

## Legal Regulation of Entrepreneur's Conduct in Slovakia

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### Abstract

*The article provides characteristics of legal regulation of the conduct of entrepreneurs, including the analysis of a new element of the Slovak law – so-called "disqualification". It consists in a prohibition (by a court order) to perform functions of a member of the statutory or supervisory body in a company or co-operative, as well as in a prohibition to act as a director of the organisational unit of an enterprise, as a director of an enterprise of a foreign party, or as a procurator. Entrepreneurs are entitled to act on their own name. We distinguish direct and indirect (mediated) acts of entrepreneurs. When acting directly, the entrepreneur acts personally (for individuals) or through the statutory body (for legal entities). Indirect (mediated) acts of entrepreneurs consist in manifestation of the will through a third person, who acts on behalf of the entrepreneur (so-called statutory representation).*

### Key words

*Entrepreneur's conduct, representation, procuration, disqualification*

**JEL Classification:** K2, K22

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### Introduction

Basic legal regulation that provides for the entrepreneur's conduct is the Commercial Code. The term "entrepreneur" is defined in Article 2 paragraph 2 of the Commercial Code. Entrepreneur is deemed to be: a) a person registered in the Commercial Register, b) a person conducting business pursuant to a Trading License – trader (person engaged in business activity on the basis of an authorisation to practise a certain trade), c) a person engaged in business activity on the basis of an authorisation issued under regulations different from the provisions governing the issue of a trade authorisation (so-called "liberal professions" such as lawyers, notaries public, experts and others), d) an individual engaged in agriculture, who is entered in an appropriate register under a particular regulation (so-called "self-employed farmer").

An entrepreneur has its own legal personality and as such is entitled to act in its own name. The provision of Article 13 paragraph 1 of the Commercial Code distinguishes between entrepreneur being an individual and entrepreneur being a legal entity. Entrepreneur's conduct is basically classified to two categories.

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The first category comprises direct acts of the entrepreneur, i.e. acts performed by the entrepreneur personally (if the entrepreneur is an individual) or through the statutory body (if the entrepreneur is a legal entity). The entrepreneur performs these acts through its own activity without help of another entity acting as a mediator between him and third parties.

The second category comprises manifestations of the will by the entrepreneur that are performed indirectly (mediated), i.e. through a third person duly authorised by the entrepreneur (to act on its behalf). Here the entrepreneur usually does not get into direct contact with third parties to whom its acts are intended. The authority takes action in a certain matter or group of matters is namely delegated to a designated person. This person represents the entrepreneur and acts towards third parties as a legal or contracting representative. The classification of acts of an entrepreneur to direct and indirect (mediated) acts is embodied in Article 13 paragraph 1 of the Commercial Code that provides: "If the entrepreneur is an individual, he shall act either personally or through a representative. A legal entity shall act through its statutory body, or through its representative."

## **1 Methodology**

A paper deals with legal regulation of entrepreneur's conduct in Slovakia. According to methods that were used, it's going on theoretical article. We used general scientific methods, mostly method of analysis, synthesis, comparison, deduction, induction, and generalisation. Some philosophical methods of knowledge were used by generalisation of concrete problems. Method of scientific abstraction was used to eliminate non-important and coincident from important and regular. The aim of the paper is to analyse the legal regulation of entrepreneur's conduct, including new legal institutes in Slovak law, e. g. disqualification (disqualified representative) and register of disqualification so called "black list".

## **2 Results and discussion**

### **2.1 Conduct of entrepreneur – individual**

An entrepreneur (individual) act in his own name alone or (when he cannot or does not want to act alone for some reason) through its authorised representative.

Individual legal acts performed by an entrepreneur (individual) as part of his business activity are governed by the Civil Code. If an entrepreneur (individual) fulfils conditions laid down by the law he can perform a business activity.

One of these conditions is the legal capacity (i.e. the capacity to acquire rights and obligations through one's own legal acts). An individual acquires full legal capacity with majority (i.e. by reaching the age of 18 years; before this age majority can be acquired by marriage only).

