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UDK: 347.714:004

Original scientific work

DOI: 101.5937/ptp2004001S

Received: 24.08.2020.

Approved on: 23.12.2020.

Pages: 1–12

THE APPLICATION OF DIGITAL TECHNOLOGY IN BUSINESS REGISTRATION

ABSTRACT: The application of digital technology has succeeded, on the one hand, in facilitating the business and whole life of the modern humans, and, on the other hand, in slightly putting in the background the long-maintained habits and values that have become obsolete and unnecessary with digitalization. Almost the entire year of 2020, due to the global pandemic and restrictive measures, as well as business in it, has been reduced to the virtual world and digitalization. Although the application of new technologies is not new, this year it has received a special treatment, and the business entities have been required to adjust their business, the work from home, the online work, through various Internet applications with which help there can be organized certain meetings, seminars, educative programmes, conferences as well as closer business contacts with a picture and tone being alive. So, digital technologies have, in this so-called. Covid19 year, taken over our entire, both business and a large part of private life. However, if the focus is put on a lot of positive aspects of the application of new technologies, especially in modern business, where their application saves time and energy, and thus money, then a digital registration of business entities is certainly one of them. For example, in Serbia, since 2018, with a few clicks, it has been possible to electronically register a one-member or multi-member limited liability company and an entrepreneur. However, the application of digital technologies in the process of registration and setting up the business entities has existed much longer than the e-registration. Along with the increasing application and importance of digital technologies in this area, there are opened up some

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new dilemmas and emerged new challenges that modern business entities have to be faced. The same thing can be applied to the new challenges the registration authorities are faced.

Keywords: *digital technologies, legal regulations, the registration of business entities, e - registration*

1. Introduction

Registration provides to a business entity the last in a series of legal requirements that it must meet in order to become a subject of rights, or to acquire legal personality and the power to be an independent holder of rights and obligations in legal transactions in its own name and for its own account. The state is interested in regulating the registers of companies and business entities in general, because by the very act of registration and its publication, a business entity can influence legal and economic transactions by its business, enter into legal relations with third parties and legal persons. Also, for the sake of legal security, it is very important that third parties are acquainted with the basic data of business entities, and this is achieved only through the application of digital technologies, or the online availability of such data. However, in recent years it has been supplemented by enabling online or e-registration of business entities.

Historically, the registration of business entities arose almost at the same time as the need to organize business in one of the prescribed forms of companies. The Commercial Code, passed by Miloš Obrenović the First in 1860¹, also contained a provision on the obligation of every trader, whether working alone or in partnership, to report the company under which he wants to trade to the commercial court in the place where he wants to trade. Also, the trader had the obligation to publish his company and store in the official newspaper together with the approval he received from the court for performing the reported jobs, and the court pointed out the same on its bulletin board². There is also interesting obligation of the trader from that early years – If the trader performed his work in several places or districts, he had to make a report in each place, if there is a court³.

¹ Gradanski zakonik za kraljevinu Srbiju sa komentarom i Trgovački zakonik: Zakonik trgovački, Zakon o akcionarskim društvima, [Civil Code for the Kingdom of Serbia with commentary and Commercial Code: Commercial Code, Law on Joint Stock Companies]. priredivač Laza Urošević, Beograd, Izdavačka knjižarnica Gece Kona, 1917.

² Zakonik trgovački iz 1860, [The Commercial Code]. Article 5.

³ Ibid.

In the neighboring Republic of Croatia, the Commercial Law was valid, ie. legal article XXXVII of 1875⁴. Territorially, it was applied on the territory of Croatia and Slavonia. This law prescribed the obligation to register, which was kept by the commercial courts in the form of a special book. Here, too, the publicity of the register was determined, which was of two types, ie one was kept for traders, which would correspond to today's notion of entrepreneurs, and the other for companies⁵.

Company registration was introduced in Great Britain, for example, in 1844⁶. Australia, as a British colony, received its legal legislation, also during the 19th century, more precisely, at the end of that century, when Victoria, as the first Australian state, regulated company law, and thus the registration of companies in 1896⁷.

