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# Doing Business in the Slovak Republic

2015





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# Preface

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

The information contained herein is general in nature and is intended to only provide an outline 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in the Slovak Republic are constantly changing and readers should be aware that any information may soon become outdated. This remains true notwithstanding the access of the Slovak Republic to the EU on May 1, 2004 - and undertaking the process of harmonization of its laws with those of the EU.

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.*

**Baker & McKenzie**  
**MAREK & PARTNERS, s. r. o.**  
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## 1. Investment Incentives and Related Issues

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

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

At the time of writing this guide, according to the available information, an amendment to the relevant laws governing investment incentives was being prepared. The original effective date of these legal changes was proposed to be December 1, 2014. However, only the intra-ministry objection proceeding of the respective legislative proposal had been completed. Therefore, it was rather difficult to predict when and to what extent the planned changes would become effective.

### 1.1 Tax Incentives Granted under the Income Tax Act

For purposes of the Income Tax Act, the term “taxpayer” means a natural person (individual) or a legal entity.

Section 30a of the Income Tax Act sets out the rules for tax incentives granted to the taxpayer following an approval decision on investment incentives issued to the taxpayer under the Investment Aid Act or de minimis state aid scheme.

Under Section 30a of the Income Tax Act, the taxpayer may claim tax relief up to the amount specified in the Income Tax Act provided that

- (i) the taxpayer has been issued with an approval decision on investment aid incorporating tax relief pursuant to the Investment Aid Act or de minimis state aid scheme, and
- (ii) the taxpayer meets the conditions laid down in the Investment Aid Act and the special conditions pursuant to the Income Tax Act or de minimis state aid scheme.

The taxpayer may claim tax relief over not more than ten consecutive tax periods; the first tax period for which tax relief may be claimed is a tax period in which the taxpayer was issued with an approval decision on investment aid and the taxpayer met the conditions laid down in the Investment Aid Act and the special conditions pursuant to the Income Tax Act; tax relief, however, may not be claimed later than for the tax period in which three years have elapsed since the issuance of the decision pursuant to the Investment Aid Act.

The special conditions referred to above are:

- (i) during the tax periods for which tax relief is claimed, the taxpayer applied all the provisions of the Income Tax Act reducing the tax base, to which the taxpayer 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 the 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 the taxpayer did not reduce the 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), entitlement to 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 tax relief.

If the taxpayer fails to comply with the conditions specified above in subsection (i) or (ii), entitlement to tax relief in the relevant tax period is lost and the taxpayer is obligated to file a supplementary tax return for each tax period in which the conditions were not met.

The taxpayer may claim tax relief of up to 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. Further, Section 30b of the Income Tax Act sets out the rules for tax incentives granted following an approval decision on investment incentives issued pursuant to Act No. 185/2009 Coll., on Incentives for Research and Development, as amended.

## 1.2 Incentives under the Investment Aid Act

Under the Investment Aid Act, a foreign investor can apply for state aid, aimed at supporting initial investment and promoting job creation. State aid may be provided in the following forms:

- (i) a subsidy for acquisition of long-term tangible assets and long-term intangible assets;
- (ii) income tax relief under the Income Tax Act;
- (iii) a contribution for creation of a new job under a special regulation;<sup>1</sup>
- (iv) transfer of immovable property or exchange of immovable property at a price lower than a general asset's value.

The general conditions for the granting of investment aid in the industrial production sector, except for the sectors and operations under a special regulation<sup>2</sup>, are the following:

- (i) the acquisition of long-term tangible assets and long-term intangible assets in the amount of at least EUR 10 mil., of which at least 50% must be covered by the equity of a legal entity or assets of a natural person-entrepreneur;

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<sup>1</sup> Section 53d of Act No. 5/2004 Coll., on Employment Services, and on Amendment to and Supplementation of Certain Acts, as amended

<sup>2</sup> 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 0 of the Treaty (General block exemption Regulation) (Official Journal of the European Union, L 214/3, August 9, 2008)



- (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 long-term tangible and long-term intangible assets;
- (iii) production, activities, processes, constructions or production and technology equipment complying with the environmental protection conditions pursuant to special regulations,
- (iv) implementation of the investment plan will lead to the creation of new jobs;
- (v) the investment plan is implemented at one location (as defined in the Investment Aid Act).

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

- a) the amount specified under clause (i) above is reduced to EUR 5 mil., of which at least 50% must be covered by the equity of a legal entity or assets 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 calendar 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 (i) above is reduced to EUR 3 mil., of which at least 50% must be covered by the equity of a legal entity or assets 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 enterprise<sup>3</sup>, the amount specified above under clause (i), clause a) or clause A) is reduced to one half.

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

- (i) the acquisition of long-term tangible assets and long-term intangible 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 assets of a natural person-entrepreneur;
- (ii) at least 70% of the total work force are employees with a university education;
- (iii) implementation of the investment plan will lead to the creation of new jobs.

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

- (i) the acquisition of -term tangible assets and long-term intangible 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 assets of a natural person-entrepreneur;
- (ii) at least 60% of the total work force are employees with a university education;
- (iii) implementation of the investment plan will lead to the creation of new jobs.

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

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

- (i) the acquisition of new technology equipment intended for the provision of services with the minimum value of 40% of the total value of purchased long-term tangible assets and long-term intangible assets;
- (ii) the acquisition of long-term tangible assets and long-term intangible assets in an amount of at least EUR 10 mil., of which at least 50% must be covered by the equity of a legal entity or assets of a natural person-entrepreneur;
- (iii) services, activities, processes, constructions or equipment complying with the environmental protection conditions pursuant to special regulations;
- (iv) implementation of the investment plan will lead to the creation of new jobs;
- (v) the investment plan is implemented at one location (as defined in the Investment Aid Act).

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

- a) the amount specified above under clause (ii) 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 assets of a natural person-entrepreneur;
- b) the value under clause (i) 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 calendar 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 (ii) 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 assets 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 on Investment Incentives**”). The Decision on Investment Incentives 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.

The Central Office of Labor, Social Affairs and Family (the “Office”) may also grant a contribution as support for creation of a job vacancy in the first regularly paid employment to an employer who will hire a candidate, younger than 25 years of age, who has been registered as an unemployed candidate for at least 3 months, or a candidate, younger than 29 years of age, who has been registered as an unemployed candidate for at least 6 months. Such an employment must be arranged in the range of at least half of the standard weekly working time and an employer must file a written application to the Office.

### 1.3.2 Training Grants

An employer may ask the relevant district labor office for a contribution for general or specific training of its employees. The training grant may be granted up to the amount set out in Commission Regulation (EC) No. 651/2014, subject to the condition that the employee will be employed by the employer for at least 12 months from the end of general or specific training or if the training is carried out as part of measures designed to prevent or reduce mass lay-offs.

### 1.3.3 Transportation Grants

An employer may ask the relevant district labor office for a contribution for transportation of its employees to work, if the employer provides for daily transportation of its employees to work due to reason that mass transportation is demonstrably not operating at all or it is not operating to the extent appropriate for the needs of the employer. The transportation grant may be granted up to 50% of the costs incurred with respect to transportation of the employees.

## 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.

## 2. Overview of Business Entities

The Commercial Code recognizes several forms (legal structures) of business entities available for doing business in the Slovak Republic. An incorporated business entity in the Slovak Republic is a legal entity (an artificial person) that has been incorporated through a registration process established by legislation. The legal personality of such entities is separate and distinct from that of any of its owners or management.

At the time of writing this guide, a rather larger amendment to the Commercial Code was considered (concerning mainly a limited liability company).

### 2.1 Principal Characteristics

The purpose of the following section is to provide a general overview of the principal characteristics of Slovak business entities (companies).

#### a. Statutory Sources of Authority

A legal entity 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 articles of incorporation or bylaws.

