



# SK Legal Alert

February 2024

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### Legislation News

**On 1 March 2024**, Act No. 309/2023 Coll. on Conversions of Commercial Companies and Cooperatives (the "**Act**") will enter into force **in the part regulating domestic and cross-border conversions of commercial companies and cooperatives**.

The Act is a result of the need to ensure both the transposition of Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 in relation to cross-border conversions, mergers and divisions and a uniform, coherent and transparent regulation of domestic and cross-border mergers, amalgamations and divisions of companies and changes in the legal form of a company (the "**Conversion**").

The Act also introduces new institutes into the Slovak legal order, such as **financial assistance** or the **insolvency register**.

A brief overview of these changes is summarised below.

### Conversions of companies and cooperatives

#### Current regulation

The legal regulation of Conversions is currently contained in Act No. 513/1991 Coll., Commercial Code (the "**CC**"). However, as a result of the amendments gradually being added to the CC, in particular by transposition of commercial law directives, the regulation of Conversions is complexly structured and fragmented, leading to it being split off into a separate Act.

#### New terms and institutes

The Act adds new terms and definitions to the existing Conversion terms provided in the CC. It is based on the provisions of the CC and also implements changes required by the practice.

The term **conversion** (in Slovak: "*premena*") in the Act includes **merger** (in Slovak: "*fúzia*"), as an inclusive term for **merger** (in Slovak: "*zúčenie*") or **amalgamation** (in Slovak: "*splynutie*") of companies and **division**

(in Slovak: "*rozdelenie*") including a **splitting up** (in Slovak: "*rozštiepenie*") and a **spinning off** (in Slovak: "*odštiepenie*") companies.

**Splitting up** is a procedure by which the company being demerged is dissolved and its capital is transferred (i) to other existing companies, which thereby become the legal successors of the dissolving company ("demerger by merger"), (ii) to newly established companies, which by their formation become the legal successors of the dissolving company ("demerger by amalgamation"), or (iii) by a combination of the above.

**Spinning off**, on the other hand, is a procedure by which the company being divided is not dissolved and a part of its capital, specified in the conversion project, is transferred (i) to one/more existing companies (so-called "spinning off by merger"), (ii) to one/more newly established companies (so-called "spinning off by amalgamation"), or (iii) by a combination of the above, into another company.

The Act also contains **cross-border** equivalents of the mentioned terms, where in addition to the participating/successor Slovak company, there is a cross-border element in the form of at least one participating/successor company incorporated in another EU Member State.

The amalgamation/merger agreement together with the demerger project used in the CC are collectively referred to as **the conversion project** in the Act.

Changes of legal form include both a change of legal form and a **cross-border change of legal form**, which has not yet been regulated in the CC, where a company changes registered office from one Member State to another and at the same time changes its legal form in accordance with the law of the state after the change of legal form.

Similarly to Conversions, the Act defines which types of companies can change their legal form across borders. These are limited liability companies, joint stock companies and their foreign alternatives.

The Act introduces **special liability of members of the statutory body for damage** caused to the company and

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shareholders for breach of their obligations under the Act in the process of preparing and implementing conversions and changes of legal form.

### Transitional provisions

The current legislation on national/cross-border Conversions under the CC will apply when these conditions are met:

- i) the draft Conversion contract / project has been approved before 1 March 2024 and
- ii) the application for registration of the Conversion in the Commercial Register has been submitted by 30 June 2024; if a decision of the Antimonopoly Office of the Slovak Republic is required, the period shall be extended by the time necessary to obtain such decision, but not more than six months.

### Financial assistance

In addition to the removal of the Conversion Regulation from Section 69 to 69b CC, the Act introduces into the CC, **effective from 1 March 2024**, the institute of **financial assistance**, i.e. the ability of a company to finance the acquisition of its shares by a third party upon fulfilment of the statutory conditions, which is currently not permitted under the Slovak legal system.

Financial assistance in the form of advances, loans, credits or collateral may be provided directly or indirectly by the company if stipulated in the company's bylaws and if in particular the following conditions are met:

- i) provision on fair market terms,
- ii) verification of the financial capacity of the recipient by the Board of Directors,
- iii) the ratio of the company's equity to the subscribed share capital together with the statutory funds determined by the CC,
- iv) establishment of a special reserve fund in the provided amount by the company.

The provision of financial assistance will be resolved by the General Meeting by a two-thirds majority of the present shareholders on the basis of the report of the Board of

Directors and, in certain cases, also the report of the Supervisory Board.

If financial assistance is provided in violation of the legal conditions, the members of the company's Board of Directors may be held liable for damages in the event of a breach of their duties.

### Amendment to the Bankruptcy and Restructuring Act

Article XXI of the Act also comprises the amendment to Act No. 7/2005 Coll. on Bankruptcy and Restructuring (the "**Insolvency Act**"), a part of which entered into force in August last year. However, its most significant change - *the register of pre-insolvency, liquidation and insolvency proceedings* - the "**Insolvency Register**", will become **operational only as of 1 January 2025**.

The Insolvency Register was amended to the Insolvency Act for the purpose of collecting information on pre-insolvency, liquidation and insolvency proceedings in a single digitalized information system.

From January next year, the centralised Insolvency Register will electronically record and publish information and documents on:

- i) bankruptcy proceedings, including small bankruptcy,
- ii) restructuring proceedings,
- iii) debt relief proceedings,
- iv) public preventive restructuring
- v) liquidation and supplementary liquidation ordered by court,

from the issuance of the resolution on their commencement to their termination.

The Insolvency Register will replace the Register of Debtors, which currently electronically publishes information on proceedings under points (i) to (iii) above, as well as service through the Commercial Bulletin.

Liability for the registration and publication of data in the Insolvency Register will be held by the competent addressee

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in accordance with the law, i.e. in case of a document addressed to the court, the court, and in case of a document addressed to the trustee or liquidator, the trustee or liquidator, as the case may be.

The data published in the Insolvency Register will not need to be proved to public authorities and in commercial dealings and will be in a structured form that will allow their retrieval and automated processing.

The Insolvency Register (operating from 1 January 2025) will also include the data published in the Register of Debtors and the Commercial Bulletin under the regulations in force until 31 December 2024.

Another significant change introduced by the Act **with effect from 1 January 2025** is a **new regulation of service** mainly through publication in the Insolvency Register, which should result in acceleration and increase of transparency in proceedings registered therein. For example, in case of a denial of a claim by the trustee, the time limit for filing an action with the court will newly be calculated from the moment of publication of the denial of the claim in the list of claims in the Insolvency Register as opposed to the current calculation from the delivery of the trustee's notification on claim denial to the creditor.

At the same time, the trustees' administrative burden shall be reduced, in particular by:

- ▶ filing applications in insolvency proceedings (bankruptcy, restructuring and debt relief proceedings), including claims application or denial, through newly designated electronic forms to ensure unambiguous recording and publication in the Insolvency Register in a structured form after the commencement of the proceedings;
- ▶ virtualization of the list of claims and the inventory of assets, i.e. their compilation, recording and update directly in the Insolvency Register by the trustee in accordance with the act, including immediate recording and publication of each change - update which will eliminate the obligation of the trustee to issue confirmations that the claim has been entered in the list

of claims as well as the obligation to issue confirmations on (non-)registration of assets in the inventory or to inform about the exclusion of assets from the inventory, etc., given that both the list of claims and the inventory of assets will be publicly available in the up-to-date version;

- ▶ the inventory of assets will be recorded in the Insolvency Register and in the trustee's file in electronic form only.

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