SK Legal Alert

August 2022

Weinhold Legal

Legislation News

The National Council of the Slovak Republic has recently approved several acts and amendments to acts impacting entrepreneurs and business environment. The changes concern, for example, contributions from the funds of the European Union (hereinafter referred to as "EU"), the introduction of a Central Register of Accounts, the area of labour law and protection against money laundering. Special attention is to be paid to the new Act no. 111/2022 Coll., on Impending Bankruptcy amending also the Commercial Code. A brief overview of the most significant changes is summarized below.

Act on the Central Register of Accounts and on Amendments to Certain Acts

On 17 March 2022, the National Council of the Slovak Republic approved the Government Bill No. **123/2022** Coll. on the Central Register of Accounts and on amendments and supplements to certain acts. The aim of the act is to transpose Article 32a V. AML Directive (Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU), as well as the transposition of Directive (EU) No. 2019/1153 laying down rules to facilitate the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision 2000/642/JHA.

The EU Directives have created a requirement for the establishment of a centralised automated mechanism enabling defined authorised public authorities (e.g. financial intelligence units, intelligence services or law enforcement authorities) to identify in a timely manner the holders and disposers of payment accounts, deposit accounts, building society accounts or accounts of holders of book-entry securities. According to the explanatory memorandum to the draft act, such timely identification is a prerequisite for increasing the effectiveness in preventing, detecting, investigating or prosecuting perpetrators of serious crimes, or for the subsequent seizure of assets and proceeds of crime. This central automatic mechanism takes the form of a Central Register of Accounts, the administrator and operator of which is the Ministry of Finance of the Slovak Republic. A financial institution, i.e. a bank, a branch of a foreign bank, a payment institution, a branch of a foreign payment institution, an electronic money institution, a branch of a foreign electronic money institution, a securities dealer and a branch of a foreign securities dealer, is obliged to send data on the creation, change or termination of accounts to the Central Register of Accounts electronically by the end of the day following the creation, change or termination of the data in question.

The Act on the Central Register of Accounts entered into force on **May 1, 2022**.

Amendment to the Act on the Protection against the Legalization of the Proceeds from Crime and on the Protection against the Financing of Terrorism

As part of the approval of the draft Act on the Central Register of Accounts and on amendments and supplements to certain acts, the National Council also approved amendments to Act No. **297/2008 Coll.** on the Protection against the Legalization of Proceeds from Crime and on the Protection against the Financing of Terrorism.

These changes include, for example, defining new terms - financial information, financial analysis, operational analysis and strategic analysis, expanding the examples of an unusual transaction to include a transaction where there is a reasonable belief that the funds or assets are or have been the proceeds of crime or are related to the financing of terrorism, or changes relating to the areas defined below:

CHANGES WITHIN PRIMARY CARE

Basic care now includes, among others, not only obtaining information about the purpose and intended nature of the trade or business relationship, but also its evaluation. Basic care now also requires obtaining and evaluating information about the nature of the client's business.

CHANGES WITHIN ENHANCED CARE

If the risk assessment shows that enhanced care is required and the client is not physically present for the purposes of identification and verification of identification, the obliged person had to comply with one of the following 4 conditions under the previous legislation:

- identify the client through additional documents, data or information and take other measures to verify or confirm the documents submitted,
- request written confirmation from another bank, a foreign bank operating in the territory of a Member State or a financial institution operating in the territory of a Member State that it is its client,

SK Legal Alert

August 2022

Weinhold Legal

- arrange for the first payment to be made through an account held in the name of the client with a bank or foreign bank operating in the territory of a Member State, if the client has provided proof of the existence of such an account, or
- verify the client's identification to the extent that this allows the provision of a payment initiation service or a payment account information service by another obligated person, if at least basic care has been performed by this obligated person.

From the date of entry into force of the Amendment, the first alternative is deleted. It will no longer be possible to validly carry out enhanced care in the absence of the client by means of additional documents, data or information and by taking additional measures to verify or confirm the documents submitted.

DATA RETENTION

The obliged person is now obliged to retain for five years from the end of the contractual relationship with the client or from the execution of an occasional trade outside the business relationship not only the specified data and written documents and all data and written documents on the trades executed, but also all data obtained in the course of the exercise of care in relation to the client, records of the process of assessing and determining the client's risk profile, trading correspondence, the results of analyses carried out, records of all actions taken, including any related impediments, in a manner and to an extent that ensures the verifiability of the individual trades and the procedures associated with them.

CHANGES RELATED TO ULTIMATE BENEFICIAL OWNERS

In the context of identification of the ultimate beneficial owner ("**UBO**"), which is part of the basic care of the obliged person in relation to the client, the obligations of the obliged person are specified if, on the basis of a risk assessment, there is a higher risk of money laundering or terrorist financing. Whereas the previous legislation provided only that the obliged person must not rely solely on data obtained from the Register of Legal Persons, the amended act requires the obliged person to verify the information from an additional trusted source.

