

## LEGAL REGULATION OF THE BUSINESS REGISTER SINCE 1950 AND IN THE PRESENT DAY IN THE SLOVAK REPUBLIC

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*The article deals with the historical development of the Business Register which have been taking place in the territory of the Slovak Republic since 1950 and with the contemporary legal regulation of the Slovak Business Register. The Business Register has been amended and re-codified during almost 70 years several times. Significant milestones are the separate Act on the Enterprise Register dated 1950, the subordination of the legal regulation of the enterprise register under the Economic Code and later under the Business Code after the regime was changed as well as the change of its name to the Business Register. In the present day, the Business Register is regulated by several legal regulations – the Business Code, the Civil Non-Dispute Procedure Code, the Act on the Business Register and the Decree of the Ministry of Justice stipulating specimen of forms for filing motions for making the entry into the Business Register and a list of documents which must be enclosed to the motion for the entry. The article presented «only» summarizes facts using tools of legal comparison to highlight the context of the progress of individual legal amendments made throughout the specified time period up to the present.*

*Key words: business, register, regulation, Slovak*

## ПРАВОВОЕ РЕГУЛИРОВАНИЕ КОММЕРЧЕСКОГО РЕЕСТРА В СЛОВАЦКОЙ РЕСПУБЛИКЕ С 1950 г. ПО НАСТОЯЩЕЕ ВРЕМЯ

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*В статье рассматриваются история развития Коммерческого реестра на территории Словацкой Республики начиная с 1950 г. и действующее правовое регулирование Коммерческого реестра в стране. За прошедшие почти 70 лет Коммерческий реестр претерпел значительные изменения и несколько раз был заново кодифицирован. Среди важных вех в развитии Реестра можно выделить принятие отдельного Закона о Реестре компаний 1950 г., включение норм о Реестре компаний в Экономический кодекс, а после смены режима – в Коммерческий кодекс и его переименование в Коммерческий реестр. В настоящее время Коммерческий реестр регламентируется рядом правовых актов, среди которых – Коммерческий кодекс, Гражданский внесудебный регламент, Закон о Коммерческом реестре, а также Указ Министерства юстиции, определяющий образцы бланков для подачи заявок на регистрацию в Коммерческом реестре и перечень документов, которые необходимо приложить к заявке на регистрацию. Автор с помощью сравнительно-правового метода обобщает сведения о принятии отдельных законодательных изменений.*

*Ключевые слова: бизнес, реестр, регулирование, Словакия*

## 1. Introduction

The contemporary institute of the Business Register has been amended several times since its introduction. They originated in guilds which date back to 11<sup>th</sup> up to 13<sup>th</sup> century and were maintained according to the place of guilds<sup>1</sup>. The guild lists were maintained by a guild notary and could be made into the guild only after special requirements were fulfilled. Guild membership and entitlement to practice craft was proved by the entry in the guild list.

The development of the society, businesses, and monopolies in guilds caused that the institute of guild became insufficient. Thus, legislative amendments were made in the 19<sup>th</sup> century – Guilds were cancelled, and Act № 37/1875 Business Code was adopted in Hungary. It introduced the term business register, obligatory registration, the public of the Business Register, an official business journal – «Közpönti Értesítő» (The Central Notifier), etc. The legal regulation of the Business Register was advanced, and some its basic elements are effective even today.

The legal regulation had been effective by 1950 via reception statutes № 11/1918 Coll. on the establishment of the autonomous Czechoslovak state and Act № 1/1939 Coll. on the autonomous Slovak state with minor differences or new legislation supplementing the legal regulation of the business register. It is worth mentioning for example Decree № 397/1919 Coll. of the Government of the Czechoslovak Republic, which amended legislation on the publication of the entries made in the Register, and Act № 89/1942 Coll. on the Deletion of Ceased Companies from the Company Register by virtue of office. In 1950, Act № 100/1950 Coll. on the enterprise register was adopted in 1950 when the business register and the register of communities were substituted by a single register – the enterprise register.

## 2. Enterprise register

In 1950, Act № 100/1950 Coll. on the enterprise register<sup>2</sup> was adopted. Compared to the contemporary Act on Business Register, it was much briefer. The legal regulation of the Business Register was limited to 16 articles whereas 4 articles contained transitional and final provisions. The wording of articles was much more concise, too.

