



Legal Alert

Changes in the Slovak civil and commercial legislation

- The Legal Entities' Criminal Liability Act
- New civil procedural codes

We wish you a pleasant reading.

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KPMG in Slovakia
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The Legal Entities' Criminal Liability Act

The Legal Entities' Criminal Liability Act No. 91/2016 Coll. has become effective as of 10 July 2016. This act introduces direct criminal liability of legal entities for committing designated criminal offenses (e.g. sharing of proceeds from crime, money laundering, illegal employing, causing harm to the financial interests of the European Union, causing harm to the consumer, abusive commercial practices towards the consumer, tax and insurance evasion, failure to pay taxes and insurance, tax fraud, non-payment of taxes and insurance, tax administration obstructing, corruption crimes).

Sorts of criminal penalties

For committing the above-stated crimes, the respective authorities may sentence the legal entity to e.g. winding-up of the legal entity, forfeiture of its property, monetary fines, prohibition of its commercial activities or ban of participation in public procurement.

Possibilities of concluding the criminal responsibility against the legal entity

Criminal liability of the legal entities arises if the crime is committed in favor of a legal entity, on its behalf, in the course of its activities or through the entity, by (a) a statutory body or member of the statutory body, (b) a person performing control or supervision of the activities of the legal entity, or (c) other person entitled to represent the legal entity or to take decisions on its behalf. Committing a crime may also be accredited to the legal entity if one of the persons mentioned above either negligently, or due to lack of supervision, allows the other person who acts within the powers granted by the legal entity, to commit a crime.

Neither the criminal liability of an individual, nor determination of particular individual who acted in a way establishing the criminal liability of the legal entity is a precondition of criminal liability of the legal entity.

Duration of the criminal responsibility

Criminal liability of the legal entity persists also during the bankruptcy, forced administration, liquidation, or dissolution and should pass to all of its legal successors.

The Legal Entities' Criminal Liability Act recognizes some cases in which the legal entity cannot be charged with the criminal offence as well as the reasons for exemption from the criminal liability. This new regulation will, therefore, require implementation of adequate mechanisms for early recognition and reporting of a potential criminal activities within the legal entity.

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A: Marian Dzuroška

T: +421 915 758 936

M: mdzuroska@kpmg.sk

New procedural codes

As of 1 July 2016, the new procedural codes – Civil Dispute Procedure Code (in Slovak: *Civilný sporový poriadok*), Civil Non-Dispute Procedure Code (in Slovak: *Civilný mimosporový poriadok*) and Administrative Procedure Code (in Slovak: *Správny súdny poriadok*) have replaced the Civil Procedure Code (*Občiansky súdny poriadok* in Slovak).

Civil Dispute Procedure Code

It sets out the *causal court competency*, which means that for designated types of disputes, competency of the court is recognized solely with regard to the merits of the dispute and irrespective of the defendant's residence (e.g. District Court Bratislava III for the whole district of the Regional Court Bratislava in employment disputes).

Further it introduces the institute of the so-called *intervenient* (that have replaced the Secondary Participant who has an interest on the result of a dispute). If the party notifies a potential intervenient of the dispute, the intervenient loses the possibility to object to the result of the dispute if he does not enter the proceedings (e.g. in case of a recourse claims arising from insurance relations).

The *principle of judicial concentration* is a newly implemented principle according to which the means of procedural attack and procedural defense must be used on time. The court may not consider the means if the court believes that the party could have used them at earlier stage of proceedings.

The court may order a *preliminary hearing* (prior to the first regular hearing) which may result in a final decision in the dispute. There is also a possibility of a default judgment ruling if the plaintiff or the defendant does not attend the preliminary hearing without a serious reason.

An appreciated novelty might be the *private expert opinion* (submitted by the party without a previous court order). If such expert opinion meets all the statutory requirements it is considered as equally important piece of evidence as the court-ordered expert opinion.

Completely new is the regulation of the *disputes with the protection of a weaker party* (consumer, antidiscrimination and individual employment disputes) which purpose is to simplify the procedural position of a weaker party (e.g. court is entitled to provide the evidence in favor of the consumer and employee, judicial concentration principle does not apply).

As for the appeals, the most important changes are mainly the restriction of the right to appeal only against the enumerated court resolutions (in respect of judgements the right to appeal remains unchanged) and the obligation of a court of appeal to confirm or change the challenged decision, if the court of appeal has previously cancelled the decision of a first-instance court. As for the extraordinary appeals, an important extension of grounds for appeal took place (e.g. in case that the court of appeal deviates from the common decision-making practice) together with the prolongation of a period for filing the appeal from one month to two months.