IMPOSING SANCTIONS AND FINES

The amendment of the act also introduces changes in the regulation of the level of penalties, the purpose of which is to ensure that the defined administrative penalties or measures include, in the case of legal persons and natural persons - entrepreneurs, maximum administrative pecuniary penalties of at least 2 times the amount of the undue benefit, or in the case of banks and financial institutions, 10% of the total annual turnover according to the most recent financial statements. The amendment also extended the objective time limit for the imposition of fines from five years to seven years.
The amendment to the Act on the Protection against Money Laundering and on the Protection against the Financing of Terrorism entered into force on **1 May 2022**.

The Act on Solving Impending Bankruptcy and on Amendments to Certain Acts

On **17 July 2022**, Act No. **111/2022 Coll.** regulating the solving of impending bankruptcy entered into force including also amendments to certain other acts (including the Commercial Code).

According to the explanatory memorandum, the aim of this new act is primarily to provide debtors with sufficient space for effective and transparent preventive restructuring in the initial stage, when bankruptcy is still imminent, and thus prevent bankruptcy and subsequent insolvency proceedings. According to the legislator this step should prevent job losses, maximize the total value for creditors compared to what they would get in a possible bankruptcy, and last but not least prevent an increase in loan defaults.

The central point of the Act is the regulation of instruments for the resolution of the imminent bankruptcy[1] of a debtor that is a legal person in the form of **public preventive restructuring** and **non-public preventive restructuring** and the regulation of bankruptcy that would eventually occur in the course of a public preventive restructuring.

Public Preventive Restructuring

The debtor is entitled to submit an application for a public preventive restructuring (hereinafter referred to as the "**PPR**")

[1] The Debtor is in impending bankruptcy, especially if he is at risk of insolvency. The Debtor is at risk of insolvency if, taking into account all the circumstances, it is reasonably possible to assume that his insolvency will occur within 12 calendar months. A legal entity is insolvent if it is unable to fulfil at least two monetary obligations to more than one creditor 90 days after the due date.

SK Legal Alert

August 2022

Weinhold Legal

using a prescribed formular. However, the court will not approve PPR if it can be presumed that the debtor's business is not viable. The act provides for a demonstrative list of such cases[2]. In case of a PPR, the debtor is obliged to make use of an **adviser**[3] to assist, in particular, in drawing up the debtor's public plan.

The court shall approve the PPR within 10 days of receipt of a complete petition or removal of its deficiencies. At the same time, the court shall appoint a **trustee** for the debtor on a random basis if it approves the PPR and the appointment is proposed by the debtor, the creditors, or if the court also grants temporary protection at the same time. In particular, the trustee shall supervise the debtor by examining the facts which may give rise to the discontinuance of the preventive restructuring procedure.

The debtor is entitled to apply for **temporary protection** in order to fulfil the objective of the PPR, in particular if it attaches the creditors' consent to the application for PPR. The act thus replaces the institute of temporary protection provided under Act No 421/2020 Coll. on Temporary Protection of Entrepreneurs in Financial Difficulties, which is repealed by the entry into force of Act No 111/2022 Coll. However, the temporary protection under the Act on Resolving Impending Bankruptcy has similar effects to the eponymous institute in the repealed Act. The court grants temporary protection to the debtor for a period of 3 months if the necessary majority of creditors agrees to its granting. In cases where more time is required due to the complexity of the preventive restructuring of the debtor, the act allows for the possibility of extending the protection period by a further 3 months[4]. Temporary protection is granted by a court decision authorising the PPR. The court shall publish the details of the granting of the temporary protection in the Commercial Bulletin.

A **public plan** is also required to accompany the PPR application. This must be drafted in such a way as to ensure a fair distribution of the debtor's assets among the affected creditors, be realistic, sustainable and certain, and should contain the information that the affected creditors need to be able to vote on the public plan in an informed manner. The public plan is divided into 3 parts (introductory, descriptive and binding), the elements of which are described in detail in the act. A **list of all known creditors** at the record date, together with the amount of their claims, divided into separate groups (each secured creditor separately, unsecured creditors, creditors of related claims, subordinated creditors and a group of shareholders), shall be annexed to the public plan. The groups of creditors are important, for example, in case of exercise of voting rights as well as in case of satisfaction of creditors (while respecting the pro rata satisfaction rule). The list of creditors shall be published by the court in the Commercial Bulletin. Once the PPR has been approved, creditors have 30 days to request the debtor to correct or supplement the list of claims, and the debtor is obliged to comply.

