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A brief overview of the most significant amendments to the Companies Act

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The new Act on Amendments of the Companies Act entered into force today, with the exception of certain provisions which will enter into force on 1 August 2023. The main goal of the amendments is to further harmonize Croatian laws with the *Acquis Communautaire*. Amendments to the Companies Act are accompanied by the amendments to the Court Registry Act, which, with certain exceptions, came into force on 24 March 2022. The amendments, among others, seek to digitalize and increase the efficiency of corporate incorporation processes, as well as to improve the administration of the Court Registry. Will these amendments result in such effects? We are a bit sceptical, but decide for yourself based on the below.

Why and for what purpose is the Act being changed at all?

Essentially, the amendments represent a continuation of the harmonisation of Croatian legislation with the European Acquis Communautaire. In this light, the main objective of these amendments is to implement the Directive 2019/1151[1], which at the European-wide level seeks to digitalize and modernize the process of establishment of companies and branches, as well as to improve the efficiency and transparency of the Member States court registries.

Amendments of the Companies Act[2] are accompanied by the corresponding amendments to the Court Registry Act[3], whose primary aim is to establish more efficient procedures for establishing and conducting of business and to continue with the digitalisation of corporate registration entries.

In addition to the above, the Act has simultaneously been harmonized with additional domestic legal sources, i.e., Bankruptcy Act and Civil Obligations Act.

Widening of the scope of persons who cannot be appointed as management board members

The ban on appointment of certain persons as management board members was pre-existing, but these amendments additionally:

- widen the scope of persons to whom the ban applies; and
- establish the record of persons who cannot be appointed as management board members.

Under the new regulation, the following additional categories of persons cannot be appointed as management board members:

- persons convicted for criminal offenses of breach of trust in business operations, fraud in business operations or causing of bankruptcy; and
- persons sanctioned under the laws of another state for a criminal offense which corresponds to the above criminal offences or to whom a measure prohibiting the exercise of certain professions, which fall within the scope of company's business, has been imposed in another state.

The second substantive amendment concerns the establishment of mechanisms to prevent abuse and circumvention of the previous provisions. The Croatian Ministry of Justice and Administration is required to establish a record of persons who cannot be appointed as management board members by 1 August 2023. When examining the registration or change of a

[1] Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law.

[2] Companies Act (Official Gazette nos. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 152/11, 111/12, 125/11, 68/13, 110/15, 40/19)(**"the Act"**)

[3] Court Registry Act (Official Gazette nos. 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13, 93/14, 110/15, 40/19., 34/22.)

management board member, director, *procura* holder and a liquidator, the registry court shall make sure if that person is listed in the record. In case of doubt, the registry court may, by virtue of a system of interconnected foreign registries, verify if the person in another Member State of the European Union is prohibited from performing the profession within the scope of the company's business activities. Should it be determined that a person cannot be appointed to that function, the court will reject the registration of her/his appointment.

Amendments concerning the appointment of *procura* holders

The new amendments determine that a person who cannot be appointed as a management board member may also not be granted a procuration, i.e. special representation authority. Put differently, they cannot be a *procura* holder

Furthermore, since the earlier amendment of the Act deleted a provision on the deposit of the signature of the *procura* holder in the Court Registry, it could potentially have occurred that the *procura* holder was appointed without his/her knowledge, approval, or consent. Therefore, these amendments have corrected this "oversight" by requiring that a written statement of the procurator that he/she is aware of the *procura* given to her/him has to submitted in case of a registration with the Court Registry.

It is hard to imagine a situation where someone would, secretly without the knowledge of another person, give to such person the authority to *de facto* manage his/her company without any restrictions. In other words, we believe that the potential hypothetical risk which the amendments seek to address does not justify the requiring of yet another additional “paper”, especially considering the alleged process of digitization. However, such an intervention is in line with the overly rigid, risk-averse, and uncompromisingly cautious insistence of the legislator and legal academia on "theoretical legal certainty" instead of incentivizing unhindered and effective conduct of business.

Preservation of business documentation after a company is wound up

The question of where and how to store or keep accounts and documentation of the company at the end of the liquidation is a question that has been addressed several times. For instance, in 2019 this issue was attempted to be resolved in a manner that, instead of the courts, the documentation was handed over to the Croatian Chamber of Commerce.

The "successful outcome" of such regulation attempt is clearly illustrated by yet another attempt to address the issue. Under the new regulation, the documentation:

- is to be kept by the liquidator personally, or
- is to be entrusted to an authorised person providing storage services.

The possibility of preserving business books and documentation in electronic form is also foreseen, which could be turn out to be an actual moving in line with the times.

Shareholders must comply with the provisions on the preservation of business books and documentation of the company even when the termination of the company occurs outside the winding-up or bankruptcy proceedings.

