News 2017/01

Accounting Advisory, KPMG in Slovakia
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Amendments to the Commercial Code and the Act on Accounting in October 2017

On 12 October 2017, the National Council of the Slovak Republic approved an amendment to the Commercial Code by passing Act No. 264/2017 Coll., with the Act on Accounting being amended at the same time. Other laws have been amended as well, e.g., the Penal Code, the Rules of Repossession Procedure, the Act on Banks, the Act on Social Insurance, the Act on Income Tax, the Act on Bankruptcy and Restructuring, and so forth.

Consequences for accounting will primarily result from the following changes:

- deadlines for approval and filing of financial statements in the Collection of Deeds of the Commercial Register and/or the Register of Financial Statements;
- changes related to a merger, amalgamation into a separate entity, and demerger of companies;
- a capital fund from contributions from shareholders/partners (accounting legislation refers to other capital funds).

These changes will enter into force on 1 January 2018, except for changes concerning a merger, amalgamation into a separate entity, and demerger of companies, which will enter into force earlier, as of the date of their being promulgated in the Collection of Laws, that is, on 8 November 2017, and except for certain other amendments, which will enter into force later, on 1 September 2018.

Other changes to the Commercial Code apply to business secrecy, responsibilities of statutory bodies, responsibility of a controlling entity for the bankruptcy of a controlled entity, documenting an application for deletion of a company from the Commercial Register with the consent of the tax administrator and the Social Insurance Company, and so forth. These changes are not discussed in this News.

Amendment to the Commercial Code

Description	Previous legislation	New legislation	Substance of change
Deadlines for approval and filing of financial statements in the Collection of Deeds of the Commercial Register and/or the Register of Financial Statements	Presentation for approval. According to Article 40 (1) of the Commercial Code, the relevant body of a joint stock company, simplified joint stock company, limited liability company, cooperative, and state-owned company is required to submit ordinary individual financial statements and extraordinary individual financial statements for approval within six months of the end of the accounting period.	Presentation for approval. According to Article 40 (1) of the Commercial Code, a joint stock company, simplified joint stock company, limited liability company, cooperative, and state-owned company are required to submit their ordinary individual financial statements and extraordinary individual financial statements to the relevant body for approval in such a way that this body approves them within 12 months of the balance sheet date of the ordinary individual financial statements and extraordinary individual financial statements.	Presentation for approval. The deadline has been changed from the previous time limit of six months of the end of the accounting period to a more flexible time limit.
	Filing in the Collection of Deeds. According to Article 40 (2) of the Commercial Code, if financial statements are not approved within three months of their presentation, the unapproved financial statements shall be filed in the Collection of Deeds within 30 days of the fruitless expiration of the three-month time limit.	Filing in the Collection of Deeds. According to Article 40 (2) of the Commercial Code, an entity referred to in paragraph 1 is required to file its ordinary individual financial statements and extraordinary individual financial statements in the Collection of Deeds within nine months of the date of their preparation; this does not apply if financial statements are filed in the Collection of Deeds pursuant to special legislation.	Filing in the Collection of Deeds. The deadline for filing unapproved financial statements in the Collection of Deeds has been changed from the previous maximum of 10 months (6 months for presentation + 3 months for approval + 30 days of the fruitless expiration of the deadline for approval = 10 months) of the balance sheet date to nine months of the date of their preparation. The date of preparation always comes later than the balance sheet date. The date of preparation is the date of signing by the statutory body (Article 17 (5) of the Act on Accounting). It continues to apply that the financial statements must be prepared at the latest within six months of the balance sheet date, unless special legislation (e.g., the Act on Income Tax) provides otherwise (Article 17 (5) of the Act on Accounting).
	Deadline for approval According to Article 23a (7) of the Act on Accounting, an accounting entity must file the approved financial statements or a notification of the date of approval of the financial statements in the Register of Financial	Deadline for approval The provisions of Article 23a (7) of the Act on Accounting have not been changed.	Deadline for approval. The Commercial Code did not stipulate the deadline by which the general meeting must approve financial statements. According to the aforementioned new provisions of Article 40 (1) of the Commercial Code, it seems that