As part of the public plan, restructuring measures (measures of an economic and legal nature) are being adopted, the aim of which is to prevent the debtor's bankruptcy and ensure the viability of its business. Restructuring measures may consist of any change in assets, liabilities, capital structure or other changes. They are e.g., restructuring of the debtor's obligations to creditors (in the form of deferment of maturity, debt forgiveness, securing obligation...), sale of the debtor's property, creation or termination of the employment relationship, change of the statutory body and other demonstratively stated restructuring measures.

If the court authorises a PPR, an approval meeting of creditors must be held to approve the public plan. The approval of the public plan requires the consent of the necessary majority of creditors according to the specific group of creditors (e.g. secured creditors must all consent). If any group does not give its consent, the debtor may ask the court to substitute the consent of the group. After the creditors' approval meeting, the debtor is entitled to apply to the court for confirmation of the approved public plan within 7 days of the meeting.

---

[2] For example, if there are grounds for winding up the debtor, the debtor has been wound up or is being wound up, the debtor is subject to the effects of a declaration of bankruptcy or the opening of restructuring proceedings, the debtor does not keep proper accounts or has not complied with the obligation to deposit the accounts in the Register of Accounts, or where the debtor has taken other measures that threaten its financial stability and has not remedied the consequences of those measures.

[3] This is a new institute introduced by the Act on the Resolving of Impending Bankruptcy. An adviser is an entity that must have the necessary knowledge, perform the function with professional diligence and meet other legal requirements. His role is to assist the debtor in averting impending bankruptcy. For example, it prepares the documents necessary for preparing a public plan, examines and proposes specific measures for the sustainability of the business, prepares or comments on the impending bankruptcy test or the best interest or creditors test.

[4] The debtor may exercise this right only once and the total duration of the temporary protection cannot exceed 6 months.

SK Legal Alert

August 2022

Weinhold Legal

A confirmed public plan is binding on the debtor and its creditors and takes effect upon confirmation. The confirmation or effectiveness of the public plan has interesting and important consequences, such as the unenforceability of those creditors' claims against the debtor of which the debtor was not aware even on the 30th day after the authorisation of the preventive restructuring. However, the public plan leaves intact the creditor's right to seek satisfaction of its claim or other right it had before the public plan came into effect out of the amount by which the debtor's estate was decreased by the conflicting legal act.

If the debtor **becomes insolvent** during a PPR, the debtor's statutory body is obliged to inform the specified entities (court, creditors ...) in writing of the debtor's insolvency without undue delay. However, the debtor may continue the PPR even after the debtor's bankruptcy has occurred if it can be reasonably assumed that the debtor will be able to meet all new obligations in a proper and timely manner and the public plan is confirmed by the court or the debtor averts bankruptcy; otherwise, a motion to discontinue the PPR must be filed.

Non-public Preventive Restructuring

A debtor who is in impending bankruptcy and who is not subject to the effects of a declaration of bankruptcy or the opening of restructuring proceedings may agree with one or more creditors who are subject to the supervision of the National Bank of Slovakia or another similar institution abroad on a **non-public plan** in a non-public preventive restructuring. The non-public plan shall be reviewed by the court, which shall decide on its approval. However, it is important to note that a non-public plan is binding only on the creditors who have consented to it in writing. However, the court will reject a non-public plan if it finds that the non-public plan could harm the proprietary interests of creditors who are not parties to the non-public plan.

Procedural Provisions

The Act also contains **specific procedural provisions**. It regulates, for example, the jurisdiction of courts, issues of providing evidence or some special rules (e.g. admissibility of an appeal against a court order only if permitted by law). It is therefore appropriate to pay attention also to this no less important section on procedural rules.

Finally, it is worth adding that the adoption and entry into force of this act **transposes** Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

Amendment of the Commercial Code

On **17 July 2022**, an Amendment to the Commercial Code also came into force, which brought a change, in particular, in the regulation of the **effectiveness of the transfer of ownership interest**. Under the previous legislation, the effects of the transfer of a majority shareholding were linked to its registration in the Commercial Register. Since the amendment came into force, the transfer of ownership interest is already effective towards the company upon delivery of the contract on the transfer of ownership interest to the company, or upon a later date agreed in the contract on the transfer of ownership interest. However, the effects of the transfer of ownership interest shall not take place until its approval by the General Meeting, if required.

Act on Contributions from European Union funds

Approval of Act no. 121/2022 Coll. on contributions from EU funds and on the amendment and supplementation of some acts took place on March 16, 2022. The aim of this act is to set the legal environment for the implementation of new EU regulations effective from July 1, 2021, governing changes to several rules for the implementation of EU funds. The draft act governs legal relations with respect to the provision of a contribution to a financial instrument and implementation of a financial instrument from EU funds in the program period 2021 to 2027, and also determines the position and powers of public administration bodies in the process of using EU funds and the role of the Government of the Slovak Republic and defines several bodies, e.g. body ensuring the protection of EU financial interests, central coordinating body, managing body, paying body, coordinating body for financial instruments, etc.