If an individual has the legal capacity and at the same time fulfils the other conditions for performance of business activity, he can execute legal acts and hence act as an entrepreneur. The conditions of practising of a certain trade on behalf and account of the person, who does not have the legal capacity due to the lack of age or by virtue of a judicial decision, are governed by the provision of Article 12 of the Act No. 455/1991 Coll. on Trade Licensing (Trade Licensing Act), as amended.

## 2.2 Conduct of entrepreneur – legal entity

In general, legal entities can be characterised as groups of persons or blocks of finance set up for a certain purpose, to which the law confers legal personality.

Entrepreneurs (legal entities) also have the legal capacity. They acquire this capacity at the date of their establishment (it is necessary to distinguish between foundation and establishment of a legal entity). The legal capacity may be limited by the law only.

Exceptionally, a legal entity executes acts before the date of its establishment. Legal regulation of acts executed by a legal entity before its establishment is contained in the provision of Article 64 of the Commercial Code.

The limitation of legal entities to acquire rights and obligations by their own legal acts results from the nature of legal entities (as persons different from individuals). It may also result from the situation of the legal entity (e.g. bankruptcy, restructuring or liquidation) or it may be determined directly by the law (Eliáš, 2000).

The authority to take actions on behalf of a legal entity results: a) from the law (in case of companies and co-operatives from the Commercial Code or a special act stipulating the legal position of a legal entity, e.g. director of a state enterprise); b) from the contract on establishment of a legal entity (e.g. memorandum of association, articles of association or deed of foundation).

The Commercial Code in its part devoted to individual types of companies and to a co-operative (Article 85, Article 101, Article 133, Article 191, Article 243 and Article 245 of the Commercial Code) determines the statutory body, the conduct of which is designated as entrepreneur's conduct. The statutory body is deemed to be an imaginary hand of a legal entity. Through the conduct of the statutory body a legal entity realises its characteristics, resulting from its legal personality. The statutory body may be formed by one or more individuals. The power of the statutory body to manifest the will of a legal entity is uniform and exclusive. It means that, beside of the statutory body, there is no other body having identical powers to conduct of entrepreneur (legal entity).

The details of the specific conduct of the statutory body or its members are stipulated by a document, by which the legal entity is established (e.g. memorandum of association, founding contract, deed of foundation), the statute, the articles of association etc. The conduct of a person or persons different from the statutory body, who cause legal effects for the legal entity, are qualified as representation of the legal entity.

Article 13 paragraph 3 and 4 of the Commercial Code determines basic principles of conduct of the statutory body of a legal entity towards third parties.

According to the provision of Article 13 paragraph 3 of the Commercial Code the entrepreneur shall be bound by actions of persons in whom the powers of the statutory body are vested, even if their conduct goes beyond the scope of business, except of cases in which such persons act beyond the powers of the statutory body, which are or may be awarded thereto by the law. The rule contained in the provision of Article 13 paragraph 3 of the Commercial Code should be interpreted so that manifestation of the will of a legal entity will always be legally relevant as long as it does not go beyond the authority of the statutory body to take actions on behalf of the entrepreneur, which the law awards to this body as direct executor of the will of the legal entity within the scope of powers of this legal entity to acquire rights and obligations by its acts, i.e. as long as the legal limitations of the legal capacity of the respective legal entity are not exceeded.

Article 13 paragraph 4 of the Commercial Code provides that any restriction of authority of the statutory body to take actions on behalf of the entrepreneur shall not be effective vis-a-vis third parties even if it is published. This provision means that an entrepreneur, who was bound by such conduct of the internal restrictions imposed on the statutory body, may request from a member or members of the statutory body a compensation for damage caused to it by such action, but the entrepreneur may not make the same claim towards a third person. The answer to the question whether the entrepreneur could make such claim towards a third party, with which such action has been taken, depends on assessment of the facts of the special case (Štenglová, 2009, pp. 102-108).

### **2.3 Organisational unit of an enterprise and enterprise of a foreign party registered in the Commercial Register of Slovak republic**

The issue of entrepreneur's conduct is linked to the issue of acting on behalf of an organisational unit of an enterprise, including an enterprise of a foreign party registered in the Commercial Register of Slovak republic.