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	Statements **within one year of the end of the accounting period** for which the financial statements are prepared.		the deadline has been stipulated ("...in such a way that this body approves them within 12 months of the balance sheet date..."). In addition, this deadline is indirectly specified in Article 23a (7) of the Act on Accounting, where it has been incorporated from Accounting Directive No. 2013/34/EU. Of course, the question remains as to whether a deadline may be stipulated in the Act on Accounting while it is not stipulated in the Commercial Code. **Effective date**. According to Article XIII, these changes will enter into force on 1 January 2018. Deadlines for preparation, presentation, audit, review, approval, filing and publication of financial statements and an annual report were discussed in News 2016/01, which were posted at www.kpmg.sk as News 2016/01. Update of this document is under preparation.
Merger, amalgamation into a separate entity, demerger – decisive date determined retroactively	According to Article 69 (6) (d) of the Commercial Code, an agreement on merger / an agreement on amalgamation into a separate entity / a project for demerger shall contain the following information: - specification of the date as of which any actions of companies being wound up are regarded, from the accounting point of view, as actions performed on behalf of the successor company. The Act on Accounting refers to this date as the **decisive date** (Article 4 (3) of the Act on Accounting).	Article 69 (6) (d) of the Commercial Code has been amended as follows: - ... company, where the date may be determined retroactively at the earliest as of the first day of the accounting period in which a draft agreement on amalgamation into a separate entity or an agreement on a merger of companies, or a project for demerger of a company is prepared, provided that the financial statements prepared as of the date preceding this date have not been approved by the relevant body.	**It was, and still is, possible to determine the decisive date retroactively**. Until now, the question was how far in the past the decisive date could be determined retroactively - whether, for example, in September 2017, the decisive date could be determined retroactively as of 1 January 2017. This was treated in practice in such a way that if the last financial statements (= prepared as of 31 December 2016) were approved by the general meeting, as the supreme body of the company, during the course of 2017, the decisive date could not be determined as of 1 January 2017, but instead had to be determined as of a later date (2 January 2017 or later), because if it had been determined as of 1 January 2017, assets and liabilities of the company being wound up would have had to be recognized at their fair value

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			(Article 27 (1) (c) of the Act on Accounting) in the financial statements prepared as of 31 December 2016 (= the date preceding the decisive date), which was not the case; and there is no option to change these financial statements retroactively, because financial statements cannot be changed after they have been approved (Article 16 (10) of the Act on Accounting). If the financial statements were not yet approved, it was possible to determine the decisive date as of 1 January 2017. Based on the amendment, this practice has been incorporated in the provisions of Article 69 (6) (d) of the Commercial Code. We would like to point out that the Act on Accounting and the Act on Income Tax continue to stipulate the date of a merger / amalgamation into a separate entity / demerger on the basis of the substance over form principle (i.e., a merger / amalgamation into a separate entity / demerger becomes effective as of the decisive date, while the decisive date may be earlier than the date of registration in the Commercial Register, but not later), whereas the Commercial Code and the Act on VAT still follow the form over substance principle, (i.e., a merger / amalgamation into a separate entity / demerger only becomes effective as of the date of registration in the Commercial Register). Effective date. The date of promulgation in the Collection of Laws (see Article XIII), which was XXX November 2017. According to the transitional provisions of Article 768p on amendments effective from the date of promulgation in the Collection of Laws, previous legislation shall apply to

