



## SLOVAKIA INVESTMENT GUIDE 2011

The Slovak Republic has witnessed robust economic growth and a massive influx of foreign investment over the last decade. Although the global crisis affected the Slovak economy, along with countless others, the country has remained one of the most attractive destinations for investing in the growing markets of Central and Eastern Europe, according to the 2011 World Bank Doing Business rankings.

This Slovakia Investment Guide 2011 aims to provide an up-to-date overview of the Slovak business environment and information about changes to key areas of Slovak law relevant to potential investors who are considering entering the Slovak market.

The first chapter of the guide contains a brief presentation of the Slovak Republic and its economic reforms over the last decade or so. The second chapter identifies the most significant factors which have enabled the Slovak Republic to become an attractive destination for foreign investors. The third chapter provides information on how to start a business in the Slovak Republic. The fourth chapter aims to analyze the basic exit mechanisms available for those investors wishing to terminate their business activities in the Slovak Republic. Last but not least, the fifth chapter offers a brief overview of dispute resolution mechanisms before courts and arbitration tribunals.

# 1. GENERAL OVERVIEW

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## 1.1 BASIC INFORMATION ABOUT THE SLOVAK REPUBLIC

The Slovak Republic covers 49,000 square kilometres and has a population of around 5.4 million. Situated in the heart of Europe, the country shares borders with Poland (508.2 km), Ukraine (98 km), Hungary (679 km), Austria (115 km) and the Czech Republic (251.8 km). Slovakia's capital city, Bratislava, has a population of 471,000 and is situated in the south-west corner of the country, close to the borders with Austria and Hungary and just 65 km from Vienna and 200 km from Budapest.

This strategic location offers a combined market potential of over 350 million customers within a radius of 1,000 kilometres. The Slovak Republic is also considered a gateway to Ukraine and Russia.

Slovakia is a member of the OECD, WTO, NATO, UNESCO, WHO, INTERPOL and a number of other international organizations. On May 1, 2004, the Slovak Republic joined the European Union and, on December 21, 2007, the Schengen area. As of January 1, 2009, the Slovak Republic became a member of the Eurozone and successfully adopted the euro with the conversion rate set at 30.1260 SKK (Slovak crowns)/EUR. On May 1, 2011, all restrictions and quotas on Slovak citizens living and working in other European Union member states were cancelled, meaning that all Slovaks may now work freely anywhere in the union.

The Slovak Republic follows the continental legal system influenced by the French and German legal systems and, in recent years, by European law.

## 1.2 ECONOMIC REFORMS HAVE LED TO GROWTH

The Slovak Republic was something of a latecomer to the economic transformation that swept through Central and Eastern Europe in the 1990s. However, following the general election in 1998 the country implemented a set of structural reforms whereby the main banks and utilities were privatized and fiscal transparency and control was improved significantly. As a result, foreign investors from Europe and the U.S. have obtained important stakes in many of the key formerly state-owned institutions.

The reform process gathered pace after the general election in 2002. The new government introduced extensive and far-reaching reforms affecting many areas, from public finance to employment, education, health and social security. The introduction of a simple, competitive and business-friendly 19% flat tax system, generally considered a cornerstone of the 2004 economic reforms, received global attention.

International observers have increasingly come to praise the depth and speed of the changes and the sharp increase in competitiveness and economic dynamism that have occurred in the Slovak Republic. Among other sources, the 2005 World Bank Doing Business Report rated the Slovak Republic as the world's top reformer in improving its investment climate during the previous year. The OECD's recent Revenue Statistics publication ranked Slovakia's tax take as a percentage of GDP as the 7th lowest amongst all OECD countries in 2009.

In the last few years the Slovak economy has followed a path of robust growth, with the highest rises in GDP in the region. Its GDP grew by over 8% in 2006 and 2007, and remained above 6% in 2008. Even though there was a 4.9% decline during the global downturn of 2009, growth of approximately 4% resumed in 2010. GDP is forecast to grow by 3.1% in 2011; the slight slowdown is mainly the result of a government austerity programme designed to bring the state budget deficit (which had risen during the economic crisis) back below 3.0% of GDP by 2013. Slovakia's public debt as a percentage of GDP remains low by European standards, at just over 40%.

## 2. THREE MAIN CONCERNS OF FOREIGN INVESTORS

### 2.1 BUSINESS-FRIENDLY TAX SYSTEM

#### 2.1.1 Overview of the tax system

The 2004 tax reform introduced a fairly competitive and business-friendly tax system. The most fundamental change was the introduction of the 19% flat tax regime. Several taxes were abolished - inheritance and gift tax as of January 1, 2004, and real estate transfer tax as of January 1, 2005.<sup>1</sup> Furthermore, the taxation of dividends was abolished, regardless of whether the recipient or payer is an EU resident or not and regardless of the share of the parent in the subsidiary, as of January 1, 2004.