Article 13 paragraph 5 of the Commercial Code provides that a director of organisational unit of an enterprise or a director of an enterprise of a foreign party, whose names are recorded in the Commercial Register, shall be authorised to take, on behalf of the entrepreneur, any action at law pertinent to such an organisational unit or enterprise. It is one of many forms of legal representation. The statutory body of a company, which has established an organisational unit or an enterprise within the territory of the Slovak Republic, is authorised to be active in law also on behalf of such enterprise or organisational unit.

### **2.4 Disqualification (disqualified representative) and register of disqualifications so-called "blacklist"**

With effect from 1 January 2016 the Act No. 87/2015 Coll. completed the Commercial Code with Article 13a, which created conditions for introduction of so-called "Register

of Disqualifications. The legislator thus reacted to the topical issues related to legal regulation of bankruptcy and restructuring in the Slovak Republic and their social implications. The purpose of the amendment of the Commercial Code was to prevent damaging of creditors in the bankruptcy and restructuring proceedings and to strengthen the legal responsibility of entrepreneurs. The professional practitioners repeatedly pointed out that individuals had been committing crimes within complex organisational structures of legal entities. They believed that to draw criminal responsibility against individuals only was insufficient (in case of imposition of a fine the individuals were replaced by other individuals). The legal entity continued to perpetrate crimes (Klátik, 2007, pp. 53-59). The provisions of the Commercial Code on disqualification are directly related to the provisions of the Act No. 300/2005 Coll. Criminal Code, as amended; the Act No. 530/2003 Coll. on commercial register and on amendments of some acts, as amended; the Act No. 7/2005 on bankruptcy and restructuring and on amendments of some acts, as amended, and of the Trade Licensing Act. A person may be disqualified only by a judicial decision on disqualification. Disqualification only consists in the prohibition to perform functions of a member of the statutory or supervisory body in a company or cooperative, and in the prohibition to act as director of an organisational unit of an enterprise, director of an enterprise of a foreign party or as a procurator. It is prohibited to perform functions or act both directly (personally) and indirectly (through other persons). According to the provision of Article 13a paragraph 2 of the Commercial Code, the decision on disqualification may only have the form of a decision determined by the law. It may have the form of: a) judicial decision on imposition of penalty of prohibition to perform functions in accordance with provision of Article 61 paragraph 10 of the Criminal Code.<sup>3</sup>

In this case the person will be disqualified from performance of functions in companies or cooperatives for the period determined in the judicial decision on disqualification; b) judicial decision on imposition of the obligation to pay a contractual penalty for violation of the obligation to file a petition in bankruptcy on time. The period of disqualification of the person from performance of functions is three years of the date when the decision entered to force (unlike the criminal proceedings, the court will not determine this period individually). The contractual penalty for violation of the obligation to file a petition in bankruptcy on time is related to amendment of the Act on Bankruptcy and Restructuring. The amendment of the Act on Bankruptcy and Restructuring introduced a new provision applicable in case of violation of the obligation to file a petition in bankruptcy. A limited liability company or a joint-stock company and a person who is obliged to file a petition in bankruptcy on its behalf, shall agree on a contractual penalty of EUR 12 500 (a half of the minimum amount of registered capital of a joint-stock company).

Even if this contractual penalty for violation of the obligation to file a petition in bankruptcy on time is not agreed, the agreement on this contractual penalty shall be assumed (concept of legal fiction).

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<sup>3</sup> According to Section 61 (1) of the Criminal Code: "A valid judgment prohibiting the performance of functions of a member of the statutory body, a member of the supervisory body, a director of an organisational unit of an enterprise, a director of an enterprise of a foreign party, a director of an organisational unit of an enterprise of a foreign party, or of a procurator shall be a decision on disqualification according to the regulations of commercial law during the period of serving of the sentence."

A valid judgment on imposition of the obligation to pay a contractual penalty is a decision on disqualification of this person from performance of functions. A member of the statutory body may not be discharged from the obligation to pay the contractual penalty. Any agreements between a company or co-operative and a member of the statutory body excluding or limiting the claim for the contractual penalty are prohibited. The exclusion or limitation of the claim for the contractual penalty must not be embodied in the memorandum of association or the articles of association. The company or cooperative may not waive the claim for the contractual penalty or conclude an agreement on settlement regarding this claim. The obligation to pay the contractual penalty for a failure to file a petition in bankruptcy on time will not arise only if the affected person proves that this obligation did not arise to him for reasons that exclude his liability, as specified in Article 74a of the Act on Bankruptcy and Restructuring.

