

THE NEW COMMERCIAL CODE WILL AFFECT ALSO “DECENT” COMPANIES

The latest amendment to the Commercial Code does not only contain restrictions on unfair practices and grey knights. It affects the life of businesses more than it seems at the first glance, and nobody talks about it. We introduce you the most important changes that may affect your business.

On November 8, 2017, an amendment to the Commercial Code was published in the Collection of Laws, which again fundamentally extends the liability of the statutory bodies, even those who have been and are no longer or even those who were not statutory representatives. Here is a summary of the most important changes.

The main changes of the amendment, which you barely find in media:

Change	What should the company do?
<p>Obligations after removal from the position of a statutory officer do not end. The former member of the statutory body has the obligation to provide reasonable cooperation required by the court, the tax administrator, the public institution (social insurance, public health insurance, trustee, bailiff) 1 year after cessation of his/her function, provided that the then appointed member of the statutory body does not provide cooperation or if it is not clear, who performs this function. The company is obliged to pay the costs associated with it.</p> <p>Automatic cessation of the function of the member of the Board of Directors in case of loss of legal integrity.</p> <p>A member of the Supervisory Board elected by employees may, in principle, be only an employee.</p>	<ul style="list-style-type: none">• Modification of internal documents• Modification of contracts with the statutory representatives• Introducing off-boarding/on-boarding processes• Screening of statutory representatives• Revision and modification of the founding document /Memorandum of Association /Articles of Association

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<p>Also the person, who performs the function of a statutory body (or a member) has objective liability (i.e. that he/she liable and accountable with his/her whole property) without being appointed to it, if he/she does not act with professional care, in accordance with the interests of the company, and all its shareholders - shadow statutory or top management member.</p>	<ul style="list-style-type: none"> • Identification of potential persons, who may be affected by this provision within the company • Damage compensation will not be limited to those under the labour law, it will also be possible to apply commercial liability • Revision of internal regulations designed especially for the top management • Ensuring that the top management is protected from the consequences of this provision
<p>The liability of the controlling person (partners /shareholders) for the insolvency of the controlled person against the creditors for damage caused by the bankruptcy of the controlled person, if substantially contributed to bankruptcy by his influence.</p>	<ul style="list-style-type: none"> • Revision of the founding document/Memorandum of Association/Articles of Association • New set up of approval processes • Assessment of the relevance of the selected legal form
<p>Introduction of the new definition “Capital Fund” (known as other capital funds) and governing the rights of disposal with the funds, including changes in the Income Tax Act (payments from the “other capital funds” account).</p>	<ul style="list-style-type: none"> • Revision of internal procedures for the payout of profit, share to partners /shareholders
<p>The revenue from the reduction of the registered capital of a company is also partially considered as income from the reallocation of the capital fund.</p>	
<p>New institutes of protection in the event of breach of trade secrecy. Have your data been stolen yet?</p>	<ul style="list-style-type: none"> • Revision of claims associated with the breach of trade secret and their application
<p>If you are dissolving a company, you need the consent of the tax administrator and the Social Insurance Company.</p>	<ul style="list-style-type: none"> • Count on increased administrative costs
<p>Are you in the list of debtors of the Social Insurance Company or the Tax Office? Then there are limitations on the transfer or split of the business share and you cannot establish a company.</p>	<ul style="list-style-type: none"> • Prepare for the administrative complexity of the process