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			amalgamation into a separate entity, merger, and demerger of a company if a draft agreement on amalgamation into a separate entity, draft agreement on merger, or project for demerger is approved prior to the effective date of this Act and an application for registration of amalgamation into a separate entity, merger, or demerger of the company in the Commercial Register is filed at the latest within 90 days of the effective date of this Act. If a decision of the relevant body is required pursuant to legislation on protection of competition, the deadline for registration of amalgamation into a separate entity, merger, or demerger of the company in the Commercial Register, as referred to in the first sentence, shall be extended by six months.
Merger, amalgamation into a separate entity, demerger – restrictions to protect creditors and shareholders	N/A	In Article 69 of the Commercial Code, new paragraphs 11 to 15 in the following wording shall be inserted after paragraph 10: (11) As of the effective date of amalgamation into a separate entity, merger, or demerger of a company: a) the amount of liabilities of the successor company must not exceed the amount of its assets; however, the amount of liabilities shall not include the amount of liabilities related to the subordination obligation; b) the successor company or the company being wound up must not be in liquidation; c) the successor company or the company being wound up cannot be subject to the effects of a declaration of bankruptcy, unless the trustee in bankruptcy agrees to amalgamation into a separate entity, merger, or demerger of the company; d) the successor company or the company being wound up cannot be subject to the effects of the commencement of restructuring proceedings or	These provisions are new. The Explanatory Report says that they are intended to improve the protection of the rights of creditors and shareholders of companies participating in a merger, amalgamation into a separate entity, and demerger and prevent unfair practices aimed at avoiding obligations related to liquidation or bankruptcy of companies. Conditions that a company must fulfill to participate in a merger, amalgamation into a separate entity, or demerger have been stipulated. Such a company should be in good condition in order for the economic objective of the transaction to be achieved, namely the transfer of capital and the continuation of business activities by the successor company. This means that, as a rule, companies that do not have an adequate asset/liability ratio and/or companies that are in liquidation or subject to proceedings for dissolution cannot participate in a merger, amalgamation into a

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		permission of restructuring; e) the successor company or the company being wound up cannot be subject to proceedings for their dissolution and cannot be dissolved by a court or on the basis of a court order. (12) Members of the company bodies shall be required to refrain from any actions aimed at its amalgamation into a separate entity, merger, or demerger if it is possible to assume that the conditions referred to in paragraph 11 are not fulfilled; otherwise, they shall be liable to creditors for any damage that they cause to creditors by breaching this obligation. (13) All companies being wound up shall deliver a notification of the preparation of a draft agreement on amalgamation into a separate entity or a draft agreement on a merger or a draft project for demerger of the company to the relevant tax administrator, which shall be the tax authority or customs authority, at the latest 60 days prior to the date of the general meeting that is scheduled to decide on the approval of the draft agreement on a merger or the draft agreement on amalgamation of companies into a separate entity or the draft project for demerger of the company, and if ownership interests or shares of the company being wound up are subject to the right of lien, the same shall also be delivered to the secured creditor within the same time limit. (14) After the shareholders or relevant bodies of the participating companies adopt a decision on amalgamation into a separate entity, merger, or demerger of the company and before an application for registration of amalgamation into a	separate entity, and demerger. It cannot be ruled out that a "sound company" will merge with such a company, but this cannot eventually threaten the creditors of the participating companies. Liability of members of company bodies for damage that they may perhaps cause by failing to keep to the obligation to refrain from any actions aimed at amalgamation into a separate entity, merger, or demerger, where the conditions for this are not met, has been explicitly defined. The obligation to submit a notification of a prepared draft agreement, based on which a merger, amalgamation into a separate entity, or demerger will be carried out, to the relevant tax administrator, as well as to the secured creditor concerned, has been imposed. The obligation to prepare an audit report on the fulfillment of the condition for a company to participate in a merger, amalgamation into a separate entity, or demerger has been introduced. From the viewpoint of an auditor, these will be assurance services within a defined scope. It is mandatory to attach an audit report to an application for registration in the Commercial Register. The purpose of paragraph 15 is to make sure that it is not necessary to prepare several reports if, for example, in the case of a merger, a report referred to in Article 218a (3) is prepared by an independent expert, who is a court expert or auditor, and information referred to in paragraph 14 forms part thereof. In the present situation, however, a report referred to in Article 218a is usually not prepared,

