



DOING BUSINESS   
IN SLOVAKIA

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# I.

# GENERAL SECTION

## I.1

## Basic information about Slovakia

Slovakia was constituted on January 1, 1993, as a successor of the former Czechoslovakia. Slovakia is situated in Central Europe surrounded by Austria, Hungary, Ukraine, Poland and the Czech Republic. Slovakia has a population of 5.4 million and a territory of 49,035 square kilometres. The capital city is Bratislava, which has approximately half a million inhabitants. Other important regional cities are: Košice, Žilina, Prešov, Banská Bystrica and Trnava.<sup>1</sup>

From its inception Slovakia has been a parliamentary democracy. Since January 2009, the official currency of the country has been the euro.<sup>1</sup>

The geographical location of the country is one of its crucial advantages. Its strategic position in the heart of Europe allows Slovakia to be a creditable partner to western countries but also provides a bridge to the east (Ukraine, Russia and other countries of the former Soviet Union) as well as to the south (Bulgaria, Romania and the countries of the former Yugoslavia).

Slovakia is an industrial country. It has a tradition in sectors such as metallurgy and metal processing, machine engineering and the automotive industry, electronics, wood processing and the paper industry, chemistry and pharmacy and other industries. Currently, great opportunities for investors can also be found in sectors with high added value such as microelectronics, research and development, information and communications technologies.

On May 1, 2004 Slovakia became a member of the European Union, thus significantly strengthening its reputation in Europe and coming to the fore worldwide. On December 21, 2007 Slovakia joined the Schengen area and on January 1, 2009 Slovakia entered the European Monetary Union. Besides its EU membership, Slovakia is also a member of many other organisations with worldwide influence such as NATO, UN, Visegrad Group, WTO, IMF, IBRD and OECD.

## I. 2

## Comparative advantages and investment opportunities

Slovakia is one of the fastest growing economies in the region. Next to the excellent strategic geographical position and standard political system, Slovakia offers, compared to other “new market economies”, a favourable tax system. In addition investors are attracted by the cost effective and well educated labour force.

According to the World Bank’s Doing Business report in 2006, Slovakia has been one of the fastest reformers in the world, introducing ambitious reforms in almost all areas (including the labour market, public finance management, health care, pensions, market exit and decentralisation).

The Slovak labour force does not attract investors only on the basis of its low costs, which is a fraction compared to the cost of western labour (in the first quarter of 2009 the average wage was €710.45). Another comparative advantage of Slovakia is its intellectual capital. Slovakia enjoys one of the highest literacy rates in the world, a high percentage of graduates, and in terms of scientists and engineers per capita, the highest rate in the region, with excellent information technology graduates.

Foreign direct and indirect investments are welcomed in all sectors. The amount of foreign direct investments which has flown into Slovakia in the past six years exceeded €25 billion. Low taxes - a 19 percent flat tax for corporations and individuals with only a few exceptions; no dividend taxes, liberal labour legislation, a cheap and skilled labour force and a favourable geographical location are the main advantages appreciated by foreign companies conducting business in Slovakia.

<sup>1</sup> All values in this text were converted according to the conversion rate set by the Council of EU finance ministers, fixed at SKK 30.1260:€1. Some acts have already been amended and the amounts rounded.

Besides the favourable tax regime and comparatively low labour costs, Slovakia offers support to both new and existing foreign and domestic investors in several ways.

As a full member of the European Union, Slovakia has harmonised the rules regarding state aid with EU legislation. Currently, the new guidelines on national regional aid for 2007 to 2013 issued by the European Commission apply.

The Slovak Investment and Trade Development Agency (SARIO) is a state representative and partner of all applicants for all forms of state incentives offering support in various ways. In 2008, SARIO concluded 32 investment projects with a total value of €916.3 million. The investors involved will create 4,624 jobs, a number that should increase to 4,979 in the future.

Eligibility for the granting of state aid and the amount of the aid generally depends on the following:

- the region where the investment is to be located and the unemployment rate in this region;
- the type of investment, i.e. the type of activity of the investor;
- the fulfilment of other conditions (e.g. the amount of the investment, the qualifications of employees, investment in modern technologies etc.).

Under Slovak law investment incentives are a specific form of regional state aid. Currently, an investor may apply for grants to acquire tangible or intangible fixed assets, corporate income tax relief, contributions for creating new jobs and for transfers or exchanges of real estate for a price lower than its market value.

The **Act on Investment Aid** provides a system of statutory conditions that applicants must fulfil to qualify for investment aid, depending on the type of project. Industrial investments, technology centres, strategic service centres (for example, centres for computer program development) and investments in the tourism sector may all qualify for investment aid.

The main criteria for granting investment aid in **industrial investments** are opening new or expanding or upgrading existing establishments, or fundamentally changing the production process, or purchasing an enterprise, for no less than €26.56 million, of which at least 50 percent must be financed from the investor's own capital. This amount can be reduced to €13.28 million or even to €6.64 million if the unemployment rate is above the Slovak average or is above the average by more than 50 percent. At least 60 percent of the sum incurred for purchasing tangible fixed assets or intangible fixed assets must be used for procuring new production or technological facilities. Moreover, at least 80 percent of the aggregate revenues must be generated from the business specified in the investment aid application. All the production, buildings and the technological facilities must fulfil the criteria of Slovak legislation on environmental protection.

Due to the economic crisis, the minimum required amounts of investments have been temporarily, for projects filed from April 1, 2009 to December 31, 2010, decreased by 50 percent. Moreover, the percentage of the sum designated for procuring new production or technological facilities has been reduced to 40 percent.

For **technology centres**, the minimum amount of investment into a new or existing centre is €1.33 million of which at least 50 percent must be financed from the investor's own sources, and at least 60 percent of all employees must have university education.

Investors in **strategic services centres** soliciting investment aid must invest more than €1.16 million of which more than 50 percent must be covered by their own funds. At least 30 percent of employees must have a university education.

Conditions for investment aid in the **tourism sector** are similar to those required in industrial investments. However, a minimum amount of the investment expenses must be €16.60 million which may be reduced to €8.30 million or even €3.32 million depending on the unemployment rate in the region concerned. At least 40 percent of the sum incurred for procuring tangible fixed assets or intangible fixed assets must be used for purchasing new technological facilities used for providing services.

Again, the minimum amount of the investment expenses has been temporarily reduced to €9.96 million, which may be further reduced to €4.98 million. The percentage of the amount designated for purchasing new technological facilities has been reduced to 20 percent.

The actual aid available for each project must be calculated as a percentage of the total value of the investment. For different regions different percentages of aid are available according to the so called regional map of state aid for 2007 to 2013, which has already been approved by the European Commission.

The map divides Slovakia into four regions for which different maximum limits for state aid (as a percentage of justified costs for the realisation of an investment) are determined. Investment projects in two regions (eastern and central Slovakia) are entitled to state aid in the maximum amount (50 percent). In the Bratislava region (being more developed) the state aid may not exceed 10 percent of the justified costs of the investment and for the western part of the country the limit is 40 percent. For investment projects with justified costs not exceeding €50 million, the limit can be increased by 10 percent for small enterprises and by 20 percent for medium enterprises.

A decision on whether and to what extent any given project qualifies for state aid is taken by the Slovak government for each project after a project evaluation carried out by the Slovak Ministry of Economy

## ***Industrial Parks***

Another form of support for investors granted by Slovakia is the development of industrial parks. Placing the future investment in an industrial park enables an investor to begin its activities in a short time. The conditions in a particular case depend on the agreement between the investor and the founder of the industrial park, which is usually a municipality or a self-governing region.

