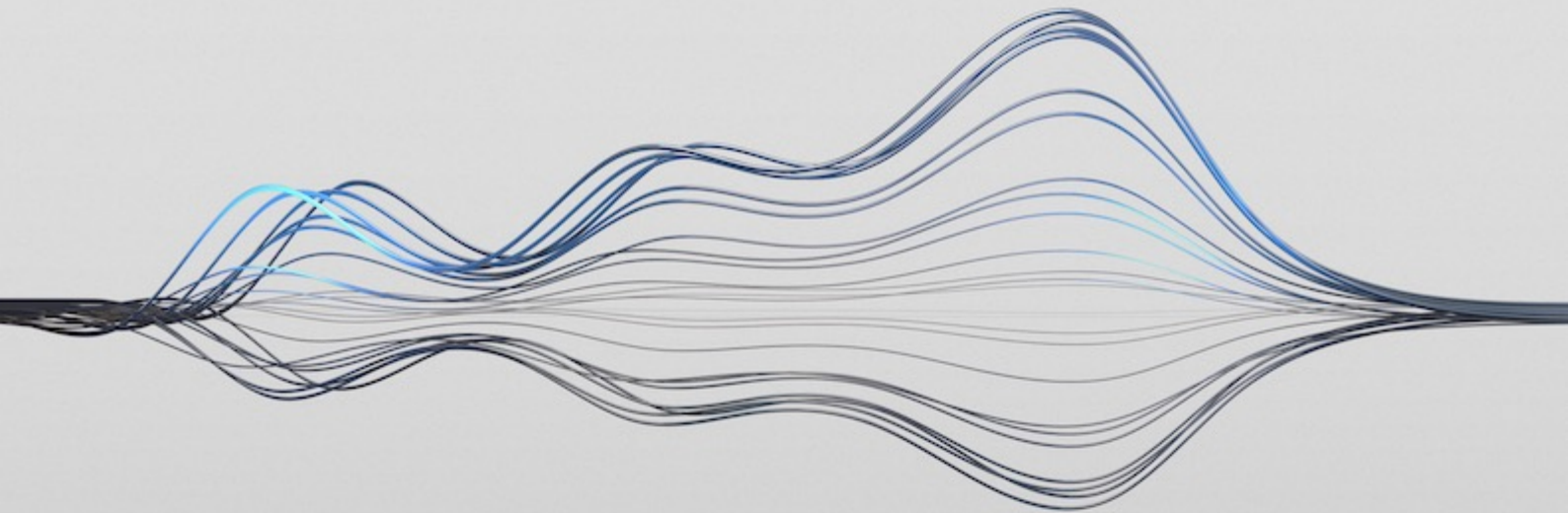


SLOVAKIA

Global Guide to Directors' Duties





Slovakia

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Corporate entities

What type of company is typically used in group structures?

As in most jurisdictions, a limited liability company (in Slovak: *spoločnosť s ručením obmedzeným*) is the typically used type of corporate entity in group structures.

Types of director

What is a "director"?

There is no specific definition of the term "director" in Slovak commercial law. Basically, the law defines a director (in Slovak: *konate*) by setting out the criteria for their role, for example how directors can be appointed and what their duties are. In general, a director (one or more) is a statutory body of a limited liability company, acting on its behalf (if there is more than one director, each of them is authorised to act on behalf of the company independently, unless the Articles of Association stipulate otherwise). Directors are registered in the Commercial Register.

The role of the director consists of, for example:

- Representation of the company externally in relation to state institutions, courts or other (third) parties.
- Conclusion of contracts on behalf of the company, conducting transactions, etc.

What are the different types of director?

There is only one type of director in a Slovak limited liability company.

For the sake of completeness, please note that in addition to a director, it is also possible to appoint a proxy (in Slovak: *prokurista*). If appointed, a proxy is authorised to carry out all legal acts arising in the operation of an enterprise, even if they otherwise require a special power of attorney. However, a proxy is not authorised to sell and encumber real estate, unless this authorisation is explicitly stipulated.

Eligibility

Who can be a director?

Only a natural person can be a director of a Slovak limited liability company. At the time of registration in the Commercial Register, such person cannot be listed in the register of enforcement proceedings as a debtor. A director also cannot be listed in the register of disqualifications.

Further conditions follow from the Slovak Trade Licensing Act. Directors must:

- be at least 18 years of age
- have legal capacity, and
- have integrity.

If the director is not a citizen of an EU member state or an OECD member state, a residence permit in Slovakia is also required.

Minimum / maximum number of directors

A Slovak limited liability company must have at least one director, but no upper limit is set by the Slovak commercial law.

Appointment and removal

How are directors appointed?

When the company is established, the first directors are listed in the Articles of Association. The application for the registration of a Slovak limited liability company in the Commercial Register must be signed and filed by all its directors. The registration of the first director(s) in the Commercial Register is constitutive, i.e. a director may perform their duties only upon registration in the Commercial Register.

During the existence of the company, subsequent directors are appointed by the general meeting or by the sole shareholder acting within the scope of the general meeting. The registration of such new directors in the Commercial Register is only declaratory, and therefore the directors may perform their duties and may represent the company from the date of their appointment (i.e. if the appointment is made with immediate effect, from the date of decision of the general meeting).

Only the company's first directors need to be stipulated in the Articles of Association, later changes of director do not need to be reflected in the Articles.