The European Union, ie the European Parliament, adopted the Directive in 2012 concerning the establishment of a central register of companies throughout the European Union, whose ratification and implementation, as well as all administrative preparations for its implementation, Member States had to make by July 7, 2014.⁸ The mentioned Directive ceased to be valid until 2017, when a new one was adopted – Directive (EU) 2017/1132 of the

⁴ Zakonski članak XXXVII.: 1895. zajedničkoga ugarsko-hrvatskoga državnoga sabora o povlasticah na izume, SBORNIK Zakonah i Naredabah valjanih za Kraljevine Hrvatsku i Slavoniju, komad XVIII, [Legal Article XXXVII: 1895 of the Joint Hungarian-Croatian National Assembly on Privileges for Inventions, COLLECTION of Laws and Orders Valid for the Kingdoms of Croatia and Slavonia, piece XVIII]. 1895.g., More at: Čepulo, D. (2001). Hrvatsko – ugarska nagodba i reforme institucija vlasti u Hrvatskom Saboru 1868-1871. [Croatian – Hungarian settlement and reforms of government institutions in the Croatian Parliament 1868-1871]. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, pp. 117-148. (2020, August 15), Available at: https://eu.pravo.hr/_download/repository/Hrvatsko-ugarska_nagodba_i_reforme_institucija_vlasti_u_Hrvatskom_saboru_1868.-1871.%2C_Dalibor_Cepulo%2C_ZPFSR_2001-1.pdf and Čepulo, D., Krešić, M. (2011). Hrvatsko – Ugarska nagodba: Institucije i stvarnost, Zbornik sa Konferencije u spomen 140 obljetnice Hrvatsko – Ugarske nagodbe [Croatian – Hungarian settlement: Institutions and reality, Proceedings of the Conference in memory of the 140th anniversary of the Croatian – Hungarian settlement], Budimpešta, pp. 141-155. (2020, August 15), Available at: https://www.pravo.unizg.hr/_download/repository/Hrvatsko-ugarska_nagodba_institucije_i_stvarnost%2C_Dalibor_Cepulo%2C_Mirela_Kresic.pdf

⁵ Zakon trgovački za Hrvatsku i Slavoniju [Trade Law for Croatia and Slavonia]. Article 10.

⁶ Companies House, (2020, August 15), Available at: <http://www.companieshouse.gov.uk/about/functionsHistory.shtml>

⁷ Lipton, P., Herzberg, A. (2000). Understanding Company law, Melbourn, Australia, p. 3.

⁸ Directive 2012/17/EU amending Council Directive 89/666/EEC and Directive 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers, Official Journal of the European Union L 156/1 from 16.6.2012. (2020, August 15), Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0017>

European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (Text with EEA relevance), OJ L 169, 30.6.2017⁹, which is prescribed cross-border access to business information on companies and their branches opened in other Member States can only be improved if all Member States engage in enabling electronic communication to take place between registers and transmitting information to individual users in a standardized way, by means of identical content and interoperable technologies, throughout the Union. This interoperability of registers should be ensured by the registers of Member States ('domestic registers') providing services, which should constitute interfaces with the European central platform ('the platform'). The platform should be a centralized set of information technology tools integrating services and should form a common interface. That interface should be used by all domestic registers. The platform should also provide services constituting an interface with the portal serving as the European electronic access point, and to the optional access points established by Member States. The platform should be conceived only as an instrument for the interconnection of registers and not as a distinct entity possessing legal personality. On the basis of unique identifiers, the platform should be capable of distributing information from each of the Member States' registers to the competent registers of other Member States in a standard message format (an electronic form of messages exchanged between information technology systems, such as, for example, xml) and in the relevant language version¹⁰.

What is common to all of the above is that the registers of companies and business entities in general, have always been under the jurisdiction of the state through its legislative power (organization through legal acts), and later through the judiciary and the executive, depending on whether the registration performed by courts or special administrative bodies. The data entered in the register were public and available to third parties, which protected the security of legal and economic transactions. Also, registers have always been considered as public books, and all data in them were considered true until proven otherwise. Therefore, the interest of the state in the legal regulation of this area, but also in the later implementation of legal regulations through their practical application, is very high without any oscillations in development, and this area is one of those that the state keeps exclusively for its bodies.