## **I. 4**

## **EU membership and the eurozone**

Slovakia became a full member of the European Union on May 1, 2004. For five years the country has enjoyed the business and trade benefits of being part of one large market governed by the principles of free movement of goods, services, capital and persons.

EU membership has brought many positive effects not only for the country itself but for foreign investors as well. The border-free importing and exporting of goods within the European market, irrespective of where such goods have been manufactured, serves as one of the main benefits. Individuals and companies resident or registered permanently outside Slovakia may now even provide certain services without the need to establish any corporate presence in Slovakia. A substantial part of the administrative procedures regarding the establishment of business and the residency of entrepreneurs, executives or employees, has been significantly speeded up and simplified.

Benefits to existing and future foreign investment have also been brought about due to the fact that Slovak legislation has adopted the principles contained in the directives and other legal acts of the European Union.

Entering the eurozone on January 1, 2009 also affects entrepreneurs and companies. One of the most important advantages of euro adoption for Slovak entrepreneurs is the removal of exchange rate risks. Euro adoption has also significantly reduced transaction costs and made financial flow more effective.

From the investment point of view, all this, in combination with political, economic and social stability as well as low taxes and a cost-effective workforce, has improved the position and attractiveness of Slovakia.

## **II.**

## **LEGAL SYSTEM**

The private civil and commercial law of Slovakia is based upon continental, civil law principles.

Compared to common law, of which a substantial binding part is created by judicial (court) decisions, the source of continental law mainly takes the form of written and binding acts, orders, bills and directives to be adopted and issued by competent legislative bodies, i.e. parliament and municipalities. Judicial rulings serve mainly as a subsidiary source for the purpose of interpreting the written laws.

Since Slovakia became a full member of the EU on May 1, 2004, EU regulations have been directly applicable in the country.

### III.

## OUTLINE OF CRUCIAL LAWS

#### III.1

### How to establish a business in Slovakia

To conduct business, investors may choose from the following forms:

- Branch
- Limited liability company
- Joint-stock company
- Limited liability partnership
- Unlimited partnership
- Cooperative

##### III.1.1

#### Branch

Under Slovak law, a branch does not have an independent legal personality. All legal acts taken by a branch are considered to be taken on behalf of its founder i.e. a foreign company. A branch is established upon the execution of an establishing document – a resolution of foundation. A foreign company may conduct business in Slovakia as of the day of the registration of the branch in the Slovak company register. A branch operates through a director - a physical person registered in the company register. However, the statutory body of the foreign company is also entitled to act on behalf of the branch office. Non-Slovak branch directors - citizens of any of the EU or OECD member states - do not need a residence permit in Slovakia.

The most common forms used by investors for business undertakings in Slovakia are either a limited liability or a joint-stock company. The basic differences between these two corporate forms are outlined below:

#### III.1.2 Limited liability company (spoločnosť s ručením obmedzeným, s.r.o.)

##### *Foundation document*

Founding Deed - in the case of a sole founder

Memorandum of Association - in the case of several founders

##### *Minimum registered capital*

€5,000

Thirty percent of the total capital must be paid in advance, and the minimum value of the total capital to be paid up in advance is €2,500. The outstanding amount is paid upon agreement between the shareholders, within 5 years at the most.

In the case of a sole member the total amount of registered capital must be paid up before the company is registered. The same applies for contributions in kind.

##### *Minimum contribution of one shareholder*

€750

#### Form of contributions to the registered capital

Monetary or non-monetary (in-kind), i.e. movable and immovable assets, certain intangible assets, existing and provable receivables.

#### Form of shares

Registered ownership interest.

#### Shareholders

One or more individuals.

One or more legal entities (corporations).

Combination of both.

A limited liability company with a sole member, even if established under foreign law, cannot be a sole member of another company. A natural person can be a sole member of at most three companies.

#### Number of shareholders

Up to 50

#### Liability of shareholders

The company itself is wholly liable for any breach of its obligations with all of its assets. Each member's liability for the company's obligations is limited to the unpaid part of their contribution as recorded in the Commercial Register.

#### Company bodies

General meeting – obligatory.

One or more executive directors – obligatory.

Supervisory board – voluntary.

Proxy (prokúra) – voluntary.

#### Personal liability of an executive director

Directors must act with due diligence and follow resolutions passed by the company general meeting; they may not disclose sensitive and confidential information to third parties. If they neglect or break these rules, they are liable towards the company for any and all damage caused by the breach of their obligation. Directors may also, under certain circumstances, be criminally liable.

### **III.1.3 Joint-stock company (akciová spoločnosť, a.s.)**

#### Foundation document

Founder's Deed - in the case of a sole founder.

Articles of Association - in the case of several founders.

Statutes (specifies the characteristics and the functioning of the company).

#### Minimum registered capital

€25,000

Prior to the incorporation of the company, the entire registered capital must be subscribed and at least 30 percent of the contributions in cash must be paid up. Contributions in kind must be paid in full.

#### Minimum contribution of one shareholder

No requirements.

The full nominal amount of the share capital subscribed for by each founder must be paid up within one year of the registration of the company in the Commercial Register.

#### Form of contributions to the registered capital

Monetary or non-monetary (in-kind), i.e. movable and immovable assets, certain intangible assets, existing and provable receivables of the founders.

### Form of shares

- a) share certificates issued in the shareholder's name – may be issued as a paper share or a book-entry share (registered with a special institution, the Central Securities Depository)
- b) bearer shares (the shareholder is the bearer of the share certificate) this form may be issued only as a book-entry share

### Shareholders

One or more corporations.

Two or more individuals.

Combination of one or more corporations and one or more individuals.

### Number of shareholders

No limits.

### Liability of shareholders

The company itself is wholly liable for any breach of its obligations with all of its assets. Individual shareholders are not liable for the company's obligations.

### Company bodies

General meeting – obligatory.

Board of Directors – obligatory – one or more members.

Supervisory Board – obligatory - minimum number of members: 3 (one third of members as the employees' representative(s) in a company with more than 50 employees).

Director – voluntary.

### Personal liability of a member of the Board of Directors

Members of the Board of Directors must act with due diligence and follow resolutions passed by the general meeting; they may not disclose sensitive and confidential information to third parties. If they neglect or break these rules, they are liable for all damage caused by the breach of their obligation. Members of the Board Directors may also, under certain circumstances, be criminally liable.

## **III.1.4 Limited liability partnership (komanditná spoločnosť, k.s.)**

A limited partnership is a less frequently used legal corporate form. In a limited liability partnership one or more shareholders contribute to the registered capital of the company a minimum amount of €250 and up to the amount of their unpaid contribution they are liable for the company's liabilities. On the other hand, one or more shareholders are not obliged to make any contributions to the registered capital. However, their personal liability for all the company's undertakings is unlimited.

## **III.1.5 Unlimited partnership (verejná obchodná spoločnosť, v.o.s.)**

In an unlimited partnership two or more partners are fully and personally liable for any and all undertakings of the company. This legal form is not commonly used in Slovakia.

## **III.1.6 Cooperative (družstvo)**

This legal form is not suited to the purposes of commercial undertakings. It is a traditional legal form used for the ownership of private residential property

## **III.1.7 Company registries**

Companies come into existence on the date on which they are incorporated into the Commercial Register maintained by the district courts. The Commercial Register incorporates a new legal entity within five working days

of the submission of a complete and duly prepared application. Corporate information on existing companies may be found in these registries ([www.orser.sk](http://www.orser.sk)).

Moreover, any company that wishes to conduct commercial activity in Slovakia must obtain either a Trade Licence from the Trade Licence Office or a special authorisation from some other state authority if it wants to exercise some specific activities.

