

# What Board Members and Executives Should Know About Impact of Proposed Amendment to Slovak Commercial Code on Personal Liability?

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Are you already a board member or executive of a Slovak company or about to become one? If so, you should know about the proposed amendment to the Slovak Commercial Code. The amendment aims to address the so-called “white horses” and “tunneling (asset stripping)” of the companies.

The amendment should come into force on **1 January 2018**. As it is a draft bill only, it is still subject to changes. The amendment plans to introduce several new provisions that will also have an impact on personal liability of persons that serve or served as members of a statutory body of a Slovak company.

For example, the amendment introduces:

- **The obligation of “former” members of statutory bodies to provide assistance:** The obligation to provide assistance to courts and other authorities for the period of up to one year from the date of termination of office. This obligation applies if it is not clear from the Commercial Register who acts on behalf of the company, or if the assistance is not provided by a new member of the statutory body.
- **Liability of the “controlling person” towards creditors of the “controlled person”:** The amendment introduces a liability of the controlling person for any damage caused by the insolvency of the controlled person, where the controlling person has “materially contributed to insolvency of the controlled person”. The liability applies, in particular, to instances where the controlling person has been involved in or has given an instruction to the controlled person that had led to insolvency. The controlling person may be obliged to compensate creditors for any difference between money the creditor receives from the controlled person and the actual amount of his receivable. As a result, these provisions may also have an impact on board members or executives of the controlling person.
- **Liability for damage caused to creditors for a failure to file a bankruptcy petition in time:** the amendment re-introduces liability of members of the statutory body for any **damage caused to creditors** resulting from the late filing of a bankruptcy petition. This provision will apply in instances where: (i) the court does not declare bankruptcy (except where insolvency has not been ascertained), (ii) a debtor has ceased to exist with no legal successor and

without the satisfaction of creditors, or (iii) a bankruptcy proceeding or enforcement proceeding against a debtor has been suspended due to the lack of property. This liability will exist along the obligation to pay the contractual penalty for not filing the petition.

- **New criminal offence – “unfair liquidation”:** A criminal offence is committed by a person who, with an intention to frustrate liquidation of the company, finds other person (that only provides his/her name and surname for the assumption of rights and obligations which it has no real intention to perform) to acquire a shareholding in a company or to be appointed as a member of statutory body; similarly, a criminal offence is also committed by a person who transfers its shareholding as well as the “white horse”.
- **Liability of members of statutory body towards creditors for damage in case of amalgamation, merger or split-up:** Members of corporate bodies must refrain from actions leading to an amalgamation, merger or split-up, if the conditions laid down by law have not been fulfilled (for example, the value of equity of the successor would be negative).
- **Criminal impeachability (i.e., clean criminal records) of a member of the board of directors of the joint stock company:** Only an individual who has (i) full legal capacity and (ii) clear criminal record can be appointed a member of the board of directors. If the individual does not meet these conditions, he/she shall not become a member of the board of directors even if the relevant body appointed such person to the office. If at any point he/she cease to meet the conditions necessary, their office shall expire on that day.
- **The obligations of persons performing the office of member of statutory body without being appointed to such office:** These persons will be obliged to act with professional care in accordance with the interests of the company and of all its shareholders and in case of breach of this obligation they shall be held liable to the same extent as if they were member of statutory body (for example, in case they act as former members of statutory body).

The amendment also broadens the group of so-called “**disqualification decisions**”. This relates to decisions that disqualify a natural person to be a member of statutory body or a member of supervisory board, a head of branch or procurist, and that such person will be regarded as an “**disqualified representative**”. The amendment introduces a possibility that such decision may be adopted also by authorities other than courts, if their decision can be reviewed by a court and if so stipulated by special act.

We believe that members of boards and executives should acquaint themselves with the amendment and introduce preventive and controlling mechanisms in their companies, if needed, to avoid potential liability.

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