⁹ Official Journal of the European Union, (2020, August 15), Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017L1132&from=en>

¹⁰ Ibid, Article 25.

2. The state's responsible bodies for registration of business entities

The registration of business entities could be defined as a public presentation of the attributes of the business to all interested third parties¹¹. The beginning of the 21st century is also characterized by IT progress in terms of the expansion of electronic connectivity and business. In accordance with that, the state introduces electronic systems regarding the registration of business entities, and it has been possible at any time, from anywhere on the planet to inspect the register of companies, and find data concerning a particular company, its attributes, capital, solvency, persons authorized to represent, etc. Thus, the public registration of companies has gained a global dimension that is adequate to the modern way of communication and business. In addition to legal certainty, the registers of companies also have a control significance¹², ie a control function, because during each application it is checked whether it meets all the prescribed conditions, and incomplete applications would be rejected, etc.

In comparative and domestic positive law, the bodies responsible for the registration of companies are either commercial courts or their special departments, or independent and specialized administrative bodies, or certain ministries in whose jurisdiction is such a register kept.

In the law of the Republic of Serbia, until the Law on Companies from 2004, the registration of companies was under the jurisdiction of commercial courts, and after that the Agency for Business Registers was established as a specialized and independent body with legal personality and operations in accordance with regulations on public agencies¹³. The establishment of the Agency was assisted by the Swedish Government, the World Bank, Microsoft Serbia and Montenegro and USAID – United States Agency for International Development. With the establishment of the Agency and its taking over the competence of registration of business entities from commercial courts, harmonization with European legislation, ie the First European Directive, according to which the register should be central, and registration should become

¹¹ Milanović, B. (2007). Pravo privrednih društava, [Company Law]. Kraljevo, p. 41.

¹² Barbić, J. (1999). Pravo društava, knjiga prva – opći dio [Company Law, book one – general part], Zagreb, p. 440.

¹³ Zakon o Agenciji za privredne registre, [Law on the Business Registers Agency]. *Službeni glasnik RS*, no. 55/04, 111/09 and 99/11.

administrative, not a way of legal control of business entities, the commencement of business of those entities¹⁴.

The affairs of the Agency for Business Registers are managed as a single centralized electronic database, based in Belgrade and organizational units outside the headquarters. It has its own bodies – the board of directors and the director, and it performs its tasks through the registrar when it appoints the board of directors¹⁵.

In neighboring Croatia, company registration remained within the jurisdiction of the courts or, more precisely, the commercial courts¹⁶. However, this type of register is also organized as an electronic database, because it is kept both in writing and electronically, and every commercial court has the obligation to issue an excerpt from the register, regardless of the local register in which the entry was made. In that way, the territorial restriction was abolished, which was the most common objection to previous court registers. The search in the electronic database of the Croatian court register is also accessible and easy to use and in accordance with the basic principle of publicity of the register¹⁷.

In most countries of the Anglo-Saxon legal system, the bodies responsible for the registration of companies are specially formed and specialized administrative bodies. This is the case in the United Kingdom to the Companies House, where all data on companies registered with this body are available. At the official presentation, there is also an option with links from the competent authorities for the registration of companies for all countries of the world, grouped according to continents¹⁸.

In the United States, there are as many company registries as there are member states. They are run by the Secretary of State in most Member States. For example, in California, its work is regulated by the California Code of Regulations and is not regulated as a strictly specialized body for registration of business entities and data related to their business, but is responsible for, among other things, maintaining public health, providing state archives, then jobs related to financial information in political campaigns and lobbyists, notaries, etc.,

¹⁴ Agencija za privredne registre, (2020, August 20), Available at: <https://www.apr.gov.rs/o-agenciji.1902.html>

¹⁵ Zakon o Agenciji za privredne registre, [Law on the Business Registers Agency]. Article 7-11.