Trade Licences are issued for so called free and regulated activities. The Trade Licensing Office shall issue a Trade Licence for free activities within five working days of the date of the submittal of the complete application. In order to obtain a Trade Licence for regulated activities or a special authorisation from another state body, the conditions for their delivery are stricter and the delays usually longer.

## **III.2 How to acquire an existing business**

No restrictions are imposed by Slovak law on foreign entities or individuals in respect of acquiring businesses in Slovakia. Individuals and corporate persons have in this regard the same position as Slovak citizens. To acquire shares or other forms of business undertaken by Slovak companies, acquirers have, under certain circumstances, such as business acquisitions and mergers, obligations towards the Slovak Antimonopoly Office which must approve certain transactions and, in the case of similar transactions in sectors such as banking, towards the Slovak National Bank.

The acquisition of an existing business may under Slovak law occur in several different ways. The most frequent is the purchase of shares (ownership interest) in an existing limited liability company or the purchase of shares in a joint-stock company ("share deals"). The business of an existing company might also be acquired by purchasing either all or certain selected assets ("asset deals"). Another method of acquiring all or selected assets of a target company is, under Slovak law, known as the sale/purchase of a whole/part of an enterprise.

### **III.2.1 Acquisition of shares ("Share deal")**

Foreign persons are in no way restricted in Slovakia from acquiring, holding and/or reselling shares (ownership interests) in Slovak corporations. In some cases, however, the business name, registered office and the level of the acquired share proportion must be disclosed to the public. The disclosure has either the form of registration of the new shareholder in the Commercial Register or, in the case of a transfer of shares in book-entry form, in the Central Securities Depository.

As far as the contractual form of share transfers is concerned, the sale/purchase of shares must take the form of a written share purchase agreement to be signed between the seller and the buyer. In specific cases, particularly in transfers of shares in joint-stock companies, a physical handover of shares and endorsement has to be carried-out to effectuate the ownership transfer.

### **III.2.2 Acquisition of assets ("Asset deal")**

The acquisition of a business can also be achieved by purchasing a whole business (or its part) or by purchasing selected assets from another company. The procedure in purchasing a business or its part means that instead of buying shares in a target company the investor directly acquires the business or selected assets in such a company (or its selected part).

An Asset deal may be accomplished either by a purchase and sale of selected assets connected with an assignment of certain obligations and debts, or by purchasing an enterprise or its part.

By purchasing an enterprise or its part the buyer directly acquires all assets, tangible and intangible rights, business relations, rights and obligations (receivables and liabilities) or a selected part of them. The purchase of assets causes an automatic transfer of employees connected to the acquired business to the acquirer.

The sale of an enterprise by a person registered in the Commercial Register must be registered in the Commercial Register. This obligation does not apply if only selected assets are purchased on the basis of an agreement on sale/purchase of selected assets.

### **III.3 Restructuring an existing business**

Slovak legislation provides several different methods and forms for the transformation or restructuring of an existing business. The options are: merger (amalgamation), de-merger (split-off).

The validity and effectiveness of a merger or de-merger may also be subject to the approval of the Slovak Antimonopoly Office or the European Commission, if certain thresholds are reached (see section III.5).

Moreover, on January 1, 2007, the institute of "squeeze-out" was introduced into Slovak law. This right (according to the Slovak Act on Securities "the right of buy-out") offers a possibility for buying out minority shareholders and may help companies with a fragmented structure to simplify their business and administration.

The majority shareholder holding at least 95 percent of shares may, within three months of the expiration of the last takeover proposition, request that the minority shareholders sell their shares for adequate compensation. The prior consent of the National Bank is required to assert this right. If the minority shareholders refuse to sell, the majority shareholder may request that the court issue a ruling compelling them to sell.

On the other hand, minority shareholders hold a sell-out right, that is, they may require that the majority shareholders purchase their shares.

#### ***Merger (amalgamation)***

Of all transformation methods the merger is the one most frequently used. Merger means in general an amalgamation of two or more entities and might in principal be carried out in two ways. The first is a procedure whereby one of the companies under the merger survives as the general legal successor of the other(s) and the other(s) are dissolved. Under this scheme, all the assets and liabilities of the dissolved company or companies are assigned (transferred) to another company in the merger, which is designed to carry on its own business as well as that of the other(s) as its (their) general legal successor. Under the second scheme, all companies under the merger are dissolved and all the assets and liabilities are assigned (transferred) to an entity newly established for the purpose to be the future successor of the dissolved companies.

Mergers are accomplished on the basis of a merger contract, which must be approved in advance by the General Meetings of all the companies concerned. A merger becomes legally effective under Slovak law as soon as it is registered in the company register, however, from the tax and accounting point of view, the companies under the merger appear as single tax and accounting entities as of the day specified in the merger contract as "the merger day".

#### ***De-merger (split-off)***

A de-merger means a split-off of one or more existing entities into two or more legal successors. The formal and procedural requirements are analogous to those applicable to mergers.

### **III.4 Real estate and construction**

When considering making investments in Slovakia, the acquisition and development of real estate, along with zoning, building and occupancy issues, are important for many entrepreneurs. The main real property matters may be divided into the following issues:

- (i) Real estate acquisition
- (ii) Lease
- (iii) Construction

## (i) Acquisition of real estate

The membership of Slovakia in the EU brought a significant change for foreigners intending to acquire real property in Slovakia. Non-residents (individuals as well as foreign legal entities) may now acquire real estate under the same conditions as nationals. The current legislation enables foreigners to buy real property directly, without the need to establish a Slovak legal entity.

An exemption from this general rule concerns forest and farmland located outside the border of built-up areas and some restrictions are also set out by particular acts, e.g. the Mining Act. However, regarding farmland, an EU citizen with a temporary residence permit in Slovakia may acquire the land he or she is farming three years after accession to the EU.

### ***Land Registry***

Slovak law does not recognize the principle “superficies solo cedit” according to which ownership of a land plot automatically includes ownership of any building located on it. Consequently, the owners of a given land plot may be different from the owners of any buildings on it.

Under Slovak law, in the overwhelming majority of real estate transactions, legal ownership of real estate passes only when the property transaction is registered in the respective state land registry, the Land Registry. Thus, a legally effective conveyance (transfer) is completed upon the fulfilment of two basic conditions: (i) the conclusion of a written transfer contract (a legal title) and, (ii) the registration of ownership in the Land Registry.

Any contractual transfer of real estate under Slovak law must be in writing. Moreover, for registration in the Land Registry, the signatures must be officially verified. However, a special notarial deed is not required as a formality for a property transfer.

It should be noted that real estate title does not pass to another person at the moment of the conclusion of the respective agreement but at the moment when the new person is registered as the owner on the basis of a decision of the Land Registry. Ownership may also pass to another person on the basis of other events - for instance the death of the owner or a judicial decision, in which cases registration in the Registry has only declaratory effect.

The registration of a real estate transfer should be completed by the Land Registry at the latest within 30 days of the day of the filing of the respective application. There is, however, a possibility to file an application for quick registration in 15 days (for an increased administrative fee of €265.50, €130 if filed electronically). If the transfer contract is concluded as a notarial deed or is authorised by an attorney-at-law, the registration is completed in 20 days. As soon as the registration of the transfer of ownership is completed, an ownership certificate is issued by the Land Registry to the new owner of the real estate. The ownership certificate serves as proof of ownership title to the real estate.

### ***Restitution claims***

Despite the fact that all deadlines for making restitution claims regarding the return of certain properties have already lapsed under Slovak law, some restitution claims concerning real property unjustly appropriated by the Slovak state before 1990 might still be pending. Subject to the result of a pending restitution claim, owners' rights may appear to be unclear. Information regarding whether or not a property is subject to a pending restitution claim is obtainable either from the local Land Registry or a court with local jurisdiction, which would handle possible restitution claims. However, a thorough legal due diligence is always recommended.

