On 1 January 2014, the new Civil Code No. 89/2012 Coll. (the "NCC") shall come into effect, bringing about a number of changes, including general principles of private law, the introduction of new juridical institutes, and changes to terminology.

A major benefit of the NCC is that it establishes the comprehensive regulation of legal entities from their incorporation to their termination, which so far has been scattered among several regulations. Due to certain specifics, the companies (under the new terminology known as commercial corporations) are excluded from the NCC and regulated in a separate statute, Act No. 90/2012 Coll., on Commercial Corporations (the "ACC").

Many of the "new" provisions relating to the legal entities are not unknown to the present law, because they basically just copy the present regulation of companies. Nevertheless, an important innovation to the regulation of legal entities is the introduction of so-called public registers.

**General issues of the regulation**

The NCC regulates only general issues in relation to public registers, while the detailed regulation is left to a special act on public registers (the "APR"). The APR bill has already been approved by the government and submitted to the Chamber of Deputies.

A special law has been adopted in an effort to generally regulate the registers of all legal entities. Currently, the regulation is contained in several statutes, referencing the provisions about the Commercial Register in the Commercial Code. As emerges from the explanatory report, "the ambition of the presented act should be an establishment of a united regulation of all public registers, with some variations for different legal forms, where needed". Therefore, the relevant provisions relating to the Commercial Register were also left out of the circulation of the ACC’s draft bill for comments.

The initial regulation of public registers is contained in Sec. 120 and 121 of the NCC and conceptually stems from the current regulation of the Commercial Register. The public registers of legal entities should include information on the date of the legal entity’s incorporation, the date of its dissolution with a statement of its legal grounds, the date of its termination, the trade name, the address and the business activity, the name and the address of every member of a statutory body stating how the statutory body shall represent the legal entity, and information on the origin or the termination of their position.

The NCC maintains the principles of formal and material publicity of public registers. In accordance with these principles, the public registers of legal entities shall be accessible to everyone. Anyone can inspect them and make extracts, transcripts or copies. Furthermore, a person’s legal actions based on trusting the data as recorded in the public register shall not be challengeable by the person involved on the grounds that the record does not correspond to reality. If the data recorded in the public register is published, after 15 days no one can raise a defence claiming that they did not know about the published data. If the published data does not correspond to the recorded data, the person involved cannot challenge the published data to another person. If, however, he/she proves that the other person knew about the recorded data, he/she can object that the published data does not correspond to the recorded data.
Unlike the current situation, when the above applies only to commercial companies, under the NCC both mentioned principles relate to legal entities in general. This legislation undoubtedly strengthens the legal certainty of contractors and is a welcome regulation.

The Act on Public Registers

Complex regulation of public registers is left to a special statute. The APR regulates not only material-law issues, i.e. what data shall be recorded in the Register, the Collection of Deeds, etc., but also the procedural aspects until now contained in the Civil Procedure Code.

The public register is to be maintained electronically. Nevertheless, it will still be possible to submit motions electronically (with a recognised electronic signature), as well as in paper form (with a notarised signature), but only on page forms.

A new feature is that the data on entities incorporated in the registries should be publicised by remote access also by the Ministry of Finance. This provision is expected to support the ARES system, which is not currently regulated.

In some respects, the APR extends the range of recorded data, for example in relation to a statutory body it will be necessary to also register the number of its members. Other changes to the recorded data result from the change of the material law (for example, the introduction of so-called enterprise proxy, etc.). Nevertheless, the APR also brings about the possibility of registering the name of a commercial corporation into the Commercial Register without simultaneously incorporating the commercial corporation. The explanatory report clarifies that the purpose is to provide protection for the selected business name for a specific period of time (one month).

The Commercial Court in charge of the Commercial Register shall be able, at the proposal of the registered person, to decide not to publish certain data recorded in the Register, unless the entity is a commercial corporation. The explanatory report implies that the intention of the provision is to avoid possible negative impacts in order to protect the health of people employed in the non-profit sector.

Entry in the register by a notary

One of the most practical innovations introduced by the APR is that a notary shall be allowed to make an entry in a register. The notary shall be able to process the records directly in the public register, if (i) the data are enrolled on the grounds of a notarial deed; (ii) the notarial deed contains a statement of the notary that the subject of the legal conduct (under the current terminology as the legal act) is in accordance with the law and with the founding conduct of the legal entity; and (iii) the notary has received all documents required by law.

This record can be processed only by the notary who drew up the relevant notarial deed. In this context, the APR creates a legislative abbreviation of the "base record", because the notarial deed shall serve as basis for the registration in a public register. The record itself should be processed electronically without undue delay after submission of an application for registration. Unlike the Commercial Court in charge of the Commercial Register, the notary has no deadline; however, it can be expected that the notaries shall be more flexible and that the provision shall speed up and in many cases simplify the registration process.

Conclusion

The regulation of public registers is largely based on the current regulation of the Commercial Register. Some differences are based on substantive-law institutes introduced by the NCC. On the other hand, the new regulation brings about a number
of important positive changes that are intended not only to clarify the currently unsatisfactory state of the incorporation of legal entities, but also to speed up the execution of entries in the public registers.