The act also sets out the basic principles and processes for the management and control of the grant. In addition, the act also contains procedural provisions concerning the decision-making on the application for the grant, the regulation of the process for the settlement of financial relations in the case where the landlord is obliged to reimburse the grant or part of it, and the regulation of conflicts of interest in the process of the grant provision.

The new act, which most provisions are effective from **1 May**

SK Legal Alert

August 2022

Weinhold Legal

2022[5], is intended to streamline the current system of public procurement control for the use of EU funds.

We note, however, that the act in question does not apply to the provision of contribution, aid or support under Act No. 528/2008 Coll., under which aid and support for the Slovak Republic was provided under the multiannual financial framework 2007 to 2013, Act No. 292/2014 Coll., under which a contribution from the European structural and investment funds was and is still being provided under the multiannual financial framework 2014 to 2020, nor under Act No. 280/2017 Coll., which regulates the provision of subsidies in the field of agriculture and rural development.

Amendment to the Act on Safety and Health Protection at Work

Amendment to Act No. 124/2006 Coll. on Safety and Health Protection at Work and on amendments to certain acts, which was also approved on 16 March 2022, brings changes to the institute of the safety engineer and the time period for drawing up a record on a registered occupational accident.

Safety Engineer

As of the entry into force of the amended act, there will be only the institute of a security technician (as opposed to the current legislation also comprising the institute of an authorised security technician) with professional competence at the level of the current authorised security technician.

The explanatory memorandum to the amendment to the act states that its aim is to ensure a uniform professional level of security technicians and to increase professional level of persons performing the function of security technician. The uniformity of the professional level of all security technicians is to be ensured in particular by uniform verification of their professional knowledge through examinations before an examination board set up by the National Labour Inspectorate.

The proposed regulation does not constitute a restriction of the rights or obligations of current authorised security technicians. However, Security technicians who have been issued a security technician certificate by an educational institution by 31 December 2022 will have to apply to the National Labour Inspectorate to take the Security technician examinations. If they do not comply with this obligation by the end of the transitional period, i.e., by 31 December 2024, their certificate of competence will become invalid.

Time limit for making a record of a registered accident at work

The current legislation stipulates that the Employer is obliged to register an accident at work which has caused incapacity for work of an Employee lasting more than three days or the death of an Employee as a result of an accident at work by, among other things (i.e. in addition to ascertaining the cause and all circumstances of the accident and taking and implementing the necessary measures to prevent the recurrence of a similar accident at work), drawing up a record of such an accident no later than 4 days after the occurrence of the accident has been reported. The proposed legislation will bring this time limit in line with the time limit for sending the record of an accident as defined above to the competent Labour inspectorate or the competent supervisory authority, namely 8 days from the date on which the Employer became aware of such an accident.

The amendment to the Safety and Health Protection at Work Act will enter into force on **1 January 2023**.

Amendment to the Illegal Work and Illegal Employment Act and the Employment Services Act

On 16 March, the National Council of the Slovak Republic approved an amendment to Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and Act No. 5/2004 Coll. on Employment Services extending the exemptions from illegal work and illegal employment and the competences of the Labour Inspectorate.

Extension of the exemption from illegal employment

The current legislation stipulates that work and employment for a natural person - entrepreneur or for a legal person - a limited liability company with no more than one shareholder - a natural person, if performed by a relative in the direct line, sibling or spouse of this natural person or their partner, if that relative in the direct line, sibling or spouse is pension insured, a pension recipient or a pupil or student under the age of 26, is considered neither as illegal work nor as illegal employment.

[5] With the exception of the provisions of Article VI - Amendments to Act No. 343/2015 Coll. on Public Procurement and on amendments and supplements to certain acts, which did not enter into force until **1 July 2022**.

SK Legal Alert

August 2022

Weinhold Legal

However, the amendment also extends this exemption to a limited liability company with no more than two shareholders who are related to each other in the direct line, spouses or siblings, and to their relatives in the direct line, siblings or spouses, but of course again under the condition that these relatives are pension insured, are recipients of pensions under special regulations or are pupils or students up to the age of 26.

Competences of the Labour Inspectorate

While according to the current legislation the competence to control illegal work and illegal employment is vested in the Labour, Social Affairs and Family Headquarters, Labour, Social Affairs and Family Offices and Labour Inspectorates, from the entry into force of the amended act the control will be left in the exclusive competence of the Labour Inspectorates. This should contribute to the streamlining and unification of the procedures for the performance of the inspection, in the framework of which the inspection bodies have so far followed different procedural procedures governed by different acts.

Changes related to the Illegal Work and Illegal Employment Act will enter into force on **1 January 2023**.

Tomáš Čermák
Managing Associate
tomas.cermak@weinholdlegal.com

Karin Konečná
Attorney at Law
karin.konecna@weinholdlegal.com