## (ii) Lease

Another standard method of gaining access to and using real estate in Slovakia is by leasehold. Under a leasehold, the owner of real estate leases (rents) their property for a certain time and purpose to another party

(the lessee or tenant) for a rent. Slovak law differentiates significantly between a lease of residential and non-residential real estate. A residential lease, compared to a non-residential lease, provides substantially more security of tenure for the tenant.

In general, no restrictions apply to the lease of non-residential premises by foreigners in Slovakia. Non-residential premises may be leased for the purposes determined in the occupancy permit. The lease must be executed in writing and contain a determination of the object and purpose of lease, the amount and payment terms of the rent, the amount of charges for services related to the lease and the duration of the lease (if not concluded for an indefinite period of time). A lease agreed for a definite period can be terminated, before the lapse of the agreed term, only on the grounds expressly stipulated by law. A lease agreed for an indefinite period can be terminated by either party with a three-month notice and on any grounds (or without stating a ground), unless otherwise agreed by the parties.

### (iii) Construction

In general, each investor intending to develop land or other real estate must take the following steps: (a) verify the compliance of the investor's project with municipal or regional land planning regulations, (b) obtain a zoning decision, (c) obtain a construction permit, and (d) obtain an occupancy permit.

### ***Planning regulations***

Slovak legislation stipulates the zoning rules, i.e. the plans for territory used within settlements must be respected when planning any construction (e.g. the possibility to build a certain type of building in a certain zone, the maximum number of floors, the distance between buildings, the construction of parking lots etc.)

A land plan outlines if an area or location is to be developed for industrial, office, residential or mixed purposes and sets fundamental proportions for the development. Therefore, the compliance of each individual real estate investment with the requirements of the respective land plan is essential for any real estate investor.

The construction of a building (or other construction) may only be performed in the event that all appropriate permits have been issued. The same applies to reconstructions or significant repairs

### ***Decision on the allocation of a building***

By this type of zoning decision the competent authority approves the future construction on a certain land plot. During the proceedings, besides the investor's interests related to the specific project, the public interest is also taken into account. The administrative proceedings regarding the issuance of a zoning decision is officially commenced upon the investor's written request. Other documents must also be enclosed with the investor's written request such as opinions, statements and decisions of other competent bodies of state administration. Also examined is whether the applicant has ownership title or another legally valid access permit to the land necessary for the implementation of the project.

A zoning decision is usually valid for two years. Within this term the developer is obliged to start using the land for the stated purpose or file for the issuance of a building permit. The validity of a zoning decision may be extended upon written request.

### ***Construction Permit***

A construction permit authorises a constructor to commence construction activities in order to build a new construction. Proceedings for the issuing of a construction permit are the final step in the administrative proceedings before any construction or reconstruction physically starts.

By issuing a construction permit the Building Office authorises the construction and sets binding conditions for the construction. The construction must commence no later than two years after the construction permit has been issued, otherwise the permit expires. This term may be also extended upon written request.

A construction built in accordance with terms set by the construction permit may be put into use and may become occupied only with an administrative approval to use the building, known as the occupancy permit.

In occupancy permit proceedings the Building Office assesses, in particular, whether the building was built in accordance with the documentation approved by the Building Office in the construction proceedings and whether the conditions determined in the zoning decision and the construction permit have been met. It will also verify that the building or its use will not threaten the public interest, above all from the aspect of public health and safety, environmental protection, workplace safety and safety of technical installations.

### **III. 5 Protection of economic competition (antitrust law)**

In Slovakia competition (antitrust) law is contained mainly in Act No. 136/2001 Coll. on the Protection of Competition, which contains rules concerning cartels, the abuse of a dominant position, the concentration of undertakings and rules with respect to proceedings before the relevant Slovak supervisory body - The Antimonopoly Office of Slovakia ([www.antimon.gov.sk](http://www.antimon.gov.sk)).

#### ***Rules against cartels and abuse of a dominant position***

Slovak rules against cartels (that is, agreements, concerted practices and decisions of associations of undertakings) and the abuse of a dominant position are practically similar to the respective rules of European competition law. Block exemptions issued by the European Commission may be applied to agreements which do not have an EU dimension.

#### ***Concentration of business undertakings (mergers, acquisitions, takeovers)***

Under the Act a concentration means the economic combining of undertakings through:

- a merger or amalgamation of two or more separate undertakings; or
- acquisition of direct or indirect control by an undertaking or several undertakings over another undertaking or part of another undertaking or undertakings.

The economic combining of undertakings within one economic group by which there is no change of control is not considered as a concentration under the Act.

The concentration may take the form of business transactions such as mergers, acquisitions, takeovers or the creation of joint-ventures. These are either realised as asset transactions directly in Slovakia or as transfers of shares in Slovak companies which might completely be effectuated outside Slovakia, however, which have an impact on the Slovak market. Such transactions may end up in a concentration of business undertakings with a substantial impact on economic competition in Slovakia.

The execution of these transactions is, under certain conditions, subject to the notification or approval of either the European Commission (if the transaction has a Community dimension and effect on the whole European market) or the Slovak Antimonopoly Office (if a specific transaction solely affects the Slovak market).

Slovak jurisdiction applies if a commercial transaction either inside or outside Slovakia affects economic competition in the Slovak market. In such a case the Slovak Antimonopoly Office is the monitoring and supervisory body legally authorised to be notified and finally to approve such a transaction. The filing of a merger, acquisition or another form of takeover with the Slovak Antimonopoly Office is mandatory, if the result of such a transaction is the transfer of control and the following turnover thresholds are reached:

- the aggregate global turnover of the parties to the concentration is at least €46 million for the closed accounting period preceding the establishment of the concentration and at least two of the parties to the concentration attain a turnover of at least €14 million each in Slovakia for the closed accounting period preceding the realisation of the concentration; or

- at least one of the parties to the concentration attains a total turnover of at least €19 million in Slovakia for the closed accounting period preceding the establishment of the concentration and at least one other party to the concentration attains a total global turnover of at least €46 million for the closed accounting period preceding the realisation of the concentration.

The concentration must be notified after the occurrence of a fact which resulted in a concentration, but before the rights and duties arising out of it are exercised. The Act also introduces the possibility to notify the proposal of a concentration, that is, to notify the concentration even before the conclusion of any contract or before the occurrence of any other relevant fact. An undertaking may not exercise the rights and obligations resulting from a concentration before the decision on the concentration becomes legally valid.

An administrative fee of €3319 is payable for the filing.

The Antimonopoly Office will issue a decision on the basis of notification of a concentration within 60 working days of the date of delivery of the notification. The Office may extend this time limit in complicated cases to 90 working days at maximum. The Office approves a concentration if the concentration does not create or strengthen a dominant position resulting in significant barriers to effective competition in the relevant market. The Office is entitled to approve the concentration and simultaneously impose binding conditions that must be fulfilled in order to protect the competition on the relevant market.

### **III. 6 Public procurement (public tenders)**

The Slovak Act on Public Procurement (Act No. 25/2006 Coll.) took effect on February 1, 2006. The purpose of adopting new legislation on public tenders was to increase transparency in the public procurement process, reduce the costs, accelerate the process and minimise the opportunities for corruption.

The Act regulates

- a) public awards of supply contracts, building works contracts, service contracts,
- b) building works concessions,
- c) design contests and
- d) administration in public procurement.

The Act recognises two different types of procurers: public procurers – with experience in the so called classic sector, and procurers – with experience in selected network sectors, for example water industry, power and heat engineering, gas industry, transport and postal services.