Foreign entities may also establish branches in the Slovak Republic with especially favorable treatment for business entities from European Union Member States and OECD member 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.

#### b. Foundation and Incorporation

In general, both individuals and legal entities may establish a Slovak company. However, an individual or legal entity may become a shareholder (participant) with unlimited liability only in one company.

The Slovak companies are established through adoption of Articles of Incorporation or Foundation Deed (if established by a single person), or adoption of a resolution on establishment of a Slovak branch office (in case of a branch office).

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.).

Once all statutory conditions are fulfilled (for example, a company or branch has obtained a trade license or other type of authorization to perform business activities in the Slovak Republic, or the registered capital has been paid, if required), the competent District Court will register the company with the Commercial Register. A company is incorporated, and thus acquires legal personality, on the date of its registration with the Commercial Register.

#### c. Entity Powers, Separate Legal Personality

As a separate legal entity, an incorporated business entity can enter into contracts in its own name, sue and be sued, own or transfer property, or be held criminally liable indirectly, under limited circumstances. The concept of the criminal liability of business entities is, however, expected to be changed significantly in the course of the year 2015.

#### **d. Licenses for Performing Business Activities**

In general, all business entities are required to hold a trade license (or one of the special licenses or authorization) entitling them to perform business activities. The established company must apply for such license to trade department of the relevant district 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 (so-called “craft” trades (in the Slovak language: *remeselné*) or “qualified” trades (in the Slovak language: *viazané*)), when applying for the business license, a legal entity must employ a responsible person ((in the Slovak language: *zodpovedný zástupca*), who meets the qualification criteria as stipulated by the Trade Licensing Act and is a Slovak resident. The responsible person has to be an employee of the legal entity or its shareholder/participant.

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 trade license or other authorization to carry on business, the company is incorporated on the date of its registration with the Commercial Register maintained by the relevant District Court. Under the Act on Commercial Register, the District Court maintaining the Commercial Register will register the new company within 2 business days from receipt of the complete application to incorporate/register the company.

#### **e. Statutory Representatives**

Generally, the companies are represented by their statutory representatives (i.e., a corporate body that is, by operation of law, authorized to act and sign on behalf of a company) or persons authorized to act on company’s behalf based on power of attorney.

Further, a special type of power of Attorney can be granted pursuant to the Commercial Code called “Proxy” (in the Slovak language: *prokúra*), under which the proxy-holder (in the Slovak language: *prokurista*) is registered with the Commercial Register and authorized, in general (subject to certain exemptions), to carry out all legal acts related to the operation of an enterprise.

#### **f. Winding Up of Companies**

The winding up of a company may be followed by (i) an acquisition (where assets of the company are transferred to another, already existing company), a merger (where assets of the company are transferred to another, newly-established 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 (in the Slovak language: *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-à-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 Companies and Business Vehicles

The legally recognized companies in the Slovak Republic are:

- (i) limited liability company (the name of the company 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 company must contain the word “*akciová spoločnosť*” or its abbreviation “*a.s.*” or an “*akc. spol.*”); banks, dealers, and insurance companies must be incorporated in this form;
- (iii) limited commercial partnership (the name of the company must contain the word “*komanditná spoločnosť*” or its abbreviation “*k.s.*” or a “*kom. spol.*”); and
- (iv) general commercial partnership (the name of the company must contain the word “*verejná obchodná spoločnosť*” or its abbreviation “*v.o.s.*” or a “*ver. obch. spol.*”).

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

- (i) branch office of foreign company (in the Slovak language: *organizačná zložka podniku zahraničnej osoby*), 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 (in the Slovak language: *družstvo*); and
- (iii) sole entrepreneur (in the Slovak language: *fyzická osoba - podnikateľ*) under a trade license.

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

In case of statutory representatives, who are not citizens of EU member countries or citizens of an OECD country, residence permit visa will be required by the Slovak Commercial Register.

In addition, Slovak law provides for the possibility of establishing associations of individuals or legal entities (in the Slovak language: *združenie*) under Section 829 *et seq.* of the Slovak Civil Code. 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 a limited liability company are as follows:

- (i) There must be a minimum of 1 (one), and a maximum of 50 (fifty), participants in a limited liability company (“s.r.o.”). A one-man limited liability company cannot be the sole founder or sole participant of another limited liability company. An individual (physical person) 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.
- (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 deed of foundation (in the Slovak language: “*zakladateľská listina*”), with no need to

prepare a detailed and lengthy constituent document (or by-laws). If there is to be more than one participant, a memorandum of association (in the Slovak language: “*spoločenská zmluva*”) must be prepared and signed. Both the deed of foundation and memorandum of association must be signed before a Slovak notary by the sole founder/all founders.<sup>4</sup>

- (iv) Since 1 October 2012 an s.r.o. cannot be established by a Slovak founder that has tax arrears in the Slovak Republic. A founder of an s.r.o. has to obtain consent from the relevant Slovak financial authority proving that the founder does not have any tax arrears. The consent has to be submitted to the competent Registration Court together with other documents required for incorporation of the s.r.o. This obligation to obtain prior consent of the financial authority does not apply to founders that are non-Slovak individuals or non-Slovak legal entities.
- (v) 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 deed of foundation/memorandum of association, by-laws or the Slovak Commercial Code).
- (vi) 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 company’s debts.
- (vii) An s.r.o. is under the obligation to create a reserve fund at the time and in the amount determined in its memorandum of association / foundation deed. Unless the reserve fund was already created at the time of the s.r.o.’s incorporation, the s.r.o. is obliged to create it from the net profit reported in the annual financial statements for the first year of the s.r.o.’s profitability, namely in an amount of at least 5% of the net profit but no more than 10% of the s.r.o.’s registered capital. An amount determined in the memorandum of association / foundation deed of at least 5% of the net profit reported in the annual financial statements has to be annually transferred by the s.r.o. to the reserve fund until the reserve fund reaches the amount of the reserve fund determined in the memorandum of association / foundation deed, such amount being equal to at least 10% of the s.r.o.’s registered capital.
- (viii) 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 with the Commercial Register.
- (ix) Since 1 October 2012, if a participant holding the majority ownership interest in the s.r.o. wishes to transfer the majority ownership interest, it is necessary to obtain prior consent from the relevant Slovak financial authority in relation to the participant (transferor) and the acquirer (transferee). Such consent will be granted by the authority if the participant (transferor) and the acquirer (transferee) do not have tax arrears in the Slovak Republic. This

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<sup>4</sup> The memorandum of association/deed of foundation must contain the following: (i) the name of the company and its seat (*i.e.*, its registered office); (ii) names and seats/residence of the participants; (iii) scope of business activities (no catch-all purpose clause is permitted under 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 numbers of the first directors and the manner in which they act and sign on behalf of the company (in case of a non-Slovak citizen, the date of birth is used instead of birth number, if no birth number has been assigned to that non-Slovak citizen); (vi) identification of the custodian of the participants’ contributions; (vii) the amount of reserve fund, the amount up to which the company is obliged to supplement this reserve fund, and the manner of supplementation; (viii) benefits provided to the founders of the company, if any; and (ix) likely costs and expenses necessary for establishment and incorporation of the company.

obligation to obtain prior consent of the financial authority does not apply to participants (transferors) and the acquirers (transferees) that are non-Slovak individuals or non-Slovak legal entities.

