

Creating a Single National Court Register

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Introduction

The Croatian system of record registration and record-keeping on legal entities and other essential data was established in 1993 with the adoption of the first Court Register Act. This system is based on the court register model, which consists of territorially divided court registers.

These are public registers (books) in which the legally required data and documents about specific legal entities, such as companies, are entered. Data in the court register is (as a rule) public with the primary goal of allowing market participants to have adequate, quick, and truthful information about other market participants with whom they enter into business. This feature of the court register points to its primary role: to achieve legal certainty, market confidence, and consequent business relations.

However, that system, which is almost 30 years old, has increasingly more shortcomings that significantly affect the ease of starting up and managing a business, including what was originally the goal of the system – the legal certainty of economic operators that must be registered in the court register.

When the current system was established, conditions were very different. The past thirty years have brought radical social and technological changes, which have made the existing system of court registers evidently outdated and unsuitable for modern times. Although there have been some (mainly cosmetic) changes in the meantime, the core of the system has remained unchanged.

The emergence of the Internet, increased mobility of people given better transport in parts of the country, accession to the European Union, and the maturation of the market economy in Croatia are the main factors prompting the reconsideration and reform of the court register system, i.e., the system of registers of companies and other legal entities as a whole.

Therefore, AmCham would like to use this position paper to propose reforming the system with the aim of aligning it with current and future needs and reaffirming the primary role of the register for which it was originally established.

State of play

The system of court registers, its composition, content, and related procedures are primarily governed by the Court Register Act¹ and the Companies Act². Likewise, the work of court registers is regulated in more detail by various rulebooks, such as the Rulebook on the method of entry into the court register and instructions from the Ministry of Justice and Public Administration. Also, it should be added that, given the scope of work of the court register, other regulations also logically apply, such as the Civil Procedure Act, and laws regulating the performance of specific activities.

The court register consists of two parts – the main book and the repository of documents. Data on subjects of registration required by law are entered in the main book, while the repository stores documents and other evidence supporting the data in the main book, as well as decisions and conclusions made in the registration procedure. The main books are kept in electronic form, and the document repository is in written or electronic form.

Administrative organization

Individual court registers (public books) are kept by commercial courts, and each court is individually responsible for the veracity of entries it makes. As a result, since Croatia has nine commercial courts established, there are currently nine court registers.

The jurisdiction of individual court registers, i.e., the commercial courts that keep them, is territorial. This means that only legal persons and other entities located within the territorial jurisdiction of a specific commercial court can be registered, and registration procedures can be conducted for them in that court register (registry court).

Such “different” court registers are not entirely unrelated. The main books of all court registers and the repository of documents in electronic form are interconnected in a single database for Croatia, serving as a central hub for storing registers, records, and statistical data of registry courts. The main book and the repository of documents in electronic form are kept as a single database for Croatia.

As a rule, a court register entry is initiated by submitting an application to the competent registry court. The application in the first-instance procedure is decided in most cases by a court advisor or an authorized registration officer. A single judge decides on the application in more complex cases and in the case of an appeal against the decision of a court advisor or an authorized registration officer. The legality of the judge’s decision is controlled by the High Commercial Court

¹ Court Register Act (Official Gazette Nos 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13, 93/14, 110/15, 40/19, 34/22, 123/23)

² Companies Act (Official Gazette Nos 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 111/12, 125/11, 68/13, 110/15, 40/19, 34/22, 114/22, 18/23, 130/23)

panel, composed of three judges, who decide on the appeal against the judge's decision made in the first-instance procedure.

The competent person processing the application issues a decision or a conclusion. Decisions deal with the merits of the application, while conclusions relate to the procedure and include, for example, requests for additional documentation. An appeal is filed within eight days and can only be filed against a decision. A review of a legally binding decision on registration is exceptionally permitted for resolving a substantive or procedural issue important for ensuring the uniform application of law and equality of arms in its application.

The issue of non-uniform judicial practice

Although the principle of uniformity is one of the basic principles of the court register that should be uniform throughout Croatia, practice shows that this is not entirely the case. Applications previously properly accepted before one registry court tend to be promptly rejected before another registry court. In this regard, it is not an exception but rather a desirable rule of professional conduct to consult with a judge of a specific court register before submitting an application, so that the applicant can be sure that the application will pass before that court.

The current situation gives the impression of a system of individual court registers operating independently of each other, creating local decision-making centers with a high degree of autonomy, which over time has led to non-uniform local systems of procedure and judicial practice. This was certainly not the legislator's intention.

