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Doing Business in the Slovak Republic

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Doing Business in the Slovak Republic

Abstract

[Excerpt] Since gaining its independence in 1993, the Slovak Republic has adopted new laws at a rapid pace. As a country in transition, its legal system continues to develop. Therefore, *Doing Business in the Slovak Republic* has been prepared by the Prague office of Baker & McKenzie and its Slovak counsel Marek & Partners as a general guide for those companies or persons considering an investment in the Slovak Republic. Since the legal landscape continues to be subject to frequent changes, this document should be taken as a basic guideline intended to assist investors in understanding the Slovak Republic's overall investment climate and should not be relied upon as legal advice.

The information contained herein is general in nature and is intended to provide an outline only of Slovak law and practice. It must not be relied on in relation to any transaction as a substitute to seeking specific legal advice. The law and its practice in the Slovak Republic are constantly changing and readers should be aware that any information soon becomes outdated. This remains true notwithstanding the access of the Slovak Republic to the EU on 1 May 2004 - and undertaking the process of harmonization of its laws with those of the EU.

Keywords

Slovak Republic, investment, law, business, Baker & McKenzie

Comments

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Doing Business in the Slovak Republic

2012



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Preface

Since gaining its independence in 1993, the Slovak Republic has adopted new laws at a rapid pace. As a country in transition, its legal system continues to develop. Therefore, *Doing Business in the Slovak Republic* has been prepared by the Prague office of Baker & McKenzie and its Slovak counsel Marek & Partners as a general guide for those companies or persons considering an investment in the Slovak Republic. Since the legal landscape continues to be subject to frequent changes, this document should be taken as a basic guideline intended to assist investors in understanding the Slovak Republic's overall investment climate and should not be relied upon as legal advice.

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We will be happy to provide you with updates on the material contained in this guide, or to provide you with further information regarding a specific industry or area of Slovak law in which you may have a particular interest.

This information is not offered as legal or any other advice on any particular matter. No client or other reader should act or refrain from acting on the basis of any matter contained in this document without seeking appropriate legal or other professional advice on the particular facts and circumstances at issue.

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1. Investment Incentives and Related Issues

The information contained in this summary is primarily based on current Slovak legislation - in particular, Act No. 595/2003 Coll., on Income Taxes, as amended (“**Income Tax Act**”), Act No. 561/2007 Coll., on Investment Aid (“**Investment Aid Act**”), Act No. 5/2004 Coll., on Employment Services, as amended (“**Employment Services Act**”), Act No. 193/2001 Coll., Support for Establishment of Industrial Parks (“**Industrial Parks Act**”), and Act No. 231/1999 Coll., on State Aid, as amended (“**State Aid Act**”).

Slovak legislation provides for various investment incentives for both foreign and domestic investors, including several possibilities to apply for tax and employment incentives.

1.1 Tax Incentives Granted under the Investment Aid Act

Section 30a of the Income Tax Act provides for the rules for tax incentives granted under a decision on investment incentives issued, based on the Investment Aid Act.

Under Section 30a of the Income Tax Act, a taxpayer to which a decision on the approval of investment aid containing tax relief pursuant to the Investment Aid Act was issued may claim tax relief up to the amount as specified in the Income Tax Act, provided that it simultaneously complies with the conditions laid down in the Investment Aid Act and special conditions pursuant to the Income Tax Act.

The taxpayer may claim the tax relief over not more than ten consecutive tax periods; the first tax period for which the tax relief may be claimed is a tax period in which the taxpayer was issued with a decision on the approval of investment aid and the taxpayer has complied with the conditions laid down in the Investment Aid Act and special conditions pursuant to the Income Tax Act, however no later than the tax period in which three years will have lapsed since the issuance of the decision pursuant to the Investment Aid Act.

The special conditions referred to above are:

- (i) during tax periods for which tax relief is claimed, the taxpayer will apply all provisions of the Income Tax Act reducing the tax base, to which it is entitled, in particular by means of:
 - Depreciation charges under the Income Tax Act;
 - Allowances and provisions for contingent liabilities under the Income Tax Act;
- (ii) during tax periods for which tax relief is claimed, the taxpayer is obligated to deduct a tax loss or a portion of the tax loss by which it did not reduce its tax base in the previous tax periods from the tax base in an amount corresponding to the tax base; if the tax base is higher than the amount of the tax loss by which the tax base was not reduced in the previous tax periods, the tax base shall be reduced by the amount of such loss;
- (iii) the taxpayer may not claim tax relief in the case of dissolution without liquidation, upon commencement of liquidation, or if a bankruptcy order has been issued or its business license has been revoked or suspended;
- (iv) the taxpayer shall act in compliance with provisions on adjustments of tax bases of non-resident related parties and adhere to the arm’s length principle when calculating the tax base in a mutual business transaction with a related party.

If the taxpayer fails to comply with any of the general conditions laid down in the Investment Aid Act or any of the special conditions specified above, except for the conditions specified in subsections (i) and (ii), the entitlement to the tax relief ceases to exist and the taxpayer is obligated to file a supplementary tax return for all tax periods in respect of which the taxpayer claimed the tax relief.

If the taxpayer fails to comply with the conditions specified above in subsection (i) or (ii), it forfeits its entitlement to the tax relief in the relevant tax period and is obligated to file a supplementary tax return for each tax period in which such a failure to comply occurred.

The taxpayer may claim tax relief of up to not more than the amount that, over the tax periods for which the tax relief is claimed, does not exceed, in aggregate, the value specified for this type of investment aid in the decision on the approval of investment aid issued pursuant to the Investment Aid Act.

In Section 30b, the Income Tax Act further provides for rules for tax incentives granted under the decision on investment incentives issued, based on Act No. 185/2009 Coll., on Incentives for Research and Development.

1.2 Incentives under the Investment Aid Act

Under the Investment Aid Act, a foreign investor may apply for state support (aid), which is aimed to support an initial investment and creation of jobs, and is provided in the following forms:

- (i) a subsidy for acquired material assets and immaterial assets;
- (ii) income tax relief under the Income Tax Act;
- (iii) a contribution for creation of new jobs under a special regulation;¹
- (iv) transfer of immovable property or exchange of immovable property at a price lower than a general asset's value.

The conditions for the granting of investment aid in the industrial production sector, except for the sectors and operations under a special regulation², are the following:

- (i) the setting-up of a new enterprise, the extension of an existing enterprise, diversification of the output of an enterprise into new additional products or a fundamental change in the production program of an existing enterprise, or purchase of an enterprise;
- (ii) the acquisition of new production and technology equipment intended for production purposes with the minimum value of 60% of the total value of purchased non-current materials and non-current immaterial assets;
- (iii) the acquisition of non-current materials and non-current immaterial assets in an amount of at least EUR 14 mil. of which at least EUR 7 mil. must be covered by the equity of a legal entity or own resources of a natural person-entrepreneur;
- (iv) production, activities, processes, constructions or production and technology equipment complying with the environmental protection conditions pursuant to special regulations,

¹ Section 53d of Act No. 5/2004 Coll., on Employment Services, and amendments to certain acts as amended

² Article 1(2 and 3) of Commission Regulation (EC) No. 800/2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (Official Journal of the European Union, L 214/3, August 9, 2008)

- (v) revenues earned from the business activities specified in the investment plan representing at least 80% of total revenues of the beneficiary.

If the investment plan is to be implemented in a district with the unemployment rate for the calendar year immediately preceding the year in which an investment aid application was filed higher than the unemployment rate in the Slovak Republic

- a) the amount specified under clause (iii) above is reduced to EUR 7 mil., of which at least EUR 3.5 mil. must be covered by the equity of a legal entity or own resources of a natural person-entrepreneur;
- b) the value under clause (ii) above is reduced to 50 %.

If the investment plan is to be implemented in a district in which the unemployment rate for the calendar year immediately preceding the year in which an investment aid application was filed is by at least 50 % higher than the unemployment rate in the Slovak Republic

- A. the amount specified above under clause (iii) above is reduced to EUR 3.5 mil., of which at least EUR 1.75 mil. must be covered by the equity of a legal entity or own resources of a natural person-entrepreneur;
- B. the value under clause (ii) above is reduced to 40 %.

If the investment plan is to be implemented by a small enterprise or a medium-sized enterprise³, the amount specified above under clause (iii), clause a) or clause A) is reduced to one half.

The conditions for the granting of investment aid to technology centres are:

- (i) the setting-up of a new technology centre, or the extension of an existing technology centre;
- (ii) the acquisition of non-current material and non-current immaterial assets in an amount of at least EUR 0.5 mil., of which at least 50% must be covered by the equity of a legal entity or own resources of a natural person-entrepreneur;
- (iii) at least 60% of the total work force will be employees with a university education.

The conditions for the granting of investment aid to strategic service centres are:

- (i) the setting-up of a new strategic service centre, or the extension of an existing strategic service centre;
- (ii) the acquisition of non-current material and non-current immaterial assets in an amount of at least EUR 0.4 mil., of which at least 50% must be covered by the equity of a legal entity or own resources of a natural person-entrepreneur;
- (iii) at least 30% of the total work force will be employees with a university education.

The conditions for the granting of investment aid for the tourism industry are:

- (i) the setting-up of a new comprehensive tourism centre, or the extension of an existing comprehensive tourism centre with new services;

³ Annex 1 of Commission Regulation (EC) No. 800/2008

- (ii) the acquisition of new technology equipment intended for the provision of services with the minimum value of 40% of the total value of purchased non-current material and non-current immaterial assets;
- (iii) the acquisition of non-current material and non-current immaterial assets in an amount of at least EUR 10 mil. of which at least EUR 5 mil. must be covered by the equity of a legal entity or own resources of a natural person-entrepreneur;
- (iv) services, activities, processes, constructions or equipment complying with the environmental protection conditions pursuant to special regulations;
- (v) revenues earned from the business activities specified in the investment plan representing at least 80% of the total revenues of the beneficiary.

If the investment plan is to be implemented in a district with the unemployment rate for the calendar year immediately preceding the year in which an investment aid application was filed exceeding the unemployment rate in the Slovak Republic,

- a) the amount specified above under clause (iii) is reduced to EUR 5 mil. of which at least EUR 2.5 mil. must be covered by the equity of a legal entity or own resources of a natural person-entrepreneur;
- b) the value under clause (ii) above is reduced to 20%.

If the investment plan is to be implemented in a district in which the unemployment rate for the calendar year immediately preceding the year in which an investment aid application was filed is by at least 50% higher than the unemployment rate in the Slovak Republic, the amount specified above under clause (iii) is reduced to EUR 3 mil. of which at least EUR 1.5 mil. must be covered by the equity of a legal entity or own resources of a natural person-entrepreneur.

The investment incentives are granted on the basis of a decision on granting investment incentives, which is issued by the Ministry of Economy of the Slovak Republic or by the Ministry of Transportation, Construction and Regional Development of the Slovak Republic in case of investment aid for the tourism industry and based on an application submitted by an investor (the “**Decision**”). The Decision requires the prior approval of the Government of the Slovak Republic (the “**Slovak Government**”). When approving the provision of investment incentives, the Slovak Government considers the significance of the initial investment for the national economy and the impact of the granting of investment aid on competition in the relevant market.

Under the Investment Aid Act, an investment aid beneficiary is a legal entity or a natural person-entrepreneur with its registered office in the Slovak Republic, and registered with the Commercial Register or the Trade Licensing Register, who will implement an investment plan in the Slovak Republic; the beneficiary must be 100%-owned by the applicant, or the applicant must be a controlling person of the beneficiary.

1.3 Employment Incentives

1.3.1 Employment Grants

An employer having received investment incentives on the basis of the Decision on Investment Incentives providing for a contribution for creation of new jobs is entitled to a contribution for the creation of jobs.

1.3.2 Training Grants

An employer having received investment incentives on the basis of the Decision providing for a contribution for training of employees hired for newly created work positions is entitled to be granted a contribution for training of the employees hired for the new work positions.

The contribution is provided by the relevant district labor office on the basis of a written agreement entered into between the office and the employer in the amount limited by EU regulation.⁴

1.4 State Aid Legislation

Please note that the investment incentives described above (including the tax incentives described in Section 1.1 hereof) are considered to be state aid under the State Aid Act. As a result, in order to be granted investment incentives, investors must also meet the conditions set forth in the State Aid Act.