The validity of the decision on disqualification has immediately consequences for the legal relation between the company and the disqualified representative. However, the disqualified representative is not discharged from the obligation to inform the company about the threat of damage and measures required for its prevention. The legislator took the new legal regulation even farther: Should the disqualified representative continue to take actions, he shall automatically obtain the status of guarantor from all transactions arranged by him after his disqualification, even if he acted through a third party. A specific feature of this guarantee, which arises directly from the law, is that the law excludes a regressive claim of the guarantor. Consequently, if the creditor requires a payment from this guarantor, the latter is obliged to pay the requested amount, but he cannot later request the refund of this amount from the company for which he arranged the respective transaction. It is a guarantor's obligation, but with a sanction in the form of exclusion of a regressive claim. The sanction is imposed for action being taken by a person, who had previously been disqualified by a judicial decision.<sup>4</sup>

The courts rendering the decision on disqualification need to issue the disqualification letter and send it to the court operating the register of disqualifications (District Court Žilina having jurisdiction over the whole territory of the Slovak Republic according to Article 82i of the Act No. 757/2004 Coll. on Seats and Territories of the Courts of the Slovak Republic). The District Court Žilina will enter data from this letter into the register. The extract from the register of disqualifications will be immediately sent to the courts keeping the commercial register, in which the disqualified representative is registered, and he will be removed from the commercial register. The certificate of removal will also be delivered to the affected companies and cooperatives. The Act No. 757/2004 Coll. on courts and on amendments of certain acts was supplemented by new paragraphs – Articles 82i through 82k – relating to the register of disqualifications.

The register of disqualifications contains all data from the disqualification letters, which by the competent register courts send to the District Court Žilina as the notice of the decision on disqualification. The register of disqualifications contains: name and surname of the disqualified representative; date of birth and birth number of the disqualified

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<sup>4</sup> For example a situation where the executive of a limited liability company is excluded from performance of his functions by a judicial decision, but later concludes a transaction on behalf of the company (without a required authority, of which the business partner may not be aware). If the obligation to pay to the business partner for the subject of transaction arises to the company, the former executive will be obliged to make this payment himself, should the company itself refuse to make it for any reason. If the former executive satisfies the creditors of the company he shall not be entitled to compensation (regress) from the company.

representative (if any); nationality of the disqualified representative, permanent residence of the disqualified representative; name of the court that issued the decision on disqualification, number of the proceedings, date of issue of the decision; file number of the proceedings, in which the decision on disqualification was issued; period of disqualification.

The register of disqualifications is part of the central information system. A disqualified individual must not perform functions of a member of the statutory body, a member of the supervisory body, a director of an organisational unit of an enterprise, a director of an enterprise of a foreign party, a director of an organisational unit of an enterprise of a foreign party, or functions of a procurator.

Although a disqualified person is obliged to inform all affected companies and co-operatives about his disqualification, the court will deliver the certificate of removal of the person from the commercial register also to legal entities, in which the disqualified person was active to allow them to properly continue their activities. According to Article 66 paragraph 1 of the Commercial Code, when a company remains without a statutory body due to a disqualification, the competent body of the company is obliged to appoint a new member within three months.

The applicant may apply for the certificate indicating whether there is or is not a record of the applicant in the register of disqualifications. The applicant can use such certificate, e.g. for proving his integrity to the business partners. The Act No. 87/2015 Coll., amending the Act No. 513/1991 Coll. Commercial Code, as amended, and amending some acts, as amended, does not specify whether an applicant may also apply for the certificate of another person. It means that the register of disqualifications will not be accessible to the public; the certificate indicating whether there is or is not a record about the applicant in the register of disqualifications, will be issued upon request and against payment of a fee (EUR 2.50 per page, even incomplete).

