Rödl & Partner

NEWSLETTER SLOVAKIA

SETTING FOUNDATIONS

Issue: December 2023

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Proper setup of the proxy's conduct in the company

Proxy is an important and relatively often used institute of representation in the business environment. In the application practice, especially with our foreign clients, we encounter various requirements for setting up a proxy’s conduct on behalf of a company, which is common in their home countries. In recent years, however, a number of decisions have appeared in the case law, particularly concerning the limits of the proxy's acting for the company. Hereby, we would like to bring you closer to the most frequent and most controversial issues that the Slovak courts have dealt with in recent years in connection with the conduct of a proxy on behalf of a company.

As regards the first limitation of the proxy in the performance of his/her office, this limitation lies in the very provision of Section 14 of the Commercial Code (hereinafter referred to as the CC), which states that "The entrepreneur authorises the proxy for all legal acts that occur in the operation of the business, even if a special power of attorney is otherwise required."
It follows from the diction of this provision that the proxy is not entitled to perform acts that are not related to the company's operation, such as to grant a proxy to another natural person, to perform acts that significantly change the company – its sale, change of organizational form, etc. Court practice has defined a number of such acts that are not related to the operation of the company. Thus, as a first step, it is always necessary to assess whether the act to be performed by the proxy is an act related to the operation of the business.

Joint conduct of the proxy and the managing director

In practice, we often encounter the requirement to limit the proxy's actions to joint actions with the managing director. It should be emphasised here that any limitation of the proxy's actions by the company in such a way that he/she be entitled to act only jointly with the managing director has no effect on third parties and such limitation cannot be entered in the relevant commercial register. However, it is still possible to regulate internally (e.g. in a contract, internal directive) the proxy's obligation to seek the prior consent of the managing director, but only with effect within the company and not towards third parties. Thus, if the proxy breaches the obligation to seek prior consent, the company could have claims against the proxy arising from the breach of duty (e.g. a claim for damages), but the legal acts performed by the proxy would remain valid even without the consent of the managing director.

Employment relations and proxy

One of the most common ambiguities in acting as a proxy for a company comes up in employment relationships. As we mentioned at the beginning of this article, a proxy is authorised to perform all legal acts that occur in the operation of the business. Whether the creation, modification or termination of employment relationships is an act that relates to the operation of the business has long been unclear in legal practice. However, the case law of the Slovak Republic has had an answer on this issue for approximately 2 years, although we consider it necessary to say that it is an answer which is still criticised by the professional public. The Supreme Court of the Slovak Republic stated in one of its decisions that the proxy does not include any of the activities performed by the statutory body towards the inside of the company. Considering the fact that the Supreme Court of the Slovak Republic considered employment acts (such as termination of employment) to be acts inside the company, while the proxy's authority to act in employment relations does not derive from the Labour Code either, it stated that the termination of employment signed by the proxy is invalid. Thus, until any different decision of the

Supreme Court of the Slovak Republic, it is necessary to be at least cautious when acting as a proxy in employment relations, as any employment act performed by a proxy could be considered invalid by the court in the light of the above decision.

Conclusion

We hope that with this article we have given you at least a basic overview of the limits of acting as a proxy for a company. We always try to individually assess our clients and set up the internal functioning of the company so that the rules for the performance of the proxy's office are clearly defined, without any unnecessary risk of invalidity of legal acts. We will be happy if you contact us for further consultation not only in this area.

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→ Law

Cross-border transfer of a company's registered office

For a long time, Slovak legislation has regulated the issue of cross-border transfer of a company's registered office rather briefly. The key provisions in this case were the provisions of Sec. 26 of the Commercial Code as amended and the case law of the Court of Justice of the European Union.

A change in this respect will occur from 1 March 2024, when Act No. 309/2023 Coll. on the conversion of commercial companies and cooperatives (hereinafter referred to as the "Act on the Conversion of Commercial Companies") comes into force/general information was given in our September newsletter/. The Act contains, among other things, legal regulations concerning the transfer of a company's registered office to another Member State of the European Union.