The Act strictly defined the entities for which it was obligatory to register into the enterprise register. National, state and communal enterprises, as well as people's co-operatives and joint-stock companies, had to register into the enterprise register. It was compulsory to file a motion to enter a record of a company into the register without undue delay, i. e. a specific deadline was not determined. The Act stipulated a sanction – a monetary fine – for the breach of that obligation. If the motion for entering a record of the company into the Register was not filed even upon a request of the court, a person was compelled to meet it obligation by being given a fine amounting to 50,000 Kčs. However, the sanction was facultative, and it was up to the discretion of the court whether the sanction is imposed or not and in what amount.

Substantive and local jurisdiction was already defined in Section 2 of the Act. The enterprise register was maintained by district courts in a seat of the regional court in case of enterprises which had their seat in a judicial circuit of that court. Such legal regulation of registration courts is still effective in the present day. Under the Act, district courts which dealt with an agenda of the enterprise register were titled «registration courts».

The specification of data which had to be recorded was brief and general compared to the current legal regulation. In case of all enterprises, what was recorded into the Register

<sup>1</sup> For instance, the first guilds originated in Germany already in 11<sup>th</sup> century.

<sup>2</sup> URL: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1950/100/19581107>.

is the way and time of the incorporation, a name, a seat and bodies authorized to represent the enterprise and members thereof as well as the way how they represented it and signed the documents on its behalf. Concerning the people's co-operative, it was also obligatory to register the amount of membership share, the way how members repay it and how they contribute to the payment of deficit. Regarding the joint-stock company, the amount of registered capital, a nominal value of stocks and the type thereof had to be registered as well. Next, procuration and branches were also entered into in the Register. However, the above-mentioned list of registered data was not final because the registered court was authorized to record the facts which were not explicitly specified under the Act into the enterprise register under its discretion if it was required by the purpose of activities carried out by the public registered in the enterprise register. Thus, data which had to be recorded were specified by legislation, and they were obligatory. However, legislation allowed also facultative data which were not specified in detail and the content thereof depended on judicial discretion.

The regulation of the enterprise register dealt with the effects of the entries, too. A principle of positive material publicity was expressed in such way that once the entry was recorded into the enterprise register and announced, the ignorance of the record became no excuse. The fact which was not recorded could be enforced only against a person about which it was proved that he or she knew about the fact. Negative material publicity was specified by Subsection 3 Section 5, which stated that a person in whose matter the entry was made cannot object to a person acting in reliance on the registered entry saying that the entry does not correspond to the truth<sup>1</sup>.

A proceeding before the registration court was not directly specified by legislation. In such matters, the Act referred to generally binding legislation on court proceedings in non-dispute matters, unless stipulated otherwise by the Act on the enterprise register.

### 3. Legislative regulation of the enterprise register in the Economic Code

In 1964, the Act on the Enterprise Register was repealed, and the regulation of the enterprise register became subject to Act № 109/1964 Coll. the Economic Code<sup>2</sup>. The Economic Code did not amend the conception of the Business Register. It took the name enterprise register from the previous legal regulation. At the time when the Act was adopted, the regulation of the enterprise register was limited only to 6 quite brief sections which were gradually extended to 10 sections, what eventually reflected the changes in and the needs of the business environment that was developing throughout the long period when the Economic Code was in force. Therefore, the author considers it to be purposeful to compare the first version of the Economic Code with its latest wording before it was repealed.

As already mentioned, the part about the register was very concise in the first version of the Economic Code. What had to be registered was state economic organisations, co-operative organisations and the economic undertakings of social organisations as well as other organisations, if specified by legislation, including branches. Compared to its preceding version, significant amendments were made especially to the language formulation of individual organisations. It follows that the term business/register, as well as the nomenclature of organisations, were evolving.

<sup>1</sup> The language is taken from the wording of the Act and it reflects the language acts used in that period. The author did not edit the wording for the sake of authenticity.

<sup>2</sup> URL: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/109/19911220>.