¹⁶ Zakon o sudskom registru Republike Hrvatske, [Law on the Court Register of the Republic of Croatia]. *Narodne novine*, no. 1/95, 5796, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13, 93/14, 110/15, 40/19.

¹⁷ Sudski registar Republike Hrvatske, (2020, August 20), Available at: <http://sudreg.pravosudje.hr/registar/f?p=150:1:0::NO:1:28>

¹⁸ Government UK, (2020, August 20), Available at: <https://www.gov.uk/government/publications/overseas-registries/overseas-registries>

although the register of companies occupies the largest part of its business¹⁹. In the United States, only the Federal Register of Financial Statements or the U.S. is maintained at the federal level – Securities and Exchange Commission²⁰.

In the Anglo-Saxon legal system as well, regardless of the existence of case law, the registration and the procedure of registration of companies are regulated by company regulations.

In the analysis of regulations that determine which bodies are competent to keep the register of companies, in addition to whether they are courts or special and independent administrative bodies, it is possible to discuss the set independence of the given bodies. Namely, the judiciary is independent in every legal system and that principle is established in the constitution as the highest legal act of a state. However, if we look at the specially organized state body responsible for the registration of companies, such as in our country APR, and the provisions of the Law on APR, according to which funds for the establishment and subsequent operations can be obtained on the basis of donations from foreign and domestic legal or natural persons, the question of the scope and dimension of the independence of that body may be raised. If it is accepted that such a body is organized, yet an administrative body as a manifestation of the executive power of the state and still financed by others, another question arises: to what extent can it be independent and whether that independence is the same or less than that exists in legal systems where registration is conducted by courts²¹.

Regardless of which body is entrusted with the competence of company registration, its basic elements remain the same. The provisions governing the manner and procedure of registration are imperative in nature and it is the state that, with its authority, stands behind every piece of information that is registered, with its presumption of truthfulness. In the very notion of registration, there is its greatest significance from the aspect of general social interest, and that is the legal security of economic turnover. In order to achieve legal certainty, company registers must be public and any person who so wishes may inspect them, but may also request transcripts and excerpts from the register²².

¹⁹ California Secretary of State, (2020, August 20), Available at: <https://www.sos.ca.gov/business-programs/>

²⁰ US Security and Exchange Commission, (2020, August 20), Available at: <http://www.sec.gov/>

²¹ Škorić, S. (2016). Uticaj poslovnog imena privrednog društva na njegovo poslovanje: doktorska disertacija [The influence of the business name of the company on its business: doctoral thesis]. Pravni fakultet za privredu i pravosude u Novom Sadu, p. 163.

²² Ibid.

3. Digitization of business registration and its evolution into e-registration

With the establishment of an electronic database, such as modern registers of business entities, the era of digitalization and application of modern technologies has already begun at the first step in the establishment of a business entity – its registration. At the beginning of the 21st century, such a trend has spread globally, to the whole world. Therefore, the application of new and digital technologies in the economy and in the registration of business entities is indisputable, but the manner of that application has changed significantly. Namely, the bodies responsible for the registration of business entities have gradually expanded their online database, on the one hand, and on the other hand, they have adapted the way they work to the development of new, digital technologies. Thus, in the Republic of Serbia, for example, starting from the second half of 2018, it became possible to perform the entire process of business entity registration online, without physically sending certain documents by mail, and the registration itself evolved into a complete e-registration²³. Of course, in order for e-registration to be possible, certain conditions must be met (that the applicant has a qualified electronic signature certificate, installed the appropriate program on his computer, the appropriate payment card with which he can make payment, etc.). However, this major step in enabling e-registration confirms previous claims that digital technologies have made it easier for businesses to do business, save time and money, but also open up many issues that did not exist before or that are existing dilemmas. just changed. One of the existing dilemmas, which arose after the establishment of the Agency for Business Registers in Serbia, is whether the administrative body, which can be financed by the non-governmental sector, etc., can be more professional and independent than the court register, ie a special registration department of courts or after the establishment of the Agency, the registration of business entities from the most important action after which it acquires the status of a legal entity, became only a formal procedure which establishes the will of the founder and which the registrar acts, if there are no major legal deviations. The entry of a business entity in the prescribed register, by which it acquires legal personality, is not of a declarative character, but