What should the process of cross-border transfer of a company's registered office look like after 1 March 2024?

In this article, we will discuss the situation when the registered office of a Slovak company is to be transferred to another Member State within the European Union.

The Act on the Conversion of Commercial Companies defines a cross-border conversion of a company as a procedure in which a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of the destination Member State and at the same time transfers at least its registered office to the destination Member State. However, the law allows such a change only in the case of a public limited company and a limited liability company.

The first and one of the most important steps in the process of a cross-border conversion of a company will be the drafting of a cross-border conversion project. This project must contain the elements required by the Act on the Conversion of Commercial Companies. The annexes to the draft cross-border conversion project will be the draft articles of association and the draft memorandum of association of the converted company.

Subsequently, the draft cross-border conversion project shall be examined by an auditor who shall draw up a written report on the outcome of the examination. At the same time, the company's statutory body shall draw up a written report explaining and justifying the cross-border conversion from a legal and economic point of view, in particular the implications for the company's future business activities and the implications for employees. Such report by the statutory body shall include a section for the shareholders and a section for the employees.

The draft cross-border conversion project shall be deposited in the Register of Deeds. Together with the draft cross-border conversion project, a notice shall be deposited informing the members, creditors and employees or their representatives that they may submit comments on the draft cross-border conversion project at the latest 5 working days before the general meeting

which decides on the cross-border conversion of the company. The notice of the deposit of the abovementioned documents in the Register of Deeds shall also be published in the Commercial Gazette. A notice that a draft cross-border conversion project has been drawn up shall also be sent to the competent tax authorities.

The company will also have to publish the required documents at its registered office or at another address at least 6 weeks before the vote on the approval of the cross-border conversion project draft.

The next step in the process of a cross-border conversion of the company will be the approval of the draft by the general meeting of the company. Should any shareholders not agree to the cross-border conversion of the company, they will have the right to be paid a settlement share. The Act on the Conversion of Commercial Companies also addresses the protection of the company's creditors in the context of a cross-border conversion of a company.

Before the registration of a company in the relevant register in another Member State of the European Union can be dealt with by the competent authority, compliance with the requirements laid down for a cross-border conversion of the company must be examined by a notary at the company's request. The latter will then issue a certificate prior to the conversion, which will take the form of a notarial deed.

The certificate prior to the conversion should subsequently be provided to the authorities of the State where the transfer takes place, through the system of interconnection of registers. The legality of the cross-border conversion should then be examined by the competent authority of the Member State of destination. The examination should therefore examine whether the converted company has complied with the provisions of the law of the State of destination on the formation of companies and their registration in the relevant register.

Once the cross-border conversion of the company has been examined, the competent authority of the State of destination should register the company in the relevant register and send information about it to the court in the Slovak Republic. The latter should then, on the basis of such information, delete the company from the Commercial Register of the Slovak Republic.

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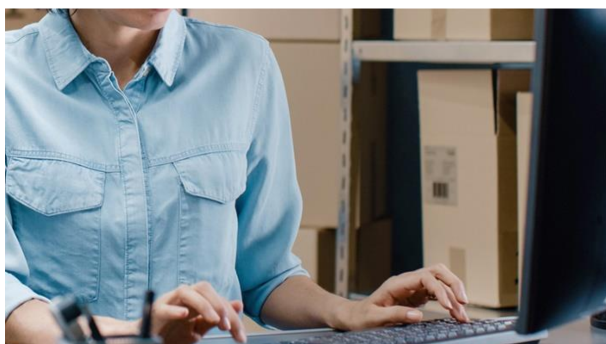
→ Business

Use of standard prices when valuing inventories

In recent years, we have increasingly come across the use of so-called standard prices in our audits when valuing inventories. This valuation is applied in manufacturing companies, which are most often owned by shareholders from the Benelux countries, Germany and Liechtenstein, but also from other countries.