In this sense, the working assumption is that non-uniform court registers are the result of a combination of the following characteristics: (i) the strict territorial character of court registers and resulting dependence of business entities, (ii) the lack of corrective mechanisms (appeal procedures) that would lead to uniformity, (iii) insufficient transparency of decisions and legal interpretations of the court register, and (iv) excessive system rigidity, which is a consequence of an uncompromising focus on preventing possible irregularities, rather than on organizing an efficient and legally adapted system. It has already been mentioned that one of the main principles of the court register is the principle of uniformity of the court register. It foresees uniform organization and the application of the same regulations in all court registers, as well as an equal registration process and procedure, regardless of which court it is. However, although a lot has been done to standardize the internal structure and procedures, insufficient attention has been paid to standardizing court register procedures upon submitted applications. In other words, a lot has been done to ensure the proper and uniform entry of positive decisions on the application in a single register; however, the decision-making process itself remains the responsibility of individual registry courts.

This is also a consequence of the general principle of independence of each judge in the application of regulations, who is then free from obligations as to how to proceed; however, adequate mechanisms and organizational measures must be

in place so that such independence does not lead to, above all, a non-uniform formal registration (bureaucratic) procedure.

In practice, these differences can sometimes influence the decision on where to establish a legal entity in order to avoid the registration process at a specific court. Likewise, in order not to avoid issues with the court to which they will later have to turn and to have their cases resolved in the shortest possible time, subjects of registration often comply with unfounded court demands. That is why there are no appeals and there is no uniform practice in the country.

Due to the above, the working conclusion is that case law is not uniform and that the procedure often depends on the register itself and its employees.

To sum up, one negative circumstance should be noted, which does result in the uniformity of court registers, but in a legally unacceptable manner. As a result of commendable efforts to improve the work of court registers, IT systems are being developed to automate and digitize court registers. However, due to such systems' initial settings and architecture, a registry court often has to adapt to the system settings, acting contrary to mandatory legal norms.

Simply put, since the system's algorithms allow only certain types of entries or make entries conditional on specific logical assumptions, registry courts are adapting to the system's limitations and make only entries that the system supports, rejecting legal ones that the system does not support. It is necessary to reduce such situations to a minimum and ensure that IT systems are based on legal norms, rather than adapting legal norms to system limitations.

Examples of non-uniform procedures of different registers

Below are some of the examples pointing to evidently different court register procedures.

- Commercial court in Zagreb – The rules on the validity of the statement of acceptance of the position of a board member changed, without a change in the regulations, three times in one year: First, the court was of the opinion that it was permissible to give this statement even before the board member's formal appointment. Then, the position changed, and the statement could only be given on or after the decision date (extremely difficult in cases where the founders and board members are foreigners who are not personally present at the time of the company's establishment at the notary public). Finally, the position was taken that the statement can be given even before the decision on the appointment of a board member but that it must not be older than eight days (which had no regulatory foundation). In addition, information about the change of the court's position could only be obtained verbally by coming to the court register for consultations.
- Commercial Court in Zagreb – The terms director and board member cannot be used interchangeably; only one of those two terms can be used.

- Commercial Court in Zagreb, Commercial Court in Varaždin (and some other courts) – During each transfer of a share in a d.o.o. (limited liability company), the transferred shares must be assigned a new ordinal number, even though there was no change in the share’s identity, nor does the transfer eliminate the old and create a new share (it is not explained why, except “that it is a new practice”) – there is no such practice in, for example, the Commercial Court in Zadar.
- Commercial Court in Zagreb – Although the High Commercial Court’s case law expressly states that the company’s procurator is authorized as a company representative to transfer the company’s shares to third parties, the Zagreb register refuses to do so without any legal basis.
- Commercial Court in Zagreb (and some other courts) – Depending on the person handling the case, in order for the legal representative or member of a company to be represented at the company’s assembly by a power of attorney, the document must be signed by all members of the principal’s board. This requirement applies to all methods of representation. Alternatively, a management decision to appoint the authorized member or members of the board to issue and sign a power of attorney must be submitted. A similar problem exists with foreign legal entities (members of the company or directors of legal entities or company members) who do not have an official document stating the method of representation of their directors (e.g., extracts from the US or UK registers state only the names of the directors, not their authorization to represent the company), so a motley practice has developed as to which document and in which form is considered acceptable for this purpose.
- Commercial court in Pazin, Varaždin, and Zagreb – When applying for entry in the court register, the joint-stock company with only a few shareholders (e.g., five) attaches minutes of its general assembly. It must additionally attach a certified power of attorney of shareholders and sometimes even a certified extract from the competent register for each shareholder.
- Commercial Court in Split – The members of the company must be listed in Article 1 of the articles of association. Such a position has no regulatory foundation but is solely a verbal, informal practice applied in a specific court register, which cannot be known without prior experience with that court.
- Commercial Court in Zagreb – Changing the existing company name or registering a new company – the model of written reservation of the company’s proposal (for a specific short period of time), which was applied until a few years ago, took a step back; now one has to come to the court register’s manager in person and get verbal approval of company registration (name approval). This creates legal uncertainty and puts the interested founder in an unenviable position with additional costs to create a brand/rebrand for something that they cannot know with certainty in advance whether it will be registered as a company.
- Different rules on the company name in different commercial courts – Some courts allow similar companies (e.g., the Commercial Court in Zagreb), while

