



LEGAL UPDATE

WEINHOLD LEGAL

Contents

OVERVIEW OF LEGISLATION PUBLISHED IN THE COLLECTION OF LAWS

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COMMERCIAL LAW

Act No. 348/2011 Coll., amending and supplementing Act No. 7 / 2005 Coll., on bankruptcy and restructuring, and on amending and supplementing certain acts, as amended, and on amending and supplementing certain acts.

Aimed at simplifying the procedure for lodging creditors' receivables, the following changes were enacted inter alia:

- A creditor can lodge multiple unsecured receivables by means of one application;
- A creditor is now obliged to lodge its claim with the trustee only, and only in one counterpart;
- Creditors can submit their receivables even after the primary 45-day filing period has lapsed from the moment bankruptcy is declared; however, the claim will be deemed as unsecured receivable without voting rights.

Additional noteworthy changes are the possibility to replace the bankruptcy trustee at any time during the bankruptcy

proceedings in case of a qualified majority vote of the creditors, as well as the creditors will be entitled to contest the receivables.

As in the case of bankruptcy, the procedure for lodging receivables was also simplified in the area of restructuring. In addition, further changes were also implemented in order to counteract the negative phenomena which were encountered in practice under the previous legislation.

Finally, we have also mentioned several changes which will come about due to the amendment; however, not sooner enter into force until 1 January 2013.

A rather prominent change brought about by the latest amendment to the Act on bankruptcy and restructuring is the significant simplification of the eligibility conditions for the creditor to file for bankruptcy. A creditor may file for bankruptcy in the event that the insolvency of its debtor can reasonably be expected. Insolvency of the debtor can reasonably be expected if the debtor is more than 30 days late in satisfying at least two financial obligations towards more than one creditor, and one of the creditors has made a demand for payment in writing. This way, the established criteria forsake the condition so that the mentioned financial obligations (receivables) are either enforceable (granted by the court), or are acknowledged by the debtor in writing.

The amendment introduces a new definition of the term "over-indebtedness" following the example of modern legislation (e.g. German). The new definition forsakes the term "outstanding obligations", which can not be higher than the value of the assets, with only the term "obligation" remaining. However, at the same time a



rule for determining the value of liabilities and assets was set. Primarily, such rule is based on the value of liabilities and assets according to an expert opinion of the accounting records, and consideration should also be given to the expected results of asset management or, as the case may be, of other business operations, if it can be reasonably expected with regard to all circumstances that it will be possible to continue in asset management or business operations. The sum of the liabilities are not be included in the amount of liabilities that are connected with the obligation of subordination, nor the sum of liabilities that would have to be settled as subordinated receivables within bankruptcy proceedings.

Changes also occurred in terms of the responsibility to fulfil the obligation to file for bankruptcy under the Act on bankruptcy. In general, as the responsible person for the breach of the obligation to file for bankruptcy in time, the person who was in the position of statutory body or its member, liquidator or the legal guardian of the debtor in the four years prior to bankruptcy may be considered.

By declaring bankruptcy a duty shall arise to such person to pay in favour of the sum of general assets in the amount of the debtor's registered capital (registered at the time of the breach), however, at maximum in the amount of twice the minimum amount of registered capital which is applicable to the given type of company form as defined by law.

In the event that more than one person meets the above criteria, they are obliged to jointly and severally fulfil their obligation as the amount of their obligations overlaps.

A new element is the ability to divest a person who is a member of a collective statutory body (e.g. Board of Directors) of his/her responsibilities. Such member shall not be divested of his/her responsibilities if he/she is not authorized to act independently on behalf of the debtor and can demonstrate that he/she was unable to comply with such obligation due to the lack of cooperation amongst those with whom he/she was acting collectively, and, without undue delay, or as soon as he/she perceived or should have

perceived the breach of this obligation, filed a notice in the Collection of Deeds that the debtor is over-indebted.

On the other hand, under the new regulation the debtor will not be required and compelled to initiate bankruptcy proceedings by virtue of being insolvent – creditors, if they refuse to accept a debtor's status, are entitled to initiate the debtor's bankruptcy.

The amendment entered into force on 1 January 2012, save for the above mentioned changes which will enter into force as of 1 January 2013.

Act No. 387/2011 Coll., on amending and supplementing Act No. 136/2001 Coll., on the protection of competition, and on amending and supplementing Act No. 347/1990 Coll., on ministries and other central state administrative bodies of the Slovak Republic, as amended.