Amendments were made also to data which had to be recorded. The possibility to record facultative data was repealed, and a legal definition of branch added, what was a significant change compared to the Act on the Enterprise Register. Thus, the register included types of undertaking, an incorporation date, a name, a seat, statutory bodies (with positions and names) and the way how statutory representatives signed on behalf of the undertaking. In case of co-operative organisations, what was also recorded is how members contributed to the payment of deficit incurred. In case of branches, it was required to enter a name of the establishment, its seat, a name and a seat of an organisation which the branch was a part of and its director's name. If the branch was seated outside a circuit of the registration court competent to enter the record of the organisation, it was registered also at a relevant registration court according to the seat of the branch. The record was made also of any change of the above-mentioned data or the cessation of existence thereof, the termination of the undertaking, the entry of organisation into liquidation and a liquidator.

The register was also maintained by a district court located in a seat of regional court (the registration court) in case of organisations which had their registered office in a circuit of the regional court concerned. The government had the authority to decide that the register would be kept by another body. The above-mentioned is a very interesting image of how the whole register agenda could be transferred to a body which was not determined under the legislation, even though the facultative one. Eventually, the competence of registration courts in the agenda could eventually be terminated and transferred to the body or several bodies selected by the government, as there were multiple registration courts. It is necessary to highlight that implementing rules could stipulate that the register of several regional court circuits was to be maintained by a single court. In the author's opinion, the whole mentioned legal regulation of registration courts is confusing, as the Act defined registration courts but eventually they did not have to perform the agenda of the register at all, and their agenda could be performed by other bodies which were not clearly defined in the Economic Code (based on the Government's decision or under implementing regulations).

Regarding the effectiveness of entries, facts recorded in the register took effect in relation to all organisations and persons as of the day on which the entry was made. If some fact (the change or deletion thereof) was not entered into the register, one could not claim for the fact against other organisation or person except the case where they knew about these unregistered facts.

The proceeding was not directly specified by the provisions for the register in the Economic Code, i. e. the Code did not even refer to regulations on civil proceeding. It is necessary to mention that the civil proceeding was regulated at that time by Act № 99/1963 Coll. Civil Procedure Code.

However, various amendments were gradually made to the register, what was evident also in the last effective legal regulation of the Economic Code. The last regulation of the register was extensive. Also, a natural person entitled to carry out a business activity under special legislation found its place in the register, even though in separate parts thereof. Commercial companies started to be registered into separate parts of the register, too. What was in general recorded in the register was state enterprises, co-operatives, joint enterprises, economic establishments of civic associations, small plants having legal personalities belonging to national committees, national committees which carried out business activity in small plants without legal personality, Czechoslovak State Railways, undertakings business, commercial companies and other entities specified by legislation. Branches and other







organisational units specified by special legislation were also registered. However, the Act provided also a negative specification. It defined organisations which were not to be entered into the register. State Czechoslovak Bank, the Central Board of Co-operatives, associations of cooperatives and possibly other organisations were not recorded in the register. Legislation on the incorporation of other organisations could stipulate that the organisations shall not be entered into the register.

The last effective wording of the Economic Code enacted that the register shall be maintained by courts referred to as «registration courts». The competence of courts in matters regarding the register was defined by separate legislation. The last legal regulation did not directly specify the competence of the registration courts in the Economic Code, as it was done by the previous regulation, but it referred to separate legislation.

As regards the effectiveness of entries, no amendments were made compared to the preceding regulation, i. e. the facts recorded in the register took effect in relation to all organisations and persons as of the day on which the entry was made. If some fact (the change or deletion thereof) was not entered into the register, one could not claim for the fact against other organisations or persons, except the case where they knew about these unregistered facts.

Compared to the first Economic Code, its last version specifically named the act under which the proceeding was to take place. Instead of a general phrase which read «legislation for court proceedings in non-contentious matters» which had been included in the Act on the register, the amendment stipulated that the provisions of the Civil Procedure Code shall apply to the matters of the register. Its provisions for procedure measures were applied also to matters where a court request was not satisfied.

The re-codification of business law brought a new code as well as amendments to the Business Register. Act № 513/1991 Coll. the Business Code<sup>1</sup> substituted the term register with a new term which is still effective today – the Register. Simultaneously, legislation defined it for the first time as a public list which includes entries of data about entrepreneurs or other persons specified by law. It is possible to state that the regulation of the Register was not extensive – it was defined only by 8 paragraphs under the first wording of the Business Code.

