

On January 27, 2021, the Slovenian National Assembly adopted the Act Amending the Companies Act (the “ZGD-1K”), which was published in the Official Gazette of the Republic of Slovenia on February 9, 2021 and will enter in force within 15 days of its publication (i.e. February 24, 2021) (hereinafter: “the Amending Act”).

Among other things, the Amending Act introduces additional restrictions on the establishment of companies and changes the regulation regarding the registered office, business and e-mail address, the relationships between a public limited company and its shareholders, agreements with members of management and supervisory bodies, the instrument of discharge and the remuneration policy, new regulation regarding conflicts of interest and a new regime for affiliated party transactions.

Below we present some of the novelties from the Amending Act.

The Amending Act supplements Article 10.a of the Companies Act, setting new restrictions on the establishment of companies the acquisition of the status of a shareholder, also for natural and legal persons from another Member State or a third country, by expanding the set of offenses preventing a person from becoming a founder, shareholder or entrepreneur. An additional restriction is introduced on the establishing of companies, the acquisition of the status of a shareholder and the performance of the activities of an entrepreneur for persons publicly registered on the list of taxpayers that fail to submit tax returns or pay taxes in the last 12 months. An additional restriction for the establishment and acquisition of business shares in accordance with the Amending Act also applies to persons who have been fined by a final decision for an offense related to unauthorized interference with the company's share capital.

With the entry into force of the Amending Act, it will be necessary to enter the company's business address in the court register in addition to the registered office and provide an e-mail address when applying for entry in the court register. Existing companies must ensure that the e-mail address is entered in the court register within one year of the entry into force of the Amending Act (i.e. by February 24, 2022).

With the entry into force of the Amending Act, public limited companies will have the right to identify its shareholders and ultimate shareholders and require them to declare whether they hold shares for their own or someone else's account. If the company does not receive the information within 14 days, the voting rights pertaining to these shares are suspended until the request for information about the shareholder is complied with.

The rights and obligations of a member of the management board or the executive director, which are not determined by the Companies Act, are regulated by an agreement to which the supervisory board or management board must give its approval (according to previous regulation, such obligation applied to all members of the management and supervisory bodies as well as proxies). The new article 262.a of the Companies Act regulates the consulting agreement on the basis of which a member of the supervisory board or the board of directors (or its family member) undertakes to provide consulting services that do not fall within the supervisory function for the company or its subsidiary. Such agreement has legal effect only if it is approved by the supervisory board or the board of directors. The same applies to consultancy agreements with other companies, controlled by a member of company bodies or their family member.

The Amending Act also introduces the obligation of adoption of a remuneration policy for all public companies and prescribes the minimum content of such policy.

The definition of conflict of interest in the third paragraph of Article 38.a of ZGD-1 remains the same, however, the Amending Act deleted the fourth to eleventh paragraphs of Article 38.a of ZGD-1, which were replaced by a new regulation of business with affiliated parties, specifically regulating the management of conflicts of interest when the company enters into transactions with members of management and supervisory bodies or executive directors in a public limited company, as well as in concluding transactions with directors and proxies in limited liability companies. At the same time, Article 38.a of ZGD-1 does not apply if it refers to managers and members of management and supervisory bodies in companies in which the State or a local community has a majority share or dominant influence. This has already been provided by the Act Amending the Integrity and Prevention of Corruption Act (ZIntPK-C).

With the entry into force of the Amending Act, a new regime of concluding transactions with affiliated parties is introduced, namely requiring the prior approval of the supervisory board of an affiliated party transaction if the company is public and the value of the transaction exceeds 2.5% of asset value recorded in the balance sheet of the approved annual (consolidated) report for the preceding year, or if the value of the transaction along with other transactions with the same affiliated person in the last 12 months exceeds this threshold. If the supervisory board rejects the approval, the management board may request the general meeting to decide on the approval; a majority of 3/4 of the votes cast is required. The company must disclose transactions with affiliated parties immediately after the conclusion, unless the information on the transaction is published as inside information in accordance with Article 17 of Regulation (EU) 596/2014.

In limited liability companies, the supervisory board remains an optional body, unless the company is a subject of public interest under the Auditing Act ("ZRev-2"). The supervisory board of a company that is a public interest entity must form an audit committee. If the company is medium or large pursuant to the provisions of the Companies Act, the company's business with managers and proxies or their family members requires the approval of the supervisory board. If the company does not have a supervisory board, the general meeting decides on the approval.

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