The amendment to Act No. 136/2001 Coll., on the protection of competition, and on amending and supplementing Act No. 347/1990 Coll. on ministries and other central state administrative bodies of the Slovak Republic, as amended ("Act on Protection of Competition") enacted by Act No. 387/2011 Coll., brought about the most important **changes of the Act on Protection of Competition as follows:**

The amendment introduces the so-called **two-stage process** for assessing concentration, the first of which should be focused on "normal" concentrations, which do not require any deeper analysis with regard to identifying the affected markets and competition concerns. Furthermore, the amendment prescribes more flexible time limits for carrying out the concentration procedure.

Where it concerns normal concentrations, the Antimonopoly Office ("Office") will issue a decision on concentration within 25 working days of receiving a complete notification (was originally 60 working days).

Decisions concerning normal concentration typically contain a simplified justification, which indicates who the parties are in the concentration, sector, or the

relevant market in which the parties operate.

In the event the concentration requires a deeper analysis, the Office will notify the respective party in writing within 25 working days. In this case, a new time period of 90 working days for issuing a decision begins to lapse from the date of receiving such written notice.

The objective of the amendment, inter alia, is to relieve the Office and the parties to the concentration by eliminating the compulsory notification of concentrations, where the domestic turnover of the party/parties of the concentration, and thus the local relationship "nexus" with the territory of the Slovak Republic is not so essential that involvement of the Office is necessary.

A concentration, within the meaning of the revised turnover criteria, is subject to an inspection by the Office if the combined aggregate turnover of the parties in the concentration reaches at least €46,000,000 in the closed accounting period preceding the concentration in the **Slovak Republic**, and at least two parties in the concentration achieve an aggregate turnover of at least €14,000,000 in the **Slovak Republic** for the closed accounting period preceding the concentration.

Where it concerns a concentration in the form of an acquisition of either direct or indirect control, the total turnover for the closed accounting period preceding the concentration in the **Slovak Republic** of the "target company" must be at least €14,000,000, and also the global turnover of the other, i.e. the acquiring party in the concentration, is at least €46,000,000.

The amendment establishes new criteria for the approval and the prohibition of a concentration, which is consistent with the tests utilised by the European Commission under Council Regulation (EC) 139/2004 of 20 January 2004, on the control of concentrations between enterprises.

The Office grants its consent to the concentration when the concentration does not significantly impede effective competition in the market, mainly due to the



creation or strengthening of dominant positions.

From a practical point of view, a rather positive change is the introduction of the possibility for a party to request that the Office narrow the scope of documents, which are submitted to the Office within the course of the proceedings (which in practice is usually administratively burdensome), by virtue of the fact that some information and documents under the decree are not necessary for assessing the concentration by the Office.

The amendment entered into force on 1 January 2012.

LABOUR LAW

Act on amending and supplementing Act No. 124/2006 Coll., on occupational health and safety, and on amending and supplementing certain acts, as amended, and on supplementing Act No. 355/2007 Coll., on the protection, promotion and development of public health, and on amending and supplementing certain acts, as amended.

The purpose of the amendment to the Act is to reduce the administrative and regulatory burdens for employers by regulating the conditions for reconditioning stays and the employer's obligation to ensure its employees occupational health and safety services.

Upon effectiveness of the amendment, the employer is not obliged to provide occupational health and safety services for employees who perform work which is classified as first or second category, i.e. types of work and working environments which pose no risk to the health and safety of employees, nor is any harm to health presumed in their estimation with respect to risk.

The amendment entered into force on 1 January 2012.

STAY OF FOREIGNERS

Act No. 404/2011 Coll., on the stay of foreigners, and on amending and supplementing certain acts.

Act No. 404/2011 Coll., on the stay of foreigners, and on amending and supplementing certain acts, replaced the current Act, which has been in force since 2002 and has been subject to several revisions after the Slovak Republic acceded to the European Union, in order to align with EU regulations in this area.

In order to ensure full compatibility with EU legislation, as well as to regulate relations in similar areas (border control and residence of foreigners in the Slovak Republic) an entirely new act was adopted which unites the issue of border control with the stay of foreigners in one single act. As a result, the quality of the service offered by the police should improve, given the close link between the Border Police and Foreigner's Police.

Another goal of the new act is to ameliorate the quality of the mechanism for managing immigration and the integration of foreigners by harmonizing the various procedures and policies in the areas concerned with the development and trends within the European Union Member States.