1.5 Industrial Parks

So called “industrial parks,” i.e. special areas, equipped with the necessary infrastructure and facilities for performing industrial activities (production) or services, exist in the Slovak Republic. Such industrial parks are developed either by private investors or municipalities. Under the Industrial Parks Act, a municipality may receive certain subsidies from the Slovak Government for establishing an industrial park within the territory of such municipality.

Since the Slovak Investment and Trade Development Agency (SARIO) plays an important role in the process of establishment of industrial parks by municipalities and also collects information on industrial parks developed by private investors, we believe that detailed information on existing or contemplated industrial parks could be best obtained during a meeting with the representatives of SARIO.

⁴ Commission Regulation (EC) No. 800/2008

2. Forms of Corporations and Business Vehicles

The Slovak Commercial Code recognizes a variety of corporations and forms of business vehicles (some of which, such as a branch office, are not legal entities) under which it is possible to do business in the Slovak Republic.

A corporation is a legal entity (an artificial person) created in accordance with the statutes. The corporate entity is separate and distinct from the legal personalities of those who own and manage the corporation. In the Slovak Republic, as elsewhere, corporate law is mostly statutory, and most statutory laws relating to general business corporations (i.e. corporations for profit) are contained in the Slovak Commercial Code.

2.1 Principal Characteristics

In general, corporations have the following principal characteristics:

a. Limited Liability

Because a corporation is a separate legal entity, its debts and obligations are treated as being distinctly its own; its shareholders and managers are ordinarily not liable for corporate indebtedness.

b. Entity Powers

As a separate entity, a corporation can contract in its own name, sue or be sued, own or convey property, and be held criminally liable for crimes that it commits.

c. Centralized Management

Control of a corporation is centralized by a board of directors elected by shareholders/participants. In general, the shareholders/participants have only extremely limited power to make management decisions (except insofar as they may elect and remove directors).

d. Continuity of Existence

Unless the duration is specifically limited in the memorandum of incorporation/articles of the corporation, a corporation's duration is "perpetual," i.e., it continues until it is dissolved, merged, or consolidated in accordance with the Code. The death, withdrawal, bankruptcy, or incapacity of any of its shareholders/participants or managers has no effect on the corporation's existence.

e. Free Transferability of Interests

The interest of the corporation's owners is divided into ownership interests (shares), and these ownership interests (shares) may be freely transferred; that is, another person may be fully substituted in place of the transferor as holder of the ownership interests (shares) in the corporation.

f. Statutory Sources of Authority

A corporation is a creature of statute; it and its managers and agents have only such authority to act as is conferred by or pursuant to statutes (principally the Commercial Code), or legally permitted provisions of the certificate of incorporation or bylaws.

Foreign entities may also establish branches in the Slovak Republic with especially favorable treatment for OECD member country business entities - and now also EU countries. The most commonly used corporate forms are the limited liability company and joint stock company. Foreign individuals may also do business in the Slovak Republic on the basis of a trade license issued by the Slovak Trade Licensing Office.

The formation of any business organization starts with the execution of the founding documents of the entity. The founders may contribute to the registered capital either in cash or through in-kind contributions (e.g. real estate, IP /IT rights, assets, etc.).

g. Licenses for Performing Business Activities

Since all business organizations are required to hold a trade license (or one of the special licenses) entitling them to perform business activities, the established company must apply for such license to a trade office or a trade department of the municipality office, before its incorporation.

The type of business license required depends on the object(s) of business of the branch or legal entity. Certain activities such as banking, insurance and broadcasting require special licenses and permits issued directly by the relevant state authority, such as the National Bank of Slovakia (“NBS”).

In addition, since certain categories of activities require fulfillment of qualification and educational requirements (classified under **notified - craft or qualified trades** (*remeselné, viazané*)), when applying for the business license, a legal entity must employ a responsible person (*zodpovedný zástupca*), who meets the qualification criteria as stipulated by the Trade Act and is a Slovak resident.⁵

No qualification criteria apply to free trades (e.g. the sale of goods, consulting services); such trades are to be notified to the Trade Licensing Office only.

Subject to obtaining the license, the company is then incorporated; i.e. registered with the Commercial Register held by the District Courts. Under the Act on the Commercial Register, the Commercial Register will register the company within 5 business days from receipt of the application to incorporate/register the corporation. The Commercial Register could also state in the registration the date of incorporation, if requested by the applicants in the application.

h. Winding Up of Companies

The winding up of a company may be followed by (i) a merger with another company (where one company is merged out of existence), an acquisition by another company or a division into several companies or (ii) liquidation. The company may also transform its legal form.

Liquidation follows the decision of shareholders to wind up the company. The liquidator (*likvidátor*) appointed by the company performs the liquidation; if the company fails to appoint the liquidator, the liquidator is appointed by the court. The creditors are asked to present their receivables vis-a-vis the company within a period of at least three months and the known creditors are notified of the liquidation. Shareholders are not entitled to any liquidation balance until all known creditors are satisfied.

2.2 Types of Corporations and Business Vehicles

The legally recognized corporations in the Slovak Republic are:

- (i) limited liability company (the name of the corporation must contain the word “*spoločnosť s ručením obmedzeným*”; or its abbreviation “s.r.o.” or a “*spol. s r.o.*”);
- (ii) joint stock company (the name of the corporation must contain the word “*akciová spoločnosť*” or its abbreviation “a.s.” or an “*akc. spol.*”); banks, dealers, insurance companies and investment companies must be incorporated in this form;

⁵ An employment requirement does not apply if the responsible person is a partner, participant or a member of the board of directors, an executive of the legal entity or the authorized representative of the branch office.

- (iii) limited commercial partnership (the name of the corporation must contain the word “*komanditná spoločnosť*” or its abbreviation “k.s.” or a “kom. spol.”); and
- (iv) general commercial partnership (the name of the corporation must contain the word “*verejná obchodná spoločnosť*” or its abbreviation “v.o.s.” or a “ver. obch. spol.”); law firms or auditing firms must be incorporated in this form.

Other business vehicles which are typically utilized by foreign investors are:

- (i) branch office of foreign corporation (*organizační složka*), which is, however, not a separate legal entity (many banks, insurance companies, pension funds, investment companies operate in the Slovak Republic in such a form);
- (ii) co-operative (*družstvo*); and
- (iii) sole entrepreneur (*fyzická osoba - podnikateľ*) under a trade license.

All of the above vehicles must be registered in the Commercial Register, save for a sole entrepreneur. All filings are to be done in the standard forms prescribed by the Ministry of Justice.

The Slovak Commercial Register no longer requires a residence permit visa for non-Slovaks who are citizens of EU member countries or citizens of an OECD country.

In addition, Slovak law provides for the possibility of establishing associations of legal entities (*združenie*). Such associations, however, do not need to be registered and are not legal entities.

2.2.1 Limited Liability Company – s.r.o. (Sections 105 – 153 of the Commercial Code)

The principal features of an s.r.o. are as follows:

- (i) There must be a minimum of 1 (one), and a maximum of 50 (fifty), participants in an s.r.o. A one-man company cannot be the sole founder or sole participant of the limited liability company. The physical person - individual can be a sole participant in no more than three limited liability companies. If the company has only one participant, and such company is declared bankrupt, this sole participant can establish another company no earlier than one (1) year after the settlement of all liabilities related to the bankrupt property as per the enforceable court’s decision.⁶
- (ii) An s.r.o. is not a flow-through entity for Slovak tax purposes.
- (iii) If the s.r.o. is to have one participant only, the company can be formed on the basis of a simple notarial deed, with no need to prepare a detailed and lengthy constituent document (by-laws). If there is to be more than one participant, a memorandum of company (“*spoločenská zmluva*”) must be prepared and signed before a Slovak notary by all executives.⁷

⁶ This provision came into force on January 1, 2002 in order to bring Slovak legislation in line with the recommendation of Regulation No. 89/667/EHS.

⁷ The memorandum of company contains the following: (i) the name of the company and its seat (i.e. place where the management of the company is actively performed); (ii) names and seats/residence of the participants; (iii) scope of business activities (no catch-all purpose clause is permitted by Slovak laws); (iv) the amount of the registered capital and the amount of each participation interest and the amount paid up; assessment of the in-kind contribution – appraisal is necessary; (v) names, residences and birth dates of the first directors and the manner in which they act and sign on behalf of the company; (vi) identification of the ownership interests administrator; (vii) the amount of the reserve funds and the manner in which such funds will be maintained up to a mandatory 10% of profit; (viii) benefits provided to the

- (iv) No shares are issued to the participants; rather, the participant becomes a holder of a participation interest (ownership interest) in the s.r.o. upon incorporation of the s.r.o., or can purchase such ownership interest by a transfer agreement, which must be acknowledged before a notary public (subject to any transfer restrictions or pre-emption rights contained in the s.r.o.'s by-laws or the Slovak Commercial Code).
- (v) The liability of participants in an s.r.o. is limited (up to the unpaid value of their ownership interests). No piercing of the corporate veil, as a means for attributing corporate liability to owners (shareholders, participants), of a legal entity is available. The general rule is that participants are not liable for a corporation's debts.
- (vi) The company must create a reserve fund (to cover losses of the company) at the time of its incorporation or at the time when such company achieves a profit for the first time. The amount of the funds must be maintained up to the amount of at least 10% of the registered capital of the company, i.e. if the company has a minimum amount, the reserve funds must be at least EUR 500.
- (vii) The ownership interest in the company can be divided, inherited, transferred, joined or pledged (can serve as a security interest). The security interest over the ownership interest is validly created at the moment of its registration in the Commercial Register.
- (viii) The company can acquire an ownership interest only in certain circumstances. A controlled company cannot acquire an ownership interest in the controlling company, save if such is acquired in legal succession to all rights and liabilities of the participant – former owner of the ownership interest.
- (ix) An s.r.o. has no board of directors. The mandatory bodies of the company are (i) general meeting of the participants; and (ii) directors – executives (one or more) who represent the company (“*konateľ*”).⁸ There is no need to establish a supervisory board - establishment of a supervisory board is discretionary.
- (x) The powers of directors can only be limited by the company's memorandum or by the general meeting; however, such restrictions have no effect on third parties. Therefore, the company will be bound by the *ultra vires* activities of its directors - even if such limitations of powers were known to a third party; the company has a right to indemnification from such director for any such acts exceeding the internal restrictions on his/her powers.
- (xi) Any agreement(s) between the company and its directors intending to exclude or limit the director's liabilities in the events of a breach of their duty of care or duty of loyalty are prohibited.
- (xii) Minimum capitalization is EUR 5,000. If there is one participant, the initial capital must be fully paid by the time of submission of the petition for incorporation. If there are two or more participants, at least EUR 2,500 of the registered capital and 30% of each participant's initial capital must be paid by the time of submission of the petition for incorporation. The remainder of the initial capital must be paid within 5 years of registration of the s.r.o. in the Commercial Register, or earlier if so stated in the memorandum of the company, subject to a default interest of 20%. The amount of default interest for late payment is discretionary. The minimum contribution of each participant is EUR 750.

founders of the company, if any; and (ix) likely costs and expenses necessary for formation and incorporation of the company.

⁸ A director, acting as a statutory representative of the company, who is neither Slovak, nor a citizen of an EU member country or citizen of an OECD country, must have a Slovak resident permit.

- (xiii) Changes to any information registered in the Commercial Register must be registered with the Commercial Register and the directors of the company are responsible for issuing a complete/full memorandum of association every time such information is amended.