- (x) The company can acquire its own ownership interest only in certain circumstances. Further, a controlled company cannot acquire an ownership interest in the controlling company, save if such is acquired through inheritance or if the controlled company takes over all rights and liabilities of the participant – former owner of the ownership interest.
- (xi) 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 (in the Slovak language “*konateľ*”).<sup>5</sup> There is no need to establish a supervisory board - establishment of a supervisory board is discretionary.
- (xii) The powers of directors can only be limited by the company’s memorandum or by the general meeting; however, such restrictions have no effect vis-à-vis 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, however, would in such a case have a right to indemnification from such director(s) for any such acts exceeding the internal restrictions on his/her/their powers.
- (xiii) 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. The company, however, may waive its claims for damages which the company can have against the directors (or agree with them on settlement of such claims), but not earlier than three years after the claims have arisen, and only on the condition that such waiver (settlement) is approved by the company’s general meeting and such approval is not formally contested by the company’s participants who hold in aggregate at least 10% of the contributions into the registered capital of the company.
- (xiv) The minimum registered capital (*i.e.*, the 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 registration of the company with the Commercial Register. If there are two or more participants, at least 50% of the registered capital and 30% of each participant’s initial capital contribution must be paid by the time of submission of the petition for registration of the company with the Commercial Register. The remainder of the initial capital must be paid within 5 years of registration of the s.r.o. with the Commercial Register, or earlier if so stated in the memorandum of association, subject to a default interest of 20%. The amount of default interest for late payment is discretionary. The minimum capital contribution of each participant is EUR 750.
- (xv) 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 (execution of) a complete/full memorandum of association every time such information is amended.

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<sup>5</sup> 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.



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

The principal features of a joint stock company (the “a.s.”) are as follows:

- (i) A joint stock company may be established by one or more legal entities or two or more individuals or a combination of legal entity(ies) or individual(s).<sup>6</sup> 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 of the company with respect to the acquisition of its shares is in general prohibited (Section 161e).
- (iv) The shareholders are not held liable for the company’s obligations; the company is liable for breach of its obligations up to the value of all 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 companies.
- (vi) Capital stock is divided into shares, which can be issued as certificated shares (only registered form) or as book-entry shares (in a bearer or registered form) 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 registered shares of the company may also be owned by two or more persons. The company can, in certain instances and under conditions laid down in the Commercial Code, acquire its own shares.
- (viii) The shares can be divided, transferred or the rights attached to such shares can be separately transferred or assigned. The company’s bylaws may, 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 can issue voting or non-voting<sup>7</sup> 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, notwithstanding the economic result, is also prohibited.

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<sup>6</sup> One individual (physical person) cannot establish a joint stock company. After the company’s incorporation, all shares could, however, be acquired by one individual. There is no maximum limit as to the number of shareholders.

<sup>7</sup> 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 it can 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 (Section 207).
- (xi) The mandatory bodies of the joint stock company are: (i) board of directors which can consist of only one member;<sup>8</sup> (ii) a supervisory board of at least three members;<sup>9</sup> 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 full-time employees at the time of election.
- (xiii) A joint stock company is required to create a reserve fund in the amount of 10% of the registered capital upon its incorporation; 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 bylaws, but not less than 20% of the company's registered capital (Section 67, Section 217).
- (xiv) The minority shareholders rights (shareholders holding shares, the nominal value of which amounts at least to 5% of the registered capital, or less if stated so in the company's by-laws, and who hold 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, request the board of directors to incorporate a matter designated by the minority shareholders into the agenda of a general meeting or request the board of directors to commence an action for payment of the issue price of shares against defaulting shareholders or 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; raise claims for damages or other claims in the company's favor against the board of directors; and **(iii) to commence a derivative action suit in the above** (Sections 181 and 182).

### 2.2.3 General Commercial Partnership – v.o.s. (Sections 76 - 92)

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

- (i) A general commercial partnership is a legal entity of at least two persons who carry out business activities under the same business name. The Articles of Incorporation (partnership agreement) must contain the business name and the seat of the company; identification of the partners and the scope of business activities.
- (ii) Each partner is a general partner, i.e., all partners are jointly and severally liable for all obligations of the partnership (a new partner is liable for the obligations of the partnership incurred prior to his/her accession to the entity; however, he/she could require from other partners to be indemnified for any payments paid by him/her and compensated for any associated damages; the departing partner is liable for the obligations of the partnership incurred prior to his/her exit);
- (iii) No contribution or capitalization is required by law to establish a legal entity.

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<sup>8</sup> 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.

<sup>9</sup> There is no need for a member of the supervisory board who is non-Slovak to have a Slovak residence permit.

- (iv) Each partner is authorized, by law, to act on behalf of the partnership, unless otherwise stated in the Articles of Incorporation. Such statutory rights of only some of the partners are effective and may be enforced against third parties, if the name of the partners entitled to act on behalf of the partnership is entered into the Commercial Register (evidenced by the extract from the Commercial Register).
- (v) The profits are shared equally among the general partners, unless otherwise stated in the Articles of Incorporation.
- (vi) The partnership may be a flow-through entity for Slovak tax purposes.

#### 2.2.4 Limited Commercial Partnership – k. s. (Sections 93- 104)

This partnership has the features of the general partnership and the limited liability company.

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

- (i) A limited commercial partnership is a legal entity with at least one limited partner (in the Slovak language: *komanditista*) and at least one general partner (in the Slovak language: *komplementár*). The Articles of Incorporation (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.
- (ii) The minimum limited partner’s statutory contribution into the initial capital of limited commercial partnership is EUR 250.
- (iii) Limited partners are liable up to the unpaid amount of their contributions; the general partners faces unlimited liability with respect to all obligations of the partnership.
- (iv) Only the general partner is authorized to participate in the partnership’s business management 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 Articles of Incorporation (partnership agreement) states otherwise.
- (v) 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 office is not a separate legal entity; as a result, the foreign legal entity which has established the branch office would be liable for all obligations and consequences resulting from the activities of the branch office in the Slovak Republic.
- (ii) There are no capitalization requirements for a branch (i.e., no statutory registered capital is required).
- (iii) The authorized representative of a branch office 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 office would be subject to Slovak taxation on all income attributed to the activities of the branch office.

- (v) A branch is required to maintain its books on an accrual basis.

## 2.2.6 Co-operative

The principal features of a co-operative are as follows:

- (i) A co-operative is a legal entity established for the purpose of either undertaking business or satisfying the economic, social or other needs of its members.
- (ii) A co-operative is an association of an unlimited number of members; new members may join and the existing members may leave provided the co-operative always has at least five members, or at least two members that are legal entities.
- (iii) The minimum statutory registered capital is EUR 1,250.
- (iv) A co-operative is required to create an indivisible fund at least in the amount of 10% of the registered capital upon its incorporation. This fund must be replenished on an annual basis by at least 10% of the co-operative's annual net profit, until the amount of the indivisible fund is equal to one half of the registered capital of co-operative.
- (v) The members are not held liable for the co-operative's obligations; the co-operative is liable for breach of its obligations up to the value of all its assets.
- (vi) The mandatory bodies of a co-operative are: Members' Meeting (in the Slovak language: "členská schôdza"), Board of Directors (in the Slovak language: "predstavenstvo") and Audit Commission (in the Slovak language: "kontrolná komisia").

## 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 office is that it is not a separate legal entity, thus exposing the "parent company" to direct liability for the actions of the branch office.

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

	<b>s.r.o.</b>	<b>a.s.</b>
Minimum capital (EUR)	EUR 5,000	EUR 25,000
Minimum no. of appointments required (likely triggers a need to obtain Slovak residence permit)	1 (director)	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 and legal entities in the form of personal income tax and corporate tax respectively. In addition, certain sources of income are not included in either personal or corporate income tax bases and are subject to a different method of tax collection requiring the payer to withhold tax on behalf of the recipient (“withholding tax”).

### 3.2 Tax Registration

Taxation is administered and collected by local competent tax offices. The supreme tax authority is the Ministry of Finance, represented by the Financial Directorate.