Amongst the changes affecting the citizens of EU Member States in the Slovak Republic belongs the obligation of such persons to register their stay in the Slovak Republic in cases of stays exceeding more than three months. The application for registering a stay must be filed using the relevant form in person at the foreigner's police department within 30 days following expiry of the three-month period from the date of entry into the territory of the Slovak Republic.

The Act entered into force on 1 January 2012.

FREEDOM OF INFORMATION

Act No. 382/2011 Coll., on amending and supplementing Act No. 211/2000 Coll., on the freedom of information, and on amending and supplementing certain acts (Freedom of Information Act), as amended.

The objective of the adopted amendment to the Freedom of Information Act is to introduce a solution for problems surrounding application of the Act, and to correct the mechanism concerning the

mandatory disclosure of contracts, invoices and orders on the basis of past experience.

Under the amended version of the Freedom of Information Act, the scope of disclosure of mandatory contracts was extended to include contracts which are awarded by companies and cooperatives that were established by obliged entities, while defining a specific regime for contracts which are awarded in the ordinary course of business practice.

The amendment significantly expands the negative number of contracts which do not have to mandatorily be disclosed, which, inter alia, include contracts where the subject-matter is artistic performance, or loan contracts provided by the Student Loan Fund.

In order to relieve the administrative burden, certain parts of contracts are exempt from mandatory disclosure under the amendment, such as technical templates; instructions; drawings; project documentation; and general business terms and conditions.

An important change in relation to the disclosure of orders and invoices is that, since the amendment has entered into force, it is no longer required to publish their full wording so as to ensure compliance with the actual status, but rather it is sufficient for the obliged entity to disclose the statutory data on its Web site in a structured and transparent form for a period of at least 5 years (e.g. identification of the mandatorily disclosed contract to which the invoice or order pertains).

The amendment to the Freedom of Information Act entered into force on 1 January 2012.

PROCEDURAL LAW

Act No. 332/2011 Coll., on amending and supplementing Act No. 99/1963 Coll., Code of Civil Procedure, as amended, and on amending and supplementing certain acts.

The aim of the amendment is to expedite court proceedings and the means by which it strives to achieve the said goal,



including a set time period in which the court has in order to render a decision on the selected procedure or to take procedural steps (e.g. service of process). This is generally a 30-day period (for courts of first instance) and 60-day period (for appellate courts), respectively.

If a party demands that counsel be assigned and meets the conditions for exemption from court fees, the court will no longer assess (as previously) whether the conditions for free legal advice have been fulfilled and assign counsel to the party, but rather will refer the party to the Centre for Legal Aid, which, after receiving the party's request, will ensure that legal counsel is assigned to the party, provided statutory conditions are met.

Changes were carried out in respect of consumer disputes concerning jurisdictional matters in annulment proceedings of an arbitral award. If the plaintiff to the proceeding is a consumer, the relevant court is deemed to be the court where the consumer resides.

Obstructive conduct of the parties to the proceedings should be mitigated by imposing a duty on the parties to provide reasoning for postponing the hearing without undue delay, after the party has learned of, or could have learned of or have envisaged such reason.

If the reason for postponing the hearing is due to a medical condition of the party or its representative, the application for suspending the hearing must include a statement from the attending physician indicating that the individual's medical condition is such that does not allow participation in the hearing, provided the reason is a medical condition.

If the court decides to postpone the scheduled hearing on the basis of the request of a party for an important reason, the counterparty which appeared at the hearing, or due to postponement for an unexcused absence, will have the right to demand the amount of €15 (€100 in cases where represented by a legal counsel) from the counter-party.

The same applies where the reason for postponement is the unexcused absence of the legal counsel of a party. However, the claim seeking to request the said amount must be raised within the 15-day period following the day of the postponed hearing.

The amendment introduced the possibility of the imposition of an obligation to deposit an advance payment for costs in disputes involving amounts exceeding 400-times the subsistence minimum for an adult person (at present it is €75,932). Upon the defendant filing a motion, the court will order the plaintiff and also the defendant to pay an advance payment for costs within a period of no longer than 60 days (5% of the claimed amount). However, such does not apply to plaintiffs who qualify for exemption from court fees. In addition, the court will suspend the proceedings within 15 days from expiry of the time period for paying the advance payment for costs if the plaintiff fails to pay the advance payment within the specified period, and the defendant, who is also obliged to pay the advance payment, fulfils his obligation.

The amendment to the Code of Civil Procedure entered into force on 1 January 2012.

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