²³ Agencija za privredne registre, [Agency for Business Registers]. (2020, August 20), Available at: <https://www.apr.gov.rs/usluge/eusluge/eregistracija-osnivanja-jednocalanog-i-viseclanog-doo.2405.html>

of a constitutive one, where the business entity emerges as a new entity, different from its own or its founders.²⁴

4. Conclusion

The evolution of business registration, and even the bodies in charge of registration from central databases, available to anyone in any part of the world via the Internet, to e-registration where you can again establish a business entity from the comfort of your home or office has occurred in line with the progress and spread of digital technologies that have become an unavoidable factor in all spheres of modern human's life. In this, the so-called Covid 19 year, when the whole world is faced with restrictive measures concerning the physical movement of people, the obligation of physical distance and other unpopular measures, e-registration of businesses allows easier access to the register, easier access to documentation and certainly safer for health, access to business and startup business. However, as in sociology, as a science of humans, human is the social being, regardless of modernity and progress of technology, the Internet, the possibility of live meetings through various applications, no modern technology can adequately and completely replace physical and personal contact. Accordingly, businesses are adapting to new and easier approaches through digital technologies, but people need to keep their core values that digital technologies only need to further refine, not completely replace.

5. Acknowledgments

The article was created as a result of research on the Project entitled: "Legal regulation of the use of digital technology in the function of business development", funded by the Provincial Secretariat for Higher Education and Research of AP Vojvodina, within short-term projects of special interest for sustainable development in AP Vojvodina in 2020.

²⁴ Škorić, S. (2015). Pravni subjektivitet privrednog društva – pravna, politička i sociološka dilema, [Legal subjectivity of a company – legal, political and sociological dilemma]. special issue, *Kultura polisa*, „Pravo i savremeno društvo“, p. 194.

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PRIMENA DIGITALNE TEHNOLOGIJE KOD REGISTRACIJE PRIVREDNIH SUBJEKATA

REZIME: Primena digitalne tehnologije je uspela, sa jedne strane da olakša poslovanje i čitav život savremenog čoveka, a sa druge da lagano stavi u drugi plan dugo održavane navike i vrednosti koje su digitalizacijom postale zastarele i nepotrebne. Gotovo čitava 2020. godina, zbog globalne pandemije i restriktivnih mera, kao i poslovanje u njoj svedeno je na virtualni svet i digitalizaciju. Iako primena novih tehnologija nije novina, ona je ove godine dobila poseban tretman, te se od privrednih subjekata zahtevalo prilagođavanje poslovanja, rad od kuće, rad *online*, preko različitih internet aplikacija preko kojih se održavaju sastanci, seminari, edukacije, konferencije, neposredniji poslovni kontakti sa slikom i tonom uživo. Dakle, digitalne tehnologije su u ovoj tzv. Covid-19 godini, preuzele čitav naš, kako poslovni, tako i veliki deo privatnog života. Međutim, ukoliko je fokus na veoma mnogo pozitivnih strana primene novih tehnologija, posebno u savremenom poslovanju, gde se njihovom primenom štedi vreme i utrošena energija, a samim tim i novac, onda je digitalno registrovanje privrednih subjekata svakako jedna od njih. Tako je na primer, u Srbiji od 2018. godine, sa par klikova, moguće elektronskim putem registrovati jednočlano ili višečlano društvo sa ograničenom odgovornošću i preduzetnika. Međutim, primena digitalnih tehnologija kod registracije i osnivanja privrednih subjekata veoma je značajna i postoji daleko duže od e-registracije. Uporedo sa povećanjem primene i važnosti digitalnih tehnologija u ovoj oblasti, otvaraju se i neke nove dileme, pojavljuju se novi izazovi sa kojima se savremeno poslovanje privrednih subjekata suočava. Jednako važi i za nove izazove koji se postavljaju pred organe ovlašćene za registraciju.

Ključne reči: *digitalne tehnologije, pravna regulativa, registracija privrednih subjekata, e-registracija.*

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