While public procurers are obliged to act in compliance with the Act at all times, (network) procurers are only obliged to apply the Act in the event where the conditions specifically provided for under the Act are fulfilled.

With the aim of making public procurement more efficient and rationalising it, the Act attempts to render public procurement more centralised by establishing the Central Procurement Agency and more detailed regulations for framework agreements. The Central Procurement Agency performs the function of an “intermediary” to act between public procurers, or procurers, and tenderers, since public procurers and procurers are entitled to procure goods and services through this agency. The Central Procurement Agency is entitled to conclude framework agreements on their behalf.

A public procurer can use all the procedures currently defined by the law on public procurement (an open procedure, a restricted procedure, negotiation with or without publication). In the case of procuring for over-limit public orders, however, a new specific procedure has been instituted which is called ‘public tender dialogue’. This procedure can be employed in the case of extraordinarily complex projects when the public tender or selective public tender is ruled out since it is not possible to objectively define the technical requirements or the financial terms of the project in advance. This applies particularly to the PPP projects (Public Private Partnerships) such as projects for integrated transport infrastructure (building motorways) or large computer networks.

The Office for Public Procurement of Slovakia is the supervisory body in charge of monitoring whether the general and specific conditions related to an individual public tender have been fulfilled. Under the Act on Public Procurement, a tendering entity or candidate may submit objections against the tender proceedings or its results.

Under the Act on Public Procurement, the criteria to be used for evaluation of tenders may be (i) the lowest price or (ii) the economically most advantageous offer. Where tenders are evaluated on the basis of (ii), the public procurer and the procurer must specify the individual criteria relating to the object of contract, in particular the price, technical execution, functional characteristics, environmental characteristics, operating costs, operating cost effectiveness, post-warranty service and technical assistance and delivery date of the supplies.

In addition to the individual criteria, the public procurer and the procurer must also specify the rules for application of the criteria which are to ensure a quality-based distinction meeting the individual criteria. The rules for the application of the criteria specified by the public procurer and the procurer must be non-discriminatory and must support fair competition.

To maintain transparency the Slovak Office for Public Procurement issues the Journal of Public Procurement as a source of information on notices used in public procurement, results of public procurement as well as other relevant information

### **III.7**

### **Insolvency (bankruptcy)**

The Act on Bankruptcy and Restructuring (Act No. 7/2005 Coll.) came into effect on January 1, 2006 and was marked as one of the most significant legal reforms.

The Act recognises two forms of bankruptcy: insolvency (where a debtor has more than one creditor and is unable to settle its debts within 30 days of them becoming due) and indebtedness (a debtor has more than one creditor and the value of its liabilities which are due exceeds the value of its assets).

Under Slovak law debtors should take due care of their financial situation and should take appropriate measures to avoid bankruptcy. Moreover, debtors or members of their statutory body or the liquidator are responsible submitting a motion for the adjudication of bankruptcy. Creditors must be indemnified for damage incurred by a failure to file such a motion. The damage is presumed to be the amount of the claims that remain unsatisfied after the termination of bankruptcy proceedings.

The insolvency law also offers a modern way of resolving insolvency by allowing insolvent or excessively indebted subjects to conclude an agreement with their creditors on the method of debt settlement by a process of restructuring, meaning that the assets of such a company do not necessarily have to be sold and the enterprise liquidated

### **III.8**

### **Intellectual property**

Slovakia is a signatory of many multilateral as well as bilateral treaties dealing with intellectual property and Slovak law provides for the protection of trademarks, patents, registered designs, copyrights and trade secrets.

#### ***Trademarks***

To have a trademark protected in Slovakia either its registration with the Industrial Property Office of Slovakia, with the International Bureau of the World Intellectual Property Organisation or with the Office for Harmonisation in the Internal Market is necessary.

The protection period for trademarks registered in Slovakia is ten years from the date of the application. The protection may be renewed for an indefinite number of ten-year periods.

## ***Patents***

A patent may be granted for any technical inventions that are new, involve an inventive step and are capable of industrial application. To have an invention protected as a patent, either registration with the Industrial Property Office of Slovakia ([www.upv.sk](http://www.upv.sk)) or with the European Patent Office is necessary.

An application filed with the International Bureau of the World Intellectual Property Organisation on the basis of the Patent Cooperation Treaty is another option.

The maximum length of protection is 20 years from the day of the patent application.

## ***Registered designs***

Registration with the Industrial Property Office of Slovakia or with the Office for Harmonisation in the Internal Market is necessary for the protection of a design. Protection lasts 5 years from the date of the filing of the application and may be renewed. However, the maximum period of protection is 25 years.

## ***Copyright***

Protection of copyright in Slovakia is provided by the Copyright Act. The Act protects any literary, artistic or scientific work that is the result of the creative intellectual activity of an author (including software). Copyright arises once a work is expressed in a perceptible manner, irrespective of its appearance, scope, quality purpose or form of expression. No registration is required to protect copyright. In general, copyright lasts during the whole of the author's lifetime and for a further 70 years after the author's death.

Under Slovak law, copyright is the personal right (moral and economic) of an author which cannot be transferred to other persons (only a licence can be granted).

## ***Trade secrets***

Trade secret is defined as potentially valuable trading, manufacturing and technological information related to enterprises which are not normally available in the respective industry. An entrepreneur whose trade secret is disclosed without authorisation may demand compensation for damage from the party which disclosed the secret. Protection of a trade secret is not limited to any specific period of time, as it is protected as long as any of the attributes of the trade secret exist.

## ***Confidential information***

When negotiating in business, a party is entitled to classify certain information as confidential. The confidential information does not need to meet the criteria of a trade secret. A party that discloses any confidential information in breach of its statutory or contractual obligations is liable for the damage caused by such a disclosure. Protection of confidential information is not limited to any specific period of time. The information is protected as long as it is confidential, unless the confidentiality period is limited by the parties involved.

## ***Rights of intellectual property created during employment***

In the case of copyright, the right to exercise the economic rights to a work created by an employee in the course of employment belongs to the employer. The author's moral rights to the work remain unaffected. However, the employee's consent with the publication of his or her work is presumed and the employer has a right to publish it under his or her name. The employer may assign the right to exercise the copyright to any third person only with the author's consent. If the employer ceases to exist with no successor-in-title, the right of the employer to exercise economic rights terminates and these rights revert back to the employee.

Patent rights to an invention made as part of an employee's tasks under an employment relationship belong to the employer. However, the employee's right to be recognised as the inventor remains unaffected. The employee has a right to appropriate remuneration from the employer.

### **III.9**

## **Labour law**

The fundamental legal regulation of employment issues in Slovakia is the Labour Code (Act No. 311/2001 Coll.).

The Slovak Labour Code is relatively liberal and makes the labour market substantially flexible. The last significant revision to the Labour Code, amending employment relationships concluded for a definite period, working from home, teleworking and the temporary allocation of employees, was passed in 2007.

### ***Employment contract***

An employment relationship is established upon the conclusion of a written employment contract. However, a contract not in writing does not automatically invalidate the relationship. An employment contract must include the following stipulations:

- the type of work for which the employee was accepted (job title) and a brief description of it (job description),
- the place of work,
- the day of commencement of the work,
- remuneration, unless agreed in a collective agreement,
- payment terms,
- working hours,
- duration of paid holiday; and
- length of notice period.

Further conditions in the interest of the contractual parties, particularly further material benefits, may be agreed in the employment contract. Under Slovak law a probation period for a maximum of three months can be a part of an employment contract.