in some cases, even members of a group are sometimes not allowed common parts of the company (e.g., Commercial Court in Varaždin). The assessment depends on the individual judge or official's discretion rather than on clear rules. The main challenge is that it is impossible to formally check in advance the eligibility of the (company) name; it can only be checked informally, verbally, or the applicant is informed of the ineligibility during the establishment process itself (which creates additional costs for the founders and prolongs the establishment). There are also examples of unfounded rejection of certain companies due to the verbal position that a particular word is unacceptable (for example, the word "*solutions*" in the company name is unacceptable to a certain number of registration judges in Zagreb, although there are numerous trading companies with the said word in their names).

- Commercial Court in Zagreb – Article 40, paragraph 7 of the Court Register Act stipulates that documents submitted as evidence must not be older than one year, except when the document validity depends on fulfilling a condition, the expiration of a term, or option rights. Despite the clear and unambiguous legal provision, according to the verbal instruction, the Commercial Court in Zagreb questions the possibility of implementing a share transfer agreement if it is older than one year, regardless of the fact that the document validity is dependent on the fulfillment of certain conditions, which leads to uncertainty when structuring certain legal transactions.
- Simplified liquidation cases often point to a lack of uniformity with regard to the obligation to store business books and documentation with the storage service provider in accordance with the rules governing the handling of archival material and archives (the person and storage location of the company's books and documents must be entered in the court register), which leads to uncertainty (certain courts allow documentation to be stored with a board member if they are an EU national, certain courts allow it to be stored with the founder, regardless of whether they are an EU national or are based in an EU member state, etc.).
- Commercial Court in Zagreb – When applying for a written list of company members, the applicant must submit the application at the register along with HRK 20 worth of paper stamps, which are only available for purchase at FINA. After submission, the applicant will be informed that it may take anywhere from 3 weeks to 3 months to receive the document. This is due to the archival dislocation caused by the earthquake and the need to locate the specific file. If the intention is to persist with the use of state stamps, they need to be available at points of sale, as was the case even before the introduction of the euro as the official currency. Also, it is important to note that the list of company members was available a day after the application, and the time required to obtain the document is unreasonably long and often burdensome for business entities.
- Commercial Court in Zagreb – When submitting an application for entering a change in data on the founder of a d.o.o. company, where data change occurs due to the merger or acquisition of the former founder with another company

(whereby the companies that participated in the merger/acquisition were registered at the same court and the status change was implemented correctly and registered), the court requires the applicant to submit a written decision on the completed merger with a printed certificate of finality (although both the decision and the information on legality are readily available and are in the document repository of the same court in electronic form). In particular, the court requests that the applicant come to court, request a copy of the decision, request a finality certificate, and then immediately submit the same document back to the court.

Proposal of a new organization

The review of the current situation in this document gives rise to reflections on the urgent need to reform the system, primarily to make it easier for entrepreneurs, increase uniformity of practice, and adapt to modern times.

For this purpose, it is good to emphasize that the analysis of similar registers in other EU member states points to a strong tendency towards system reform or reforms that have already taken place, with standard features in terms of centralized and digitized systems, easier access and increased transparency for its users (business entities and their founders and managers).

Thus, out of 27 EU member states, only nine still have a decentralized registry management system (and none was established in the 21st century). These are primarily systems under the judiciary's jurisdiction, as is currently the case in Croatia, and countries under the influence of the "Germanic" system (although, for example, Germany significantly centralized its system with the last amendments of 2007).

