respect to the first instance courts, one Municipal Court Košice will be created by merging the District Court ("**DC**") Košice I, the DC Košice II and the DC Košice-Okolie, and the current five DCs in Bratislava will be replaced by four municipal courts in Bratislava.

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics covered in this bulletin should be consulted before any decision is made. The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

For further information, please contact the partner / manager you are usually connected to.



Tomáš Čermák
Managing Associate
tomas.cermak@weinholdlegal.com



Karin Konečná
Attorney at Law
karin.konecna@weinholdlegal.com