TABLE 1: Basic tax rates in V4 countries

	Slovakia	Czech Republic	Hungary	Poland
Corporate Income Tax	19%	19% <sup>2</sup>	10% / 19% <sup>3</sup>	19%
Personal Income Tax	19%	15%	16%	18 - 32%
VAT	20% <sup>4</sup>	20%	25%	23%

The Slovak tax system comprises direct and indirect taxes. Direct taxes include income tax (personal income tax, corporate income tax) and municipal taxes (real-estate tax, motor vehicles tax, etc.), whereas indirect taxes include value added tax (VAT) and excise duties. Only income tax and VAT will be dealt with in this chapter, as they are the most relevant from an investor's point of view.

<sup>1</sup> Article 3 par. 2 letter a) and Article 12 par. 7 letter b) of the Act No. 595/2003 Coll. on Income Tax.

<sup>2</sup> This tax rate was reduced to 19% as of January 2010.

<sup>3</sup> The corporate income tax rate is 10% up to HUF 500 million, and 19% above that amount.

<sup>4</sup> Value added tax was increased to 20% with effect from January 1, 2011.

### 2.1.2 Corporate income tax

According to Article 2 of the Income Tax Act, corporate income tax is levied on legal persons provided their registered office or the place of their effective management is located in the Slovak Republic. The Income Tax Act defines the place of effective management as the place where the managerial and business decisions of statutory and supervisory bodies are adopted. The tax obligation of such legal persons is unlimited and they are, therefore, liable to pay tax on income derived from Slovak sources and also on income derived from sources abroad. Other entities such as permanent establishments<sup>5</sup> have only a limited tax obligation and are, therefore, liable to pay corporate income tax only on income derived from Slovak sources. The tax year does not have to correspond to the calendar year.

Note that the Income Tax Act does not contain any particular provisions on group taxation. Each company must submit a separate tax return.

### 2.1.3 Personal income tax

According to Article 2 of the Income Tax Act, personal income tax is levied on natural persons permanently residing in the Slovak Republic or physically present in the Slovak Republic for 183 days or more of a calendar year, either continuously or in total (Slovak tax residents). Slovak tax residents are liable for personal income tax on their worldwide income.

Other natural persons (Slovak tax non-residents) are liable for personal income tax on their Slovak sources of income only. This includes, for example, income from work carried out in the Slovak Republic, income paid by a Slovak company for performing a statutory function in a company, or income from consulting services or similar activities carried out in the Slovak Republic.

### 2.1.4 Value added tax

Value added tax is governed by the VAT Act<sup>6</sup>. Slovak taxable entities with their main office, place of business or establishment in Slovakia must register for VAT if their turnover within the previous twelve calendar months exceeded EUR 49,790. Voluntary registration is also possible.

The VAT rate was increased from 19% to 20% as of January 1, 2011. A reduced VAT rate of 6% that had been applied to so-called 'sale of farm goods' was also abolished by the Amendment to the Act on Value Added Tax No. 490/2010 Coll.

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<sup>5</sup> Article 16 par. 2 of the Income Tax Act defines a permanent establishment as a permanent place or facility being used either constantly or repeatedly by a foreign company carrying out business activities in the Slovak Republic. It can be either a branch that is registered in the Commercial Register or an unregistered unit that has no legal status. A permanent establishment is also constituted by an activity, place or facility through which a foreign company carries out one-off activities in the Slovak Republic for more than 6 months in any 12 consecutive months.

<sup>6</sup> Act No. 222/2004 Coll. on Value Added Tax.

### 2.1.5 Transfer pricing

According to Article 17 par. 5 of the Income Tax Act, prices between a Slovak entity and its foreign related party must be set at a fair market value for corporate income tax purposes. Otherwise, tax authorities have the right to adjust the tax base and impose penalties if they conclude that arm's-length prices have not been respected.

Article 2 letters n) - r) of the Income Tax Act defines a foreign related party as a foreign party economically or personally related, or a foreign party otherwise connected. Note that such a relationship arises only in cases where the parties have established a business connection solely for the purpose of decreasing their tax base. An economic or personal relationship is defined as one party participating in the equity, control, or management of the other party, or a relationship between two parties which are under the common control or management of another party. Participation in equity or control means a higher-than-25% direct or indirect participation in share capital or voting rights.