In addition, the majority of EU countries, 18 of them, decided on the so-called administrative registers (under the competence of the state administration) or the regulatory registers (where a regulatory body, such as an agency, etc., is responsible for keeping the register).

Most countries that have reformed their registers in the last 10-15 years have done so in order to switch to a centralized (uniform) system, and some, like Bulgaria, have switched from a register within the judiciary to a regulatory register.

In any case, given the economic trends in Croatia (economic growth and entrepreneurial initiatives), we believe that the time has come for an essential reform of the register system; AmCham hereby makes its proposals on how the register of companies (and other legal entities) may work in the future.

Consolidation of existing registers

The majority of citizens perceive the court register as a single body and quite often misunderstand the fact that there are still nine different court registers, each within a commercial court, which operate independently of each other and that their only link is their common regulations (which they apply in different ways) and the court register website to search for information about registered companies and institutions.

AmCham believes that the first necessary step is **system reorganization and the consolidation of all court registers into a single national court register, which would stand for a state body/institution independent of the existing commercial courts**. Such a national register can remain a judicial body or be reformed into an administrative body, i.e., a regulatory body closely related to commercial courts for procedure harmonization. We believe that this is

an issue that should be resolved in the further process of consultation and model development. For the purposes of this document, our proposal will primarily focus on a model of the register as a judicial body.

The existing nine court registers would be replaced by nine (or more) regional offices of the national court register.

In addition, in our opinion, it would be good to create a contact point in every city where the court register of the commercial court is now located, where citizens, company members, notaries, lawyers, and other participants in registration procedures could quickly and efficiently obtain relevant information, enter into contact with the persons in charge of registration and achieve real two-way communication (especially in more complex cases where regulatory principles would be applied more – namely that the core of the actions of the registration experts is to implement each case as efficiently as possible in accordance with the regulations and the intentions and needs of the participants in the procedure).

Amendments to procedural rules – a more precise delineation of the register’s authorities

Although the registration procedure is normatively regulated in great detail, certain court registers often expand their jurisdiction in matters where the court register was not originally intended to analyze the submitted documentation.

Court registries often go into the matter of applications themselves and their contents beyond the limit of what the law requires. Instead of leaving potential substantive irregularities that do not affect the formal conditions for registration to the parties to resolve in regular court proceedings, the court register requests the correction of individual documents or decision content in its proceedings, although the issue often concerns only different wording than usual and not visible irregularities.

Therefore, the registration procedure itself should be made more flexible on the one hand (particularly in the form of the application submission procedure, etc.), and, on the other hand, it is necessary to more precisely and clearly delineate court register powers. If the form for a particular entry is satisfied, and even if there are substantive irregularities that some participant in the procedure could dispute or interpret as illegal, this should not be the job of the court register. Additionally, and as explained below, all interpretations of the procedural rules for registration should be made public on the court register’s website without delay so that all persons interested in registration can easily and quickly find out the basic conditions for legal and valid registration.

In the same way, it is necessary to exclude data on the founders of limited liability companies from the registration in the court register and to establish a separate system for the registration of data on the founders/members and all changes in this regard, which would be automatically linked with all other relevant databases in the country. (Register of beneficial owners, Tax Administration, etc.).

Alternative verification of registration documentation through NIAS or a notary

Considering the further development and wider acceptance of digital tools and digital identity (using the NIAS/START system through e-OI and Certilia in Croatia and other eIDAS tools in the EU), it is necessary to significantly expand the scope and possibilities of using electronic verification of documentation for submission to the court register. We believe that the vast majority of documentation used for making changes in companies in Croatia is sufficiently secure and clearly defined. Signing it via an advanced electronic signature system should be equated with signature verification or authentication by a notary public.

For example, a trading company can now be established through the START system. By the same principle, it is necessary to expand the capabilities of that (very good) system and allow for the preparation and submission of other applications using the same system, such as:

- registration of establishment with individually prepared and electronically signed articles of association;
- notification of changes in management and supervisory board members;
- registration of change of registered office and business address, etc.

Of course, this does not mean excluding notaries from the procedures: it only means providing an alternative to the participants in the procedure who know how to use digital tools. Anyone who wants to but does not have adequate certificates to use the START system could still use a notary public for everything that requires signature certification, i.e., document authentication.

Electronic submission of applications is recommended

Today, the application for registration in the court register can be submitted electronically (through a notary public or the START system) but also “manually” (by submitting the application and supporting documentation in paper form to the court by mail or personally).