The introduction of the register of disqualified persons does not increase the administrative burden for the entrepreneurs founding companies. The extract from the register of disqualifications is not a mandatory annex to the proposal for entry of a company into the commercial register. The register court will automatically verify whether the person to be registered as a member of the statutory body, member of the supervisory body, director of an organisational unit of an enterprise, director of an enterprise of a foreign party, or as a procurator is not disqualified from performance of this function. If there is a record about the proposed person in the register of disqualifications (i.e. the proposed person is disqualified from the performance of function) the court will reject the proposal for the entry into the commercial register.

## 2.5 Representation

Beside of legal representation through a director of an organisational unit of an enterprise or an enterprise of a foreign party recorded in the commercial register, the Commercial Code distinguishes representation by procuration. Procuracy is a form of special authorisation granted by an entrepreneur to the procurator. Another form of legal representation is a business authorisation according to Article 15 of the Commercial

Code. A person who has been entrusted to perform certain tasks in the operation of an enterprise shall be deemed to be authorized to carry out any and all the actions that are usually associated with such tasks. Contract representation is established e.g. by the mandate contract or the contract on commercial representation, where the authority of the mandatary or commercial representative to represent the entrepreneur arises on the basis of the power of attorney. The granted power of attorney is often part of the concluded contract (in the form of a special contract provision or annex to the contract).

## 2.6 Procuration

Beside of legal representation through the director of an organisational unit of an enterprise or an enterprise of a foreign party entered in the commercial register, the Commercial Code distinguishes representation by procuration as a form of authorisation granted by the entrepreneur to the procurator. The entrepreneur may grant a procuration to an individual only and it is valid after the entry into the commercial register. Procuration is the widest form of representation of an entrepreneur. It authorises the procurator for execution of all legal acts in the operation of an enterprise, even if these acts otherwise require a special power of attorney.<sup>5</sup> It shall not include authorization to alienate and encumber real estate, unless such an authorization is expressly specified in the procuration. If the procuration is extended to alienation and encumbering of real estate, these activities shall be recorded as the method of procurator's conduct. The linkage with operation of an enterprise is objective limitation of the content of the procuration. A procuration embodies all special authorisations, which are required for the operation of an enterprise, even if a special act requires a special authorisation (e.g. according to the Act on Securities and Investment Services). To be valid the granted procuration must be recorded in the commercial register. Procuration as a form of indirect entrepreneur's conduct may be individual or collective. Procuration may be granted to several persons, in which case each of the procurators shall be authorized either to act and sign instruments individually or jointly, whereby the consent of all the procurators (or of at least two of them) shall be required.

The Commercial Code defines the conduct under procuration as representation and signing. Representation is manifestation of the will of an entrepreneur in case of informal legal acts. In case of individual procuration the consent of the designated procurator shall represent the entrepreneur's conduct. Collective procuration requires the consent of all the procurators or of at least two of them. A procurator executing legal acts shall sign instruments by attaching to the instrument the business name of the entrepreneur, plus an addendum indicating the procuration and his signature. The failure to comply with the requirement set out in Article 14 paragraph 5 of the Commercial Code, i.e. failure to attach addendum indicating the procuration (procurator, per procuram, p.p., p.p.a.) shall not be legally penalised by invalidity of the act executed on behalf of an entrepreneur if, after consideration of all circumstances, it is clear who has executed the legal act and on whose behalf (Patakyová et al., 2013, p. 60).

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<sup>5</sup> Procurator is entitled to represent the entrepreneur in the civil proceedings. He does not need for this purpose a special authority from the entrepreneur. (Resolution of the Supreme Court of SR of 30 April 2002, file No. Obdo V 27/2001).

If the procurator executing a legal act on the basis of granted procuration goes beyond the scope of his authority, the entrepreneur shall be bound by such act, provided that it has consented to it. However, if the entrepreneur does not communicate its disapproval to the person, with whom the procurator acted, without undue delay after it learns that the procurator went beyond the scope of his authorisation, the entrepreneur shall be deemed to have consented to the act going beyond the scope of authorisation of the procurator (Article 33 of the Civil Code).

As regards potential limitation of the scope of granted procuration by internal regulations of the entrepreneur, it must be noted that such limitation (like limitation of validity of legal acts executed by members of the statutory body) does not have legal consequences towards third parties.