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		separate entity, merger, or demerger of the company is filed, an auditor designated in the approved agreement on amalgamation into a separate entity, agreement on merger, or the approved project for demerger of the company shall prepare a report on ascertained facts to certify that, provided that the situation of the participating companies remains unchanged as of the date referred to in paragraph 6 (d) (= as of the decisive date), the conditions referred to in paragraph 11 (a) will be fulfilled. If the company being wound up is not required to have its financial statements audited by an auditor, the report shall also include a certification by the auditor that receivables and liabilities of the company being wound up correspond to its financial reality as of the date preceding the date referred to in paragraph 6 (d). An audit report on ascertained facts shall be attached to the application for registration in the Commercial Register for the purpose of certifying the facts referred to in paragraph 11 (a). (15) The provisions of paragraph 14 shall not apply if a report referred to in Article 218a (3) (= report by an independent expert, who may be an auditor or court expert, on the result of a review of the draft agreement on amalgamation into a separate entity, the agreement on merger, or the project for demerger), which includes information that would be included in a report referred to in paragraph 14, is prepared. Paragraph 5 in the following wording shall be inserted after the provisions of Article 69a: (5) All companies being wound up and successor	because this report should only be prepared if any of the shareholders so requests (Article 218a (5)). The obligation and deadline for companies being wound up and successor companies to file an application for registration of a merger, amalgamation into a separate entity, or demerger in the Commercial Register have been stipulated. The deadline shall not apply if special legislation makes concentration conditional upon a decision of the relevant body (for example, Act No. 136/2001 Coll. on Protection of Competition). The above is what the Explanatory Report has to say. To put it briefly, the conditions for carrying out a merger, amalgamation into a separate entity, and demerger have been made significantly more complicated. For example, the following is required: - a notification to the tax administrator at the latest 60 days prior to the date of the general meeting that is scheduled to approve a draft agreement; - an audit report that the amount of liabilities of the successor company will not exceed the amount of its assets, while an auditor only has 30 days to prepare this report (= the period after the adoption of a decision by shareholders in the participating companies and before filing an application for registration in the Commercial Register); - if the company being wound up is not required to have its financial statements audited by an auditor, an audit report should also include a certification by the auditor that receivables and liabilities of the

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		companies must file an application for registration of a merger, amalgamation into a separate entity, or demerger of the company in the Commercial Register at the latest within 30 days of the approval of the agreement on amalgamation into a separate entity, the agreement on merger, or the project for demerger of the company; this deadline shall not apply if the merger, amalgamation into a separate entity, or demerger of the company is subject to approval pursuant to special legislation.	company being wound up correspond to its financial reality as of the date preceding the decisive date. The Slovak Chamber of Auditors (SKAU) is preparing a guideline on an audit report. Effective date: The date of promulgation in the Collection of Laws, the same as in the previous case (see above).
Capital fund from contributions (accounting legislation refers to "other capital funds")	The Commercial Code does not regulate the creation or use of other capital funds. Their creation and use are generally accepted and applied in practice according to the principle of everything that is not forbidden is allowed. For example, according to the key provisions regulating the distribution of equity among shareholders, i.e., according to the provisions of Article 179, a company may distribute net profit or other own resources among shareholders. The Explanatory Report on the amendment to these provisions as of 1 December 2013 explicitly says that "other own resources" include other capital funds. Accounting legislation has regulated the creation of other capital funds since 1993; their use is not regulated. The current wording of Article 59 (6) of the Accounting Procedures for Entrepreneurs is as follows: Account 413 - *Other capital funds* shall be used to account for other monetary and non-monetary capital funds whose creation does not result in an increase in an accounting entity's share capital and for which no separate main account has been created within the aforementioned accounts of this account group. Assets received from partners	New provisions have been added - Article 217a Capital Fund from Contributions. (1) A company may create a capital fund from shareholders' contributions. The creation of a capital fund from shareholders' contributions must be regulated in the memorandum of association or in the statutes. If a capital fund is to be created from shareholders' contributions upon the company's incorporation, it must be approved by the founders. If a capital fund is to be created from shareholders' contributions during the duration of the company, it must be approved by the general meeting. The provisions on contributions shall apply accordingly to the payment of a shareholder's contribution to the capital fund, which shall be considered a capital fund at the time when it is paid. (2) Unless special legislation provides otherwise, a capital fund paid from shareholders' contributions may be used for redistribution among shareholders or for an increase in share capital if the memorandum of association or the statutes so	The amended Commercial Code refers to the term "capital fund from contributions", and the term "redistribution" among shareholders/partners corresponds to the English term "distribution." It is stated in the Explanatory Report that so-called other own resources are already referred to in several different parts of the Commercial Code at the present time. However, application practice shows several unclear issues regarding their creation and distribution. This issue has become all the more urgent following the introduction of the provisions on a crisis of a capital company, where shareholders (partners) may not want the company to be in crisis (regarding the term "company in crisis," see Article 67a et seq. of the Commercial Code) and need to increase the company's own resources relatively quickly for this purpose. The objective of the amendment is to remove this problem from application practice and clarify the position of a company's own resources. This issue is inevitably connected to accounting rules.

