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**SELECTED LEGAL INSTRUMENTS TO IMPROVEMENT OF SUPPORT
FOR THE BUSINESS SECTOR IN THE SLOVAK REPUBLIC**

In this contribution, we focus our attention on the sphere of adopting effective support measures in the framework of the business sector, which should (appropriate to the circumstances) help to economic recovery in the Slovak Republic (Member State of the European Union) in the time following after the attenuation caused by the pandemic disease COVID-19 [1, p. 1] (hereinafter in text referred to as "pandemics"). With regard to wide spectrum (extent) of legal-normative material, we want to focus on the perimeter of commercial law institutes in the context of the analyzed issues.

As was outlined above, the primary objective of the legislator is by appropriate measures, respectively by legal regulation to mitigate the negative economic impacts caused by global pandemics. In other words, the implementation of these measures should be a precondition for reducing the regulatory burden and in its outcome to improve the business environment. At the same, it should be noted at this point that the corresponding legislative interventions inter alia arise from (urgent) requirements of application practice.

With an emphasis on the thematic focus of this article, it is essentially an amendment to the provisions of the Commercial Code [2], specifically in framework of capital business companies, and that in a limited liability company and in a joint stock company [3], concerning the increase of the company's registered capital.

In a limited liability company, the provision pursuant to § 144 of the Commercial

Code was amended. Under section 1 of this provision, to the body of that business company, which is the general meeting, is allowed to decide that retained earnings or other own funds, the use of which isn't provided for by law, or other own funds of the company reported in the individual financial statements in the company's equity [4], will be used to increase the registered capital [5]. At the same, there is given an ex lege condition that the company can thus increase the registered capital only in compliance with the conditions under the provisions of § 179 (3) and (4) of the Commercial Code.

In accordance with the provision under § 144 (2) of the Commercial Code, the registered capital may be increased only on the basis of approved proper individual financial statements. The condition is that as of the date of the general meeting, a maximum of six months have elapsed from the day, on which these financial statements are assemble. Verification of the financial statements by the auditor isn't required, if retained earnings are used to increase the registered capital that could otherwise be paid to the partners and the value of the registered capital increase doesn't exceed the value of the registered capital before increasing it.

In a joint stock company the general meeting may in accordance with the provisions under § 208 (1) of the Commercial Code to decide that retained earnings or funds created from profit, the use of which isn't stipulated by law, or other own resources of the company, reported in the individual financial statements in the company's equity will be used to increase the registered capital. The company may thus increase the registered capital only in compliance with the conditions under § 179 (3) and (4) of the Commercial Code.

In this connection, section 2 of the provision under § 208 of the Commercial Code was amended. It stipulates that according to § 208 (1) of the Commercial Code, the registered capital may be increased only on the basis of the approved regular individual financial statements, if as of the date of the general meeting have elapsed a maximum of six months from the date, to which these financial statements are prepared. However, in the context of increasing the registered capital in business

companies, modified legal opinions appear in the application practice. It can be said that the decisive (judicial) bodies in the framework of their (current) decision-making practice, taking into account the appropriate application of the provision according to § 208 (2) of the Commercial Code, even for a limited liability company, require that the financial statements, the results of which are to be used as a basis for increasing the registered capital, be audited. But this causes a burden on the part of entrepreneurs. If it is a retained earnings, which could still nevertheless be paid to the partners in accordance with other provisions of the Commercial Code, there is no reason to insist on the audit of the financial statements in a limited liability company. The responsibility that the limited liability company meets such requirements is at the expense of the statutory body [6, p. 2].

In the context of the analyzed issues, it is important to focus on the intersections in the framework of the so-called accounting rules, especially in the Act on Accounting [7], also in the Act on Banks [8] etc. Thus we want to indicate that the views focused on the sphere of company law are directly correlated in the framework of the legal categories and institutes of public (financial) law.

It should be noted that this sophisticated issue deserves special attention in the dimension of European Union law. Ensuring the improvement of the business environment and the modernization of industry at the level of the Member States of the European Union, means actively and coordinated searching, finding and implementing the necessary solutions in application practice. The European Union can actively contribute to achieving these specific objectives through its institutional basis.

In conclusion, it should be said that the central aim of law-making at the national level, equally at the supranational level, in both private and public law, should be the leading idea of creating and adopting functional and effective legislation with special regard to the application of principles (especially) subsidiarity and proportionality [9]. Some suggestions presented in this article are to be understood only in terms of academic opinions and *de lege ferenda* proposals.

References:

1. Explanatory part. A. General part to Act No. 198/2020 Coll., from 9. July 2020, amending certain acts in connection with the improvement of the business environment affected by measures to prevent the expansion of dangerously infectious human disease COVID-19.
2. Act No. 513/1991 Coll. – Commercial Code, from 5. November 1991.
3. In this context see: KUBÍČEK, P.: Pojem podnik z aspektu práva. In: Obchodné spoločnosti – aktuálne otázky a problémy. Plzeň: Aleš Čeněk, 2008, str. 103 a nasl.
4. For completeness, we would like to state on this place that on the basis of the provision according to § 6 (4) of the Commercial Code, the equity shall comprise the own sources of financing of business property of the entrepreneur pursuant to special legislation.
5. At this point, it is desirable to clarify that according to the provisions of § 58 of the Commercial Code, the registered capital of the company is a monetary expression of the sum of monetary and non-monetary deposits of all partners in the company. The registered capital is compulsorily created in a limited liability company, in a joint stock company and in a simple company for shares. Its amount is registered in the Commercial Register. To this see more: Act No. 530/2003 Coll. on the Commercial Register and on the amendment of certain acts, from 28. October 2003. In wider contexts see also: SCHWARCZ, J.: Obchodný register. In: SUCHOŽA, J. a kol.: Obchodný zákonník a súvisiace predpisy. Komentár. Vydavateľstvo Eurounion. Bratislava, 2016, str. 115 a nasl.
6. Explanatory report. B. Special part to Act No. 198/2020 Coll., from 9. July 2020, amending certain acts in connection with the improvement of the business environment affected by measures to prevent the expansion of dangerously infectious human disease COVID-19.
7. Act No. 431/2002 Coll. on Accounting, as amended, from 18. June 2002.
8. Act No. 483/2001 Coll. on Banks and on the amendment of certain acts, from 5. October 2001. To this act see: LIŠKA, P. – ELEK, Š. – MAREK, K.: Bankovní obchody. Wolters Kluwer, 216 s., 2014, ISBN 978-80-7478-511-5.
9. Exempli gratia: Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC. Text with EEA relevance. Done at Brussels, 26. June 2013.