We believe that precisely because of the establishment of a single system and a national register without local and territorial jurisdiction, the new system should, to the greatest extent, facilitate the electronic submission of applications, provided that, in that case, the applicants themselves could submit the applications through the START system if the documentation was created and verified digitally, while notaries would submit applications in cases where the documentation was certified or authenticated by them. In that case, the system could automatically assign cases throughout the country, regardless of where the application is submitted. In most cases, electronic application processing could be faster and more efficient.

Introduction of public announcement of decisions of the High Commercial Court, reasoned refusals of registration, urgent resolution

One of the main issues and objections raised by participants in registration procedures is the lack of transparency and the unavailability of valid practice. Decisions or opinions of the High Commercial Court are difficult to access or even completely unavailable. The so-called informal practice of individual court registers (which is why the numerous inconsistencies described in the chapter "State of play" arise) is even less available.

Therefore, when establishing the National Court Register, it is necessary to establish a clear and reviewed system of publication of all High Commercial Court decisions in registered cases and all interpretations and practices of the court register itself and their changes. If these decisions and positions are not published, they should not be applied to applicants who submitted registration applications in good faith, relying on the published practice and positions.

Additionally, any refusal of registration would have to be explained in detail, referring to existing decisions or positions (if they concern the subject of the procedure). Rationales should not be limited to referring to laws, by-laws, or general arguments – each applicant should receive clear and unambiguous information about why the application for registration was not accepted. If the refusal is not based on an existing decision or position but rather on the register's new position on an issue, this would have to be indicated so that applicants have a clear picture and can decide whether to change the application or appeal the rejection decision.

Additionally, in the event of problems related to meeting registration requirements, the procedure itself would be far more flexible and would allow for two-way communication between the applicant and the persons in charge of registration by phone, email, and other means, without formality. The goal would be to eliminate irregularities simply and transparently, in accordance with the valid published practice and positions, while officials in charge of the case could provide help and support in that process. Only if it was really not possible to carry out the registration, or if there was no adequate cooperation between the applicant and the persons in charge, would a decision on rejection be made.

Appeals on that decision would be resolved in an urgent procedure within 30 days. Since registration procedures often lead to situations on which a company's business depends, any delay or failure to resolve the case in the most urgent terms leads to damage. In the same way, clear consequences of court delays in making decisions should be introduced (e.g., for "administrative inaction") so that the register also takes seriously the fact that applicants suffer the consequences of delays in making decisions.

Conclusion

The Croatian system of registration and record keeping of legal entities and other related essential data is a key tool for achieving legal certainty and market confidence. However, after thirty years of rapid global technological progress, political stability, and a dynamic economic environment, the existing system of nine court registers requires a significant adjustment and is ripe for structural reform.

A comparative analysis of the EU systems tends towards register centralization and digitization, as well as higher transparency and easier access. The Croatian system can and should follow this example in order to adapt to modern needs and ensure efficiency and uniformity of action.

AmCham therefore proposes the following key reforms:

- **Consolidation of existing court registers:** Establishment of a single national court register, instead of the current nine court registers, as a state body independent of the existing commercial courts, which would ensure uniform practice and procedure, reduce differences between regions, and increase legal certainty.
- **Changes to procedural rules:** A more precise definition of the limits of the court register's authority would prevent arbitrary expansion of individual court registers' powers in matters where it was not originally intended for the court register to analyze the submitted documentation, while all interpretations of procedural rules for registration should be made public on the court register's website, without delay, so that all persons interested in registration can easily and quickly find out the basic conditions for legal and valid registration.
- **Electronic submission of applications:** Electronic submission of applications in registration procedures should be the standard, with the option of using the services of a notary public as an alternative. The use of digital tools for document verification, such as NIAS, would allow for faster and more secure submission of applications.
- **Public announcement of decisions and transparency:** Decisions of the High Commercial Court and relevant interpretations should be publicly available in order to ensure consistency and predictability in proceedings, while decisions on refusal of registration should be explained in detail and based on existing practice.
- **Urgent resolution of appeals:** Appeals against court register decisions should be resolved within 30 days, with clearly defined consequences for delays, in order to avoid damage to business entities.

By introducing these reforms, Croatia would significantly improve its court register system, making it more adapted to modern economic and business needs. Centralization, digitization, and transparency are key steps towards an efficient,

reliable, and modern system of keeping records on legal entities. AmCham is convinced that these changes will facilitate business operations and increase legal certainty and market confidence, significantly contributing to the Croatian economy's further development.

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