Civil Dispute Procedure Code applies also to the proceedings initiated prior to its effectiveness.

Administrative Procedure Code

The most important changes in the *administrative court proceedings* (Administrative Procedure Code /Správny súdny poriadok) are mainly new types of administrative proceedings with statutory requirements specifically stipulated for each procedure (e.g. procedure on election-related matters, petition against the inactivity of the public administrative body etc.). Administrative Procedure Code also implies a *general administrative petition* to protect petitioner's subjective rights against an

unlawful decision of a public administrative body. An important change is the absence of ordinary remedial measure (an appeal) against the decision of an administrative court, i.e. this decision becomes effective upon its delivery to the parties. New extraordinary remedial measure against the effective decisions of the regional courts is the *cassation complaint* which has a suspensory effect in determined cases (e.g. if the defendant is a tax administration body or respective appellate administration body). The Cassation Complaint must be filed within 1 month following the delivery of the challenged decision. Another extraordinary remedial measure is the *petition for the renewal of proceedings* which may be filed within 3 months following the findings of the grounds for renewal by which the decision of any administrative court (not only the regional court) may be challenged (compared to Civil Dispute Procedure Code, objective 3 years period does not apply). The first and second part of Civil Dispute Procedure Code subsidiarily applies to the administrative proceedings. Administrative Procedure Code governs also the proceedings initiated prior to its effectiveness.

Non-Contentious Civil Procedure Code

Those proceedings where the dispute between the parties is not present (*the non-dispute proceedings*) are newly governed by *Civil Non-Dispute Procedure Code* and besides the changes in systematics and definitions, this code introduces the following important changes:

- the *principle of public interest* meaning that the court must take into consideration broad social interests when deciding about the rights and duties of the parties.
- the *principle of court investigation* has been significantly strengthened. The court is obliged to execute also the evidence beyond the parties' proposals in order to find the actual facts of the case. This principle is closely attached to the *principle of material truth* which establishes the duty of the court to discover the actual facts of the case beyond the statements of the parties. The aim is to discover the facts of the case in the most possible objective way in order to provide the most appropriate court protection.

These principles manifest themselves also by the fact that the court is not bound by the proposals of the parties and may rule *ultra petitem*, i.e. beyond the claims of the parties.

The list of the proceedings as stated in the *Civil Non-C Dispute Procedure Code* is comprehensive, all other proceedings are considered disputable. Civil Dispute Procedure Code applies subsidiarily, except the enumerated institutes (e.g. payment order, default judgement etc.). The *Civil Non-Dispute Civil Procedure Code* governs also the proceedings initiated prior to its effectiveness.

We remain at your disposal for any further information on how the legislative changes may affect your business in Slovakia in your particular situation. Please contact your KPMG Slovakia contact person.

In one sentence...

- ***The Cross Border Cooperation on the Employees' Assignment Abroad Act.*** As of 18 July 2016 Act No. 351/2015 Coll. significantly amends the Labour Code in respect of the assignment of employees for the work abroad and delegates new powers to the National Labor Inspectorate in this respect.
- ***The Arbitration Court of the Slovak Bar Chamber.*** On 1 July 2016 the Arbitration Court of the Slovak Bar Chamber has been established to arbitrate civil and commercial disputes according to the Arbitration Act. The arbitration award granted by this Arbitration Court has the same legal effects as the judgement of the general court while preserving the arbitration proceedings' advantages- promptness and simplicity.
- ***Methodical Regulation of the Ministry of Finance of the Slovak Republic*** No. MF/010871/2016-1411 on the financial audit effective as of 1 August 2016 prescribes the procedure of state bodies performing the audit according to the Financial Audit Act.

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A: Marian Dzuroška

T: +421 915 758 936

M: mdzuroska@kpmg.sk

Kontakty

Tomáš Círan, Partner

T: +421 2 5998 4306

M: tciran@kpmg.sk

Branislav Ďurajka, Partner

T: +421 2 5998 4303

M: bdurajka@kpmg.sk

Robert Kolár, Director

T: +421 2 5998 4314

M: rkolar@kpmg.sk

KPMG Slovensko Advisory, k.s.

Dvořákovo nábrežie 10

811 02 Bratislava

T: +421 2 5998 4111

M: kpmg@kpmg.sk

kpmg.sk

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