

# Bird & Bird

## THE END of speculative mergers and "shadow managers' immunity" in Slovakia.

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### Do you know the new rules?

The alarming increase in "speculative mergers" and the increasingly frequent occurrence of **strawmen** in commercial companies' management structures has long been seen as a major obstacle on the Slovak market. In response, the **Ministry of Justice of the Slovak Republic has amended the Commercial Code** to support and encourage business in Slovakia.

Below we summarise the key changes that affect all business entities, not only with respect to mergers, but also in other areas of day-to-day commercial activity in Slovakia.

### Mergers of companies "in good condition"

Strengthening the merger process to avoid numerous unfair and speculative mergers to avoid proper performance of their duties, insolvency or liquidation.

Under the new rules, only companies which are in a so-called "good condition" may be take part in the merger process, to ensure in particular the smooth transfer of capital and the continuation of business.

On the effective date of the merger, the company may not be:

- in liquidation,
- subject to cease proceedings against it,
- or the effects of bankruptcy, restructuring or a restructuring permit. In relation to the successor company, its obligations should not exceed the value of its assets at the effective date of the merger.

If just one of the above conditions is not met, members of corporate bodies should refrain from proceeding to join or merge companies.

The amendment does not entirely exclude the possibility of merging with a company that is not in a good condition, but such merger cannot threaten the company's creditors. On the other hand, the amendment introduces, as a safeguard mechanism, **liability for damage** to a creditor directly by the members of the bodies of the companies involved in the merger.

Under the amendment, the ceasing company is obliged to notify both the tax administrator and the pledgee of preparing the draft merger contract, and whether the auditor's obligation, approved in the merger agreement, to prepare a report certifying that, subject to the maintenance of the status of the participating companies on the date from which the acts of the ceasing company are considered as accounting for operations carried out on the account of the successor company, the condition of the company's sufficient capitalisation will be fulfilled, i.e. the value of the successor company's obligations will not exceed the value of its assets.

### Physical persons excluded from performing certain management functions

Clarification of the right to exclude a natural person from exercising the function of a member of a statutory body, member of the supervisory body, head of an enterprise branch, head of a foreign entity, head of an organizational unit of a foreign person's business, or a proxy in a business or cooperative.

From 2018, such a decision will be issued not only by the court, but also by another body designated by a special legal regulation. A prerequisite for this will be a judicial review of such a decision.

## Liability of "shadow management"

Implementation of liability for damage as well as criminal liability of persons de facto managing a company ("shadow managers"), frequently using strawmen for assuming their statutory rights and liabilities.

Aimed at regulating de facto management, the amendment extends the obligation to execute management functions with due care and obligations of mandate also to these persons. If these obligations are breached, such persons will have **the same liability** as if they were formally appointed members of the statutory body of a company, e.g. liability for damage incurred.

In addition, the amendment in question amends the Slovak Criminal Code when implementing the criminal liability not only for strawmen but also for the **"shadow managers"** in relation to the unfair liquidation as a new crime in the Slovak legal environment.

## Wilful insolvency

A stricter approach and the controlling entity's liability in the event of company insolvency.

The amendment also implements a stricter approach and liability of the controlling entity in the event of company insolvency. Thus, the controlling entity will be liable to the creditor of the controlled entity for damage

caused by the insolvency of this controlled entity, provided that it contributes to such insolvency by its actions.

## Transfer of shares

Simplifying conditions for the successful transfer of shares in companies.

Under the amendment, companies will no longer need the consent of the tax administrator for the transfer of shares under a new obligation, e.g., when the transfer will be a majority shareholding. However, the transfer of a business share is complicated, for example, for those entities that have been declared bankrupt or are subject to restructuring.

## Dissolving and deleting the company

It is now possible to dissolve a company without liquidation with a legal successor solely for commercial companies in "good condition".

The Social Insurance Agency's approval is required to dissolve the company.

In order to remove the frequent and often speculative procedure for dissolving companies with a legal successor, according to an audit of the successor company and the company being dissolved, the merger, merger or division of the company in liquidation, bankruptcy or restructuring may now not be effective. Further, the value of the obligations of the successor company must not exceed the value of its assets.



When deleting a company from the commercial register, which does not involve dissolving the company without liquidation with a legal successor, in addition to the tax administrator's approval, **the approval of the Social Insurance Agency is now also required**. The aim is to make it possible to delete those companies listed on the social security debtors list, whose debts no longer exist (i.e., have been fulfilled), without waiting for this list to be updated, provided they are no longer debtors waiting for the list to be updated.

Likewise, a similar obligation now applies when establishing a limited liability company, as currently a company may not be set up if any tax arrears exist. However, Social Insurance Agency arrears are not a barrier.

**Will the new rules affect your company's day-to-day operations? And will the current measures affect your future business plans?**

**We are happy to discuss any questions or issues you may have. Bird & Bird is an international law practice, one of the leading legal advisors in the area of commercial and company law. Our experienced team of lawyers possess the know-how and in-depth knowledge of all key legal and business issues.**

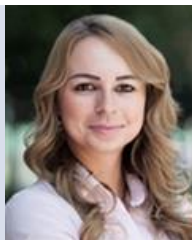
**If you are interested in a consultation, or would like to receive more detailed information, please do not hesitate to contact us.**

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