The localization of provisions for the Register was amended, too. The last version of the Economic Code consisted of twelve parts, and some of them were divided into «Part A», «Part B» or «Part C». The register was regulated by the Part Five of the Economic Code. The contemporary Business Code contains four parts, and the legal regulation of the Register can be found in the First Part of Chapter Three. The Register was maintained by a registration court under special legislation. The special legislation meant Act. № 99/1963 Coll. Civil Procedure Code, which stipulated that under Section «Proceedings in matters regarding the Register», the Register shall be maintained by a district court in a seat of a regional court («Registration Court») in case of entrepreneurs who have their registered office in a circuit of that regional court. If they do not, a competent court is determined according to the place of business. If the entrepreneur does not have a place of business, a court competent in managing the Register is determined according to the entrepreneur's domicile.

The companies to be entered into the Register were not specified as opposed to the Economic Code. Which companies had to be registered followed directly from the provisions for data which had to be entered into the Register and thus not from general provisions. It

<sup>1</sup> URL: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/513/20171108>.

followed from the provisions which dealt with special characteristics of individual companies, co-operatives, state enterprise or foreign persons.

Once entered into the Register, the fact took effect against everybody as of the day on which the entry was made. A person who the entry concerned could not object to a person acting in reliance on the entry in the Register on the ground that the record does not correspond to the truth.

The first wording of the Business Register did not deal with any provisions for the proceeding nor did it refer to any other act. As already mentioned above, the proceeding in matters regarding the Business Register was specified separately by the Civil Procedure Code.

#### 4. The legal regulation of the Business Register effective in the present day

The legal regulation of the Business Register has undergone several amendments since it was incorporated in the Business Code. The adoption of the individual act on the Business Register was a huge and important change. In 2004, a new act – Act № 530/2003 Coll. on the Business Register and on the amendments and supplements to certain acts<sup>1</sup> – took effect, transferring a substantial part of the legal regulation of the Business Register from the Business Code into the new act.

##### 4.1. The legal regulation of the Business Register under the Business Code

«Only» the basic regulation was left in the Business Code. It defines the Business Register, the entities which must be entered into the Business Register, the effects of the entries into the Register as well as how to solve potential discrepancies between a foreign person's data entered in the Register and documents in the Slovak Republic and a state where the foreign person has its registered office. The whole legal regulation of the commercial register which was left in the Business Code is thus limited to a single section, namely Section 27.

The Register distinguishes between obligatory commercial register entries, i.e. the entries of persons who must be entered into the Register, and facultative entries, that is voluntary entries recorded upon their own request. What must be entered into the Register is as follows:

- commercial companies, namely general partnership, limited partnership, limited liability company, joint stock company and simple joint-stock company,
- co-operatives,

- other legal entities specified by a special act.

- legal persons incorporated under the law of the European Union, namely European economic interest grouping, a European company, European co-operative.

- enterprises and organizational units of foreign persons' undertakings,

- branches and other organisational units of the enterprises, if stipulated by a special act.

What *may* be entered into the Register is natural persons having a domicile in the territory of the Slovak Republic and being entrepreneurs under that Act. They are entered into the Register upon their own request or if stipulated by a special act.

Section 27 of the Business Code defines also the effects in relation to third persons, what is the principle of material publicity – The entry into the Register is associated with certain legal consequences. *The principle of positive material publicity* is expressed in Subparagraph 3. Recorded data take effect in relation to third persons as of the day on which they are published. The content of documents which are published under the act is effective in re-

<sup>1</sup> URL: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/530/20171108>.

lation to third persons as from the day on which a notice about archiving the documents in the collection of documents is published. That does not apply if a registered person proves that the third person knew about such data or the content of documents. However, the registered person may not refer to these data or the content of documents in relation to third persons within 15 days as of the day of the publication thereof, if the third persons prove that they could not know about them. Subsection 4 deals with *negative material publicity* – If there is a discrepancy between the registered and published data or between the archived and published documents, one may not object to the published wording in relation to third persons. Third persons may refer to the published wording if the registered person does not prove that the third persons knew about the registered data or the content of the documents archived in the collection of documents. A *negation principle* is expressed by the provision stating that third persons may always refer to the content of documents or data which have not yet been entered into the commercial register or archived in the collection of documents except the case where they take effect only upon the entry into the register.

