

Corporate Law

New conditions for exercising the functions of a member of an elected body and the establishment of a register of persons expelled from office

The laws governing the entry of natural and legal persons in public registers, i.e. the Trade Licensing Act, the Court Fees Act, the Business Corporations Act and the Public Registers of Legal Entities and Trust Funds Act, have been amended. The changes will mostly take effect on July 1, 2023, except for some provisions which either took effect on January 15, 2023, or will take effect on July 1, 2024.

A simpler procedure is set out for the establishment and creation of legal entities in connection with obtaining a trade licence. It has become possible to register a trade or apply for a concession not only before the submission of an application for entry in the public register, but also after its submission. However, in the case of a trade registration or application for a concession, it will not be necessary to wait for the result of the assessment by the Trade Licensing Office, and it will be possible to submit a proposal for registration of a person in the public register without delay.

The obstacles to the performance of the function of members of elected bodies in the Business Corporations Act are adjusted, and the information obligation of persons who are to become members of the elected body of a business corporation is extended. Among other matters, the definition of integrity according to the Trade Licensing Act and the actual specification of integrity by the Business Corporations Act is abandoned. Offenses which constitute an obstacle to membership of an elected body will be as follows: (i) criminal offenses of embezzlement, fraud, insurance fraud, credit fraud, subsidy fraud, legalization of proceeds of crime, legalization of proceeds of crime due to negligence, usury, breach of duty in the administration of third-party property, breach of duty in the administration of third-party property due to negligence, damage to the creditor, advantage of the creditor, causing bankruptcy, breach of duty in insolvency proceedings, conspiracy in insolvency proceedings, breach of the obligation to make a true declaration of property, (ii) tax, fee or foreign exchange offenses, (iii) criminal offenses against binding rules of market economy and circulation of goods in

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contact with foreign countries, or (iv) similar offenses under the above points abroad.

A register will be established of persons expelled from office as a member of an elected body of a business corporation in order to strengthen public order protection by providing a database that effectively verifies that a certain obstacle to function in relation to a particular person persists. It will be a public administration information system administered by the Ministry of Justice. In the record shall enter persons: (i) who have been excluded by a court decision from the performance of the function of a member of the statutory body pursuant to Sections 63 to 65 of the Business Corporations Act, (ii) who have been subject to an injunction constituting an obstacle to the exercise of the function, (iii) who have been convicted of an offense constituting an obstacle to the exercise of the function, or (iv) who have been declared bankrupt.

The records will be non-public and only courts and notaries should have access to them. The Ministry of Justice will issue the applicant with a statement or confirmation of the non-existence of his registration, i.e. the absence of obstacles.



Practice Area News

Modification of registration in the Commercial Register. Starting from January 15, 2023, Act No. 304/2013 Coll., On Public Registers, is amended. From now on, the eligibility to be a member of a body of a legal person is evidenced by an affidavit of the registered person. Thus, it will not be necessary to provide proof of a trade authorisation or other licence or an extract from the Criminal Register.

New concept of moderation of contractual penalties.

The Grand Civil/Commercial Law Chamber of the Supreme Court on January 11, 2023 (file no. 31 Cdo 2273/2022) introduced a new concept of moderation of contractual penalties under § 2051 of the Civil Code. Not only the circumstances known at the time of negotiation will play a role in the proportionality evaluation, but also those that existed at the time of the breach.

Compliance programme as a mitigating circumstance. A recent decision by the Office for the Protection of Competition confirms the importance of having compliance programs. The Office imposed a significant fine for restriction of competition, but the amount of the fine was reduced as a result of the Office taking into consideration for the first time as a mitigating circumstance the fact that the party had a compliance programme in force.

Admissibility of contractual exclusion of grounds for withdrawal. The Supreme Court on November 3, 2022 (file no. 23 Cdo 2541/2021) concluded that parties in private law relations may contractually deviate from the grounds for withdrawal from the contract set out in the provisions of Sections 1977, 1978 and 2002 of the Civil Code or exclude such grounds for withdrawal from the contract, as these are dispositive legal norms and not mandatory.

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