Description	Previous legislation	New legislation	Substance of change
	free of charge and members' shares in cooperative housing associations shall primarily be credited to this account. As can be seen from the above, these contributions are referred to as "funds" for the purposes of accounting legislation.	provide, namely on the basis of a decision of the general meeting. A capital fund from shareholders' contributions may not be used for redistribution among shareholders if the company is in crisis or were to find itself in crisis as a consequence of redistribution of the capital fund from shareholders' contributions. (3) If a capital fund paid from shareholders' contributions is to be used for redistribution among shareholders, a notification of the amount to be redistributed must be published at least 60 days in advance. The provisions of Article 179 (4) shall not be thereby affected. (4) The provisions of Article 67f (2) and (3) shall apply accordingly to a capital fund from shareholders' contributions that has been used for redistribution among shareholders contrary to this Act. A shareholder shall not be required to return any consideration from the redistribution of the capital fund from shareholders' contributions if it is proven that the shareholder received the consideration in good faith. In addition, the following provisions have been amended accordingly: - Article 179 (4) – a capital fund from shareholders' contributions may be redistributed among shareholders; - Article 179 (5) – a capital fund from shareholders' contributions shall bear no interest; - Article 179 (7) – the provisions banning the refund of a contribution shall not apply to redistribution of a capital fund	As far as the creation of capital funds from shareholders' contributions is concerned (a person other than a shareholder is not authorized to provide a contribution), it is explicitly stated that this is conditional upon being regulated in the memorandum of association or in the statutes. If a capital fund is to be created from shareholders' contributions upon the company's incorporation, it must be approved by the founders. However, if this fund is to be created during the duration of the company, its creation is subject to approval by the general meeting. Same items that can be contributed to the share capital ca be contributed to capital fund as well. In the case of contributions in kind, it is necessary to apply the rules for determining the amount of contributions in the same way as in the case of contributions to share capital. The creation of a capital fund from contributions (the term "contributions by a shareholder outside share capital" is also used in practice, which is not quite adequate) is conditional upon its being paid, and only then can the capital fund be created (the assumption of a liability to pay a contribution is not sufficient for shareholders). Redistribution among shareholders (only) of contributions paid is conditional upon the fulfillment of the notification obligation (publication of a notification), the nonexistence of a crisis of the company, in which the company might as well find itself as a consequence of distribution of contributions and a decision of the general meeting. Shareholders' contributions are not as strictly regulated own resources as, for example, share capital. On the other hand, if considerations substituting for equity

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		from shareholders' contributions. As Article 179 applies to **joint stock companies**, the provisions of Article 123 (2) and (3) have been amended accordingly with respect to **limited liability companies**.	cannot be refunded in the event of a crisis, the "minore ad maius" (= "from smaller to bigger") argument should be used to arrive at the conclusion that this equally applies to shareholders' contributions. If a capital fund from contributions is used contrary to this Act, this will have similar consequences as the (prohibited) refund of considerations substituting for own resources. However, a shareholder who is able to prove (the shareholder carries the burden of proof in possible court proceedings) that he or she has received the consideration in good faith will not be required to return the consideration. The above is what the Explanatory Report has to say. This means that: - a contribution may only be made by shareholders, and not by third parties; - this is conditional upon being regulated in the memorandum of association or in the statutes; - also, redistribution can only be carried out among shareholders, and not to third parties; - it may only be used for two purposes: redistribution among shareholders or an increase in share capital; it may not be used, for example, to settle a loss; - a notification of redistribution among shareholders must be published in the Commercial Bulletin at least 60 days in advance; - a capital fund from contributions may be presented in the balance sheet only after it