An employment relationship under Slovak law may be established for a definite or an indefinite period of time. However, an employment relationship for a definite period of time is limited to three years. Within these three years, an employer may renew or repeatedly conclude an employment relationship for a definite period only once. In certain cases it is possible to renew the employment relationship more times and the three year limit may also be exceeded.

### ***Termination of employment***

An employment relationship may be terminated by (i) an agreement, (ii) a notice of termination, which might be given by either the employer or the employee, (iii) immediate cancellation, or, (iv) cancellation during the probationary period.

The termination of an employment contract must be in writing.

Regarding termination by notice, only an employee has the legal freedom to terminate the employment relationship with their employer for any reason, or even without giving a reason. The termination notice must be delivered to the other party.

An employer may give notice to an employee and may terminate an employment relationship only on the grounds expressly stipulated in the Slovak Labour Code. The most common reasons for doing so are company closure, relocation, reorganisation, a breach of labour discipline or cases where an employee does not meet the health or other preconditions for work. In these situations the employment relationship ends with the lapse of the notice period which is two months (three months for an employee who has worked for the employer for at least 5 years).

An employee may also be dismissed immediately without being granted a notice period if he or she has been convicted of a crime or has committed a gross breach of work discipline (immediate termination).

An employment relationship for a definite period of time may, in addition to the reasons described above, be terminated by expiry of the agreed term (i.e. an employer does not have to terminate the employment contract by giving notice and thus is not bound to give any of the grounds for notice expressly stipulated by the Labour Code).

An employee is entitled to severance pay upon the termination of employment in the minimum sum of a twice the average monthly earnings if the employment relationship is terminated by notice due to organisational changes or the employee's health or by an agreement for the same reasons.

There is no general prohibition under Slovak law with respect to mass dismissals. In the case of collective redundancies mass dismissals, an employer must notify in writing the trade union or the employees' committee as well the local labour office of the reasons for the redundancies and the number of employees to be dismissed. After negotiating with employees' representatives on measures to mitigate the negative effects of redundancies, a written report of the result must be delivered to the employees' representatives and local office for labour, social affairs and family at least one month before an employer gives a termination notice. If no trade union or employees' committee was established, the employer must fulfil these duties directly toward its employees.

### ***Maximum working days, minimum wage and minimum holiday***

The standard working week is 40 hours. The average weekly working hours for an employee, including overtime, must not exceed 48 hours. Compulsory overtime work per year must not exceed 150 hours. An employer may agree upon overtime work with an employee beyond this limit. However, overtime work may not, in any case, exceed the maximum of 400 hours per year.

The minimum wage set out by the Slovak government is currently (July 2009) €295.50 per month.

The basic minimum holiday allowance is four weeks per year.

### ***Equal treatment***

The Slovak Labour Code prohibits all kind of discrimination during employment and the recruitment process. Courts can order an employer to stop any discriminatory practice and award the discriminated party financial compensation. The burden of proof lies with the defendant.

The respective labour inspection office may also impose on the employer a fine of up to €33,193.92 on the grounds of discrimination

### ***Managers and executives***

Individual persons, who act as branch managers or executives in other legal entities, carry out their work either (i) on the basis of a mandate (service) agreement under commercial law or (ii) on the basis of an employment contract under the Labour Code.

In practice, service agreements are concluded by managers who act on behalf of the relevant entity as its statutory body (a member of the board of directors in a joint-stock company or the executive director in a limited liability company). Managers and directors who do not have positions as statutory bodies work in most cases on the basis of an employment contract.

The internal regulations issued by an employer may state that leading employees are to be nominated to their function. In such a case, revocation of the function constitutes a legal reason for giving notice to the employee. This possibility makes the relationships with leading employees more flexible.

*Social security*

The Slovak social security system consists of three pillars – the first is compulsory, whilst the second and third are voluntary.

The first pillar's principles

Under Slovak law the computation base for calculating contributions is the taxable income received (for example the gross salary of an employee) with certain exceptions. The monthly computing base is limited:

- (i) The minimum is the official minimum monthly salary (currently €268.87, whilst the maximum is four times the official Slovak average salary (currently €2,674.90), for the following categories:
  - retirement and permanent disability insurance,
  - unemployment insurance and
  - reserve fund contributions.
  
- (ii) The minimum is the official minimum monthly salary (currently €268.87), whilst the maximum is 1.5 times the official Slovak average salary (currently €1,003.09), for the following categories:
  - sickness and
  - guarantee insurance contributions.

Contributions to this first pillar are partly paid by the employer and partly by the employee (see table below).

The second pillar's principles

The system of old age pension savings is financed from contributions paid into personal retirement accounts.

If the individual enters this retirement insurance pillar, the employer's contribution to the first pillar will decrease from 14 percent to 5 percent of the computation base. The difference is the employer's contribution to the individual's personal retirement account.

The third pillar's principles

The third pillar is private Additional Pension Insurance. There are no limitations on the amount of contributions to this system.

*Health insurance*

The health insurance system covers the state healthcare expenses of the individuals paying the contributions.

Under Slovak law the computation base for calculating contributions corresponds to the taxable income received (for example the gross salary of the employee) with certain exceptions. The monthly base is limited:

- the minimum base is the official minimum monthly salary (currently €295.50),
- the maximum base is three times the official Slovak average salary for 2007 (currently €2,006.17).

*Social and health insurance contributions*

The specific figures on how social and health funds the contributions are distributed and how the total cost is split between the employer and the employee are set out in the chart below (valid as of 1 July 2009):

Type of insurance	Paid by the Employer		Paid by the Employee	
	Rate percent	Current maximum monthly contribution	Rate percent	Current maximum monthly contribution
		€		€
<b>Social</b>				
Sickness	1.4	15.10	1.4	15.10
Retirement	14	404.80	4	115.60
Permanent disability	3	86.70	3	86.70
Unemployment	1	28.90	1	28.90
Guaranteed fund	0.25	2.70	-	-
Reserve fund	4.75	137.30	-	-
Injury insurance	0,8	No maximum limit	-	-
<b>Health</b>				
	10	200.61	4	80.24
<b>Total</b>	<b>35.2</b>	<b>876.11*</b>	<b>13.4</b>	<b>326.54</b>

\* Injury insurance contribution is not included in the maximum contribution.

### ***Social security and health insurance upon EU accession***

Following the accession of Slovakia to the EU, EU Regulations, being directly effective in all EU member states, apply in Slovakia. Regulations No. 1408/71, 574/72 and 859/2003 concern social security in the EU and apply to workers (employed and self-employed) in the cases where these work or undertake business in one or more EU member states. The national legislation of the member states continues to be effective. The EU rules have mainly served to determine the local jurisdiction of the insured.

The main principles of the Regulations are:

- equality of treatment and the prohibition of discrimination on the grounds of citizenship (the principle of equal rights and duties),
- the application of the legislation of one state (the insurance being paid in one state),
- the addition of insured periods (export of benefits),
- the maintenance of acquired rights – payments of benefits abroad, export of benefits.

The Regulations implement direct duties and rights for EU citizens (including citizens of Slovakia), who work or undertake business in Slovakia.

Under the above rules, the basic principles of determining the jurisdiction for the application of legal regulations are:

- a person working in one member state is subject to the legislation of that state, even if the person has his or her residence in another state,
- a person working in two or more member states is subject to the legislation of the state in which:
  - o he or she has his or her residence as long as he or she performs his or her activity within that state in part,
  - o the person's employer has its registered residence or seat, if the person does not have his or her residence in any of the member states in which he or she performs his or her activity.
- a posted worker continues to be subject to the legislation of the posting state on the fulfilment of all the following conditions:
  - o he or she has been posted by a company conducting its business in one of the member states where the person ordinarily carries out their work for that company,
  - o the reason for posting is the performance of work for the employer, with whom the employee continues to be in an integral relation,
  - o the anticipated duration of posting does not exceed 12 months,
  - o the posted employee is not replacing another posted person.