2.2.2 Joint Stock Company – a.s. (Sections 154 - 220a)

The principal features of an a.s. are as follows:

- (i) A joint stock company may be established by a legal entity or two or more individuals.⁹ A joint stock company may be established: (i) by a private agreement on share subscription without a public offer to subscribe shares or (ii) by a public offer to subscribe shares. Regardless of the method of establishment, the registered capital of a joint stock company must be at least EUR 25,000. The shares must be completely subscribed and a minimum of 30% of the nominal value of the shares must be paid prior to the constituent general meeting of shareholders.
- (ii) A joint stock company is not a flow-through entity for Slovak tax purposes.
- (iii) Financial assistance is prohibited (§161e).
- (iv) The shareholders are not held liable for the company's obligations; the company is liable through its assets.
- (v) A joint stock company may exist as a **private** or **public** company. It is considered to be public if part or all of its shares are admitted to trading on a regulated market located or operated in one of the Contracting States of the European Economic Area. The main difference between these two forms of companies is the restrictions on transfer, merger, squeeze rights and the reporting requirements imposed on the public corporations.
- (vi) Capital stock is divided into shares, which can be issued as certified shares (order or name) or as book-entry securities recorded in the Central Securities Depository (all bearer shares in a Slovak joint stock company must be recorded in the Central Securities Depository; therefore no "true" bearer shares can be issued by a Slovak joint stock company).
- (vii) The shares of the company may also be owned by two or more persons. The company can, in certain instances, acquire its own shares the nominal value of which in aggregate does not exceed 10% of the registered capital.
- (viii) The shares could be divided, transferred or the rights attached to such shares could be separately transferred or assigned. The company's bylaws could, in some manner, restrict the transfer of shares. Such restriction must be recorded and, therefore, seen on the extract from the Commercial Register.
- (ix) The company could issue voting or non-voting¹⁰ preferred shares with the various series/manner of favoritism/priority to the dividends. The nominal value of preferred shares must not exceed 50% of the joint stock company's registered capital. The right to receive an advance on dividends is prohibited as well as the creation of any preemptive rights to receive the company's profit upon its liquidation. The issuance of shares with the right to interest is also prohibited.

⁹ One physical person cannot establish a joint stock company. After the company's incorporation, all shares could, however, be acquired by one physical person. There is no maximum limit as to the number of shareholders.

¹⁰ Such non-voting preferred shares will temporarily acquire voting rights when the general meeting decides that no preferred dividends will be paid or when such payment is delayed.

- (x) The company can neither issue different classes of ordinary shares, nor can it have non-voting ordinary shares. The joint stock company may issue convertible bonds or preemptive bonds. Such bonds may be issued up to an amount equal to 50% of the registered capital (§207).
- (xi) The mandatory bodies of the company are: (i) board of directors which can consist of only one member;¹¹ (ii) a supervisory board of at least three members;¹² and (iii) the general meeting of shareholders.
- (xii) At least one third of the members of the supervisory board must be elected by employees, if an a.s. has over fifty employees working more than half a work week (as described by certain regulations at the time of the general meeting).
- (xiii) A joint stock company is required to create a reserve fund in the amount of 10% of the registered capital upon its establishment; which is to be used to finance the company's losses (or the amount exceeding this statutory amount could be used, for example, for distribution to the company's shareholders, if the board of directors or the supervisory board so decides). At least 10% of the company's annual net profits must be contributed to the reserve fund, until the amount of the reserve fund is equal to the amount stipulated in the articles of association, but not less than 20% of the company's registered capital (§67, §217).
- (xiv) The minority shareholders rights (shareholders holding shares, the nominal value of which exceeds 5% of the registered capital, or less if stated in the articles of association, and who holds such shares for more than 3 months) consist of a right to **(i) request the board of directors** to convene an extraordinary general meeting with a specified agenda or to request the board to commence an action in order to **return payments**, which the company paid contrary to the provision of the Slovak Commercial Code **to its shareholders**; **(ii) request the supervisory board** to inspect the performance of powers of the board of directors in certain matters; especially to procure the supervisory board to damages or other claims in the corporation's favor against the board of directors; and **(iii) to commence a derivative action suit in the above** (§§ 181 and 182).

2.2.3 General Commercial Partnership – v.o.s. (§76 - §93)

The principal features of a general commercial partnership are as follows:

- (i) A partnership agreement¹³ of at least two partners who carry out activities under the same business name.
- (ii) Each partner is a general partner - jointly and severally liable for all of the obligations of the partnership;¹⁴ thus no contribution or capitalization is required by law to establish a legal entity.
- (iii) Each partner could, by law, act on behalf of the company, unless otherwise stated in the partnership agreement. Such statutory rights of only some of the partners are effective and could be enforced against third parties, if the name of the partners entitled to act on behalf of the company are entered into the Commercial Register (evidenced by the extract).

¹¹ A member of the board of directors who is non-Slovak, nor a citizen of an EU member country, or citizen of an OECD country, must have a Slovak residence permit.

¹² There is no need for a member of the supervisory board who is non-Slovak to have a Slovak residence permit.

¹³ The partnership agreement must contain the business name and the seat of the company; identification of the partners and the scope of business activities.

¹⁴ The new partner is liable for the obligations of the partnership incurred prior to his/her accession to the entity; however, he/she could be required to be indemnified for any damages paid by him/her. The departing partner is liable for the obligations of the partnership incurred prior to his/her exit.

- (iv) The profits are shared equally among the general partners.
- (v) The partnership may be a flow-through entity for Slovak tax purposes.

2.2.4 Limited Commercial Partnership – k. s. (§ 93- §105)

This partnership is a combination of the general partnership and the limited liability company.

The principal features of the limited commercial partnership are as follows:

- (i) A partnership agreement¹⁵ entered into by at least one limited partner (*komanditista*) and one general partner (*komplementár*) is necessary to found the partnership.
- (ii) Limited partner(s) are liable up to the unpaid amount of their contribution(s), which must be at least EUR 250; the general partner(s) face unlimited liability with respect to the obligations of the partnership.
- (iii) Only the general partner(s) are authorized to carry out the commercial management of the partnership and to act on behalf of the partnership as its statutory representative. In other matters, general partner(s) and limited partner(s) decide jointly by a majority of votes, unless the partnership agreement states otherwise.
- (iv) Limited partners are liable to the same extent as general partners for obligations incurred under contracts entered into without authorization (e.g. where no *ad hoc* power of attorney was granted by the partnership).

2.2.5 Branch Office

The principal features of a branch office are as follows:

- (i) A branch is not a separate legal entity; as a result, the offshore legal entity which establishes the branch would be liable for all obligations and consequences resulting from the activities of the branch in the Slovak Republic.
- (ii) There are no capitalization requirements for a branch.
- (iii) The authorized representative of a branch in the Slovak Republic (if neither a Slovak or EU country citizen, nor a citizen of an OECD country) must possess a Slovak residence permit.
- (iv) Subject to the provisions of any applicable tax treaty, a branch would be subject to Slovak taxation on all income attributed to the activities of the branch.
- (v) A branch is required to maintain its books on an accrual basis.

2.3 Choice of Entity or Vehicle

Most foreign investors utilize the s.r.o. (a limited liability company), the a.s. (a joint stock company) or the branch as the vehicle for carrying out their business activities in the Slovak Republic.

The principal advantage of a branch office is that there are no capitalization requirements. The disadvantage of a branch is that it is not a separate legal entity, thus exposing the “parent company” to direct liability for the actions of the branch. In addition, unlike a Slovak legal entity, a branch is not permitted to own land and buildings (although it may lease premises).

¹⁵ The partnership agreement must contain the business name and seat of the company, identification of the partners – limited partners (the amount of their contribution) and general partners – as well as the scope of business activities.

The choice between an s.r.o. and an a.s. often depends on the following factors:

	s.r.o.	a.s.
Minimum capital (EUR)	EUR 5,000	EUR 25,000
Minimum no. of appointments required (likely triggers a need to obtain Slovak residence permit)	1 (executive)	4 (1 member of the board of directors and 3 members of the supervisory board)
Supervisory Board	Optional	Mandatory
Ability to be traded on a recognized Slovak stock exchange	No	Yes
Registrable at the Central Securities Depository	No	Yes
Reserve Fund	Yes (once the company achieves profit) up to 10%	Yes upon the company's incorporation – up to 20%

3. Income Taxation

3.1 General

Slovak tax legislation provides for the taxation of individuals in the form of personal income tax and legal entities in the form of corporate tax. In addition, there are certain sources of income which are not included in either personal or corporate income tax bases; such sources of income are subject to a different method of tax collection, which requires the payer to withhold the tax on behalf of the recipient (“withholding tax”).

3.2 Tax Registration

Taxation is administered by local competent tax offices, which report to the regional tax directorates. The supreme tax authority is the Ministry of Finance, represented by the Financial Directorate.

Legal entities and individuals (other than employees) who receive permission to undertake business activities in the Slovak Republic (in the form of a business license (see Section 2 above)) must apply for tax registration no later than by the end of the calendar month following the calendar month in which they had received such business license. The application for tax registration is made to the local tax authority in which a legal entity or individual has its registered office or resides. The taxpayer is also obligated to notify the tax authorities by the end of the calendar month following the calendar month in which it had started to generate taxable income or receive gains subject to income tax. Similarly, when a foreign entity creates its permanent establishment in the Slovak Republic, it is required to notify the tax authorities of such creation by the end of the calendar month following the calendar month in which it had created its permanent establishment in the Slovak Republic. The taxpayer does not have a registration duty in the Slovak Republic, provided that the Slovak sourced income is subject to withholding tax or the income is qualified as generated from a taxpayer’s dependent activity.

If local competence cannot be established under the paragraph above, particularly in the case of entities or persons which are Slovak non-residents for tax purposes, this shall be determined according to the location of the particular permanent establishment or the place in which the person liable for tax carries out his/her main activity in the Slovak Republic. In all other cases, entities or persons must report all their income which is derived from Slovak sources to the Tax Office for Bratislava.

3.3 Corporate Income Tax

Income generated by legal entities (including general partnerships) is subject to a general tax rate of 19%. Capital gains of legal entities are treated as ordinary income and taxed at the normal rate of 19%.

For Slovak legal entities, income subject to taxation is generally gross worldwide revenue. Companies that do not have their seat or place of management in the Slovak Republic are subject to Slovak taxation only on their Slovak-sourced income. Branches of foreign companies are generally regarded as permanent establishments of foreign enterprises in the Slovak Republic for tax purposes. Branches are separate accounting units and are obligated to keep double entry bookkeeping under Slovak accounting rules. The tax authorities can deem the profit of a branch to be that of a similar sized entity, if it is not possible to ascertain the actual profit attributable to the activities of the branch in the Slovak Republic.

3.4 Personal Income Tax

Under tax legislation, individuals who have a permanent address in the Slovak Republic, or who are present in the Slovak Republic for more than 183 days during a calendar year, are deemed to be Slovak tax residents. Slovak tax residents are taxed on their worldwide income. The provisions of an applicable tax treaty may affect the tax status of an individual.

The current flat tax rate for individuals is 19%.

Taxable income for individuals generally includes:

- (i) income from dependent activities – including salaries, wages, bonuses, other compensation of a similar nature and most benefits in kind. Employment income also includes fees paid to directors and shareholders of private limited liability companies and to members of statutory and other bodies of business entities;
- (ii) income from self-employment, business and lease activities;
- (iii) income from capital; and
- (iv) other income.

An individual's tax base is the amount by which a taxpayer's taxable income in the relevant calendar year exceeds tax-deductible expenses incurred to generate such income.

Certain income for individuals is, under certain conditions, exempt from tax, including:

- (i) income from the sale of movable assets not included in a taxpayer's business property (this exemption does not include shares and other participation interests in business entities);
- (ii) income from dependent activities performed in the Slovak Republic by a Slovak non tax-resident for an employer seated outside of the Slovak Republic, provided that such person does not spend more than 183 days in the Slovak Republic in any following 12 month period, the income is not borne by a Slovak permanent establishment and the income is not paid for artistic or sporting activities;
- (iii) travel expenses provided to an employee (up to statutory limits); and
- (iv) mandatory social security contributions, which are paid by an employer on behalf of its employee.

3.4.1 Deductible Expenses

Expenses must relate to taxable income and must be sufficiently proved by a taxpayer to be recognized as tax deductible. Expenses, which can be deducted for tax purposes include, *inter alia*:

- (i) tax depreciation of tangible assets and amortization of intangible assets (see the following paragraphs on depreciation and amortization);
- (ii) where the sale of an asset subject to depreciation occurs, the tax net value of a tangible asset or net book value of a fixed intangible asset;
- (iii) insurance relating to a business activity;
- (iv) mandatory health and social security payments made by employers;
- (v) rental paid for the lease of business premises;
- (vi) financial leasing installments (subject to certain regulated limits) and ordinary leasing installments;
- (vii) banking and other professional fees (e.g. brokerage fees for securities trades);

- (viii) travel expenses (e.g. expenditure on fuel up to certain statutory limits);
- (ix) personal costs and other employee benefits in the scope provided for by labor law statutory provisions.

The tax base may be reduced by the tax losses from the previous years, which may be carried forward for a period of up to the following seven years. Tax losses cannot be carried back.

3.4.2 Depreciation

Tangible assets, whose price is more than EUR 1,700 and which have an operational life of more than one year, are depreciated.