#### 4.2. *The legal regulation of the Business Register under the Act on the Business Register*

Unlike the legal regulation of the Business Register in the Business Code, the Act on the Business Register was substantially more extensive when it was introduced – It contained 15 Sections with a quite wide scope. The Act can be considered a very important milestone in the overall regulation of the Business Register since it introduced the period for entering a record – 5 working days after the motion to enter the record is filed. «The specification of a fixed short period for entering the record of proposed facts creates conditions for rapid processing of filled motions, especially in the case that the motion is perfect and complies with all the statutory requirements. The basic prerequisite for observing the period is particularly the fact that the verifying of the motion and annexes thereto if of formal character and it is not required «to check whether the statutory requirements for entering the record are fulfilled comprehensively», as it is the case in the present day under Section 200b Subsection 1 Civil Procedure Code. Also in the case where a certain form of material check is assumed under the legislation, the legislation explicitly stipulates what specific facts must be checked by a higher court official before the proposed data are registered, creating thus the preconditions for the quick and predictable process»<sup>1</sup>.

The new Act on the Business Register dealt with the registration of data in detail for the first time, what reflected the shift to a formal assessment of motions. Before data, the change thereof or deletion thereof are recorded in the Business Register, the registration court shall check whether:

- a) motion for entering the record has been filed by a person entitled to do so
- b) the motion is complete
- c) all the annexes specified by special legislation are filed along with the motion
- d) the annexes have been submitted in a form specified by a special act
- e) the data indicated in the motion for the entry are identical to the data implied by the filed annexes
- f) a court fee has been paid except fillings which are not subject to fees pursuant to a special act.

The motion for entering the record shall be considered incomplete:

- a) if it has not been filed in a form laid down by a special regulation. That does not apply if the motion for the entry is filed via a unified contact point.

<sup>1</sup> The Explanatory Memorandum on Act № 530/2003 Coll. on the Business Register.

- b) if it does not indicate all the data laid down by the Act or special act,
- c) if it indicates only the data about which the Act or a special act stipulate that they are not entered into the Business Register,
- d) if the motion is incomprehensive.

However, it is not possible to assess all motions, and the Act on the Business Register takes that into account, for instance regarding commercial companies, it is necessary to check, for example, the content of a memorandum of association or a foundation deed, whether it is signed by all participants and whether all the participants' signatures on the memorandum or deed are authenticated, and the minimum and maximum number of members etc.

The amendment to the form of a decision was also a huge difference compared to the previous regulation, what was also associated with accelerating the assessment of the motion. What began to be issued is entry confirmation letters instead of judicial decisions, what simplified an administrative aspect of the entry. The confirmation letter specifies the content of the entry made, for example, if it concerned the change of a company's registered office, the letter indicated also the data which was deleted – an original registered office address and a datum which is entered into the Business Register, the new seat address. After the proposed data are registered, the registration court issues an extract from the Business Register and sends or gives it to a movant without undue delay.

Simultaneously, a person who assesses the motion for recording the entry and enters data into the Business Register was also amended. The person is a higher court official. Under Act № 549/2003 Coll. on court officials<sup>1</sup>, the higher court official, is a court official who has received, the higher education of the second level in the field of law at a faculty of law of a higher education institution in the Slovak Republic or owns a higher legal education diploma issued by a foreign higher education institution, and at the same time, he or she is a person without a criminal record. The higher court official does not substitute a judge but he reduces his work, and as the case may be, eases his workload in complex legal matters like in the case of the commercial register. The higher court official carries out actions concerning the Business Register – the entry of data into the Business Register, the entry of the change thereof of the rejection of entering the entry – based on statutory commission and not under the judge's authorisation. The higher court official performs his duties throughout the whole registration proceeding. The only exception is the case where he rejects to make the entry into the Business Register and the person who filed the motion files objections after eliminating the deficiencies of the motion. If the higher court official does not intend to approve the motion, then he lays a registration file before the judge who will assess it.

Even though the Business Register has undergone several amendments since 2004, the nature and the layout of legal regulation thereof has not been amended significantly. Currently, the Act on the Business Register is comprised of 15 Sections which define the subject-matter of regulation and specify the data which must be entered into the Business Register, the constant of the collection of documents, requirements for the entry into the Business Register, the process of registration, requirements for the entry and reasons for rejection, archiving in the collection of documents, publication and notification obligation of courts regarding the recorded data etc.