The full accession of Slovakia to the European Union has also had a significant affect on immigration issues. A preferential immigration system exists for citizens of the European Economic Area (27 EU member states plus Lichtenstein, Norway and Iceland) and citizens of Switzerland. The majority of the respective Slovak legislation is contained in the Act on Residency of Foreigners No. 48/2002 Coll. as amended. The Act deals with visas, residence permits and other immigration obligations when staying in Slovakia.

### ***Residency***

Generally, for a foreign citizen intending to work or conduct business in Slovakia a residence permit is required. The residence permit allows the foreigner to stay in the country and to travel to foreign countries and back within the time period stated in the permit. However, a residence permit is not required if a foreigner travels to Slovakia occasionally and does not spend generally more than 90 days during a half of the calendar year in the country.

The requirement for a residence permit does not apply to EU citizens and European Economic Area (EEA) citizens who intend to reside in Slovakia temporarily. Further, there is no duty to obtain a residence permit for EU citizens or citizens of member countries of the Organisation for Economic Cooperation and Development (OECD) who are registered with the Commercial Register as statutory representatives (directors) and will not stay in Slovakia for more than 90 days during half of the calendar year.

### ***Working permit***

All EU member states' citizens who work in Slovakia enjoy equal treatment as do Slovak nationals. To start work neither a working permit nor a visa is needed for an EU member state national. An EU member state national need not apply for a temporary or permanent residence permit. An EU member state national is only obliged to register with the Local Office of the Foreign Police for the duration of the intended stay in Slovakia.

All non-EU nationals applying for work in Slovakia are required to obtain a work permit and a temporary residence permit, otherwise they are not allowed to work in the country. First, a work permit must be obtained, then a visa. Applications for a work permit must be submitted to the respective office for labour, social affairs and family according to the seat of the future employer in Slovakia, which deals with work permits for non-EU nationals.

Visa applications must be made at the Slovak embassy in the country of origin. The Slovak embassy decides whether to grant a visa within 30 days. The granting of visa is not an automatic right. A short-term visa entitles one or several entries and for a duration determined in the visa; neither a continuous stay nor the aggregate of several stays must exceed 90 days in one half-year. A long-term visa entitles an alien to entry and stay for a period longer than 90 days in one half-year, if it is necessary Slovakia to fulfil obligations under international treaties.

### ***Corporate Income Tax***

#### ***Scope***

Slovak tax residents, i.e. legal entities with their registered seat or place of business in Slovakia, are subject to Slovak corporate income tax on their worldwide income. Tax non-residents are subject to tax only on their Slovak-source income.

Slovak general and limited partnerships are looked upon, for tax purposes, as transparent entities. The profit of a general partnership and the profit attributable to the general partners of a limited partnership are taxed at the partners' level. General partners are subject to corporate income tax if they are legal entities or to personal income tax if they are individuals.

Companies are taxed individually in Slovakia; consolidated returns are not allowed

Under Slovak law a flat tax rate is applicable, being 19 percent in 2009.

Certain forms of income are taxed at source by means of a withholding tax when made by Slovak companies to foreign parties. A 19 percent withholding tax applies, for example to royalties and interest income from saving deposits and loans. However, a double taxation treaty may reduce the rate or may provide for the taxation of such income only in the state of residence of the beneficial owner of the income. Special tax exemptions are applicable between related companies- EU tax residents.

Dividends, liquidation surplus and settlement amounts paid out of profits earned on or after 1 January 2004 are not subject to income tax

### ***Determination of Taxable Profit***

A taxable profit is determined as an accounting profit adjusted by certain non-assessable income and non-deductible expenses.

Capital gains except for dividends are included in the taxable profit and are subject to tax at the regular profit tax rate.

Generally, upon calculating the taxable profit, only those expenses which the taxpayer incurs to generate, ensure and maintain its taxable income are deemed deductible. Non-deductible expenses include, amongst other things, gifts and entertainment expenses, non-contractual fines and penalties, travelling expenses above statutory limits, most valuation differences and reserves, inventory shortages and damages, losses from the sale of land, accounting provisions and accounting reserves, creation of a reserve fund and other funds, excluding the obligatory social fund etc.

However, a taxpayer can donate up to 2 percent of its tax liability to a qualifying non-profit organisation of its choice.

Expenses related to the depreciation of tangible and intangible assets are deductible within the limits set out by the provisions of the Income Tax Act. Tangible assets are classified into 4 groups according to their useful life. The depreciation periods of tangible assets vary from 4 years (computers, office devices) to 20 years (buildings of a permanent nature).

The depreciation of tangible assets can be calculated using a straight line or an accelerated method.

The tax depreciation of intangible assets equals the accounting depreciations.

A lessee can depreciate a tangible fixed asset held under a financial lease. In this case, the depreciation period equals the leasing period, and the depreciation base equals the acquisition value of the leased asset without VAT. The acquisition value is increased by the expenses related to acquisition of the leased asset that the lessee incurred before the asset was put into use.

### ***Loss Relief***

Losses may be carried forward for 5 consecutive taxable periods, starting with the tax period immediately following that in which the taxpayer reports a tax loss.

Losses cannot be carried back and they cannot be offset against the profit of another group company.

### ***Transactions between related persons***

Transactions between a Slovak entity and its foreign related persons must be provided at arms-length. Otherwise the tax payer has to adjust the tax base. If it is not done by the tax payer, the tax administrator may assess

additional tax and penalties, if there is insufficient documented justification for the pricing used. This rule however, does not apply to transactions carried out between Slovak persons (without a foreign element).

A related person is a relative, a person economically or personally related, or otherwise connected (including persons who have established a business connection only for the purpose of decreasing the tax base). An economic or personal relationship means one person having more than 25 percent participation (directly or indirectly) in the equity, control or management of the other person, or a relationship between two persons that are under the common control or management of one person.

Transfer pricing methods used under the Slovak Income Tax Act are based on OECD transfer pricing guidelines.

### ***Thin Capitalisation Rule***

From January 1, 2009 the thin capitalisation rule is to be reincorporated into the Act on Income Tax.

This provision limits the tax deductibility of interest on credits (or loans) paid by a taxpayer to their creditor if:

- the creditor has a direct or an indirect share in the registered capital of the taxpayer that represents at least 25 percent, or
- the taxpayer has a direct or an indirect share in the registered capital of the creditor that represents at least 25 percent.

According to the thin capitalisation rule, interest on a sum by which the average amount of credits and loans from the above creditors during the taxation period exceeds six times the taxpayer's equity will not be considered as tax deductible.

However, the thin capitalisation rule will be used only if the calculated average amount of credits and loans exceeds €3,319,400.

### ***Permanent Establishment***

A permanent establishment of a foreign person located in Slovakia is not a legal entity, but income derived by a permanent establishment is deemed to be Slovak-source income.

A permanent establishment is created by fixed place of business or facility that is used either constantly or repeatedly, through which a foreign company carries out its business (or its part) in Slovakia.

Moreover, a permanent establishment may be defined as an activity or services carried out in Slovakia for more than 6 months in any period of 12 consecutive months.

However, a double taxation treaty may modify such above mentioned conditions.

A foreign individual, or an entity that has created a permanent establishment in Slovakia, must register with the relevant Financial Authority and file tax returns annually.

### ***Tax securement***

Individuals or legal entities may have to secure the tax from payments made to foreign taxpayers who have Slovak-source income. Such securement is not applicable to the incomes of the taxpayers – EU residents.