The Commercial Code does not determine the conditions of termination of procuration, therefore this issue is addressed according to Article 33b of the Civil Code. Beside of legal representation through the director of an organisational unit of an enterprise or an enterprise of a foreign party entered in the commercial register, the Commercial Code distinguishes representation by procuration as a form of authorisation granted by the entrepreneur to the procurator. The entrepreneur may grant a procuration to an individual only and it is valid after the entry into the commercial register. Procuration is the widest form of representation of an entrepreneur. It authorises the procurator for execution of all legal acts in the operation of an enterprise, even if these acts otherwise require a special power of attorney.<sup>6</sup> It shall not include authorization to alienate and encumber real estate, unless such an authorization is expressly specified in the procuration. If the procuration is extended to alienation and encumbering of real estate, these activities shall be recorded as the method of procurator's conduct. The linkage with operation of an enterprise is objective limitation of the content of the procuration. A procuration embodies all special authorisations, which are required for the operation of an enterprise, even if a special act requires a special authorisation (e.g. according to the Act on Securities and Investment Services). To be valid the granted procuration must be recorded in the commercial register. Procuration as a form of indirect entrepreneur's conduct may be individual or collective. Procuration may be granted to several persons, in which case each of the procurators shall be authorized either to act and sign instruments individually or jointly, whereby the consent of all the procurators (or of at least two of them) shall be required.

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entrepreneur if, after consideration of all circumstances, it is clear who has executed the legal act and on whose behalf (Patakyová et al., 2013, p. 60).

If the procurator executing a legal act on the basis of granted procuration goes beyond the scope of his authority, the entrepreneur shall be bound by such act, provided that it has consented to it. However, if the entrepreneur does not communicate its disapproval to the person, with whom the procurator acted, without undue delay after it learns that the procurator went beyond the scope of his authorisation, the entrepreneur shall be deemed to have consented to the act going beyond the scope of authorisation of the procurator (Article 33 of the Civil Code).

As regards potential limitation of the scope of granted procuration by internal regulations of the entrepreneur, it must be noted that such limitation (like limitation of validity of legal acts executed by members of the statutory body) does not have legal consequences towards third parties.

The Commercial Code does not determine the conditions of termination of procuration, therefore this issue is addressed according to Article 33b of the Civil Code. A procuration terminates in particular by revocation of the procurator, notice given by the procurator or death of the procurator.

## 2.7 Business authorisation

Legal regulation of business authorisation is characterised by two features: a person authorised for execution of legal acts on behalf of the entrepreneur and the scope of his/her authorisation for representation of the entrepreneur. The authorised person means any individual with legal capacity, which is authorised by an entrepreneur for execution of specified acts concerning the operation of the enterprise. The form of authorisation is not regulated by the Commercial Code. The authorisation may have a written or oral form. An important condition is that the entrepreneur has entrusted the person with certain activity in the operation of the enterprise and this activity is related to execution of legal acts (not any legal acts, but only usual acts falling into the scope of functions entrusted to the person by the entrepreneur).<sup>7</sup>

In case of a business authorisation it involves a factual state of authorisation, which is based on the organisational structure of enterprise. All levels of management of an enterprise of the entrepreneur can be subordinated to the authorisation to act as authorised representative. In relation to third parties the decisive factor will be the designation of the authority, which will be used as the basis for evaluation of the normality of the authorised representative conduct the activity entrusted to him. The third party will distinguish between powers resulting from authorisation of the general director and (for example) of the HR department director. The normality should be evaluated in the context of the entrepreneurial practice and well-established procedures. The existence of authorisation will have to be proved and demonstrated by the entrepreneur. The

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<sup>7</sup> The Supreme Court of CR in judgment file No. 32 Odo 317/2005 stated that according to Section 15 paragraph 1 of the Commercial Code the person who was entrusted with certain activity in the operation of the enterprise shall be authorised for execution of all acts that are usually executed in the performance of this activity.

authorisation results internal organisational regulations or from a decision of the statutory body. Unlike the Civil Code, the linkage to the subject of activity is not decisive for authorisation according to Article 15 of the Commercial Code.