The scope and content of the data which must be registered have been changing in the course of decades. We now can divide the data which must be entered into the Register into

<sup>1</sup> URL: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2003/549/20170201>.





general data and data specific for a particular legal form of a legal person. The general data which must be registered concern all the entities – for instance, a business name, a registered office in case of a legal person and a name and surname in case of a natural person, if not identical with his business name, a date of birth, birth number, domicile and a place of business etc. The specific data which are registered in case of a limited partnership are partners' names, surnames and domiciles or a partner's business name or a name and a registered office of a legal person, a general partner and a limited partner, an amount of each limited partner's pledged contribution and the amount paid up, an amount of subscribed capital and the amount paid up. For the sake of comparison, the specific data which are recorded in case of a joint-stock company are an amount of subscribed capital, the amount paid up, the number, kind, form, type and the nominal value of shares. In a joint-stock company with a variable subscribed capital, what must be indicated is the fact that shares do not have nominal value, and the limitation of transferability of registered shares, if their transferability is limited. If the company has a sole shareholder, the sole shareholder's name, surname and domicile or business name, or name and registered office are also entered into the Register. However, for the purpose of the article, it is not useful to list all the specific registered data. The amount of them is vast, including a foreign person's enterprise.

Several amendments have been made in during the 13-year effectiveness of the Act on the Business Register. Firstly, it was the introduction of electronic filings in 2007. The motion for the entry of a record may be filled by electronic means, and the motion must contain a movant's secure electronic signature<sup>1</sup>. Next, in the author's opinion, it concerns the reduction of the period for entering the record from 5 business days down to 2 business days. One of the important changes is indeed the amendment which responded to the introduction of Euro currency which substituted the original currency – Slovak Crown. The amendment stipulated the obligation of a person registered in the Business Register to convert nominal values of contributions made to the capital and express nominal values in Euros as well as Slovak Crowns.

The latest amendment of the Act on the Business Register is Amendment № 141/2017 Coll. It has brought about reform in the term «secure electronic signature» in case of provisions regarding electronic filings. It cannot be said that the term «secure electronic signature» has been explicitly substituted by an equivalent term because under Section 5a, the motion must be authorized instead of being signed by a secure electronic signature as it used to be before the latest amendment was adopted. A different amendment was made to the third line of Subsection 3 Section 12 – regarding consulting the Business Register, extracts, transcripts and confirmation letters from the Business Register, copies of documents and confirmation letters from the collection of documents – «if a movant requests that an electronic extract from the Business Register be issued, the registration court shall issue such extract signed by a qualified electronic stamp free of charge without undue delay after the request is delivered via electronic means». The term «secure electronic signature» has been replaced by the term «qualified electronic stamp» in that case.

Another significant modification which has been introduced by the latest amendment to the Business Register is a system of interconnected central registers, business registers and the companies' registers as well as obligations arising therefrom, for example a court may delete a foreign person's enterprise or organisational unit without any motion filed, if

<sup>1</sup> The Act effective as of August 9, 2017, does not use the term secure electronic signature but instead it stipulates that the motion must be authorized by the movant.



through the system of interconnected central registers, business registers and companies' register, a foreign commercial register or other register which the foreign person is registered in or which it is obliged to file its documents at publishes that the foreign person has ceased to exist or has been deleted. That does not apply if the cessation or deletion of the foreign person from the foreign commercial register or other register which the foreign person is registered in or which it is obliged to file its documents at has occurred upon the change of the foreign person's legal form, merger, fusion or split or due to the cross-border relocation of its seat registered in the foreign commercial register or other register which the foreign person is registered in or which it is obliged to file its documents at publishes that the foreign person has ceased to exist or has been deleted.

The legal regulation of the Business Register is not effected «only» by legislative amendments regarding directly the Business Register, but it is indirectly influenced also by amendments to the Business Code. For example, it is the case of the new type of commercial company – simple joint-stock company – because the legal regulation of the Business Register had to take the registration of the company into account and the provisions defining the data which must be registered about that company had to be supplemented. It concerns also, for example, Letter e) Subsection 2 Section 2: «in case of a joint-stock company, an amount of subscribed capital, the amount paid up, the number, kind, form, type and the nominal value of shares, the exclusion or limitation of transferability of registered shares, if the transferability thereof is excluded or limited. If the company has a sole shareholder, the sole shareholder's name, surname and domicile, business name or name and registered office shall be also entered into the Register». If the legal regulation of the Business Code regarding the law of commercial companies develops, it will influence the Act on the Business Register as well.