Harmonization of national legislation

Piercing of the Corporate Veil and the Bankruptcy Act

The amendments stipulate that in the event that bankruptcy proceedings are instituted against the company, claims against third persons who are liable for the company’s obligations due to piercing of corporate veil can only be made by the bankruptcy trustee.

This has been done to harmonize the Act with the Bankruptcy Act, which sets forth that, in case of opening of bankruptcy proceedings against a company whose members are personally liable for its obligations, claims against these persons during bankruptcy proceedings can be made only by the bankruptcy trustee.

Squeeze out and calculation of interest

Squeeze out related amendments relate to the method of calculating interest on the amount of the compensation that the majority shareholder is required to pay to the minority shareholders for the acquisition of their shares.

The interest is no longer calculated on the basis of the discount rate, but on the basis of an average interest rate on outstanding amounts of loans granted for a period

exceeding one year to non-financial corporations. The amendments have been made to comply with the Civil Obligations Act because of adoption of euro and the consequent abolition of the obligation of the Croatian National Bank to determine the level of the discount rate.

Novelties regarding the incorporation of a limited liability company

The new amendments introduce novelties regarding the establishment of a limited liability company, but these changes will not come into force before **August 1, 2023**.

Amendments relating to incorporation methods

Under the new regulation the company's founding act in the form of a notarial deed or a private document certified by a Notary Public may be drawn up by electronic means of communication and in electronic form.

Moreover, when incorporating a simple limited liability company, the procedure is further simplified as the founding act may be prepared only based on the form attached to the Act and confirmed by the Notary Public.

Remote company incorporation without the participation of a Notary Public

The new amendments change the current provisions on the "remote company incorporation without the proxy" in such a way as to allow the "official electronic incorporation system" to be accessed also by proxies and legal representatives of the founders.

The incorporation act is to be adopted based on the predetermined form attached to the Act, which will in future also be available in English, although it will not be possible to establish a company directly based on the English version. Put differently, the English version's purpose is to enable the foreign founders/shareholders to understand what they will be signing when adopting the Croatian version of the form.

Remote company incorporation with the participation of a Notary Public

The amendments introduced the institute of remote incorporation of a limited liability company with the participation of a Notary Public.

The institute is organized in such a way that the founding act of the company is issued in electronic form as a notarial deed, or a private document certified by a Notary Public. When a company is incorporated as a simple limited liability company, the founding act is adopted by filling in the forms that are attached to the Act in electronic form.

Other documents can also be adopted in electronic form and signed by the persons who have adopted them with a qualified electronic signature.

An interesting novelty is that in the process of incorporation, the Notary Public will communicate with shareholders, representatives and members of the company's corporate bodies via electronic means of communication, which include communication via video link and similar. In this manner, the Notary Public will inform them whether the articles, company name, subject of its business and appointments of members of the company's bodies are in accordance with the applicable laws, as well as to determine their true will and warn them of the legal consequences of their actions.

The identity of persons will be verified by means of electronic identification, but in case of doubt, the Notary Public may require the physical presence of shareholders, their representatives or members of the company's bodies.

Contributions for acquired shares can be paid only in cash (i.e. not in kind) to a temporary account of the state budget or as a deposit to a special account of a Notary Public opened with a credit institution in the Republic of Croatia.

Amendments to the provisions on contributions for acquired shares

According to the envisaged amendments, cash contributions for acquiring shares may be paid not only to the company's account with a credit institution in the Republic of Croatia, but also to a special account of a Notary Public opened with a credit institution in the Republic of Croatia.

Amendments to the statement on the absence of outstanding debts

Amendments to the Court Registry Act introduced the possibility that the statement of the founder of the company on the absence of outstanding debts arising out of taxes, pension and health insurance contributions,

as well as debts for net salaries to employees, which is given by the founder of the company when incorporating the company, can now be electronically signed by the founder, instead of notarized by the Notary Public.

Additionally, an important intervention from the practical side concerns the introduction of the possibility for the said statement to be given by the founder's proxy in the process of incorporation of the company, with the founder still, without exception, liable for the content of the statement given by the proxy in his/her name and on his/her behalf.

This amendments make the procedure a bit easier for foreign founders who previously had to organize certification and possible apostille abroad, and then send the originals to Croatia and bear the costs of a certified translation into Croatian.

Remote incorporation of a branch office

So far, the possibility of remote incorporation was provided only for:

- a limited liability company, and
- a simple limited liability company.

One of the novelties that should increase the efficiency of setting up and operating of companies, including foreign ones, is the possibility of incorporating a branch office remotely by electronic means of communication. This amendment falls into the category of provisions that will come into force from 1 August 2023.

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