

Amendments to the Companies Act (ZTD) and the Court Register Act (ZSR)

Zagreb, December 2021



American Chamber of Commerce in Croatia *Američka gospodarska komora u Hrvatskoj*

Contents

Introduction	3
Amendments to the Companies Act	4
Form of the notarial document (Article 387 of the ZTD)	4
Establishment of a company remotely without the participation of a notary public (Articles 397a – 397e of the ZTD)	4
Amendments to the Court Register Act.....	6
Article 39 of the ZSR.....	7
Article 40a of the ZSR.....	7
Conclusion	8

Introduction

On October 20, 2021, the Ministry of Justice and Public Administration of the Republic of Croatia submitted two legislative bills for public consultation:

1. Amendments to the Companies Act (ZID ZTD)
2. Amendments to the Court Register Act (ZID ZSR)

The legislative bills are proposed for the purpose of a further digital transformation of the procedure concerning the establishment, registration of establishment, and registration of changes in companies in the court register.

As stated above, the most recent Amendments to the Companies Act and the Amendments to the Court Register Act introduced remote establishment of limited liability companies without authorized persons using the START system. Even though the system is conceived well, it is quite limited in use primarily because it may only be used by Croatian nationals having NIAS credentials of an appropriate level.

Besides, the system only allows the establishment of companies. It does not allow the implementation of changes within already established companies. Therefore the vast majority of all activities related to the establishment, changes, and registrations with the court register would still be performed before a notary public because the founders normally found it easier and simpler to perform all company establishment activities in a “one-stop-shop”.

The present draft amendments propose the introduction of remote establishment as well as the implementation of all other changes by electronic means, the possibility of appointing an authorized representative for the purpose of the same, and the possibility of establishing a company and executing changes before a notary public remotely (via a video link, etc.). In addition, a very wide application of an advanced electronic signature is introduced as a replacement for notarial certification of documents – including for the purpose of transferring stakes in limited liability companies.

AmCham welcomes the proposed changes and finds them exceptionally favorable. The objective of this position paper is to contribute constructive proposals for the development of the final drafts of the two bills ultimately capable of improving legal certainty as well as the business and investment environment in the Republic of Croatia.

Amendments to the Companies Act

Form of the notarial document (Article 387 of the ZTD)

Since provisions defining a new acceptable form of the deed of establishment (Articles of Incorporation) are introduced in the law and since the new rules allow it to be in an electronic form, we hereby propose minor improvements to eliminate any doubts in future interpretation of the regulations, specifically adjustments to the proposed wording of Article 15 of the ZID ZTD amending paragraphs 1 and 2 of Article 387 which read as follows:

- a) **The third sentence of Article 387 paragraph 1:** "A notarial act or a private deed certified by a notary may also be drawn up by means of electronic communications in an electronic form, in compliance with the provisions of regulations on the form of the notarial acts and deeds."
- b) **The second sentence of Article 387 paragraph 2:** "This declaration may also be drawn up in an electronic form as well as using means of electronic communications in compliance with the provisions of regulations on the form of the notarial acts."

Establishment of a company remotely without the participation of a notary public (Articles 397a – 397e of the ZTD)

In our interpretation, those are amendments to the existing "establishment of a company remotely without authorized representatives" where the basic modification pertains to the fact that parties to the establishment procedure are permitted to be represented by an authorized representative just like until now in "classic" establishment before a notary public.

Therefore, we are providing several comments and recommendations below to simplify and facilitate the process in practice.

Power of attorney and other documents enclosed to an application for establishment

For the purpose of clarity, we propose specifying clear provisions on the methods of granting of a power of attorney, and on the form thereof as well as the clear specification of the form of other deeds which must be enclosed with the documents required for establishment by founders and authorized representatives (e.g. excerpt from an appropriate register for foreign legal persons acting as founders, and the declaration on acceptance of appointment as a member of the board of directors/authorized signatory).

We, therefore, propose:

a) to propose, in the present Article 17 of the ZID ZTD instead of the proposed amendment by striking Article 397a paragraph 3, as follows:

i. **Text of the new Article 397a paragraph 3 of the ZTD**, whose wording would be as follows:

"Actions required to establish a company remotely without the participation of a notary public may also be taken by an authorized representative on behalf of one or multiple founders and/or one or multiple members of the board of directors. The founder and/or the member of the board of directors is required to provide the power of attorney in the form prescribed under Article 387 paragraph 3 or in an electronic form signed using a qualified electronic signature. In such cases, all founder obligations referred to in Article 397d of this Act also pertain to the authorized representatives and the power of attorney shall authorize the authorized representative to take all required actions and provide all required declarations for the valid performance of establishment for and on behalf of all represented persons."

ii. addition of a **new Article 397a paragraph 6** following Article 397a paragraph 5 of the ZTD formulated as follows:

"The founder participating in the remote establishment procedure shall provide the authorized person with a power of attorney whose contents are prescribed through the form representing Annex 7 to this Act, and the management board member shall provide the authorized person a power of attorney whose contents are prescribed through a form representing Annex 8 to this Act."

b) to **additionally propose amendment of Article 397b paragraph 2 of the ZTD**, in Article 18 of the ZID ZTD which would read as follows:

"In remote establishment procedures, deeds or their photocopies shall be enclosed in an electronic form. Deeds requiring public certification as hard copies shall be deemed valid if signed in the digital form using an electronic signature of the issuer of the deed."

c) to propose, in a new article of the ZID ZTD an **addition to Article 397d paragraph 1**, by adding a new sentence after the full stop which reads as follows:

"If the founders are represented in the establishment procedure by an authorized representative, in addition to the establishment documentation, it is necessary to enclose documents representing valid evidence of the identity of the founders in the form prescribed in Article 397b paragraph 2. The same shall apply if a founder – a legal person having a registered seat outside the Republic of Croatia – is represented by a person authorized for representation in compliance with the law of the state in which the founder has its registered seat."