Legal entities and individuals (other than employees) who have been granted formal 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 by the end of the calendar month following the calendar month in which they received such permission. An 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 the taxpayer 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 establishment and apply for registration by the end of the calendar month following the calendar month in which the permanent establishment was created. The taxpayer does not have a duty to register for tax purposes in the Slovak Republic, provided Slovak sourced income is only subject to withholding tax, or such income is classified as generated from the taxpayer’s dependent activity (employment), capital assets, or other income categories (Section 5, Section 7 or Section 8 of the Income Tax Act), or from a combination of these income categories.

If local competence cannot be established under the paragraph above, particularly in the case of entities or persons that are considered non-residents for tax purposes, it will be determined according to the location of the particular permanent establishment or the place where the entity or person liable for Slovak tax carries out the majority of their business activities in the Slovak Republic. In all other cases, entities or persons must report all their income derived from Slovak sources to the Tax Office Bratislava.

### 3.3 Corporate Income Tax

Income generated by legal entities (including general partnerships) is subject to a general tax rate of 22%. Capital gains of legal entities are treated as ordinary income and taxed at the normal rate of 22%.

Taxable income of Slovak legal entities is generally considered to be gross worldwide revenue. Companies whose seat or place of management is not located in the Slovak Republic are subject to Slovak taxation only on their Slovak-sourced income. In general, for tax purposes, branch offices of foreign companies are regarded as permanent establishments of foreign enterprises in the Slovak Republic. A branch office is a separate accounting unit and is obligated to maintain accounts in the double entry bookkeeping system under Slovak accounting rules. If it is not possible to ascertain the actual profit attributable to the activities of a branch office in the Slovak Republic, the tax authorities may deem the profit of the branch to be equal to that of a similar sized legal entity.

### 3.3.1 Tax Licenses

The amendment to the Income Tax Act introducing *inter alia* the “tax licenses” became effective as of January 1, 2014. The tax license is the minimum tax to be paid in each tax period by (i) a taxpayer who reported a tax loss, and (ii) a taxpayer whose tax duty calculated in the tax return is below the amount of the applicable tax license set forth with respect to the following classes of taxpayers:

- a) If, as of the last day of the tax period, the taxpayer is not a value added tax payer with the annual turnover not exceeding EUR 500,000, the tax license is EUR 480;
- b) If, as of the last day of the tax period, the taxpayer is a value added tax payer with the annual turnover not exceeding EUR 500,000, the tax license is EUR 960;
- c) If the tax payer had an annual turnover exceeding EUR 500,000, the tax license is EUR 2,880.

Tax licenses apply to legal entities only. A tax license for the relevant tax period is, in general, payable within the period for filing a tax return for the relevant tax period according to Section 49 of the Income Tax Act (*i.e.*, in general, tax licenses for the 2014 tax period will be payable by March 31, 2015).

Further, the difference between the amount of the paid tax license and the amount of the tax reported in a tax return can be set off against the future tax liability exceeding the amount of the applicable tax license in the following three consecutive tax periods.

## 3.4 Personal Income Tax

Under Slovak 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 in a given calendar year, are deemed to be Slovak tax residents. Slovak tax residents are taxed on their worldwide (local and foreign) income. When determining the tax status of an individual, the provisions of an applicable international tax treaty are taken into account.

The current income tax rate for individuals is

- a) the basic rate of 19% on tax base (taxable income) up to the amount of the defined minimum subsistence level multiplied by 176.8; and
- b) the higher rate of 25 % on tax base (taxable income) in excess of the defined minimum subsistence level multiplied by 176.8.

In 2015, the amount of the defined minimum subsistence level multiplied by 176.8 is EUR 35,022.31.

Taxable income for individuals generally includes:

- (i) income from dependent activities – including, but not limited to, salaries, wages, bonuses, other compensation of a similar nature and most benefits in kind. Income from dependent activities also includes fees paid to directors and shareholders of private limited liability companies and to limited partners of limited commercial partnerships;
- (ii) income from a business activity and self-employment; rental income and income generated by the use of artwork and artistic performance;
- (iii) capital income; and
- (iv) other income.

An individual's tax base is the amount equivalent to all items of income reduced by deductible expenses incurred to generate such income and other deductions in the relevant calendar (tax) year.

Certain classes of an individual's income are, under certain conditions, exempt from tax, including:

- (i) income from the sale of movable assets that are 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 person who is considered a non-resident for Slovak tax purposes from an employer having its registered office outside of the Slovak Republic, provided that such a person does not spend more than 183 days in the Slovak Republic during any consecutive 12 month period, the income is not borne by a Slovak permanent establishment, and the income is not received for artistic or sporting activities;
- (iii) reimbursements for travel expenses provided to an employee (up to statutory limits); and
- (iv) mandatory social security contributions paid by an employer on behalf of its employee.

### 3.4.1 Deductible Expenses

Expenses must relate to taxable income and must be sufficiently evidenced by a taxpayer and recorded in the taxpayer's account books in order to be recognized as tax deductible. Expenses that 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) after the sale of an asset subject to depreciation is made, the net tax value of a tangible asset or net book value of a fixed intangible asset (certain exceptions apply in this respect);
- (iii) insurance premiums relating to a business activity;
- (iv) mandatory health and social security payments made by employers;
- (v) rent 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 statutory provisions in the area of labor law.

The tax base may be reduced by tax losses from the previous years, which may be carried forward evenly for four succeeding tax years. Tax losses cannot be carried back.

### 3.4.2 Depreciation

In general, a tangible asset is depreciated if its cost exceeds EUR 1,700 and has an anticipated useful life of more than one year. Other types of assets may also be depreciated, e.g. buildings and other structures.

Tax law sets depreciation periods for different types of assets, grouped in four categories, as follows:

<b>Depreciation Group</b>	<b>Length of Depreciation</b>	<b>Depreciated Assets</b>
1	4 years	computers, communication equipment, passenger cars.
2	6 years	radiators, cooling and freezing equipment, machinery equipment, furniture, medical and dental tools and equipment.
3	8 years	electric motors, generators and transformers, ovens, burners.
4	12 years	prefabricated buildings, air-conditioning, elevators.
5	20 years	buildings and civil engineering structures (save for those in depreciation groups 4 and 6).
6	40 years	apartment buildings, hotels and similar buildings, administration buildings, other civil engineering structures.

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.

An intangible asset is depreciated if its cost exceeds EUR 2,400 and has an anticipated useful life of more than one year. Intangible assets (that are costs of development) must be amortized within 5 years. Accounting amortization charges are also relevant for tax purposes.

### 3.4.3 Income Tax Returns

In general, individuals and legal entities are required to file a tax return within three months following the tax year for which it is filed. Income tax returns must be filed with the relevant tax authority, i.e., the tax office in charge of the district in which an individual resides or a legal entity has its registered office.

## 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:

<b>Tax Liability of Previous Year</b>	<b>Frequency</b>	<b>Amount of Prepayment</b>
EUR 2,500 – EUR 16,600	Quarterly	1/4 of previous year's tax liability
Over EUR 16,600	Monthly	1/12 of previous year's tax liability



### 3.5.1 Withholding

Where 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. At the same time, individuals or legal entities who are required to withhold from payments must report the withholding and payment to the tax authorities.

The following types of payments are subject to withholding tax at a rate of 19% (provided that a rate of 35% is not applied – please see our comments below), 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, construction and assembling services and similar activities performed in the Slovak Republic;
- (ii) remuneration for the activities of an artist, sportsman, circus performer, or collaborating person(s) and from other similar activities performed personally or valorized in the Slovak Republic, directly or through an intermediary person;
- (iii) payments from Slovak tax residents and permanent establishments of Slovak non-residents in the form of:
  - income received for use or the right to use industrial property, software, designs, models, plans, technology and other know-how;
  - income for use or the right to use a copyright and rights similar to copyrights;
  - interests and other yields on provided loans and credits and on derivatives;
  - income from the lease and other use of moveable property located in the Slovak Republic.