#### *4.3. The legal regulation of the Business Register under the Civil Non-Dispute Code*

As indicated above, the proceedings brought before the Business Register are regulated by the Civil Procedure Code. In 2016, civil procedure legislation was re-codified and the single civil procedure regulation – the Civil Procedure Code – was «divided» into Act № 160/2015 Coll. Court Dispute Procedure Code, Act № 161/2015 Coll. Court Non-Dispute Procedure Code and Act № 162/2015 Coll. Administrative Procedure Code. Re-codification has influenced also the Business Register – since it was regulated partially also by the Civil Procedure Code before: The provisions for proceedings are currently regulated by Act № 161/2015 Coll. on Civil Non-Dispute Procedure Code<sup>1</sup> in its fourth chapter titled «Proceedings in matters regarding the Business Register». Under the Civil Non-Dispute Procedure Code, such proceedings are:

a) proceeding for entering data into the Business Register (The entry of data into the Register means also the entry of the change of data and the deletion of recorded data)

b) proceedings for keeping data recorded in the Business Register in conformity with the actual legal status

c) proceedings for deleting the entry of data made into the Business Register

The Civil Court Non-Dispute Procedure Code regulates also the competence of courts. The registration court is competent on a casual basis unless stipulated otherwise under a special regulation. The registration court is a district court competent in maintaining the Register. The Business Register is managed by a district court located in the seat of a region. The Business Register kept for the circuit of the Regional Court:

<sup>1</sup> URL: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2015/161/20160701>.



- a) in Bratislava is maintained by the District Court Bratislava I,
- b) in Trnava is maintained by the District Court Trnava,
- c) in Trenčín is maintained by the District Court Trenčín,
- d) in Nitra is maintained by the District Court Nitra,
- e) in Žilina is maintained by the District Court Žilina,
- f) in Banská Bystrica is maintained by the District Court Banská Bystrica,
- g) in Prešov is maintained by the District Court Prešov,
- h) in Košice is maintained by the District Court Košice.

However, the Civil Court Non-Dispute Procedure Code does not define the territorial jurisdiction. That is regulated pursuant to the Act on the Business Register. A registration court competent in registration and keeping the documents in the collection of documents is a court located in the circuit where a person who is recorded in the Business Register has its place of business. If that person does not have any place of business, the competent registration court is determined according to his domicile.

The Civil Court Non-Dispute Procedure Code deals also with the proceeding before the registration court. The registration proceeding can be divided into two stages:

1. «The first stage starts by filing a motion and ends by the entry of data into the Business Register or the rejection of the entry. It falls under a higher court official's competence, and it is regulated under the Act on the Business Register.

2. The next stage which starts as from the moment when objections against the rejection of making the entry are raised and ends when a decision on the objections is made. It is regulated by Section 200b Civil Court Procedure Code<sup>1</sup>. Nevertheless, it concerns a special decision made under formal assessment or limited material assessment with no possibility to provide further proofs»<sup>2</sup>.

The Civil Non-Dispute Procedure Code regulates only a conditioned proceeding – the proceeding which is not commenced in a majority of cases. Firstly, it is conditioned by the rejection of making the entry into the Business Register, and secondly, by filing objections against the rejection and the objections must be filed by a movant. The second stage is thus a facultative stage.

Filing the objections is not a duty. It is not enforceable. It is only up to the movant whether he will eliminate the deficiencies or supplement documents of the motion concerned.

The movant eliminates the deficiencies in the proceeding by filing objections to the higher court official's decision where they are specified – the rejection of recording the entry. The elimination of deficiencies means adding missing data or correcting data for which making the entry was rejected. In practice it means that if the motion is rejected because it does not include the required documents – for instance, a sole member's decision in case of the change of the Executive – the movant will file the required document along with the objections, which is the sole member's decision containing his officially authorised signature. The movant files objections at the registration court which rejected the entry, within 15 days after the decision on the rejection of making the entry is delivered. Objections submitted out of time are a reason for the rejection of the entry.