The period over which an asset is depreciated varies according to the manner in which the asset is classified in the tax law (there are four different asset categories).

Depreciation Group	Length of Depreciation	Depreciated Assets
1	4 years	Computers, laboratory equipment, telecommunication equipment
2	6 years	Tanks, elevators, fridge machines, clearing machines, machinery equipment, power energy sources
3	12 years	Prefabricated buildings, electricity production equipment, air-conditioning
4	20 years	Buildings

Certain tangible assets may not be depreciated (e.g. natural resources and works of culture and art). Taxpayers can elect to depreciate assets by one of two depreciation methods (the methods allow either a straight-line depreciation or an accelerated depreciation approach); however, once the depreciation method for an asset is adopted, it may not be changed.

Also, intangible assets whose price is more than EUR 2,400 and which have an operational life of more than one year are amortized. Any intangible assets must be amortized within 5 years. Accounting amortization charges are also relevant for tax purposes.

3.4.3 Income Tax Returns

Individuals and legal entities are required to submit a tax return, at the latest within three months following expiration of the annual taxable period (unless the individual has merely income from dependent activities and annual tax reconciliation is made by the employer). Income tax returns must be submitted to the district tax authority in which the individual or legal entity submitting the tax return has its office or resides.

3.5 Prepayments of Tax

The following tax prepayments are required to be paid, both by individuals and legal entities, according to the tax liability of the previous year:

Tax Liability of Previous Year	Frequency	Amount of Prepayment
EUR 1659,70 – EUR 16,596.96	Quarterly	1/4 of previous year's tax liability
Over EUR 16,596.96	Monthly	1/12 of previous year's tax liability

3.6 Withholding

Where the tax law requires individuals or legal entities to withhold taxes, the withheld amounts must be paid to the tax authorities by the fifteenth day of the month following the month in which the withholding took place. Individuals or legal entities who are required to withhold from payments abroad must report the payment to the tax authorities within fifteen days from the date when the obligation to withhold arose.

The following types of payments are subject to a 19% withholding tax, if such payments are made to tax non-residents:

- (i) remuneration for provision of services, including commercial, technical or other consultancy services, management and intermediary activities and similar activities performed on the territory of the Slovak Republic;
- (ii) remuneration for the activities of an artist, sportsman and co-operated person(s) and from other similar activities performed personally or valorized on the territory of the Slovak Republic, directly or through an intermediary person;
- (iii) payments from Slovak tax residents and Slovak permanent establishments in the form of:
 - Income for use or right to use industrial property, software, designs, models, plans, technology and other know-how
 - Income for use or right to use a copyright and rights similar to copyrights
 - Interest and other yields on provided loans and credits and on derivatives
 - Income from lease and other use of moveable property located on the territory of the Slovak Republic

The following income is also subject to Slovak withholding tax of 19%, regardless of who obtains the relevant income:

- (i) interest and similar yields on loans and credits, current accounts, savings books;
- (ii) income from a participation certificate in a trust unit;
- (iii) monetary winnings from lotteries and similar games;
- (iv) monetary winnings from public and sport competitions;
- (v) income from the lease of real estate;
- (vi) income from bonds.

The provisions of an applicable tax treaty may reduce the amount of withholding tax.

Dividends are not subject to any tax, regardless of whether the recipient is considered a tax resident or tax non-resident, or whether the recipient is a business entity or individual.

3.7 Value Added Tax (“VAT”)

3.7.1 General

VAT is a tax levied upon the transfer of goods, the provision of services including the transfer or use of rights, the transfer of ownership in real property and on imported goods.

The following goods and services are exempt from VAT with the right for deduction of input VAT:

- (i) export of goods;
- (ii) international transport of goods and regular personal international transport;
- (iii) export of services (e.g. legal, accounting, advertising and recruitment services) when they are provided to foreign entities.

The following goods and services are exempt from VAT without the right for deduction of input VAT:

- (i) postal services;
- (ii) radio and television broadcasting services;
- (iii) financial services, such as provision of a loan or credit, operating bank accounts;
- (iv) insurance services;
- (v) training, education and scientific services;
- (vi) medical and health care services;
- (vii) social care services;
- (viii) provision of lotteries and similar games;
- (ix) services supplied to members of political parties, political movements, churches, religious societies and civil associations;
- (x) services related to sports or physical education;
- (xi) cultural services;
- (xii) collection of financial means;
- (xiii) sale of postage stamps and duty stamps; and
- (xiv) transfer and lease of real estates.

3.7.2 Payers of VAT

Persons or entities having a turnover exceeding EUR 49,790 during the past 12 successive months are required to pay VAT and must register, for VAT purposes, with the district tax authority by the 20th day of the month following the month in which their turnover exceeds the stated threshold.

Legally established associations whose collective turnover exceeds EUR 49,790 during the previous 12 months are liable for VAT and members of the association must individually register for VAT purposes.

Individuals or entities may voluntarily elect to register for VAT purposes and, thereafter, become liable for payment of VAT, even if they have not exceeded the statutory threshold.

3.7.3 VAT Rates

A rate of 20% is levied on all taxable supplies except for certain categories of goods (e. g. pharmaceutical products, books, equipment for physically disabled persons etc.) on which a rate of 10% is levied.

3.7.4 VAT Base

VAT is calculated on the VAT base for the taxable supply, multiplied by the applicable tax rate for the goods or services in question. The VAT base for goods and services is their price. In cases where the price is not known or agreed, the tax base is determined as the “usual market price” of the taxable supply.

3.7.5 VAT Period, Returns and Payment

The tax period for the submission of VAT returns and payments is dependent upon turnover:

Turnover for Previous Calendar Year	VAT Period
>= EUR 331,939.19	Calendar month
< EUR 331,939.19	Calendar quarter

VAT returns must be submitted within 25 days of the end of the applicable VAT period. Payment of VAT is due at the same time the VAT return is due.

3.7.6 VAT Refunding

An application for VAT refund can be submitted for a maximum period of one calendar year and the amount of the VAT refund requested must be at least EUR 50. An application for VAT refund can be submitted for a period shorter than one calendar year, but not less than three calendar months, if the amount of the VAT refund requested is at least EUR 400. A VAT refund can be requested even with respect to a shorter period of time than three calendar months, if this period represents the remainder period of the calendar year and the amount of the VAT refund requested is at least EUR 50.

Deduction of input VAT is not possible for the following received supplies:

- (i) supplies exempt from VAT without the right for input VAT (e.g. financial services); and
- (ii) supplies, which are not subject to VAT

The VAT deduction may be claimed when the taxable supply is paid and accounted for, assuming that the taxable supply was provided and a valid tax document on payment exists.

3.7.7 Tax Penalties

A penalty payment is imposed when VAT is in arrears (e.g. a late payment). The tax authorities may also impose a fine when the tax return is filed after the statutory deadline - or when the tax document is issued earlier than the tax supply is rendered.

3.8 Other Taxes

3.8.1 Excise Duties

Excise duty is levied on the production for sale and import of certain consumer goods in the Slovak Republic, such as hydrocarbon fuels and lubricants, tobacco products, spirits, beers and wines. Duty is charged on the basis of the volume produced or imported, with rates varying widely within each category.

3.8.2 Real Estate Transfer Tax

Real estate transfer tax no longer applies in the Slovak Republic.

3.8.3 Road Tax

Road tax must be paid on all vehicles used for business purposes, whether or not the vehicle is actually owned by a business entity. Annual road tax rates vary depending on the engine capacity (for passenger cars) or total weight and number of axles (for trucks and buses).

4. Customs Duties

Import duties are based on the General Agreement on Tariffs and Trade (GATT/WTO) – internationally accepted list of tariffs. Some customs regimes also enable an importer to eliminate (inward processing) or postpone customs duty payments (storage of goods in customs warehouses and customs zones, temporary importation of goods).

Preferential customs rates for industrial goods, as low as 0%, are applied to goods imported from certain states subject to international customs preferential agreements (e.g. Eastern European countries).

Customs duty on particular goods is assessed based on the customs value of the goods, which involves the sale price of goods and related transport and other auxiliary costs (insurance, licenses for use of goods). The customs value does not include the value of imported intangible assets (e.g. software) and imported services (e.g. installation and training).

In addition to the customs duty, an import VAT of 20% or 10% in cases of certain goods (please see Section 3.7.3 above) applies on the goods imported. Import VAT is deductible under the same conditions applying for deduction of VAT on supplies rendered on the territory of the Slovak Republic.

5. Audits and Accounting

5.1 Accounting System

Business individuals and business entities keep their accounting books either in a single-entry system (possible only for individuals and non-profit entities), or double-entry system (obligatory for all business entities).

5.2 Accounting Period

An accounting period may be either a calendar year (which is standard), or an economic year. An economic year is a successive 12-month period beginning on the first day of any month other than January. The entity may change its accounting period with an approval issued by the tax authorities.

5.3 Accounting Principles

Accounting units are required to adhere to statutory accounting principles for keeping their accounting books. The economic result achieved under the statutory accounting principles is also decisive for the income tax base assessment.

The Ministry of Finance prescribes binding charts of accounts and statutory accounting rules.

5.4 Valuation

Accounting units are required to record all transactions in euro. For some items, such as receivables and payables, shares, as well as cash, the transaction must be recorded in a foreign currency, provided that the relevant assets and liabilities are denominated in that foreign currency. Certain assets (securities, derivatives) are also obligatory valued based on their market value as of the closing date.

In general, all assets should be valued at their acquisition value and all liabilities should be recorded in their nominal value. In certain cases, tangible assets may be recorded at their replacement costs and intangible assets at the lower of the development cost or replacement value. Assets are written off over their useful economic lifetime, as determined by the accounting unit.

5.5 Financial Statements

Year-end financial statements consist of a balance sheet, profit and loss account and notes to the financial statements, including a cash-flow statement. The notes must contain such information in order to assess the entity's assets, liabilities, financial position and results. This includes the accounting principles, valuation methods and depreciation policies used in the relevant accounting period.

Consolidated financial statements and the consolidated annual report must be prepared by the parent company of a subsidiary company. The parent company means a company which, *inter alia*:

- (i) has a majority of voting rights in the subsidiary company; or
- (ii) has the right to appoint or remove a majority of the members of the statutory or supervisory body of the subsidiary company and, at the same time, is a participant or shareholder in the subsidiary company; or
- (iii) has the right to control the subsidiary company as a participant or shareholder under an agreement with this subsidiary company, or under the subsidiary company's memorandum of association or by-laws; or

- (iv) is a participant or a shareholder in the subsidiary company and, based on an agreement with other of its participants or shareholders, has the majority of voting rights.

Full year-end financial statements must be filed with the tax authorities. Business entities registered in the Commercial Register are also obligated to file their financial statements and annual reports with the Registration Court within 3 months of their General Meeting.

5.6 Statutory Audit

Under Slovak accounting law, the following entities are required to have their ordinary and extraordinary financial statements and annual report audited by a Slovak statutory auditor:

- (i) business entities which obligatorily have registered capital (i.e. limited liability companies, joint-stock companies and co-operatives), if they meet any two of the following conditions in the accounting period preceding that for which the financial statements are to be audited:
- Total gross value of the entity's assets stated in the balance sheet exceeds EUR 1 million
 - The entity's net turnover generated from the sale of products, goods and services exceeds EUR 2 million
 - The average number of employees exceeds 30
- (ii) business entities and cooperatives the securities of which have been accepted for trading at the regulated market; and
- (iii) certain regulated entities such as banks, branches of foreign banks, insurance companies, branches of a foreign insurance companies, etc.

The statutory audit of the financial statements must be performed by the end of the accounting period following the accounting period for which the financial statements or annual report were prepared.

All entities subject to the obligatory audit are required to publish an excerpt from their financial statements, together with the auditor's opinion, in the Commercial Bulletin. The obligatorily audited entities must also prepare their audited annual report, including financial statements, an auditor's opinion, a summary description of operations and activities performed during the relevant accounting period as well as forecast the business situation of the entity.

6. Labor Issues

6.1 Legal Framework

The Slovak Labor Code, Act No. 311/2001 Coll., as amended (“**Labor Code**”), is the principal legislative act governing employment relationships in the Slovak Republic. This Labor Code has been incorporated into Slovak legislation to reflect the process of economic transformation in the Slovak Republic and to incorporate into Slovak law the various concepts existing under EU labor law related Directives.