Article 397e of the ZTD

The present Article 19 of the ZID ZTD proposes to introduce a new paragraph 8 in Article 397e regulating cases where the court of registration doubts the identity of the founder or compliance with the rules on the prevention of money laundering and terrorist financing. AmCham's proposal aims at additionally clarifying such situations in order to expedite the procedure and widen the scope of the present provisions of Article 19 of the ZID ZTD which would also amend Article 397e paragraph 1 regarding the scope of representation under a power of attorney.

Therefore we propose the present Article 19 of the ZID ZTD to contain:

- i. an **addition to Article 397e paragraph 1 of the ZTD**, by appending a sentence following the full stop which reads as follows:

"If the founder is represented by an authorized representative, the stake may be paid the founder in person or by the authorized representative for and on behalf of the founder."

- ii. a **new Article 397e paragraph 8**, whose wording would be as follows:

"If it is suspected that the company members or company body members forged or otherwise misused their identity, that they lack legal competence or authorization to represent the company, that regulations on prevention of money laundering and terrorist financing are violated in the process of establishment, the court of registration shall render a conclusion instructing the applicant to submit an application through a notary public within 15 days where all deeds drawn up in the remote company establishment procedure without the participation of a notary public are recognized as valid unless the court explicitly specifies individual deeds in the conclusion as invalid or that the same requires a modification or addition. If an individual founder or a member of the board of directors participating in the procedure of establishment is represented by an authorized representative – a lawyer whose office has a registered seat in the Republic of Croatia, it shall be deemed that there is no cause for suspicion referred to in this paragraph in relation to such a person unless it is clear that elements of unlawfulness exist. If the applicant fails to comply with the conclusion rendered by the court, the application shall be deemed withdrawn."

Amendments to the Court Register Act

In relation to the Amendments to the Court Register Act, AmCham proposals pertain to Articles 39 and 40 of the ZSR.

Article 39 of the ZSR

In Article 10 of the ZID ZSR, it is proposed to adopt a new Article 39 of the ZSR regulating the **form of application for entry in the court register**, as well as defining cases where some type of **certification of the application** is required or otherwise.

A grammatical interpretation of paragraph 2 of the above provision leads to a conclusion that a qualified electronic signature is not deemed a sufficiently credible means of verification of identity of the signatory, i.e. that it would only be valid if the application to enter information in the court register requires no public certification in compliance with paragraph 1 of the same provision. Such an interpretation would also lead to a **practical inability to establish a company remotely without the participation of a notary public** since an application to enter information in a court register could only be signed in such an establishment procedure using qualified electronic signatures of the applicants.

We are therefore proposing to **amend the proposed Article 39 paragraph 2 of the ZSR** so it reads as follows:

"An application to enter information in the court register may be submitted to the court of registration in an electronic form. Such an application shall be submitted electronically through a notary public, a court register website system, or the court register website within the START system. The notary public and the applicant shall sign the application using qualified electronic signatures.

Article 40a of the ZSR

The tax clearance certificate which has for years been an integral part of any company establishment and transfer of stakes in limited liability companies (since they are entered in the court register), shall only be written declarations made by the founder personally with the signature certified by a notary public.

Even though the START system currently allows the founders to provide the above declaration in an electronic form, this **has not been regulated by the law**. Likewise, if the founders are represented in a remote company establishment procedure by an authorized representative, under the existing rules, the authorized representative is not authorized to submit the relevant declaration for and on behalf of the represented founder.

In order to harmonize the regulation with the current capabilities of the START system, and in order to avoid doubts regarding the establishment procedure performed through an authorized representative (i.e. to explicitly allow the authorized representative in the procedure to submit the above declaration on behalf of the founder in the START system, we propose an **amendment of Article 13 of the ZID ZSR** by having it add the following sentence in Article 40 paragraph 1 of the ZSR after the full stop:

"The declaration referred to in this paragraph may also be provided by an authorized representative of the founder for and on behalf of the founder of the entity and the founder of the entity shall assume full liability for the contents of the declaration provided by their representative."

Conclusion

The American Chamber of Commerce in Croatia welcomes the proposed amendments to the Companies Act and the Court Register Act. The proposed amendments represent a significant advance and incentive to the development of the economy and entrepreneurial climate in the Republic of Croatia.

The AmCham proposals set out in this position paper are aimed solely at maintaining the intended purpose of the proposed amendments as well as the maximum facilitation and unification of their future implementation and potential interpretation.

For additional information, please contact:
American Chamber of Commerce in Croatia
Andrea Doko Jelušić,
Executive Director T: +385 01 4836 777
E: andrea.doko@amcham.hr