The registration court will decide on the objections within ten business days without a hearing. If the registration court upholds the objections, it will make the entry. If the motion for recording the entry contains a date for making the entry, the proposed data will be

<sup>1</sup> The provisions of the Civil Court Non-Dispute Procedure Code in the present day.

<sup>2</sup> Business law – to be added.

recorded as of the date. If the registration court makes the entry later or if the motion does not contain the date for making the entry of data, the court record data proposed as of the day following the day on which the entry is made. After the entry is recorded, the registration court issues a confirmation letter and sends it to the movant without under delay. The confirmation specifies the content of the entry made. After the entry is recorded, the registration court issues also an extract from the Business Register and sends it to the movant without undue delay. Objections to the entry are not admissible.

In general, it is a higher court official who decides on objections, and only if he concludes that the motion does not meet statutory requirements, he gives a motion file to a judge who will decide on the motion. If the higher court official concludes that all defects of the motion have been eliminated by objections filed, he himself makes the entry of proposed data. In this proceeding, a judge acts as a body of the second instance. The judge decides on objections by delivering a resolution – a form of decision different from the one based on which the entry of data is recorded in the Business Register or rejected in the first stage of decision. The movant may appeal against the resolution.

The Civil Non-Dispute Procedure Code contains also special provisions for filing electronic objections, a proceeding for keeping data in conformity with actual legal status and a proceeding for deleting the entry of data. Since the proceeding for keeping data in conformity with actual legal status and the proceeding for deleting the entry of data do not concern a «classic» entry<sup>1</sup> into the Business Register, the article will not deal with them in detail.

#### *4.4. Legal regulation of the Business Register under Decree № 25/2004 Coll. of the Ministry of Justice*

Finally, we cannot forget on Decree № 25/2004 Coll. of the Ministry of Justice, which stipulates specimens of forms for filing motions for registration in the Business Register and a list of documents which must be enclosed to the motion<sup>2</sup>. It is an integral part of the legal regulation of the Business Register because it specifies and names exactly the documents which must be filed along with the motion of a company<sup>3</sup> in applying for «the first entry», the entry of change, deletion, merger, fusion, etc. The Decree is extensive – its pdf version has 483 pages in the Collection of Laws. The extensiveness of the Decree cannot be evaluated according to the number of sections, since its major part is formed by annexes containing individual forms for the entry of all the types of companies and co-operative into the Business Register and they include also a special form for the entry of the change of data about the company or co-operative. That concerns also legal persons established under the law of the European Union.

The Decree thus can be divided into a section part and an annex part. The section part stipulates what documents are filed for the entry into the Business Register. However, the documents which must be filed for the entry of change are specified by annexes – following the form concerned. In practice, it means that if a motion for making the record of the change of a limited liability company's registered office is put forward, it is necessary to use an appropriate form for the entry of the change of the registered data about the limited

<sup>1</sup> The period of 2 business days does not apply to the proceedings. Moreover, legislation specifies participants of the proceeding and if needed, a hearing may be adjourned. Then the court may suspend the proceeding and the judge always makes his decisions in the form of resolution, etc.

<sup>2</sup> URL: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2004/25/20171108>.

<sup>3</sup> Or other registered persons.





liability company. There is a list of documents which must be enclosed to the motion for the entry of the change below the form there. The documents consider each change which may occur in the company. Regarding the change of its registered office, it is required to file a members' decision or a decision of the General Meeting on the amendment to the Memorandum of Association as well as a document which proves a title to or a right to use and enjoy the property or the part thereof which does not exclude the use of the property or the part thereof, or a property owner's consent with registering the property into the Business Register as a registered office under special legislation.

### 5. Conclusion

Since 1950, the legal regulation of the Slovak Republic has undergone significant amendments which responded to the change in the regime, the currency as well as the integration into the European Union. All the changes have influenced the Business Register – its functioning and legal regulation. It is probable that the development will not stop and it will continue further as the legal regulation of the Business Register evolved in the past. The idea is confirmed by the latest legislative amendments to the Civil Non-Dispute Procedure Code, the Business Code or the Act on the Business Register itself. Thus, it will be very interesting to observe the direction the legal regulation will follow as well as factors which will affect the amendments.