The fact that the business authorisation concerns a large group of persons also results from judgment of the Supreme Court of SR of 8 October 1997, file No. 6 Obo 158/1997, according to which the legal scope of representation shall not be exceeded if the financial director of a company issues and signs a guarantor's declaration, by which a financial obligation (debt) of the company is to be secured; or if the commercial department director of a company concludes the contract on purchase of goods.

This fact is important from the perspective of the protection of bona fide acting of third parties who enter contractual relationship with the entrepreneur. This protection is further highlighted in Article 16 of the Commercial Code, according to which an entrepreneur shall also be bound by actions of a third party taken inside the entrepreneur's establishment, unless the third party must have been aware that such conduct was unauthorized. Unlike the business authorisation, the situation in case set out in Article 16 does not involve a person holding an authorisation for acts in the establishment, where such person stays. Moreover, it is irrelevant whether such person held or did not hold a permission of the entrepreneur to stay in its premises. An act executed on business authorisation shall bind the entrepreneur towards a third party only if it was executed in its establishment and if the affected third party was bona fide. If the act was not executed in the establishment of the entrepreneur or if the third person knew or could have known that this person was not authorised for such act, the entrepreneur shall not be bound by such executed act. It also results from judgment of the Supreme Court of SR of 22 April 2008, file No. 1 Obdo 35/2006 which states that according to the provision of Article 16 each person who acts in the establishment of the entrepreneur is deemed to be its legal representative if the other person acts in good faith that it is an entrepreneur, i.e. he does not know that the acting person is not authorised for such conduct.

## **2.8 Power of attorney**

The entrepreneur's conduct is also related to conduct through the authorised representative, i.e. on granted power of attorney. Entrepreneurs may be represented by other person, to whom they grant the power of attorney for these purposes. This person can be an individual or a legal entity.

The entrepreneur may grant the power of attorney to a person who is not an employee of the enterprise, but who carries out specified acts on its behalf (e.g. if the entrepreneur is a participant to a legal dispute and grants the power of attorney to the lawyer for the purposes of its representation in the legal proceedings). The granted power of attorney must clearly indicate the scope of powers of the authorised representative. It allows the division of the power of attorney into general representation, which empowers the authorised representative to represent the entrepreneur in all legal acts, and special representation, through which the authorised representative is entitled to only execute a certain legal act or a certain type of legal acts.

A granted power of attorney not always requires a written form. The regard to the requirement of the principle of legal certainty guaranteed by the constitution is use of a written form is recommended in legal relations involving business activity. However, if a legal act requires a written form, the power of attorney must be granted in writing, otherwise the act executed by the authorised representative will be invalid. If the authorised representative acts on behalf of the principal within the limits of the authorisation for representation, the rights and obligations will arise directly to the principal. Instructions given to the authorised representative, which do not result from the power of attorney, have no influence on the legal effects of the conduct, unless they were known to the persons toward whom the authorised representative acted. If the authorised representative exceeds his authorisation to act on behalf of the principal or if somebody acts on behalf of a third party without the power of attorney, such person will be bound by such act alone. The person affected by such act may require from the authorised representative either the fulfilment of the obligation or a compensation for damage caused by his act. In case of the power of attorney it is also necessary to distinguish cases where notarized signature of the principal is required and cases where a nonnotarized signature will do. Notarized signature on the power of attorney is required for signing of contracts relating to immovable property or for entry of data into the Commercial Register through an authorised representative.

## Conclusion

The term "entrepreneur" designates both natural and legal persons, who fulfil conditions determined by the Commercial Code to be identified as entrepreneurs for legal acts, which they execute on a daily basis in the performance of their business activities. The Entrepreneurs contact large number of persons and therefore they should be properly identifiable in the performance of their activities. It is also necessary regard to the need of legal certainty) to designate persons, who may execute legal acts on behalf and on an account of the entrepreneur. It is also necessary to distinguish whether a legal act is executed by the entrepreneur alone (or through its statutory body) or by persons authorised for their execution, or whether the legal act was executed at all by a person authorised for acting on behalf of the entrepreneur, or by a disqualified person. According to valid legislation it is necessary to carefully distinguish between the conduct of the statutory body and representation. The conduct of the statutory body cannot be regarded as representation, because it is a direct conduct.

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