The other relevant legislative act is the Act on Collective Bargaining, Act No. 2/1991, as amended (“**ACB**”).

Most of the provisions in the labor legislation are of a mandatory nature and may not be varied by the provisions of the relevant employment agreement. For example, termination provisions which differ from those as specified in the Labor Code and which are less favorable to the employee would generally not be enforceable.

6.2 Applicability of Labor Code

The following considerations should be kept in mind when employing personnel in the Slovak Republic:

6.2.1 Employment of Slovak Nationals and Foreigners

The Labor Code applies to employment relationships between Slovak legal entities and their Slovak employees in the Slovak Republic. To the extent that Slovak law will apply to an employment relationship between a branch office of a foreign legal entity and its Slovak employees in the Slovak Republic, such relationships must also comply with the provisions of the Labor Code. The employment relationships between the employees (performing their work in the Slovak territory) and a foreign employer, as well as between foreigners and employers residing in the Slovak territory, are governed by the Slovak Labor Code, unless the acts on the conflict of laws state otherwise (in particular, the Act on International Private and Procedural Law). The Slovak Labor Code, in accordance with Directive 96/71 EC, also stipulates which provisions of this Code are mandatory in the event that employees are sent (transferred) to work on the territory of another EU member state and *vice versa*.

Under the Act, employment agreements with expatriates may be governed by laws other than Slovak law, although any provisions in the agreement (even if valid under the chosen law) would be invalid if they were to violate “Slovak public order.”

The provisions of the Code are generally harmonized with EU laws and are more protective of the employee than is commonly the case in the United States.

6.2.2 Creation of Employment

A labor relationship may only be established with the consent of an individual and an employer. Under the Code, labor relationships generally arise between employees and employers on the basis of written:

- Employment agreements (*pracovná zmluva*); and
- Agreements on works performed outside of employment (*dohody o prácach vykonaných mimo pracovného pomeru*), including two types of agreements: (i) agreements on performance of temporary job of students (*dohoda o brigádnickej*

práci studentov) and (ii) agreements on performance of work (*dohody o vykonaní práce*).

In addition, certain positions of top management or special positions (e.g. political) are filled by election or appointment. This type of employment is created by an execution of a written employment agreement, which follows such election or appointment into the position by a relevant body.

The employment agreement must consist of certain mandatory terms; otherwise, it will be invalid.

In the employment agreement, the employer must, at a minimum, agree with the employee as to:

- (i) the type of work for which the employee is hired and a brief description of the work;
- (ii) the place of work performance (where the employee will be asked to carry out the employment activities);
- (iii) the day of commencement of work; and
- (iv) salary payment conditions, unless such are agreed by the collective agreement.

The employment agreement may also contain additional terms and conditions as agreed by the parties.

The employment agreement may include a probationary period of three months (or less, if so agreed by the parties), except in the case of an executive employee who reports directly to the statutory body or a member of the statutory body and in the case of an executive employee who reports directly to such an executive employee, where the maximum length of the probationary period can be six months. Moreover, it is possible to agree on an exception to the aforesaid in a collective agreement whereby the maximum length of the probationary period agreed in an employment contract with an employee can be six months except in the case of an executive employee who reports directly to the statutory body or a member of the statutory body and in the case of an executive employee who reports directly to such an executive employee, where the maximum length of the probationary period can be nine months. The probationary period, as agreed upon in the employment agreement, may not be subsequently extended. The probationary period must be agreed upon in writing; otherwise, it is invalid. The probationary period may be agreed upon with all categories of employees.

The Labor Code stipulates several limitations on the creation of an employment relationship for a definite period of time, such as that the employment can be agreed, prolonged or renewed for no more than three years and that this employment may be prolonged or renewed no more than three times within the three-year period. Such limitation has its exceptions, if the employment is prolonged or renewed for certain stipulated reasons by law or for some positions (e.g. substitution of the employee).

6.2.3 Termination of Employment

Under the Labor Code, an employer is very limited as to its ability to terminate employees without cause. The termination period is one month and if the employment relationship has existed for at least one year, the termination period is two months; however in the event of the employer's reorganization or if the employee's position ceases to exist, then if the employment relationship has existed for at least one year and less than five years, the termination period is two months and if the employment relationship has existed for at least five years, the termination period is three months.

In case of notice given by an employee the termination period is one month and if notice is given by an employee who has been employed in employment relationship by the employer for at least one year, the termination period is two months.

An employee may be terminated for cause with immediate effect, if the employee intentionally commits a crime or materially breaches his/her employment obligations (e.g. is intoxicated on the job, steals company property, etc.). An employee may be terminated for cause with two months' notice, if the employee, after an official warning, fails satisfactorily to carry out his/her work obligations or assignments.

An employee may also be terminated in the event of the employer's reorganization or if the employee's position ceases to exist. However, in this case, the employee must first be offered a similar job with the employer (assuming such a similar position exists), although the employer is under no duty to create such a similar position. An employee terminated as a result of the employer's reorganization can receive a two-month or three-month severance payment, if the employment relationship is terminated by virtue of mutual agreement before the commencement of the termination period; the amount of severance payment depends on the number of years the employee has worked for the employer. An employee whose employment is created under "the agreement on works performed outside the employment relationship" is not entitled to any severance payment.

6.3 Specifics for Expatriate Personnel Working in the Slovak Republic

6.3.1 Work Permits and Residence Visas

With minor exceptions, relating to EU member country citizens, diplomatic and armed forces personnel (and certain other categories), a foreign national employed in the Slovak Republic by a Slovak legal entity (or a branch of a foreign legal entity, or seconded by a foreign legal entity to work in the Slovak Republic), is required to obtain a residence permit through a Slovak embassy or consulate and a work permit through a Slovak labor authority. The employment of the foreign employee could, *inter alia*, terminate on the date of expiration of his/her residence permit or work permit.

A foreign national who wishes to act as a member of the board of directors of an a.s., an executive of an s.r.o., the authorized representative of a branch or a procurist for a Slovak legal entity, must obtain a residence permit for the Slovak Republic, unless such foreigner is an EU or OECD country citizen. The exceptions applicable to EU or OECD country citizens are described in the Corporate Section for each corporate business vehicle.

6.4 Collective Agreements

The process of collective bargaining is governed by the ACB. Wages and other labor entitlements may be regulated in collective agreements within the framework established by the relevant labor regulations. Collective agreements also regulate the relationships between the employer and trade unions. Rights which individual employees acquire through collective bargaining agreements are treated the same as other employee rights arising out of the employee's employment relationship.

There are four types of collective agreements, and all must be entered into in writing to be enforceable:

- (i) agreements between a trade union body and the employer;
- (ii) agreements of a higher degree concluded for a larger number of employers between a relevant higher trade union body and organization/organizations of employers;
- (iii) agreements of a higher degree concluded between a relevant higher trade union and an employer – state; and
- (iv) agreements of a higher degree concluded for employers who are bound by specific laws (public functions, government employees, etc.).

A collective bargaining agreement cannot provide less to employees than a collective agreement of a higher degree.

7. Real Estate

7.1 No Restrictions on Ownership or Lease of Real Estate by Slovak Non-Residents

Upon the accession of the Slovak Republic into the European Communities and the EU, a new provision on non-residents' acquiring real estate in the Slovak Republic became effective, and now non-residents may freely acquire real estate in the Slovak Republic, excluding land outside a built-up area which is a part of agricultural fund, and other real estate from which a special legal regulation excludes acquisition.

Slovak legal entities, whether Slovak or foreign owned, may freely acquire real estate.

Both Slovak and foreign legal entities and individuals may lease real estate at prices set by an agreement among the parties without further restrictions (other than the need, in certain circumstances, to obtain the consent of a local municipality). Property may only be leased for the purpose for which it has been zoned by the local municipality.

7.2 Cadastral Register

Each change in ownership of real estate is recorded in the real estate registry (known as the “**Cadastral Registry**”). The Cadastral Registry, which is administered by the Offices of Cadastral Administrators (*správy katastra*), contains all data about a geometric identification, list of all lots, their location and description, as well as data on the rights to real estate, i.e. ownership rights, all easements, encumbrances, mortgages, charges or other rights of third parties and which rights, their recording, decisions on territorial borders and corrections of errors in records or in territorial borders, are applied to for a registration and a decision to a relevant Office of Cadastral Administration. The eight Cadastral Offices (*katastrálne úrady*) and 79 Offices of Cadastral Administrations are centrally supervised by the State Office on Geodesy, Cartography and Cadastral of the Slovak Republic.

For an effective creation of mortgages, charges over land, easements, as well as the effective occurrence of the transfer of ownership title, a registration of such transfers or rights is necessary.

The State Office on Geodesy, Cartography and Cadastral of the Slovak Republic maintains a Cadastral registry on the Internet under www.katasterportal.sk, making access to the information concerning a particular lot and its owners much simpler and more efficient.

8. Types of Security Interest Available in the Slovak Republic

The general framework for creating security rights in the Slovak Republic is established by the Civil Code and supplemented by the Commercial Code, the Securities Act, intellectual property laws as well as others. Slovak law divides security into two principal groups of rights:

- (i) personal rights, which are valid only between the debtor and the creditor, such as assignment of rights or a fiduciary transfer of rights and which frequently result in a temporary transfer of the ownership title to the secured assets; and
- (ii) material rights, which are valid with respect to all third parties, such as pledge, mortgage, easement or possession.

None of the material security rights result in the transfer of title to the assets secured but, rather, such material rights entitle the creditor to the proceeds resulting from the foreclosure sale of secured assets.

9. Foreign Exchange

Slovakia has amended its foreign exchange rules several times since the year 1995 in order to gradually liberalize rules on trading with foreign exchange instruments, foreign securities and rules on the acquisition of ownership of real estate by foreigners. All such changes respect the European Agreement dated 4 October 1992 on the accession of the Slovak Republic into the EU. After Slovakia joined the EU, the Foreign exchange rules ceased to perform the regulatory function of capital flow.

The Foreign Exchange Act (under § 8) and the Act on the NBS, however, still require Slovak residents and a foreign branch office established in Slovakia to fulfill a notification requirement regarding establishment of an account in a country outside Slovakia and its balance, as well as on its income/payments received from outside of Slovakia.

Notifications, in the form prescribed by the NBS, are available on the internet at www.nbs.sk.¹⁶

Further, the following exchange controls currently exist in the Slovak Republic:

- (i) a foreign exchange permit is required for foreign exchange residents (defined as legal entities with their registered office in the Slovak Republic and permanent residents of the Slovak Republic) who intend to deal in foreign exchange as a business;
- (ii) although there is no need to obtain a license in order for a foreign exchange resident to obtain a loan from a foreign exchange non-resident, the foreign exchange resident must notify the NBS of such loan, as described above.

As of 1 May 2004, in contrast to the former and current foreign exchange rules applicable in Slovakia, under §19a of the Foreign Exchange Act, foreign exchange non-residents are able to acquire ownership title to real estate in Slovakia, save for (a) real estate which belongs to an agricultural or forest fund, located outside of a built in municipality area or (b) a real estate acquisition which is limited by specific laws (e.g. Act on Waters, Mining Laws, laws on protection of natural environment, etc.).

Conversion of Cash

No difficulties in converting cash or cash equivalents into U.S. dollars or in withdrawing cash from Slovakia are reasonably foreseeable under the provisions of the Foreign Exchange Act, the principal law governing foreign exchange in Slovakia, provided that the conversion is effected through a licensed entity, such as a bank.

However, it should be noted that:

- (i) under Section 39 of the Foreign Exchange Act, if a foreign exchange emergency is declared by the Government of Slovakia, payments in a foreign currency or abroad generally may be suspended for the duration of such emergency (such suspension not to exceed three months at any one time); and
- (ii) if the NBS and the Ministry of Finance establish a deposit duty pursuant to Section 38 of the Foreign Exchange Act, banks may be required to ensure that a certain percentage of cash deposits maintained for its customers is kept in an account, a bank and for a period as specified by the NBS and the Ministry of Finance.

¹⁶ At the Slovak menu click on “Štatistika” - then on “Štatistika platobnej bilancie” - and then “Hlásenia pre devízovú ohlasovaciú povinnosť.” Unfortunately, all forms are in Slovak.