The standard price is actually a predetermined price that includes the incidental costs of acquiring the inventory and is used to value both purchased inventory and own-produced inventory. In practice, the application of this valuation of inventories is usually as follows: standard prices are established for individual items of inventories at the beginning of the accounting period and a so-called revaluation – an increase or decrease in the price of the inventories in stock to the current standard price – takes place in the accounts.

In the balance sheet, this transaction is reflected as a change in the valuation of the inventory in stock, and this change is charged to the profit and loss account as a change in own-produced inventory, regardless of whether it is purchased inventory or own-produced inventory. This creates a mismatch between the change in own-produced inventory on the balance sheet and the change in own-produced inventory recognised in the profit and loss account, which has to be adjusted at the year-end.

When inventories (materials, goods) are purchased during the accounting period, they are taken into stock at the last known standard price, the difference between the standard price and the purchase price of the inventories on the invoice from the supplier of the inventories being charged directly to the profit and loss account in account 501 – Consumption of materials. This difference between the standard price and the actual purchase price of the inventory is actually a price variance which needs to be assessed and adjusted accordingly for the correct valuation of the inventory at the end of the accounting period. Only that part of the price variance which belongs to the part of the inventory already consumed should be shown in the profit and loss account. To quantify the part of the price variance already to be recognised in the profit and loss account, the standard formula for dissolving price variations on inventories can be used:

Incidental acquisition cost (IAC) ratio

$$\frac{\text{Opening balance of price variance} -/+ \text{Price variance additions}}{\text{Opening inventory} + \text{Inventory additions}}$$

IAC

IAC ratio * Inventory reductions

The above formula is used to quantify how much of the price variance should be recognised in the profit and loss account and the remainder should be recharged as an adjustment to the valuation of inventories in stock on the balance sheet.

In addition, the valuation of purchased inventories in stock should also be considered in terms of Incidental acquisition costs. When using the standard price, the actual incidental acquisition costs invoiced by the supplier are charged directly to the profit and loss account in the expense accounts. Since the standard price also includes the incidental costs of acquiring the inventories, it is necessary to have a breakdown of the standard price into cost and incidental costs of acquisition and, consequently, to assess separately the correctness of the measurement of the incidental costs of acquisition in stock at the end of the accounting period.

Although the above method can partially deal with the use of standard prices in the valuation of inventories, the application of standard prices in accounting in Slovakia also entails certain risks. The use of standard prices is itself a certain inconsistency with Slovak accounting rules, especially as regards the upward adjustment of the price – the increase in the

inventory price for purchased inventories (materials and goods).

According to Slovak accounting rules, purchased inventory should be valued at the purchase price stated on the invoice for the purchase of the inventory. However, Slovak accounting rules allow the price of inventory in stock to be split into a so-called fixed price and a price variance, and the price variance can be dissolved into costs using the above formula. These components of inventory valuation should be accounted for in separate analytical accounts. If, on the contrary, the deployment of the standard price results in a reduction in the inventory price, there are tax risks, since the reduction in the inventory price may be treated as the creation of an inventory valuation allowance, which is a non-tax expense from the point of view of the tax rules.

As the valuation of inventories at standard prices is becoming more and more common in practice and local companies usually have to adopt this valuation in Slovak accounting due to the requirement of the company owners, it is necessary to assess the above risks when implementing standard prices in practice. Although it is the desire of international companies not to have differences in valuation between local accounting and parent company reporting, when standard prices are deployed, some valuation adjustments have to be made at the local level and a difference will arise between the valuation of inventories in the accounting and their valuation for parent company reporting purposes.

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→ Business

Adjustment of allowances for business trips within Slovakia

As of 1 October 2023, the allowances for business trips within Slovakia have been increased.
Currently, the following allowance rates apply:

- for business trips from 5 to 12 hours, the new rate amounts to 7.8 euros
- for business trips from 12 to 18 hours, the new rate amounts to 11.6 euros
- for business trips over 18 hours a day, the rate amounts to 17.4 euros

In this context, the minimum value of meal tickets was also changed, it amounts currently to 5.85 euros.

At the same time, this change also affects the amount of the meal allowance, now ranging from 3.22 euros to 4.30 euros.

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