News - 2020/03

Accounting Advisory / KPMG in Slovakia
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Amendment to the Act on Accounting and the Commercial Code in July 2020

The National Council of the Slovak Republic adopted Act No. 198/2020 Coll. of 9 July 2020 amending certain laws in connection with the improvement of the business environment affected by measures to prevent the spread of the dangerous contagious human disease COVID-19. The Act was promulgated in the Collection of Deeds on 21 July 2020. The Act is also known in practice as "Sulíkovo kilečko" [Sulík's Hundred] or "Podnikateľské kilečko" [Business Hundred] (refers to more than 100 measures prepared by the Economy Ministry led by Richard Sulík). The Explanatory Statement says that the draft law contains administrative measures and removes bureaucratic restrictions on small and medium-sized businesses and licensed traders.

This Act has amended a large number of other laws. Most changes entered into force on the date of promulgation in the Collection of Laws (21 July 2020), whereas other changes will enter into force later, on a gradual basis, by 1 January 2023.

This News discusses amendments to two laws:
- Act No. 431/2002 Coll. on Accounting (Act on Accounting): increase in the criteria of size for financial statements to be audited (please note that the criteria of size were also increased as of 1 January 2020),
- the Commercial Code: simplification of an increase in share capital from own resources.

Description	Previous legislation	New legislation	Substance of change
Audit of financial statements by an auditor, criteria of size (Article 19 (1) (a) of the Act on Accounting)	The obligation to have individual financial statements audited is set out in Article 19 (1) and (4) of the Act on Accounting. This obligation also applies, **among others,** to accounting entities that have a prescribed legal form and exceed certain criteria of size. Ordinary individual financial statements and extraordinary individual financial statements must be audited by an auditor if the accounting entity: a) is a company and met at least two of the following conditions as of the balance sheet date and for the preceding accounting period: 1. its total assets exceeded 2,000,000 euros; total assets being defined as total assets determined from the balance sheet before adjustments by items specified in Article 26 (3) (= the "gross" column in the balance sheet), 2. its net turnover exceeded 4,000,000 euros, 3. its average recalculated number of employees exceeded 30 during one accounting period.	Ordinary individual financial statements and extraordinary individual financial statements must be audited by an auditor if the accounting entity: a) is a company and met at least two of the following conditions as of the balance sheet date and for the preceding accounting period: 1. its total assets exceeded **~~2,000,000~~ 4,000,000** euros; total assets being defined as total assets determined from the balance sheet before adjustments by items specified in Article 26 (3) (= the "gross" column in the balance sheet), 2. its net turnover exceeded **~~4,000,000~~ 8,000,000** euros, 3. its average recalculated number of employees exceeded **~~30~~ 50** during one accounting period.	The criteria of size have been increased as follows: - assets from 2,000,000 to 4,000,000 euros (the maximum according to the Accounting Directive is 4,000,000 and/or 6,000,000 euros; at the same time, the Directive refers to "net" assets, i.e. less depreciation/amortization and value adjustments, whereas the Act on Accounting refers to "gross" assets, i.e. before reduction by depreciation/amortization and value adjustments; as a "gross" amount is usually higher than a "net" amount in practice, this criterion does not reach the amount of 4,000,000 euros referred to in the Accounting Directive, but is lower even after the increase), - net turnover from 4,000,000 to 8,000,000 euros (the maximum according to the Accounting Directive is 8,000,000 and/or 12,000,000 euros), - the number of employees has been increased from 30 to 50 (the maximum according to the Accounting Directive is 50). **Effective date**. According to Article XLI, these changes will enter into force on **1 January 2022**. According to the **transitional provisions** of Articles 39u and 39v of the Act on Accounting, the criteria of size will be **increased on a gradual basis.** With respect to the accounting period beginning on **1 January** (= **calendar year**) - **2020**, the existing criteria of 2,000,000 / 4,000,000 / 30 apply (Article 39u (2) of the Act on Accounting), - **2021**, the criteria of 3,000,000 / 6,000,000 / 40 apply (Article 39u (1), Article 39v (1) of the Act on Accounting), - **2022**, the criteria of 4,000,000 / 8,000,000 / 50 apply. If an accounting entity's accounting period is a **financial year** (= not a calendar year) beginning during the course of: - **2020**, the existing criteria of 2,000,000 / 4,000,000 / 30 apply (Article 39u (3) of the Act on Accounting), - **2021**, the criteria of 3,000,000 / 6,000,000 / 40 apply (Article 39u (3), Article 39v (2) of the Act on Accounting), - **2022**, the criteria of 4,000,000 / 8,000,000 / 50 apply (Article 39v (2) of the Act on Accounting).

Description	Previous legislation	New legislation	Substance of change
Increase in share capital from own resources (Article 144 and Article 208 (2) of the Commercial Code)	An existing company may increase its share capital by means of further contributions from shareholders (monetary or in kind) or from the company's assets (= own resources). **Article 144 (limited liability company)** The General Meeting may decide that retained profit or other of the company's own resources whose utilization is not set out by law, or other of the company's own resources presented in its individual financial statements as the company's equity, shall be used to increase share capital. The company may increase its share capital in this manner only if the conditions referred to in Article 179 (3) and (4) are met. Article 208 (2) shall apply accordingly. **Article 208 (2) (joint stock company)** Share capital may be increased according to paragraph 1 only on the basis of approved financial statements which have been audited by an auditor with an unqualified opinion and prepared based on data established at the latest as of the date from which not more than six months elapsed until the date of the General Meeting.	The wording of Articles 144 and 208 (2), i.e. an increase in share capital from own resources, has been amended. **Article 144 (limited liability company)** (1) The General Meeting may decide that retained profit or other of the company's own resources whose utilization is not set out by law, or other of the company's own resources presented in its individual financial statements as the company's equity, shall be used to increase share capital. The company may increase its share capital in this manner only if the conditions referred to in Article 179 (3) and (4) are met. (2) Share capital may be increased according to paragraph 1 only on the basis of approved ordinary individual financial statements if, as of the date of the General Meeting, a maximum of six months elapsed from the balance sheet date. An audit of the financial statements by an auditor shall not be required if retained profit that may otherwise be paid to shareholders is used to increase share capital and the amount of the increase in share capital does not exceed the amount of share capital prior to its increase. **Article 208 (2) (joint stock company)** Share capital may be increased according to paragraph 1 only on the basis of approved ordinary individual financial statements if, as of the date of the General Meeting, a maximum of six months elapsed from the balance sheet date.	The **Explanatory Statement** reads as follows: A limited liability company may use both retained profit and other of its own resources for a nominal increase in share capital. At the present time, judicial practice, with reference to the proper application of Article 208 (2), requires that the financial statements whose results are to be used as the basis for an increase in share capital be audited by an auditor, which also applies to limited liability companies. Naturally, this substantially increases the burden on businesses. In the case of retained profit that may still be paid to shareholders in accordance with other provisions of the Act, **there is no reason to insist that financial statements of a limited liability company be audited.** Responsibility for the limited liability company meeting such prerequisites is borne by its statutory body. The Explanatory Statement only refers to limited liability companies, because the bill drafted by the government only referred to limited liability companies (Article 144). The National Council of the Slovak Republic extended the bill to apply to **joint stock companies** as well (Article 208 (2)). **Effective date**: According to Article XLI, these changes entered into force on the date of promulgation in the Collection of Laws, i.e. on 21 July 2020.

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