9.1.1 Expropriation

There is no existing or officially proposed law or other rule in Slovakia that is likely to result in the nationalization or similar confiscation of either foreign investments, or companies in which foreigners have invested. With respect to expropriation, however, Article 20.4 of the Slovak Constitution provides that expropriation or restrictions on property rights shall be imposed only to the extent necessary for the protection of public interest, only on the basis of law and shall be justly compensated.

9.1.2 Mechanisms Available for Protecting Cash

A Deposit Protection Fund was established under Act No. 118/1996 Coll., on Protection of Deposits, as amended (“**Deposit Protection Act**”), which, in general, guarantees deposits of individuals, non-entrepreneurial entities and certain entrepreneurial entities that are not required to have their financial statements audited (“**Individual**”) - regardless of the place of residence/registered office of such Individuals, provided that such deposits are registered in the name, surname, place of residence and birth date or birth number (individuals) or under the name, identification number, registered office, identification of register or other evidence in which such entity is registered and a number of applicable registration entry (entities) of the Individual account-holder and provided that such registration/identification of the Individual account-holder was recorded prior to such bank or branch of foreign bank becoming unable to pay deposits. The guarantee covers up to 100 percent of a depositor’s deposits, regardless of the currency deposited in the account(s) with a bank. Please note that banks, securities dealers, insurance companies, etc. are explicitly excluded from the scope of the Deposits Protection Act and, thus, any their deposits are not covered by the statutory deposits guarantee.

10. Competition Rules

Slovak competition laws have, to a wide extent, been harmonized with EU laws, especially Art. 101 and 102 *et seq.* of the Treaty on the Functioning of the European Union (Lisbon Treaty).

The purpose of Slovak competition legislation (Act No. 136/2001 Coll., On Protection of Economic Competition, as amended) is (i) to protect economic competition on the market with goods, activities, provision of work and services against elimination, restriction and other distortion, including threat of competition as well as (ii) to create conditions for further development of competition in order to encourage economic development benefiting consumers.

Under § 2 (4) of the Act, this Act also applies to any activity and conduct taking place outside the Slovak Republic, if such activity or conduct may lead or could lead towards restriction of economic competition on the domestic Slovak market. Competition laws apply to entrepreneurs (both individuals and legal entities) and to state administrative bodies and municipalities.

The Act is administered by the Anti-monopoly Office of the Slovak Republic (*Protimonopolný úrad Slovenskej republiky*, the “AMO”).

In general, the AMO regulates the following areas:

- (i) agreements restricting competition;
- (ii) abuse of a dominant position in the market; and
- (iii) concentrations (which includes mergers, fusions, joint ventures, etc.).

The Act, in general, prohibits each of the activities described below.

10.1 Agreements Restraining Economic Competition (§4 and 6 of the Act)

The following agreements are prohibited: agreements on direct or indirect price fixing or fixing of other commercial conditions; cartel agreements; production limitation agreements; agreements to restrict the market access of other competitors; divisions of the market; and boycotts.

Some exemptions are also stated in the Act for the Protection of Economic Competition, such as agreements where the combined share on the relevant market does not exceed 10% of the aggregate turnover of goods on the relevant market in the Slovak Republic. Such exemptions do not apply to price fixing, production limitation agreements and agreements on distribution of a market and its resources.

10.2 Abuse of Dominant Position (§8 of the Act)

Common examples of abuse of a dominant market position include: direct or indirect extortion of unfair prices or other unfair trading conditions; threat of limiting, or limiting, production, markets or technical development of goods to the prejudice of users; applying dissimilar conditions in an identical or comparable performance with individual undertakings, whereby these undertakings are or can be placed at a disadvantage in the competition; making the consent to conclusion of a contract subject to a condition that the other contracting party accepts also supplementary obligations which, by their nature or according to commercial usage, do not relate to the subject of such a contract; or temporary abuse of the economic power with the aim to exclude competition.

An entrepreneur or a group of entrepreneurs are deemed to have a dominant market position if (i) such entrepreneur/entrepreneurs are not subject to substantial competition **and** its/their market power enables it/them to behave independently (of other undertakings or consumers). If the AMO discovers that an abuse of dominant position has occurred, it declares such fact by its decision and in general, impose sanctions and remedies, as well as simultaneously prohibits such action(s) in the future.

10.3 Concentration of Competitors Not Approved By the AMO

The thresholds for notifying a concentration are as follows:

- (i) aggregate worldwide turnover of the participants to the concentration is at least EUR 46,000,000 **and** at least two of the participants to the concentration individually achieved a turnover in the Slovak Republic of EUR 14,000,000;

OR

- (ii) at least one participant to the concentration achieved a turnover in the Slovak Republic of at least EUR 19,000,000 **and** at least one other participant to the concentration has a combined worldwide turnover of at least EUR 46,000,000.

The above figures are based on the closed previous accounting period.

A concentration must be notified to the AMO in accordance with Section 10 (9) of the Act before the rights and obligations resulting from a concentration are exercised and after:

- (i) execution of a binding agreement;
- (ii) notification of an acceptance of a bid in a public tender;
- (iii) delivery of a decision of state authority to the entrepreneur;
- (iv) announcement of a takeover bid;
- (v) the date when the European Commission delivered a notification to the entrepreneur informing that the AMO will act in the matter; or
- (vi) some other event, which leads to an establishment of concentration, occurs.

As with the “old” Act, the entrepreneur can still request that the AMO issue a statement on intention of competition which, however, does not preclude the entrepreneur from its duty to notify the concentration.

The AMO issues a statement within 60 business days from the date of submitting a request providing that the request is complete. In difficult cases, the AMO may extend the period for issuance of the statement for up to 90 business days.

In this regard, the AMO has the authority to approve a merger, consolidation or acquisition, if the applicants are able to prove that the harm to competition (which may arise from the transaction) is outweighed by the advantages.

The AMO may impose fines on competitors of up to EUR 330,000 (or up to 10% of the net turnover in the preceding calendar year) where the Act has been breached, either intentionally or by negligence. The AMO may fine undertakings which obstruct the proceedings without a valid reason up to EUR 3,300.

Without such approval of the AMO, the transaction will be deemed ineffective. In share acquisition transactions, for example, the acquirer may not exercise control over the acquired entity until such approval has been obtained. The AMO may also cancel the relevant agreement in the absence of due notification to the AMO.

Unfair Competition under Commercial Code

The Commercial Code also governs competition rules in general.

Unfair competition is prohibited. It is primarily understood as:

- Deceptive advertising
- Deceptive descriptions of goods and services
- Conduct contributing to mistaken identity
- Parasitic exploitation of a competitor's reputation, products or services
- Bribery
- Disparagement
- Violation of trade secrets; and
- Endangering consumers' health or the environment

11. Environmental Protection

11.1 Environmental State Authorities

Compliance with environmental laws is supervised by the Ministry of Environment ('**MoE**'), the District Offices of Environment ('**DOE**'), the Borough Office of Environment ('**BOE**') and the Inspection of Environment ('**IoE**').

Each authority has defined scopes of powers, which vary with every element the state protects, e.g. whether this relates to air, soil, waste or water. However, each authority has some inspection authorities and, in general, only the BOE issues approvals, consents and licenses wherever necessary under the respective Act (each further below analyzed). Also, the inspections (IoE) serving in the area of air protection are more as a professional advisory body.

Regulations governing the protection of the environment are analogous to those prevailing in EU countries. As a result, any person exploiting natural resources, developing projects, building or removing structures, or introducing production processes, products or materials into the Slovak Republic is required to carry out such activities in compliance with the applicable environmental protection legislation.

Slovak legislation also requires that projects of a certain type and size may be carried out only after completion of an environmental impact study.

11.2 Specific Environmental Laws and Liability Issues

Environmental laws in the Slovak Republic are stated in several acts. These are especially:

(i) The Act on Environment, No. 17/1992 Coll., as amended

The scope of this act defines the basic terms and provides for the general legal framework and obligations of physical persons and legal entities with respect to the principles of protection of the environment.

The act defines the concept of ecological harm as a loss or weakening of natural functions of ecosystems caused by damage of individual elements or by infringement of their internal relations and processes as a result of human activity (Article 10). This general definition of ecological harm is reflected in other special acts on environmental protection. The act stipulates that any person/entity that has caused ecological harm is responsible for restoration of natural functions of the infringed ecosystem, or a part thereof.

(ii) The Act on Protection of Nature and Environment, No. 543/2002 Coll., as amended

In addition to the Act on Environment, the Act on Protection of Nature and Environment provides basic rules for the protection of particular spheres of nature. The act defines special zones of protection (national parks, protected areas, etc.) and specifies the state authorities that are responsible for protecting the special zones of protection - and enforcing environmental laws within the area of their competence.

As a general principle, the act stipulates that any person/entity that damages, wastes or illicitly alters elements of nature and the environment protected by the act is required to restore such elements to their initial state - wherever possible.

(iii) The Act on Wastes, No. 223/2001 Coll., as amended

Under the Act on Waste, the producer of waste can only dispose of waste in the manner as stipulated in this act or in other special acts. The obligations of the waste producer devolve to any person/entity that agrees to receive the waste from the producer.

(iv) The Act on Waters and on Amendment of Act on Offences, No. 364/2004 Coll., as amended

Presumably, a Company produces some wastewaters or industrial waters and, therefore, needs to dispose (dump) of such waters into groundwater or public sewage systems. This use of waters is defined by the act as “a specific use of waters” (Article 21).

(v) The Act on Air, No. 137/2010 Coll.

Under this Act, the operator of the source of air pollution is responsible for compliance with the emission limits as set forth by the DOE. The approval of the air protection state authority is required for (i) localization and construction of the source of air pollution, including any changes thereto; (ii) change of use of fuel and raw materials and to technological changes of sources of air pollution; and (iii) production, import and transportation of facilities, materials and products which pollute or may pollute the air.

(vi) The Act on Protection and Usage of Agricultural Land, No. 220/2004 Coll.

The owners, or, if applicable, lessees of land which is defined as agricultural soil fund (i.e. agricultural land) must manage their activities on the land in a manner which does not cause pollution of the land and they must allow representatives of the respective state authorities to enter such land for the purposes of inspection. The Agricultural Ministry sets the permitted limits of pollution of agricultural soil and the state authorities for soil fund protection can impose a penalty on any person/entity for soil pollution exceeding the permitted limits, or for other breach of the obligations as stipulated in this act.

12. The Slovak Securities Market

12.1 Capital Markets – 2003-2004 Reform

The Slovak Republic's capital markets were established in 1990. The basic preconditions for their establishment were created in the first wave of coupon privatization, as well as some key changes of the capital markets settlement and payment system and registration of book entered securities, which were undertaken in the 4Q of the year 2003 (the former brokerless system on which securities were traded ceased to exist¹⁷) and the 1Q of the year 2004 (the Central Securities Depository (“**CDCP**”) - former Securities Center - has commenced its activities on new principles).

The Slovak Republic's capital markets are regulated especially by Act No. 530/1990 Coll., as amended, on Bonds (“**Bond Act**”), the Commercial Code, new Act No. 203/2011, effective as of July 1, 2011, on Collective Investment, Act No. 429/2002 Coll. as amended, the Stock Exchange Act (“**Stock Exchange Act**”), the Foreign Exchange Act and the Act on Securities and Investment Services No. 566/2001 Coll., as amended (“**Securities Act**”), which came into effect on January 1, 2002.

In accordance with §18 of the Stock Exchange Act, the Bratislava Stock Exchange (“**BCPB**”) issued the Stock Exchange Trading Rules (“**Trading Rules**”), stipulating the types of trades which may be executed at the BCPB, trading times, requirements for instructions, etc.

Equities and government and corporate bonds can be traded on both the BCPB and the CDCP.

12.1.1 Central Securities Depository - Material Changes in Recording System of Book Entry Securities

The CDCP (*Centrálny depozitár cenných papierov SR, a. s.*) is a central system of recording of book entered securities. The CDCP operates on a membership principle, similar to the BCPB. The members of the CDCP can be (i) securities brokers, which were granted prior approval from the NBS; (ii) NBS as well as (iii) other central depositories, foreign or Slovak.

A membership principle means that securities owners no longer have direct access to services of the CDCP, as was the case in the past with the Securities Center. If a securities owner wishes to actively trade with securities (or undertake transfers from former accounts with the SCP, or sales or gifts, or through inheritance), such owner must open an account with a CDCP member (“**Clients Brokerage Account**”) and realize all instructions only through such member or through a securities broker, who has a contract to provide such services with the CDCP member.