The following income is also subject to Slovak withholding tax at a rate of 19% (provided that a rate of 35% is not applied – please see our comments below), regardless of residence or non-residence status for tax purposes:

- (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 impose withholding tax at a reduced rate.

Dividends paid on profits reported after January 1, 2004 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.

Effective from March 1, 2014, the withholding tax rate has been increased to 35% in the case of (in general) payments to taxpayers from non-EU/EEA countries and countries, with which the Slovak Republic has not concluded treaties on avoidance of double taxation.

## 3.6 Value Added Tax (“VAT”)

### 3.6.1 General

VAT is a tax levied on the transfer of goods, the provision of services including the transfer or use of rights, the transfer of ownership of 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) provided 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) public radio and television broadcasting services;
- (iii) financial services, such as provision of a loan or credit, operating bank accounts;
- (iv) insurance services;
- (v) training and education 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.

### 3.6.2 Payers of VAT

A taxable person or entity must register for VAT if their turnover for the past 12 consecutive calendar months exceeds the VAT registration threshold of EUR 49,790. The taxpayer must register with the district tax authority by the 20th day of the month following the month in which their turnover exceeds the stated threshold.

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. However, they

may be required to deposit with the financial authority a guarantee from EUR 1,000 to EUR 500,000. If the guarantee is not used for settlement of VAT arrears (if any), the tax authority will return the guarantee after 12 months.

### 3.6.3 VAT Rates

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

### 3.6.4 VAT Base

VAT is calculated on the VAT base for a 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 (consideration) to be received by the supplier of such goods and services. In cases where the price is not known or agreed, the tax base is determined as the “usual market price” of the taxable supply.

### 3.6.5 VAT Period, Returns and Payment

In general, the tax period for the submission of VAT returns and payments is a calendar month. A registered taxpayer may decide to comply with the reporting and payment obligation quarterly provided that (i) more than 12 months have passed since the end of the calendar month in which the taxpayer became a VAT taxpayer, and (ii) during the previous 12 consecutive calendar months the taxpayer generated a turnover of less than EUR 100,000. 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.

### 3.6.6 Application for Refund of VAT

An application for a VAT refund may relate to a maximum period of one calendar year. If the refund period is shorter than a calendar year but at least 3 months, the amount of the VAT claimed must be at least EUR 400. If the refund application relates to one calendar year or a period of less than three months (representing the remainder of a calendar year), the amount of the VAT claimed must be 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 that are not subject to VAT

The VAT deduction may be claimed when a taxable supply has been supplied, paid and accounted for as evidenced by a valid tax document.

### 3.6.7 VAT Penalties

VAT returns must be submitted and payment for the VAT due must be cleared by the due date. Failure to file a VAT return and pay for the VAT due on time can have several consequences including the imposition of a penalty and surcharge by the tax authorities. Penalties and surcharges may also be charged in other cases, such as filing an inaccurate VAT return, or when a tax document (a VAT invoice) is issued before the date on which a transaction is considered to take place for VAT purposes (the time of supply).

## **3.7 Other Taxes / Fees**

### **3.7.1 Excise Duty**

Excise duty is a tax levied on certain commodities produced/manufactured, supplied or imported in the Slovak Republic, such as mineral oils, tobacco and tobacco products, spirits, beers, wines, electricity, coal and natural gas. The tax rate depends on the type and volume of commodity.

### **3.7.2 Real Estate Transfer Tax**

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

### **3.7.3 Motor Vehicle Tax**

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

### **3.7.4 Motor Vehicle Registration Fee**

The motor vehicle registration fee is levied on all motor vehicles registered for the first time in the Slovak Republic. The amount of the fee varies depending on the engine performance of the registered motor vehicle (from EUR 33 up to EUR 2,997).

## 4. Customs Duties

The Slovak rates of customs duty comply with the General Agreement on Tariffs and Trade (GATT) that regulates international trade and tariffs in particular. Certain 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 payable on particular goods is assessed on the basis of their customs value which in addition to their purchase price includes related transport and other auxiliary costs (e.g. insurance fees, license fees 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 customs duty, import VAT of 20%, or 10% in cases of certain goods (please see Section 3.7.3 above), applies to imported goods. Import VAT is deductible under the same conditions applicable for deduction of VAT on supplies rendered in the Slovak Republic.

## 5. Audits and Accounting

### 5.1 Accounting System

Business individuals and business entities keep their accounts either in a single-entry system (individuals and non-profit entities only) or double-entry system (obligatory for all business entities registered with the Commercial Register).

### 5.2 Accounting Period

Accounting law defines ‘accounting period’ as a calendar year or a fiscal year, i.e., a period of 12 consecutive calendar months beginning on the first day of any calendar month other than January. The law requires that an accounting unit notifies in writing a tax office within certain time limits if its accounting period constitutes a fiscal year.

### 5.3 Accounting Principles

Accounting units are required to maintain their books (accounting records) in accordance with statutory accounting principles. The profit or loss of an accounting unit calculated pursuant to the principles is also decisive for the determination of the tax base (taxable income).

The Ministry of Finance of the Slovak Republic regulates mandatory 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, or cash, the transaction must be recorded in a foreign currency, provided that the value of the relevant asset and liability is denominated in that foreign currency. Furthermore, certain assets (securities, derivatives) must be evaluated on the basis of 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 at their nominal value. In certain cases, tangible assets may be recorded at their replacement costs and intangible assets at the lower of their development cost or replacement value. Assets are written off over their useful economic life that has been 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 as is necessary 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.

For a subsidiary company, consolidated financial statements and a consolidated annual report must be prepared by the parent 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 dismiss the majority of the members of the statutory or supervisory body of the subsidiary company and, at the same time, the parent company 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 shareholder in the subsidiary company and, on the basis of an agreement with other of its participants or shareholders, has a majority of voting rights.

Comprehensive year-end financial statements must be filed with the tax authorities. With effect as of January 1, 2014, the financial statements (and annual reports, if prepared) of business entities registered in the Commercial Register are mandatorily filed with the financial statements register maintained by the Ministry of Finance of the Slovak Republic.

## 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 cooperatives), if they meet any two of the following conditions in the accounting period preceding that the one for which the financial statements are to be audited:
  - total gross value of the entity's assets as stated in the balance sheet exceeds EUR 1 million,
  - the entity's net turnover 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 foreign insurance companies, foundations established and operated for publicly beneficial purposes, etc.

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

The mandatorily audited entities must, in general, 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 the entity's performance forecast.

## 6. Labor Issues

### 6.1 Legal Framework

Act No. 311/2001 Coll., the Labor Code as amended (the “Labor Code”), is the principal legislative act governing employment relationships in the Slovak Republic. The Labor Code has been incorporated into Slovak legislation to reflect the process of economic transformation in the Slovak Republic and to transpose into Slovak national law the various concepts set out in European Union directives regarding labor law.

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

Most of the provisions of labor law are of a mandatory nature and may not be varied by the provisions of the employment contract. For example, termination provisions that are less favorable to employees than those specified in the Labor Code would generally not be enforceable.

### 6.2 Applicability of Labor Code

The following are the considerations that should be taken into account 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 relationship must also comply with the provisions of the Labor Code.

Employment relationships between employees (performing their work in the Slovak Republic) and foreign employers, as well as between foreigners and employers residing in the Slovak Republic, are governed by the Labor Code, unless the appropriate rules of conflict of laws (private international law) state otherwise (in particular, the Act on International Private and Procedural Law). The Slovak Labor Code, in accordance with Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, also stipulates which provisions of this Code are mandatory in the event that employees are posted to perform work in the territory of another EU member state and *vice versa*. The Act on International Private and Procedural Law provides that employment contracts with expatriates may be governed by other than Slovak law, although any provisions in such agreements (even if valid under foreign law) are invalid if they violate the Slovak public order regulations.