It is also recommended to conclude a management agreement with the director, which regulates remuneration of the director and the mutual rights and obligations of the director and the company (otherwise the director will be entitled to a so-called usual remuneration). Such a management agreement needs to be approved by the general meeting (or sole shareholder).

How are directors removed?

A director can resign from the function.

However, the easier and the most common method for removing a director is recall by the general meeting (or sole shareholder). The deregistration of a director from the Commercial Register is only declaratory, i.e. the function terminates with effect from the date of recall (i.e. if the recall is made with immediate effect, from the date of decision of the general meeting).

Board / management structure

Typical management structure

A Slovak limited liability company is managed by one or more directors.

Creation of a supervisory board in a limited liability company is not mandatory and is very rare.

For the sake of completeness, we note that in case of a joint stock company (in Slovak: *akciová spoločnosť*) creation of a supervisory board is mandatory.

How are decisions made by directors?

Generally, the Slovak commercial law does not specify a decision-making process of directors of a Slovak limited liability company.

The law requires that every director fulfils their duties with professional care and in line with the interests of the company and all its shareholders.

Authority and powers

Each director is authorised to act on behalf of the company independently, unless the Articles of Association stipulate otherwise (e.g. that two directors must act jointly).

The scope of powers may be limited by the Articles of Association or by general meeting (or sole shareholder). However, such limitation is not effective towards third parties.

The company's business management must be distinguished from the company's representation. While representation of the company is carried out externally in relation to third parties, business management relates to the internal management of the company. According to the Slovak Commercial Code, where decisions fall within the company's business management, the consent of a majority of the directors is required, unless the Articles of Association require a higher number of votes.

Delegation

The directors are not entitled to delegate the full scope of their management powers to third parties via a power of attorney and may only delegate a specific task or tasks (i.e. a general power of attorney is prohibited).

Duties and obligations of directors

What are the key general duties of directors?

A director is in charge of the company's day-to-day business.

The key duties of a director are, for example:

- To ensure due administration of the company's prescribed records and accounts, to keep a list of shareholders and to inform shareholders of the company's affairs.
- To submit for the general meeting's approval financial statements and a proposal for the distribution of profit or payment of losses.
- To exercise powers with professional care and in accordance with the interests of the company and all its shareholders. In particular:
 - Directors must obtain and take into account in their decision-making all available information relating to the subject of their decision.
 - Directors must maintain confidentiality about confidential information and facts, the disclosure of which to third parties could cause damage to the company or endanger its interests or the interests of its shareholders.
 - While exercising their powers, directors must not give priority to their own interests, the interests of only certain shareholders or the interests of third parties over the company's interests.

What are directors' other key obligations?

In general, directors must take all necessary measures in order to prevent insolvency.

Directors are obliged to file a petition for bankruptcy within 30 days of the moment they learned or could have learned of the company's insolvency while maintaining professional care. If the director does not file a petition for bankruptcy in time, they are obliged to pay to the company a penalty in the amount of EUR12,500.

A breach of this obligation to file a petition for bankruptcy in time is also punishable under the Slovak Criminal Code.

Transactions with the company

A director cannot:

- Conclude, in their own name or on their own account, business deals related to the company's business activity.
- Mediate the company's business deals for other parties.
- Participate in the business activity of another company as a shareholder with unlimited liability.

- Perform activities as a statutory body or another body of another legal entity with a similar subject of business (unless exemptions under the Slovak Commercial Code apply).

The Articles of Association of a company may stipulate further limitations.

Liabilities of directors

Breach of general duties

Directors who breach their obligations while exercising their powers are obliged to jointly and severally compensate the company for the damage caused.

According to the Slovak Commercial Code, the directors are not liable for damage if they can prove that they exercised their powers with professional care and in good faith and that they were acting in the company's interest. Directors are not liable for any damage caused to the company by executing a decision of the general meeting; however this does not apply if the general meeting's decision is contrary to legal regulations, the Articles of Association or if it concerns the obligation to file the petition for bankruptcy.

Claims for damages of the company against its directors may be exercised on behalf of the company by each shareholder. Such claims may be also be exercised by a creditor of the company that is unable to satisfy its receivable from the company's property.

Liabilities on insolvency

Please see [What are directors' other key obligations?](#)

Other key risks

A director is also personally liable if, for example, they breach the following obligations:

- To ensure that there is no violation of contractual obligations.
- To ensure that the company pays its taxes and advances in time and submits its respective tax declarations in accordance with Slovak tax legislation.
- To ensure that the company makes timely payments (in this respect, please note that non-payment of salary and severance payments is a crime under the Slovak Criminal Code for which also the statutory body of the employer is punishable).
- To ensure that all administrative law requirements are met fully and in a timely manner.
- To ensure that the company complies with the Slovak labour law regulations, etc.

Protection against liability

How can directors be protected from liability?

Agreements between a company and its director that exclude or limit the liability of the director are not permitted. The Articles of Association can neither limit nor exclude liability of the director. A company may waive its claims for damages against a director or conclude a settlement agreement with them only after a period of three years since such claims arose, provided that the general meeting approves this and that no shareholder or shareholders with contributions amounting to 10% of the registered share capital file a protest against such decision at the general meeting.

Insurance of liability for damage can be concluded.

What practical steps can directors take to avoid liability?

Directors should perform their duties in compliance with the Slovak Commercial Code and other applicable regulations (such as tax regulations, labour law regulations, regulations concerning health and safety, ethics, bribery/anti-corruption, etc.).

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