The CDCP member will then record all data concerning the securities and its members on this Client Brokerage Account. In addition, the CDCP member has an individual account (*účet majiteľa*) opened with the CDCP. The CDCP opens accounts for each member of the CDCP, as well as for a state

¹⁷ With effect from 2 September, 2003, and as a result of the merger of the former brokerless system **RM - Systém Slovakia, a. s.** and the company **RM - S Market, o. c. p., a. s.**, **RM - S Market, o. c. p., a. s.** became a legal successor of **RM - Systém Slovakia, a. s.** (which ceased to exist). The services provided by RM-S Market are currently:

- Provision of sale and purchase of securities issues in Slovakia
- On-line trade on foreign capital markets through www.rmsfinport.sk
- Furnishing the issuance of securities issues
- Provision of sale of shares in investment management companies
- Provision of sale of insurance products
- Investment management advisory services

RM - S Market, o. c. p., a. s. is a member of the BCPB and a member of the Central Securities Depository.

administrative body, upon its request. The CDCP can also open an account for another physical individual or legal entity, but only if requested by a member of the CDCP.

Past accounts with the SCP will not be automatically cancelled (unless the accounts are empty); the CDCP will keep these “old records” until they are entirely cleared. No instructions, save for the transfer to new records (accounts), will be possible. All such instructions will, however, have to be performed only through the CDCP member or through a securities broker who has an appropriate contract executed with a CDCP member.

Under the Securities Act and the Banking Act, banks incorporated under Slovak law or locally registered and licensed branches of foreign banks (as well as foreign or domestic legal entities holding a license for securities trading granted by the NBS - securities brokers) have the authority to trade securities on behalf of a foreign security holder/owner and also to hold securities in their own portfolio for possible subsequent “secondary sale.” Banks, foreign banks and securities brokers are subject to the regulation by and supervision of the NBS.

12.1.2 Bratislava Stock Exchange

The BCPB was established in early 1991 and, as with all other similar exchanges, is established on a membership principle. This means that individuals and legal entities who are non-BCPB members and who are interested in buying and/or selling securities through the BCPB, must do so via a BCPB member.

The BCPB member then realizes the transaction on behalf of the client and according to its instructions.

The BCPB operates in accordance with the license (*povolenie na vznik a činnosť burzy*) granted by its supervisory authority – the NBS. The BCPB must have at least 10 founders¹⁸ and an equity capital of at least EUR 3,319,391.89, consisting of book entered registered shares (*zaknihované na meno*). The BCPB is prohibited from (i) converting its shares into other types or forms of securities; (ii) issuing priority shares; (iii) changing its legal form of a joint stock company into another business vehicle or (iv) selling its entire or part of its enterprise.

The bodies of the BCPB are: (i) general meeting; (ii) board of directors (has at least 3 members); (iii) supervisory board and (iv) a general director.

The Stock exchange rules afford for two types of memberships: regular – for an indefinite time¹⁹ and temporary – definite for a period of one year.

A member of the BCPB can only be a securities broker, foreign securities broker or a bank or foreign bank, and must satisfy certain pre-requirements and observe the Stock Exchange rules.

The following trades can take place on the BCPB:

- (i) trades affecting rates (*kurzotvorné obchody*) – pairing of instructions on the number of securities and their price;

¹⁸ The BCPB founder can only be: a securities dealer, investment management company, insurance company, bank and foreign legal entities with a similar scope of business activities registered outside the Slovak Republic.

¹⁹ Current regular members of the BCPB are: Československá obchodná banka, a.s., Dexia banka Slovensko a.s., ING Bank N.V. (Netherlands) through its branch in the Slovak Republic ING BANK N.V., branch office of foreign bank, J&T BANKA, a.s. through its branch in the Slovak Republic J&T BANKA, a.s., branch office of foreign bank, NBS, OTP Banka Slovensko, a.s., Patria Finance, a.s., Poštová banka, a.s., RM-S Market, o.c.p., a.s., SEVISBROKERS FINANCE o.c.p., a.s., Slovenská sporiteľňa, a.s., Sympatia Financie, o.c.p., a.s., Tatra banka, a.s., UniCredit Bank Slovakia a.s., VOLKSBANK Slovensko, a.s., Všeobecná úverová banka, a.s.

- (ii) block trades (*blokové obchody*) – pairing of instructions on the number of securities and their price;
- (iii) direct trades (*priame obchody*) - the price and volume are agreed in advance by the purchaser and the seller. Identity of both is disclosed; and
- (iv) repo operations (*repo obchody*);
- (v) trades within a public take-over bid or an obligatory public take-over bid, respectively.

Further, BCPB members could realize mandatory offers for the acquisition of shares, if such obligation arises to a listed company under the provisions of the Securities Act.

Trades take place through an electronic exchange operation system (“EBOS”) by matching purchase orders and sale orders. Such trades could be realized in the EBOS system as follows: (i) fixing **from 10:30 am to approx. 10:50 am** and (ii) continuous trading, block trading, trading within the module of market makers,²⁰ announcing of direct trades and repo operations **from 11:00 am to approx. 02:00 pm**.

Direct Trades. Forward trading, i.e. the price and volume are agreed in advance by the purchaser and the seller. The identity of both is disclosed.

Repo Operations. Securities are purchased/transferred for cash with an agreement to repurchase and retransfer these securities (or fungible, similar) at a certain date in the future to the account of the original owner of the securities. Partial delivery, different date or repurchase, or cancellation of repo trades is possible.

12.2 Admission for Listing on BCPB of EU Issuer

The BCPB will accept a listing prospectus (translated into Slovak language) of (i) a foreign issuer seated in an EU member country; and (ii) prepared in accordance with the laws of another EU members state, if (iii) such has been simultaneously or within 60 days prior to/or after such application to the BCPB submitted to the listing authority in the state where such issuer has a registered office. The EU foreign issuer – applicant for listing on the BCPB – must also submit proof of its registration with that listing body in the other EU country, translated into Slovak language.

The BCPB may require the submission of other information such as information on the manner of notifying owners of the foreign issuer’s securities in the Slovak Republic and identifying securities brokers, who will furnish some brokerage services on behalf of the issuer in the Slovak Republic.

12.3 Securities Traded on the BCPB

12.3.1 Equities

According to the Securities Act, all listed - publicly traded equity issues must be dematerialized and held in book-entry form at the CDCP. Ordinary shares are the most common form of equity issuance. These shares carry voting rights and are entitled to dividend payments, which are typically made annually. Preference shares also exist and are normally entitled to fixed dividends ahead of ordinary shares. For more detail see section Corporate – 2.2.2 – “a joint stock company.”

12.3.2 Bonds (Notes)

In addition, corporate bonds can be traded on the BCPB.

²⁰ Market Maker for certain securities issues is the member of the BCPB who has entered into a written agreement with the BCPB on market making in this issue.

Bonds, under Act No. 530/1990 Coll., as amended, the Bond Act, are securities which, under Slovak laws, could be denominated in a foreign currency. The interest on the coupon could be fixed, floating, fixed in combination with share of profit, margin of face value and lower issuer rate, etc., or a combination of any of the above.

Disposal with bonds for a foreign issuer is only permissible in accordance with the FX laws. Bonds can be issued as bearer (*na dorucitela*) or registered (*na meno*) securities. The transfer of registered securities is permissible, unless the issuer sets up some limitations on transferability in the terms and conditions of the issued bonds (in this event, the conditions on redemption of the bonds by the issuer must be stated). The list of registered bonds is kept by the issuer or by an entity empowered by the issuer. The issuer of book entered registered bonds may empower the CDCP to keep a record of the bondholders.

The issuer of bonds in Slovakia can be:

- (i) a Slovak residing legal entity, as well as a foreign branch of a bank;
- (ii) a Slovak residing physical individual registered in the Commercial Register; and
- (iii) a Slovak non-residing legal entity.²¹

The issuer is obligated to publish the terms and conditions of the issued bonds in the nationwide periodic press, which publishes stock exchange news at least seven days prior to the first day of commencement of their issue (the scope of the terms and conditions is stipulated in §3 (3) of the Bond Act). The terms and conditions must be submitted to the NBS no later than on the day of the commencement of their issuance; the issuer shall do so electronically using a form published on the NBS website. The NBS will no later than one month after the first day of commencement of the issuance publish the relevant terms and conditions with the Commercial Gazette.

An issuer under (i) and (ii) above who has issued bonds abroad is obligated to inform the NBS, no later than on the date of the bonds issuance, of the place of the issue and to submit the terms and conditions of such bonds to the NBS.

Under the Bonds Act, the following kinds of bonds can be issued: (1) mortgage back bonds (*hypotekárne záložne listy*); (2) treasury bonds (*štátne dlhopisy*); (3) municipality bonds (*komunálne obligácie*); and (4) employee bonds (*zamestnanecké obligácie*).

12.4 Forms of Securities in Slovakia

The Securities Act recognizes two forms of securities: (i) securities that are issued in the form of physical certificates (certificated securities) and (ii) securities that exist only in book-entered (non-certificated) form, recorded electronically by the CDCP.

12.4.1 Certificated Securities

Certificated (physical) securities may be designated as existing in bearer or registered form (except for shares in Slovak joint stock companies, bonds and units of open-mutual funds, which may only be in book-entry form).

The holder of a bearer certificated security is generally deemed to be its owner. Ownership of registered certificated securities is evidenced by the appropriate transfer instrument (e.g. endorsement) and, if a list of shareholders is maintained, the notation of the new owner on such list of shareholders.

²¹ Residence as defined by the FX laws

12.4.2 Book-Entered Securities

Under Slovak law, all listed securities, bearer shares in Slovak joint stock companies, bonds (except for sovereign or governmental bonds issued by Slovakia) and certain other securities can only be issued as book-entered securities. Since the law requires that several types of bearer securities may only be issued in book-entry form, *de facto*, there are very few types of securities that can be issued as “true” bearer securities.

Insolvency of the CDCP should not affect the ownership of dematerialized securities, since the CDCP does not own the securities on behalf of its clients, but merely registers the ownership of securities and the deposit of securities.

12.5 Clearing and Settlement

Settlement of all BCPB transactions is carried out in accordance with the relevant provisions of the Securities Act, the Stock Exchange Act, the Trading Rules of BCBP and the Operation Rules of CDCP.

Banks, foreign banks, securities dealers and other entities who must clear and settle all payment transfers through the clearing and settlement system also observe the requirements and limitations of, *inter alia*, Act No. 492/2009 Coll., on Payment Services and on Amendment of Certain Laws, as amended.

12.6 Further Market Reforms

The Slovak government and the supervisory authorities have, in the last few years, begun to address concerns relating to inadequate corporate disclosure, abuse of minority shareholder rights and insider trading, in respect of companies listed on the BCPB. The Slovak Securities Act and the Commercial Code have been amended to improve minority shareholders’ rights and ownership transparency, as well as against insider trading. The Slovak Stock Exchange Act has also begun imposing stricter listing requirements.

Further, in light of EU accession, EU laws on disclosure, reporting, etc. must also be observed.

13. Bankruptcy Laws

Bankruptcy proceedings in the Slovak Republic are governed by Act No. 7/2005 Coll., on Bankruptcy and Restructuralization, as amended (the “**Bankruptcy Act**”), which came into effect on January 1, 2006.

The Bankruptcy Act applies to insolvency proceedings initiated after January 1, 2006. Insolvency proceedings initiated before January 1, 2006 continue to be governed by the former Act No. 328/1991 Coll., on Bankruptcy and Restructuralization, as amended.

The Bankruptcy Act distinguishes between the following three types of insolvency proceedings:

- (i) bankruptcy proceedings (in Slovak language: *konkurz*);
- (ii) restructuring proceedings (in Slovak language: *restrukturalizacia*); and
- (iii) release from debt of natural persons (in Slovak language: *oddlzenie fyzickej osoby*).

A debtor is insolvent if it is not able to fulfill at least two monetary obligations to more than one creditor 30 days after the obligations fall due. A debtor is considered to be overburdened with debt, if it is obligated to maintain accounting under Slovak accounting regulations, has more than one creditor and the value of its due obligations exceeds the value of its assets. A debtor is considered to be in failure (in the Slovak language: *v upadku*) if it is insolvent or overburdened with debt.

The condition that the debtor has more creditors is satisfied even if the claim of the other (second) creditor is of an insignificant value. Therefore, the debtor is not insolvent if he has only one creditor (even if this creditor has more than one due receivable), but the receivables of other creditors have not yet matured.