The provisions of the Labor Code are generally harmonized with EU laws and provide for a better protection of employees’ rights in comparison with, for example, United States labor law.

#### 6.2.2 Formation of Employment Relationship

Any employment relationship must be based on a mutual agreement between an individual and employer. Under the Labor Code, a labor-law relationship may generally arise between an employee and employer on the basis of:

- a written employment contract (in the Slovak language: *pracovná zmluva*); or
- written agreements on work performed outside of an employment ( in the Slovak language: *dohody o prácach vykonávaných mimo pracovného pomeru*), (i) temporary student work agreement (in the Slovak language: *dohoda o brigádnickej práci študenta*), (ii) work



performance agreement ( in the Slovak language: *dohoda o vykonaní práce*) and (iii) work activities agreement ( in the Slovak language: *dohoda o pracovnej činnosti*).

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

The employment contract must be made in writing and must consist of certain mandatory terms.

In the employment contract, 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 (in general, a municipality, its part or a place specified in another way);
- (iii) commencement date of work; and
- (iv) conditions of salary payment, unless such conditions are agreed by the collective agreement.

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

The employment contract 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. The probationary period, as agreed upon in the employment contract, 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 two years and that this employment may be prolonged or renewed no more than two times within the two-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, in general, one month, unless a longer period is applied according to the below text. The termination period of an employee who was served a notice due to dissolution or relocation of the employer (or its part) (provided the employee did not agree to the change of the agreed place of work performance), the employee's redundancy resulting from organizational changes or who has lost, on a long-term basis, the ability to continue to perform his/her work because of his/her health condition (pursuant to a doctor's opinion) is (i) at least two months if, as of the date the notice was served, the employee's employment has lasted at least one year to less than five years, (ii) at least three months if, as of the date the notice was served, the employee's employment has lasted at least five years. The termination period of an employee who was served a notice due to reasons other than those mentioned above is at least two months if the employee's employment has lasted for at least one year.

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 at least two months.

An employee may be terminated for cause with immediate effect, if the employee has been convicted of an intentional 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 one or two months' notice (see above), if the employee, (a) after an official warning within the preceding 6-month period, fails satisfactorily to carry out his/her work obligations or assignments, or (b) repeatedly breaches his/her obligations despite having been served an official warning within the preceding 6-month period regarding the possibility to be terminated for such cause.

An employee may also be terminated in the event of the employer's dissolution or relocation (or its part) (provided the employee does not agree to the change of the agreed place of work performance), or due to the employee's redundancy resulting from organizational changes, or due to the fact that the employee has lost, on a long-term basis, the ability to continue to perform his/her work because of his/her health condition. However, in the above cases, 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 dissolution or relocation (or its part), or due to the employee's redundancy resulting from organizational changes, or because the employee has lost, on a long-term basis, the ability to continue to perform his/her work because of his/her health condition (pursuant to a doctor's opinion), is entitled to receive a one-month up to four-month severance payment. If the employment is terminated by agreement concluded with the employee for one of the reasons mentioned in the previous sentence, the employee has a right to a severance payment in the amount from one-month up to five-month severance payment. The amount of severance payment depends on the number of years the employee has worked for the employer. An employee whose employment is formed under "the agreement on work performed outside of an 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 apply for and 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.

A foreign national who wishes to act as a member of the board of directors of an a.s., a director of an s.r.o., the authorized representative of a branch or a proxy-holder (*prokurista*) 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 Act on Collective Bargaining (Act No. 2/1991, as amended). 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 union body. 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/bodies and the employer;
- (ii) agreements of a higher degree concluded for a larger number of employers between a relevant higher degree trade union body/bodies and organization/organizations of employers;
- (iii) agreements of a higher degree concluded between a relevant higher degree trade union body/bodies and the Slovak Republic as an employer; and
- (iv) agreements of a higher degree concluded for employers who are bound by specific laws (i.e., laws regarding public functions, governmental bodies' employees, etc.).

A collective agreement is invalid to the extent it provides less to the employees than a collective agreement of a higher degree.

As opposed to the legislation valid until the end of year 2013, as of January 1, 2014, the following changes to the Act on Collective Bargaining are important:

- (i) the collective agreements of a higher degree can be concluded for not only the sectors, but also their parts;
- (ii) the binding force of the collective agreements of a higher degree can also be extended to the employers in the parts of the sectors, as opposed to the past when it could have been extended to the employers in the sectors as a whole only;
- (iii) the binding force of the collective agreement of a higher degree can also be extended to the employers in the sectors or parts thereof without these employers' consent, as opposed to the past when such employers' consent have been required for it to be effective;
- (iv) the Act on Collective Bargaining provides for certain exemption regarding the employers to which the extension of the collective agreement of a higher degree will not apply, including the employers with less than 20 employees (according to the average registered number of employees calculated for the calendar month preceding the month in which the extension took effect) and the employers who render business activities for less than 24 calendar months as at the date the extension took effect.

## 7. Real Estate

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

Upon becoming a member of the European Communities and the European Union, the Slovak Republic introduced new legislation allowing non-residents to acquire real estate in the territory of the Slovak Republic, except for land classified as agricultural or forest land outside built-up areas, and other real estate subject to a special legal regulations limiting its acquisition. As of June 1, 2014, this restriction has been abolished. Non-residents may now acquire real estate in the territory of the Slovak Republic, save for special categories of land, e.g. environmentally protected areas and archeological sites. Further, special conditions apply to acquisition of agricultural land in order to safeguard its cultivation and original purpose.

In general, Slovak and foreign legal entities and individuals may lease real estate at prices agreed between the parties without any restrictions. Property may only be leased for the purpose for which it has been zoned by a local municipality.

### 7.2 Cadastre

Any change in ownership of real estate (or its limitation) is recorded in the official register of real estate in the Slovak Republic, known as the Cadaster. The Cadaster is maintained by the district offices' cadastral departments and includes the details of the real estate's geometric determination (location) and description, as well as other details such as ownership rights, liens, easements, certain pre-emption rights and leases etc. The administration of the Cadastre is supervised by the Geodesy, Cartography and Cadaster Authority 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 in the Cadaster is necessary.

The Geodesy, Cartography and Cadaster Authority of the Slovak Republic maintains a Cadastral registry on the Internet under [www.katasterportal.sk](http://www.katasterportal.sk), making access to information concerning any particular lot and its owners much simpler and more efficient.

## 8. Types of Security Interest Available in the Slovak Republic

The general legal framework for creating security rights in the Slovak Republic is principally set out in the Civil Code and supplemented by the Commercial Code, the Securities Act, intellectual property laws. 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

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

Under Section 8 of the Foreign Exchange Act (Act No. 202/1995 Coll., as amended) and the Act on National Bank of Slovakia (Act No. 566/1992 Coll., as amended), however, residents and organizational units of non-residents established in the Slovak Republic are required to report (i.e. to fulfill a notification requirement), certain details of their financial transactions in relation to residents abroad and in relation to non-residents.

The relevant notification forms are provided by the National Bank of Slovakia (the “NBS”) and available on its website: [www.nbs.sk](http://www.nbs.sk).<sup>10</sup>

Further, the following exchange limitations 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 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.

From May 1, 2004 to May 31, 2014, in contrast to the former applicable foreign exchange rules, under Section 19a of the Foreign Exchange Act, foreign exchange non-residents were able to acquire ownership title to real estate in the Slovak Republic, except for (a) real estate classified as agricultural or forest land, located outside of built-up municipality areas or (b) real estate acquisitions that are subject to specific laws (e.g. the Act on Water, Mining Laws, the environmental protection laws, etc.). However, the latest amendment to the Foreign Exchange Act further liberalized regulations for acquisition of land in the Slovak Republic by foreign exchange non-residents. As of June 1, 2014, non-residents may now acquire real estate in the territory of the Slovak Republic, save for special categories of land, e.g. environmentally protected areas and archeological sites. Further, special conditions apply to acquisition of agricultural land in order to safeguard its cultivation and original purpose.