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			is paid (i.e., a receivable from a partner and an increase in equity cannot be presented at the same time, but an increase in equity should instead be presented only after the contribution has been paid); - the provisions on contributions in kind (for example, an expert opinion, see Article 59 and Article 60 of the Commercial Code) shall apply to the payment of contributions. **Effective date**. According to Article XIII, these provisions shall enter into force on 1 January 2018. According to the **transitional provisions** of Article 768q, the provisions of Article 23 (2) and Article 217a shall only apply to contributions to a capital fund **provided after 1 January 2018**. It transpires from the above that contributions provided prior to 1 January 2018 remain unregulated. It would apparently be appropriate to regulate them by analogy, i.e., the statutes/memorandum of association should be amended and contributions that have not been paid as of 1 January 2018 should be paid.

Amendment to the Act on Accounting

Description	Previous legislation	New legislation	Substance of change
Capital fund from contributions (accounting legislation refers to "other capital funds")	As stated above, the creation of other capital funds has been regulated by accounting legislation since 1993; their use is not regulated. The current wording of Article 59 (6) of the Accounting Procedures for Entrepreneurs is as follows: Account 413 - *Other capital funds* shall be used to account for other monetary and non-monetary capital funds whose creation does not result in an increase in an accounting entity's share capital and for which no separate main account has been created within the aforementioned accounts of this account group. Assets received from partners free of charge and members' shares in cooperative housing associations shall primarily be credited to this account. As can be seen from the above, these contributions are referred to as "funds" for the purposes of accounting legislation. By analogy with contributions to share capital, an increase in other capital funds (equity, own resources) should already be recognized at the time of the assumption of a liability to pay a contribution, rather than when it is paid. See the provisions of Article 2 of the Accounting Procedures for Entrepreneurs regulating the date of an accounting transaction (date of establishment of a receivable, date of establishment of a liability). The contributor should make the following accounting entries at the time when the contributor assumes the liability to pay a contribution to other capital funds:	A new provision, Article 28 (5), has been added to the Act on Accounting: (5) On the basis of payment of contributions to a capital fund from contributions, the company and the partner or shareholder shall account for the creation of a capital fund from contributions pursuant to special legislation. The partner or shareholder shall account for contributions paid to the capital fund from contributions as part of the valuation of a security or ownership interest in share capital.	In accordance with the new provisions of the Commercial Code concerning a capital fund from contributions, the creation of a capital fund from contributions will be accounted for only when this fund is paid, rather than when a receivable from a partner arises for the company / when the partner assumes the liability related to this contribution. In the period between - the establishment of the company's receivable from the partner / the establishment of the partner's liability to the company, and - the payment of this contribution the company / partner will (apparently) present these receivables / liabilities only in off-balance sheet accounts, but not in the balance sheet. Analogical changes to other relevant accounting legislation - accounting procedures, decrees on financial statements - are also expected. Effective date. According to Article XIII, these amendments to the Act on Accounting shall enter into force on 1 January 2018.

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	- on the debit side: an increase in assets (financial investment, i.e., non-current financial assets), with a corresponding entry: - on the credit side: an increase in liabilities (liability to pay a contribution); and at the time when the contribution is paid: - on the debit side: a reduction in liabilities (reduction in the liability to pay this contribution); - on the credit side: a reduction in assets (a decrease in the asset that was the subject of the contribution). The receiver of the contribution should recognize – by way of a mirror image of the accounting entries made by the contributor - at the time when a receivable from the contributor arises for the receiver: - on the debit side: an increase in assets (receivable from the contributor), with a corresponding entry: - on the credit side: an increase in equity (other capital funds); and at the time when the contribution is paid: - on the debit side: an increase in assets (receiving the asset that is the subject of the contribution); - on the credit side: a reduction in assets (reduction of a receivable from the contributor).		

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