13.1 Filing of a Bankruptcy Petition

This petition may be filed by the debtor itself or by the debtor’s liquidator or creditor.

A debtor being in failure is *obligated* to file a petition for bankruptcy within 30 days from the moment it has become acquainted or, when exercising professional care, could have become acquainted that it is in failure. The same obligation applies also to the statutory body or members of the statutory body of the debtor (if the debtor is a legal entity), the debtor’s liquidator (if the debtor is being wound-up) or the legal representative of the debtor (if the debtor is a natural person). Not observing the above obligation may result in personal liability of responsible persons for damage inflicted upon the creditors - or even the criminal prosecution of responsible persons.

A creditor is *entitled* to file a petition for bankruptcy, if it can reasonably assume insolvency of its debtor. Insolvency of the debtor may be reasonably assumed when the debtor is in default for more than 30 days with fulfillment of at least two monetary receivables (or monetary receivables which the debtor has acknowledged in writing) towards more than one creditor - even though the creditors have invited the debtor to make payment in writing.

13.2 Commencement of Bankruptcy Proceedings

If the petition for bankruptcy complies with the statutory requirements, the court shall, within 15 days after delivery of the petition, decide on the commencement of bankruptcy proceedings. The court publishes this decision in the Commercial Gazette (which is the official publication instrument in the Slovak Republic). Upon publication of this decision in the Commercial Gazette, the bankruptcy proceedings officially commence, and from this moment the debtor is obligated to limit its activities

only to regular business activities. Commencement of bankruptcy proceedings also leads to a general legal moratorium on creditors commencing or continuing enforcement proceedings against the debtor.

13.3 Opening of Bankruptcy

If bankruptcy proceedings have been commenced on the basis of a debtor's petition, the court, within 5 days after commencement of the bankruptcy proceedings, either issues a bankruptcy order over the debtor's assets or appoints a preliminary trustee, if the court doubts that the debtor has sufficient assets.

If bankruptcy proceedings have been initiated by a petition of a creditor, within 5 days after commencement of the bankruptcy proceedings, the court requests that the debtor demonstrate its financial liquidity within 20 days after the request's delivery, instructs the debtor, that otherwise it will open the bankruptcy and instructs it on criminal consequences of non-compliance in bankruptcy proceedings. Moreover, the court sets within the same 5-day period a date of a hearing, which will take place no later than 70 days since the commencement of the bankruptcy proceedings and invites the debtor to declare if it agrees with decision of the court on opening the bankruptcy without a hearing. If a court hearing is needed to decide on evidence demonstrating the debtor's financial liquidity, the court issues a bankruptcy order over the debtor's assets within 7 days after the court's declaration on completion of evidence assessment. If the debtor fails to demonstrate its financial liquidity, the court either issues a bankruptcy order over the debtor's assets or appoints a preliminary trustee, if the court doubts that the debtor has sufficient assets. On the other hand, if the debtor demonstrates its financial liquidity, the court then terminates the bankruptcy proceedings - and the creditor that filed the petition for bankruptcy becomes liable to the debtor as well as to other persons for the damage inflicted upon them due to commencement of the bankruptcy proceedings, unless the creditor proves that it acted with professional care.

The role of the preliminary trustee is to ascertain whether the debtor's assets are sufficient for at least reimbursement of the costs of the bankruptcy proceedings and to submit to the court a final report on the debtor's assets within 45 days after the preliminary trustee has been appointed. If the court, after having appointed the preliminary trustee, finds out that debtor's assets will not be sufficient for reimbursement of the costs of the bankruptcy proceedings, it terminates the bankruptcy proceedings; otherwise the court, within 10 days after the preliminary trustee submitted to the court the final report on the debtor's assets, issues a bankruptcy order over the debtor's assets.

In the bankruptcy order, the court appoints the (ordinary) trustee (who should be identical with the preliminary trustee, if the preliminary trustee has been appointed) and requests that the creditors notify their claims.

Bankruptcy is deemed to have been opened upon publication of the bankruptcy order in the Commercial Gazette. After the bankruptcy has been opened, the debtor is referred to as the bankrupt (in the Slovak language: *upadca*).

13.4 Effects of a Court Decision Declaring a Bankruptcy

Among the most significant effects of opening of bankruptcy are the following:

Bankrupt's Assets (Section 44 of Bankruptcy Act)

The authority to dispose of the bankruptcy estate and the authority to act in the name and on behalf of the bankrupt in matters relating to the bankruptcy estate passes from the bankrupt to the trustee. Legal acts of the bankrupt performed during the bankruptcy proceedings which curtail the bankruptcy estate are not effective vis-à-vis the creditors.

Termination of Contracts (Section 45 of Bankruptcy Act)

The Bankruptcy Act contains numerous provisions concerning the possibility to terminate contracts which the bankrupt concluded before the opening of bankruptcy. For instance, if the bankrupt, prior to the opening of bankruptcy, concluded a contract that provides for an obligation for continuous or repeated activity(ies), the trustee may terminate the contract by a two-month notice (unless applicable rules and regulations or the contract itself provide for a shorter notice period). The trustee may also terminate the contract if it was concluded for a definite period of time.

Maturity of obligations (Section 46 of Bankruptcy Act)

Undue claims or obligations of the bankrupt which arose before the opening of bankruptcy and which relate to the bankruptcy estate shall become due.

Stays of pending proceedings, commencement of new proceedings (Sections 47 and 48 of Bankruptcy Act)

Court and other proceedings relating to the bankruptcy estate are suspended; such proceedings may be resumed only upon petition of the trustee. Tax administration proceedings, customs administration proceedings and criminal proceedings are, however, not suspended.

Court and other proceedings which relate to the bankruptcy estate may be commenced only upon petition of the trustee, by filing a petition against the trustee or from the initiative of a relevant authority.

As regards the bankruptcy estate, compulsory enforcement proceedings may not be commenced and pending compulsory enforcement proceedings should be suspended.

Bankrupt's Unilateral Legal Acts (Section 52 of Bankruptcy Act)

The bankrupt's unilateral legal acts that relate to the bankruptcy estate (for instance the bankrupt's instructions, authorizations or powers of attorneys) cease to exist.

Set-off (Section 54 of Bankruptcy Act)

It is not permitted to set off a bankrupt's claim which arose after the opening of bankruptcy against a claim against the bankrupt that arose prior to such date. Further, a claim which has not been duly notified, a claim which has been duly notified but which has been transferred after the opening of bankruptcy, and a claim acquired on the basis of a voidable transaction may not be set off against a bankrupt's claim. No claim may be set off against a claim that arose from the liability for failing to file the petition for bankruptcy on behalf of the debtor. The set-off of other claims is, however, not excluded.

13.5 Contesting of Notified Claims

If the trustee finds out that a notified claim is disputable (for instance, as regards the claim's legal grounds, amount or enforceability), the trustee is obligated to contest the claim to the extent in which the claim is disputable. The claim may be contested also by a creditor of a notified claim. The trustee or the creditor may do so only within 30 days after expiration of the 45-day period for the notification of claims by the creditors or within 30 days after the publication of the claim's registration into the list of claims in the Commercial Gazette, if the claim was notified after the 45-day period for the notification of claims by the creditors. If there is a larger number of notified claims, the court may, even repeatedly, extend the 30-day period by 30 more days at most. Upon expiration of these 30-day periods, claims should be deemed to be "recognized" as to the extent in which they were not contested. The bankrupt may object a notified claim, however, such an objection is only registered in the list of claims and does not affect acknowledgement of the notified claim.

The creditor of a contested claim is allowed to file a petition with the court demanding the acknowledgement of the claim within 30 days after delivery of the trustee's notification of the claim's contest.

13.6 Voidable Transactions

The trustee (and the creditors, provided that the trustee has not responded to their request to challenge a transaction within a reasonable period) are entitled, within six months after the opening of bankruptcy, to challenge certain transactions which relate to the bankrupt's assets and curtail the satisfaction of the notified claims.

Such voidable transactions include:

- (i) transactions without appropriate consideration, provided that such transactions (i) caused the debtor's failure or were performed during the debtor's failure, and (ii) were performed (in general) one year prior to commencement of the bankruptcy proceedings;
- (ii) so-called advantageous transactions (whereby the debtor, for instance, secured its obligation only after the obligation arose, waived its right or released its debtor from its debt) provided that such transactions (i) caused the debtor's failure or were performed during the debtor's failure, and (ii) were performed (in general) one year prior to the commencement of the bankruptcy proceedings; and
- (iii) transactions whereby the debtor intentionally curtailed the satisfaction of its creditors, if such intention was or must have been known to the other party, provided that such transactions were performed five years prior to the commencement of the bankruptcy proceedings.

Voidable transactions are typically challenged by filing an action with the court against the person (i) with which the debtor entered into the transaction; (ii) to the benefit of which the debtor unilaterally made the transaction; or (iii) which directly profited from the transaction. If a claim is challenged successfully, the claim shall be legally ineffective vis-à-vis the creditors and the person that benefited from the challenged claim shall be, as a rule, obligated to reconstitute the benefits acquired due to the challenged claim to the bankruptcy estate.

14. Investment Management

14.1 Legal Framework

Investment management in the Slovak Republic is governed by Act No. 203/2011 Coll., on Collective Investment, as amended (“**ACI**”). The present legal framework for investment through investment companies in securities in the Slovak Republic requires the examination of the ACI and the Securities Act.

In addition, if the investment company is to be established by a bank, the provisions of the Banking Act will also apply. The Banking Act and the Foreign Exchange Act must also be satisfied in cases of a Slovak residing bank or a branch office of a foreign bank trading/offering investment management instruments (investment funds units).

14.2 Regulatory Authorities

Under the provisions of the ACI, the activities of “resident” management companies and foreign management companies are supervised by the NBS.

14.3 Definitions of Collective Investment

“**Collective investment**” is defined (in § 2 (1) of the ACI) as a business activity the subject matter of which is to accumulate financial funds from investors, with the objective to invest in compliance with the determined investment policy on the basis of risk allocation principle for the benefit of persons whose financial funds have been accumulated. Collective investment may be conducted only through established units (*podielove fondy*), or by the raising of funds through the offer of securities of foreign collective investment entities.

“**A Public Offer**” is defined as any notification, offer or recommendation for the accumulation of financial funds for the purpose of collective investment, made by a person for his/her own benefit, or the benefit of another party through any *distribution channel*.

“**Distribution Channels**” for the purpose of this ACI are:

- a) press, radio broadcasting and television broadcasting;
- b) circulars, brochures or other papers and records on permanent media if intended for the public or if intended for addressees not specified in advance;
- c) internet, and other electronic communication or information systems accessible to the public; and
- d) unsolicited personal contact of non-professional investors.

14.4 Management Company, Foreign Management Company and Foreign Collective Investment Entity

Collective Investment on the territory of the Slovak Republic can be performed by (i) Slovak resident management companies;²² (ii) foreign collective investment entities;²³ (iii) foreign management companies²⁴ in accordance with the provisions of the ACI and the rules on limitations and balancing risk;²⁵ units (*podielove fondy*) – as undertakings of the collective investment - must be created. The so called “European passport” allows EU licensed funds/investment companies from outside of the Slovak Republic to participate in collective investment on Slovak territory.

²² “**A Management Company**” is a joint stock company registered in the Slovak Republic for business purposes, whose scope of business activities is establishment and administration of investment funds or so-called European funds in accordance with the license (*povolenie na vznik a činnosť správcovskej spoločnosti*) granted by the NBS. Management Companies are registered in the Commercial Register in accordance with the Slovak Commercial Code and the Act on Commercial Register.

²³ “**A Foreign collective investment entity**” (*zahraničný subjekt kolektívneho investovania*) is (i) a foreign unit fund (*zahraničný podielový fond*); and (ii) foreign investment company. If such entity has satisfied the conditions of the EU laws regarding collective investment, such entity will be regarded as a European fund, according to the ACI.

²⁴ “**Foreign Management Company**” s a legal entity with its registered seat outside the Slovak Republic's territory which: (i) creates and administers “foreign collective investment entity” and (ii) holds a license for undertaking activities in the area of collective investment activities issued by the relevant authority of the state in which such company has its registered seat.

²⁵ Accumulation of funds by financial institutions, such as a bank, in accordance with the Banking Act, is not an accumulation of funds from the public for the purposes of the collective investment under the ACI.

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