### Conversion of Cash

No difficulties in converting cash or cash equivalents to U.S. dollars or in withdrawing cash from the Slovak Republic are foreseeable under the provisions of the Foreign Exchange Act, the principal law governing foreign exchange in the Slovak Republic, 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 the Slovak Republic, payments in a foreign currency or abroad

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<sup>10</sup> At the Slovak menu click on “Štatistika”, then “Štatistika platobnej bilancie”, and then “Hlásenia pre devízovú ohlasovaciu povinnosť.” All forms are in the Slovak language only.

generally may be suspended for the duration of such emergency (for the maximum period of three months); 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 and a bank and for a period as specified by the NBS and the Ministry of Finance.

### 9.1.1 Expropriation

There is no existing or officially proposed law or other rule in the Slovak Republic 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 reasonably 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 EUR 100,000 of a depositor’s deposits, regardless of the currency deposited in the account(s) with a bank.

Since 2010 deposits held in a branch of a foreign bank that is operating in the Slovak Republic under a single banking license granted by EU law are protected in accordance with the rules of the deposit protection scheme adopted in the EU Member State where the foreign bank is seated. Please note that deposits of banks, securities dealers, insurance companies, etc. are explicitly excluded from the scope of the Deposits Protection Act and, thus, any of their deposits are not covered by the statutory deposits guarantee.

## 10. Competition Rules

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

The purpose of Slovak competition legislation (Act No. 136/2001 Coll., on Protection of Economic Competition, as amended (the “**Competition Protection Act**”)) is (i) to protect economic competition against its restriction, (ii) to create conditions for further development of competition benefiting consumers, as well as (iii) to define the powers and scope of activities of the Anti-monopoly Office of the Slovak Republic (*Protimonopolný úrad Slovenskej republiky*, the “**AMO**”).

Under Section 2(4) of the Competition Protection Act, the Competition Protection 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, municipalities and other persons set forth by the Competition Protection Act (such as “whistle blowers”).

Compliance with the Competition Protection Act on Protection of Economic Competition is administered by 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 include mergers, fusions, joint-ventures, etc.).

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

### 10.1 Agreements Restraining Economic Competition (Sections 4 to 6 of the Competition Protection 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; agreements to apply dissimilar conditions to an identical or comparable performance with individual entrepreneurs; making the consent to conclusion of an agreement subject to a condition that the other contracting party has to accept also supplementary obligations which, by their nature or according to commercial usage, do not relate to the subject of such an agreement; bid rigging agreements; and boycotts.

The Competition Protection Act exempts from its scope e.g., (i) block exempted agreements and (ii) agreements where the effect on competition is negligible (determined by particular thresholds of market share of competitors on the relevant markets). Such block exemptions, however, do not apply to agreements restricting competition, the effects of which are incompatible with the requirements regarding individual exemptions (e.g. agreements for the purpose of improving production/distribution, supporting economic development, providing consumers with a benefit resulting therefrom).



## 10.2 Abuse of Dominant Position (Section 8 of the Competition Protection Act)

Common examples of abuse of a dominant market position include: direct or indirect charging unfair prices or imposing other unfair trading conditions; limitation of 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.

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** (ii) 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, imposes 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) the combined aggregate turnover in the Slovak Republic of the participants to the concentration is at least EUR 46,000,000; and the individual aggregate turnover in the Slovak Republic of at least two of the participants to the concentration is at least EUR 14,000,000 each;

OR

- (ii) in the case of a merger, the individual aggregate turnover in the Slovak Republic of at least one participant to the concentration is at least EUR 14,000,000; and the individual worldwide aggregate turnover of another participant to the concentration is at least EUR 46,000,000;

OR

- (iii) in the case of acquisition of control, the individual aggregate turnover in the Slovak Republic of at least one participant to the concentration which (or the part of which) is being acquired is at least EUR 14,000,000; and the individual worldwide aggregate turnover of any other participant to the concentration is at least EUR 46,000,000;

OR

- (iv) in the case of creation of a joint venture, the individual aggregate turnover in the Slovak Republic of at least one participant to the concentration creating the joint venture is at least EUR 14,000,000; and the individual worldwide aggregate turnover of another participant to the concentration is at least EUR 46,000,000.

*Note:* As a rule, the aggregate turnover of a participant to the concentration includes also the turnover of the group to which the participant to the concentration belongs. The relevant turnovers are the turnovers achieved in the accounting period preceding the occurrence of the concentration.

A concentration must be notified to the AMO in accordance with Section 10(7) of the Competition Protection 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) any other event that leads to an establishment of concentration occurs.

The AMO applies a two-phase procedure for appraisal of concentrations. The first phase lasts no more than 25 business days beginning on the day of receipt of a concentration notification (if the notification is not complete, the AMO will notify the competitor and the said time limit will be suspended until the completed notification is received by the AMO) and ends either with a simplified AMO decision on the concentration or with a notification by the AMO informing the parties of the need for a second-phase in-depth review if the concentration requires a more thorough analysis for identification of the competition concerns. In the second phase, the AMO issues a decision within 90 business days from the delivery of the AMO's notification.

In this regard, the AMO has the authority to approve a merger, consolidation, or acquisition, if the concentration will not materially distort effective competition on the relevant market, mainly through creation or strengthening of the dominant position.

The AMO may impose fines on competitors of up to 10% of the net turnover in the preceding accounting period) where the Competition Protection 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. However, in certain serious cases, where the performance of the AMO's inspection is obstructed by the undertaking, the AMO may fine the relevant undertaking up to 5% of its net turnover achieved in the preceding accounting period.

An undertaking may not exercise the rights and obligations resulting from a concentration before the AMO's decision on the concentration becomes legally effective.

### **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

Protection of the environment and compliance with environmental laws is supervised by the Ministry of Environment (“**MoE**”), the District Offices (“**DO**”), the District Offices in the Region’s Center (“**DORC**”) and the Slovak Inspection of Environment (“**IoE**”).

Each of these authorities is vested with certain powers generally to overlook, inspect and protect various aspects related to the environment and natural resources, such as air, soil, and water in particular. In general, the DORC has the exclusive power to issue approvals, consents, and licenses under the relevant legislation. The regional inspectorates operating under the IoE act mostly as professional advisory bodies in relation to protection of air.

Regulations governing the protection of the environment are analogous to those prevailing in the EU member states. As a result, any entity that exploits natural resources, develops projects, builds or removes infrastructures, or introduces new 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

Slovak environmental law constitutes of several acts. These include, in particular, the following:

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

This act defines the major terms and provides for the general legal framework and obligations of natural persons (individuals) 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 their individual elements or components or by disruption of their internal relations and processes as a result of human activity (Section 10). This general definition of ecological harm is reflected in other special acts on environmental protection. The act stipulates that any person or entity that has caused ecological harm is responsible for restoration of natural functions of the disrupted ecosystem or its part.

(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 the fundamental 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 for enforcement of environmental laws within the area of their competence.

As a general principle, the act stipulates that any person or entity that damages, pollutes or illicitly alters elements of nature and the environment protected by the act is required to restore such elements to their initial state, if 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 are transferred to any person or entity that agrees to deal with the waste from the producer.

