

GREENFIELD PROJECTS in Slovakia

Greenfield projects, the realization of which usually reduces the risk of existing environmental burdens which often necessitate financially demanding environmental remedies, are becoming increasingly popular.

Though the realization of Greenfield projects seems to be a rather simple task, our experience shows that investors should focus, from the very beginning of the implementation of the project, on certain legal matters in order to smooth the realization of the project, to make use of state subsidies and last but not least, economise the investment costs.

PHASES OF THE GREENFIELD PROJECT AND LEGAL ISSUES TO BE TAKEN INTO ACCOUNT

The realization of a Greenfield project is usually divided into the following phases: (i) an assessment of the possibility to apply for state aid (if required by the investor), (ii) the establishment of a company and project management team selection, (iii) site location and land acquisition, (iv) construction of a building (usually a plant) and (v) the commencement of (plant) operations.

In each phase, there are several important legal issues that must be dealt with by the investor. Below, we highlight those that, pursuant to our experience, investors often underestimate. Failing to consider these issues may cause considerable delay in the investor's time schedule or even block the entire investment.

STATE AID

The majority of foreign investors coming to Slovakia try to benefit from state aid, which may be granted to investors whose investment fulfils certain criteria stipulated in the relevant European and Slovak legislation. However, investors should note that the allocation of investment incentives or state aid is not an automatic right.

Eligibility for state aid is assessed by the Ministry of Economics of the Slovak Republic in cooperation with SARIO (the Slovak Investment and Trade Development Agency). The government of the Slovak Republic takes the final decision on the granting of state aid. Moreover, details concerning state aid must also be submitted for the approval of the EC Commission. This notification process may be very time-consuming.

Substantial legal issues to be taken into account

It is important to point out that although this is not expressly provided in state aid regulations, any investment into tangible or intangible assets (e.g. the acquisition of real estate) realized prior to applying for a grant of state aid will, in practice, be disregarded in the calculation and allocation of the said state aid.

It is therefore highly recommendable to initiate all proceedings with regard to the allocation of state aid prior to the implementation of any work or undertakings in Slovakia.

ESTABLISHMENT OF A COMPANY AND PROJECT MANAGEMENT TEAM SELECTION

There are several ways of investing in Slovakia (e.g. acquisition of an existing company, acquisition of shares in an existing company, establishment of a joint-venture or of a daughter company).

Choosing the most suitable form of a legal entity requires the studying and assessing of many legal, formal, operational, financial and tax aspects. Experience shows that upon doing this, investors usually decide to establish a limited liability company, as this

Prepared by our member:

P
PETERKA & PARTNERS
Advokátska kancelária, Law Offices, Cabinet d'advocats

involves a rather simple procedure and a relatively small initial capital investment.

As the executive director of a limited liability company need not be a Slovak citizen, the project may be managed and implemented by expatriates appointed to the statutory bodies of the company.

SITE LOCATION AND LAND ACQUISITION

The site must fit the investors' needs with respect to size, zoning and location. Additional issues to be considered in choosing a site include in particular the level of existing infrastructure, the capacity of network connections, the possibilities of distribution within the region, the proximity to urban areas and any other specific needs.

Before a land plot is acquired, a complex due diligence (legal, technical and environmental) of the land plot ought to be undertaken, as investors may face several legal problems in connection with the acquisition of land in Slovakia.

Substantial legal issues to be taken into account

Zoning Plan

When the investor intends to purchase land for further development, it is advisable to check whether the Zoning Plan of the municipality allows the use of the site for the anticipated purpose. In the case that the intended site is to be used for purposes other than those permitted, the investor faces the risk that, even though they are the owner of the land plot, they will not be able to realize the project on the site.

In addition, if agricultural land is to be developed, the land must be declared non-agricultural land and such a change in the categorisation of the land must be registered in the Land Register.

Real owners of the land

Two recurrent problems in Slovakia are (i) there might be cases where the person registered in the Land Register is not the real owner of the land plot and (ii) pending

restitution claims. As it is not possible to validly acquire real estate from a non-owner, it is recommended to proceed with a legal due diligence of the land, in particular to review the acquisition titles of both the current and former owners and to check if any restitution claims have been raised.

Disintegration of the land plots

Investors are often interested in acquiring large land plots with an area of more than 5000 square metres. It is quite common for such an area of land to contain several plots which often belong to numerous persons.

Since the refusal of one single owner to sell their plot might block the entire acquisition process, investors are advised to contractually secure the acquisition of all land plots at once, or to stipulate an option to withdraw from the Purchase Contract should the acquisition of any of the plots not materialise.

Guaranteed site access and infrastructure

Although investors focus mainly on the technical aspects (drawings, capacities, administrative approvals, etc.) of the site access and infrastructure, it is also necessary to secure these from the legal point of view and to conclude respective agreements with the owners of the neighbouring land plots.

It is highly advisable to ensure by contract access and network connections to the land (via easements, etc.) when concluding the respective Purchase Contract or, as the case may be, to stipulate an option to withdraw from the Purchase Contract should any access and/or infrastructure not be guaranteed.

Ecological burdens

It is recommended to examine whether any potential dangerous substances are present below the ground which could contaminate the soil or underground water and which might be hazardous to human health or property. Moreover, it is important to settle liabilities for any eventual pollution between the former owner of the land plot and the investor.

Archaeological sites

Since archaeological findings below ground could considerably postpone or even block the realization of the investment project, an assessment of this aspect is advisable.

CONSTRUCTION

Construction works may start only after the competent authorities issue a Zoning Permit (in Slovak rozhodnutie o umiestneni

stavby) and a Building Permit (in Slovak stavebne povolenie). This phase of the project will include hiring architects, selecting suppliers of construction works, purchasing and installing machines and other equipment and drafting contracts for work.

The respective administrative proceedings require the delivery of a large number of approvals or affirmative statements by administrative bodies and/or civil organisations which must be consulted and which could be blocked by adverse expert opinions.

Therefore, it is advisable to stipulate in the Purchase Contract an option to withdraw should the Zoning Permit or Construction Permit not be granted.

OPERATION OF ACTIVITIES

The investor may use the building only after the competent authority issues an Occupancy Permit (in Slovak Kolaudacne rozhodnutie). The authority may allow the temporary operation of the building before issuing a final Occupancy Permit. This phase is usually connected to the hiring of employees and all necessary training, where labour law issues should be taken into account.

INDUSTRIAL PARKS OPTION

Pursuant to the Act on Industrial Parks, municipalities are allowed to receive financial support from the government for the purpose of securing land and infrastructure in industrial parks for investors. Land plots in such parks are usually owned by one owner (usually a municipality) and are prepared for easy connection to network infrastructure and utilities.

By opting to build in a prepared industrial park, an investor may avoid certain risks connected with the acquisition of land. Such industrial parks are currently being built all over Slovakia.

Conclusion

Greenfield or Brownfield projects in Slovakia offer an excellent opportunity for investors. As the first step, we suggest that investors set up a realistic time schedule for the investment project and to consult on the different phases with counsel familiar with the realization of such projects in Slovakia in order to assess any eventual risks related to the site and to find an optimal solution.

Such an approach would certainly help to get the maximum benefit from the state aid offered to investors, to economise the investment costs and to avoid any unpleasant surprises.



Lenka Očaiková, Attorney at Law,
PETERKA & PARTNERS

This article is of an informative nature only and under no account can it be considered to be a legal opinion.

Should you need any further information on the issues addressed in this article, please contact our Law Office:

PETERKA & PARTNERS, tel. +421 2 544 18 700
office@peterkapartners.sk;
www.peterkapartners.com