If this is the case, the Slovak taxpayer must withhold a 19 percent tax securement when paying, transferring, or crediting such payment to a foreign entity.

### ***Elimination of double taxation***

To date, Slovakia has concluded more than 60 double taxation treaties which closely follow the OECD model. The tax treaties modify (usually by reducing) the Slovak withholding tax rates used for the taxation of non-residents' income and stipulate which method ought to be used to eliminate double taxation. The double taxation treaties use either exemption or credit methods. If no double taxation treaty has been concluded between Slovakia and the respective country, the foreign-source income will be subject to Slovak taxation in full, regardless of any foreign taxation.

## ***Harmonisation with EU Tax Legislation***

On 1 May 2004, Slovakia entered the EU and consequently, EU Directives dealing with direct taxes were incorporated into the Slovak Income Tax Act.

Based on the Interest and Royalties Directive, interest income paid between Slovak and EU companies which meet the definition of a parent company and a subsidiary are tax exempt in Slovakia. The definition of a parent and subsidiary is fulfilled if for an uninterrupted period of at least 24 months:

- the taxpayer who pays respective interest has at least a 25 percent capital holding in the final receiver of such income, or
- the final receiver of interest has at least a 25 percent capital holding in the taxpayer, who pays the respective income, or
- another company seated in the EU has at least a 25 percent capital holding in the taxpayer who pays the respective income and simultaneously at least a 25 percent capital holding in the final receiver of such income.

Under similar conditions royalties, payments for software and payments under copyright law etc. are tax exempt.

## ***Personal Income Tax***

### ***Scope***

Unlimited tax liability applies to Slovak tax residents, i.e. individuals having either a registered permanent home in Slovakia or spending 183 days or more in Slovakia during the calendar year. Slovak tax non-residents are subject to Slovak income tax only on income from sources in Slovakia.

### ***Rates***

Under Slovak law a flat tax rate is applicable, which is 19 percent in 2009.

### ***Income from dependent activity***

Income from dependent activity includes employment income, income derived from work performed by partners and executives in legal entities and fees paid to members of statutory and supervisory bodies.

The responsibility for collecting tax from dependent activity (i.e. monthly tax advances for payroll tax paid to the respective Financial Authority) lies with a legal employer or with a deemed employer, i.e. a Slovak tax resident to whom foreign labour is assigned for the performance of work as an economic employer.

When computing tax, income from a dependent activity is reduced by the mandatory social and health insurance premiums withheld by the employer, exempted income and tax allowances.

### ***Business, rental, capital and other income***

Business, rental, capital and other income is taxed through a personal income tax return to be filed by the taxpayer.

In principle, a taxpayer is allowed to deduct expenses incurred in generating, maintaining or securing the income and may also apply the tax exemptions stipulated in the Income Tax Act.

### ***Value added tax (VAT)***

The Slovak VAT Act has been harmonised with EU legislation, i.e. it is in accordance with the principles laid down by the Sixth Council Directive on the harmonisation of the laws of the Member States relating to turnover taxes (the original Directive Nr. 77/388/EEC was replaced with Directive Nr. 2006/112/EC on 1 January 2007).

- Supply of goods and services effected for consideration within Slovakia.
- Goods and services acquired from VAT payers registered in an EU member state.
- Imports of goods and services from third countries (outside the EU).

## Rates

- 19 percent standard rate is mostly applied.
- As of 1 January 2007 the reduced rate of 10 percent applies to supply of certain types of goods (e.g. pharmaceuticals, medicine products or books).
- VAT-exempt supplies where the provider is able to reclaim input VAT related to the supply (export of goods, the intra-community supply of goods and provision of services and the export of goods and the provision of services outside the EU) and where the provider is not obliged to reclaim the related input VAT (e.g. postal, financial, insurance or medical services etc.).
- The transfer of a building or a land plot (except a building land plot) if the transfer is completed 5 years after the first Occupancy Permit and the lease of real property are also VAT exempt. However, a VAT payer can choose to charge VAT on the transfer of a building, including the related land plot, and can choose to charge VAT on the lease of building, if it is leased to another VAT payer.

## VAT payment and recovery of input VAT

Generally, a person effecting taxable supplies is obliged to charge VAT and remit it to the relevant tax authority. The VAT payer may reclaim the VAT incurred on the purchases used for his or her economic activities. Under the VAT Act input VAT cannot be recovered on certain stipulated supplies – e.g. taxable supplies used for VAT exempt supplies, the purchase of a passenger car or taxable supplies used for representation.

## Registration

Slovak entrepreneurs can register voluntarily for VAT if they carry out economic activity in Slovakia. VAT registration is mandatory if turnover reaches €49,790.<sup>2</sup>

## VAT returns

- The tax period for VAT is a calendar month or a calendar quarter.
- The amount payable is calculated by deducting input VAT from output VAT.
- The VAT payer must file a VAT return within 25 days of the end of the tax period and pay VAT to the respective Financial Authority.
- The input VAT credit (i.e. the excess of VAT deductions) is not reimbursed immediately after submitting the VAT return. Instead the input VAT credit should be forward and offset against future VAT liabilities. However, an amendment to the VAT Act allows reimbursement of the input VAT credit within 30 days of submitting the tax return if the VAT payer meets certain conditions. Moreover, if a VAT payer cannot offset a VAT credit in the VAT period following the one in which it arose, the tax authorities should refund it to the VAT payer within 30 days of the VAT payer submitting the tax return for the period following that in which the VAT refund was reported.

<sup>2</sup> By entering the European Monetary Union, Slovakia was obliged to fix the turnover at €35,000. However, the European Commission granted Slovakia an exception and from July 1, 2009 the turnover for mandatory registration was fixed at €49,790 which corresponds to the amount set before January 1, 2009.

### Excise duties

Excise duties apply to the supply of following products: mineral oil, beer, wine, spirits and tobacco.

Slovakia was granted a transition period for applying excise duty on coal until 2009 and on electricity and natural gas until 2010. However, from 1 July 2008, the Slovak entrepreneurs are subject to this excise duty. The level of taxation is 50 percent of the level defined in the relevant EU Directive

### Real Estate Tax

Real Estate Tax is payable by registered owners of real estate, i.e. land and buildings located in Slovakia.

### Vehicle Tax

Vehicle tax is payable on vehicles used for business purposes in Slovakia. The tax depends on the engine capacity or number of axles and the vehicle's weight.

### Inheritance Tax, Gift Tax and Real Estate Transfer Tax

Inheritance tax and gift tax were abolished from 1 January 2004.

Real Estate Transfer Tax was abolished from 1 January 2005.

## IV.

## NEWS AND PROSPECTS

Since 1998 Slovakia has undergone a period of stable economic growth.

With the accession of Slovakia to the European Union in 2004, the majority of all crucial national legislation in business and trade has been harmonised with key EU directives and orders. In Slovak national legislation many significant changes and/or new laws are underway.

From the business point of view it is worth mentioning the Act on Investment Aid which has relaxed the criteria for qualifying for investment aid (see Section I.3). Also, from 2009, Slovakia has been a member of the European Monetary Union. The most important advantages for Slovak entrepreneurs are the reduction of transaction costs and the removal of exchange rate risks.

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*We emphasise that this review is for information purposes only. Should you be interested in further detailed information we remain at your disposal.*

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PRAHA | Na Příkopě 15/583 | CZ - 110 00 Praha 1

BRATISLAVA | Kapitulská 18/A | SK - 811 01 Bratislava

KYIV | Bohdana Khmelnytskoho 17/52-A | UA - 01030 Kyiv

SOFIA | Saborna 2a | BG - 1000 Sofia