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

In cases, where waste water or industrial water needs to be released into surface waters or groundwater, a permission granted by the authority is necessary. Such use of waters is defined by the act as “a specific use of waters” (Section 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 DO. The approval of the air protection state authority is required, *inter alia*, for (i) location and construction of the source of air pollution, including any changes thereto; (ii) change of use of fuel and raw materials, and for 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 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 may impose a penalty on any person or 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 in which securities were traded ceased to exist<sup>11</sup>) and the 1Q of the year 2004 (the Central Securities Depository (“**CDCP**”), the 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., on Bonds, as amended (“**Bond Act**”), the Commercial Code, Act No. 203/2011 Coll., on Collective Investment, effective as of July 1, 2011, Act No. 429/2002 Coll., the Stock Exchange Act, as amended (“**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 Section 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 involve (i) securities brokers who have been granted prior approval from the NBS, (ii) the NBS, as well as (iii) other central depositories, foreign or Slovak.

The 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 (the “**SCP**”). 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 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.

<sup>11</sup> With effect from September 2, 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](http://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.

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 a 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 securities brokers, i.e., foreign or domestic legal entities holding a license for securities trading granted by the NBS) 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 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 (in the Slovak language: *povolenie na vznik a činnosť burzy*) granted by its supervisory authority the NBS. 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 enterprise, in whole or in part.

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 time<sup>12</sup>) and temporary (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-requisites and observe the Stock Exchange rules.

The following trades can take place on the BCPB:

- (i) trades affecting rates (in the Slovak language: *kurzotvorné obchody*) – pairing of instructions on the number of securities and their price;
- (ii) block trades (in the Slovak language: *blokové obchody*) – pairing of instructions on the number of securities and their price;
- (iii) direct trades (in the Slovak language: *priame obchody*) – the price and volume are agreed in advance by the purchaser and the seller. The identity of both is disclosed; and
- (iv) repurchase agreements operations (in the Slovak language: *repo obchody*);

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<sup>12</sup> Current regular members of the BCPB are: Československá obchodná banka, a.s., Prima 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., Sberbank Slovensko, a.s., Všeobecná úverová banka, a.s.

(v) trades within a public take-over bid or an obligatory public take-over bid.

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,<sup>13</sup> announcing of direct trades and repo operations (**from 11:00 am to approx. 03:30 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.

Repurchase Agreements Operations (Repo Operations). Securities are purchased/transferred for cash with an agreement to repurchase and retransfer these securities (or fungibles) 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 the Slovak language) of (i) a foreign issuer seated in an EU member state, 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 set forth in the BCPB Regulations.

## 12.3 Securities Traded on the BCPB

### 12.3.1 Equities

According to the Stock Exchange 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 details 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.

Bonds, under Act No. 530/1990 Coll., the Bond Act, as amended, 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 these.

Disposal with bonds for a foreign issuer is only permissible in accordance with the FX laws and Foreign Exchange Act. Bonds can be issued as bearer (in the Slovak language: *na doručiteľ'a*) or registered (in the Slovak language: *na meno*) securities. The transfer of registered securities is

<sup>13</sup> 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.

permissible, unless the issuer sets up 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 authorized by the issuer. The issuer of book entered registered bonds may authorize the CDCP to keep a record of the bondholders.

The issuer of bonds in the Slovak Republic 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.<sup>14</sup>

No later than on the day of the commencement of the issuance of bonds, the issuer is obligated to publish the terms and conditions of the issued bonds, containing details of a) the information carrier enabling reproduction and preservation; b) the issuer's website; or c) the website of a financial institution keeping or selling these bonds. The terms and conditions must be submitted to the CDCP no later than 15 days after the day of the commencement of the issuance of bonds.

Under the Bonds Act, the following kinds of bonds can be issued: (1) mortgage back bonds (in the Slovak language: *hypotekárne záložne listy*); (2) treasury bonds (in the Slovak language: *štátne dlhopisy*); (3) municipality bonds (in the Slovak language: *komunálne obligácie*); and (4) employee bonds (in the Slovak language: *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 listing of the new owner on such list of shareholders.

### 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.

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<sup>14</sup> Residence as defined by the FX laws



## 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 to include provisions with respect to insider trading. The Slovak Stock Exchange Act has also begun imposing stricter listing requirements.

Further, in light of the 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 that 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: *reštrukturalizácia*); and
- (iii) release from debt of natural persons (in Slovak language: *oddlženie 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 keep books under Slovak accounting regulations, has more than one creditor and the value of its obligations exceeds the value of its assets. A debtor is considered to be in failure (in the Slovak language: *v úpadku*) 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 overburdened with debt 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 overburdened with debt. 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. Since January 1, 2013, if responsible persons during the four years prior to the commencement of bankruptcy proceedings breached their obligation to file a petition for bankruptcy within the statutory deadline, they become liable to the amount equal to the debtor’s registered capital (however, not more than twice the minimum statutory amount of the debtor’s registered capital).

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 towards more than one creditor and one of the creditors has invited the debtor to make payment in writing.

### 13.2 Commencement of Bankruptcy Proceedings

If the petition for bankruptcy complies with the statutory requirements, within 15 days after delivery of the petition the court will decide on the commencement of bankruptcy proceedings or, provided that the requirements are not met, the court will grant an additional 10-day period for completion of

the petition. 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, within 5 days after the commencement of the bankruptcy proceedings, 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).

If bankruptcy proceedings have been initiated by a petition of a creditor, within 5 days after the commencement of the bankruptcy proceedings, the court orders the debtor to demonstrate its financial liquidity within 20 days after the request's delivery and informs the debtor that failure to do so will result in the commencement of bankruptcy proceedings as well as informs the debtor on legal criminal consequences of non-compliance in bankruptcy proceedings. Moreover, the court sets within the same 5-day period a hearing date, 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 the commencement of the bankruptcy proceedings 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 terminates the bankruptcy proceedings. In such case, the creditor that filed the petition becomes liable to the debtor as well as to other persons for the damage inflicted upon them due to the 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 the appointment of 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 commenced upon publication of the bankruptcy order in the Commercial Gazette. After the bankruptcy has been commenced, the debtor is referred to as a *bankrupt* (in the Slovak language: *úpadca*).

## 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.

### *Status 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 that has not been duly notified, a claim that has been duly notified but 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 the 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 in 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 or due to another compelling reason, 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 "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 one year 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 the 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 Section 2(1) and (2) 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 for the benefit of persons whose financial funds have been accumulated. If the financial funds are being accumulated from public, the collective investment may be conducted only on the basis of risk allocation principle. Collective investment may be conducted only through established units (in the Slovak language: *podielové fondy*), or by the raising of funds through the offer of securities of foreign collective investment entities.

“**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 the 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) the 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 in the Slovak Republic can be performed by domestic collective investment entities and foreign collective investment entities.

Domestic collective investment entities are (i) units (in the Slovak language: *podielové fondy*), and (ii) collective investment entities having the legal personality, which are either companies or co-operatives with the seat in the territory of the Slovak Republic accumulating financial funds from

multiple investors, with the objective to invest them in line with the determined investment policy for the benefit of those investors. Domestic units (in the Slovak language: *podielové fondy*) are managed by the Slovak resident management companies<sup>15</sup>.

The collective investment may be also conducted by (i) foreign collective investment entities<sup>16</sup> and (ii) foreign management companies<sup>17</sup> in accordance with the provisions of the ACI and the rules on limitations and balancing risk.<sup>18</sup> Units (in the Slovak language: *podielové 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 in the Slovak Republic.

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<sup>15</sup> “**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 (in the Slovak language: *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.

<sup>16</sup> “**A Foreign collective investment entity**” (in the Slovak language: *zahraničný subjekt kolektívneho investovania*) is (i) a foreign unit fund (*zahraničný podielový fond*); (ii) foreign investment company; and (iii) other foreign collective investment entity than under (i) and (ii) whose scope of business activities is collective investment. 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.

<sup>17</sup> “**A Foreign Management Company**” is a legal entity with its registered seat outside the Slovak Republic’s territory which: (i) creates and administers “a 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.

<sup>18</sup> 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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