### 2.1.6 Double taxation avoidance treaties

A tax regime can be modified by double taxation avoidance treaties. To date, the Slovak Republic has concluded such treaties with 63 countries around the world.<sup>7</sup> Tax treaties generally follow the OECD Model Tax Convention.

## 2.2 ATTRACTIVE INVESTMENT INCENTIVES

### 2.2.1 Investment incentives under EU law

Investment incentives are without doubt a serious argument in favour of the Slovak Republic. However, as an EU member country, the Slovak Republic must ensure compliance with EU rules.

One of the fundamental principles of EU law is the promotion of competition within the EU internal market. Therefore, EU member states are prohibited from granting any incentives capable of distorting competition and affecting trade between member states. The concept of state aid is very broad and covers a wide range of direct and indirect public incentives. Investment incentives which seek to attract foreign investors are therefore a priori perceived as distorting competition.

TABLE 2: Percentage of investment which can be covered by investment incentives

Bratislava	0% <sup>8</sup>
Western Slovakia	40%
Central Slovakia	50%
Eastern Slovakia	50%

<sup>7</sup> Data as of December 22, 2010, from the Ministry of Finance of the Slovak Republic.

<sup>8</sup> This amount was changed from 10% to 0% as of January 1, 2009.

However, the promotion of competition within the internal market is not the only relevant EU policy. The EU has set as an objective the improvement of the standard of living in poor regions and the elimination of regional disparities. This and other policies have led to a number of exemptions to the principle of prohibition of state aid. The key exemption for an investor is probably the exemption of aid to promote economic development in areas where the standard of living is abnormally low or where there is serious unemployment compared to the EU average. Regional aid differs from other categories of aid as it is restricted to specific geographical areas and specifically aims to encourage the economic development of those areas by providing support for investment and job creation.

As the granting of aid is linked to the region where the investment takes place, the European Commission has determined which regions are entitled to receive aid and the amount of aid each of those regions may receive (see TABLE 2). The percentage of the investment incentive is increased by 10% in the case of medium-sized enterprises<sup>9</sup> and by 20% in the case of small enterprises<sup>10</sup>. However in the case of large-scale investments<sup>11</sup> this percentage is decreased depending on the size of the investment.

### 2.2.2 Investment incentives under Slovak law

Until recently, the Slovak Republic had a mostly unstructured approach to investment incentives. Generally, the type and the amount of incentives received and the conditions the investor had to meet to receive them were determined by negotiation between the government and the investor. Such a system provided a great deal of flexibility, attractive for investors wanting to structure their projects in a particular way, but lacked transparency and certainty.

On January 1, 2008, a new Investment Incentives Act<sup>12</sup> came into force. The Investment Incentives Act recognizes four basic categories of investment projects entitled to investment incentives: manufacturing, technology centres, centres of strategic services, and tourism. Within each category, investors can apply for the following investment incentives: a cash subsidy for the acquisition of long-term tangible and intangible assets, corporate income tax relief, contributions for newly created jobs, and the transfer of real estate at a reduced price.

According to Article 4 par. 1 of the Investment Incentives Act, investment incentives in the field of manufacturing may be granted only for setting up new production plants, extending existing plants or diversifying their outputs, or fundamentally changing the overall production process, and on condition that the investor makes an investment of at least EUR 26,555,135.10 in the acquisition of tangible or intangible assets.<sup>13</sup> Incentives can also be granted for the acquisition of new technological equipment provided it accounts for a minimum of 60% of the value of acquired tangible and intangible assets.

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<sup>9</sup> Defined as an enterprise with fewer than 250 employees and either annual turnover not exceeding EUR 50 million or annual balance sheet total not exceeding EUR 43 million.

<sup>10</sup> Defined as an enterprise with fewer than 50 employees and annual turnover and/or balance sheet total not exceeding EUR 10 million.

<sup>11</sup> Investment projects with eligible expenditures of at least EUR 50 million.

<sup>12</sup> Act No. 561/2007 Coll. on Investment Incentives.

<sup>13</sup> The amount is reduced to EUR 13,327,756.75 if the investment is directed at regions with an unemployment rate higher than the Slovak average and to EUR 6,638,783.77 (from April 1, 2009, to EUR 3,319,391.89) if the unemployment rate is at least 50% higher than the average.

In the case of technology centres investment incentives may be used only for the development of new technology centres or for the expansion of existing centres, and on condition that the investor makes an investment of at least EUR 1,327,756.75 in the acquisition of tangible or intangible assets<sup>14</sup> and that at least 60% of employees possess an academic degree.

Other common conditions have to be met by the investor. At least 25% of the investor's eligible costs must be financed from sources other than state aid. The investor must start business activities within three years of the date the state aid was granted. And the investor must retain assets that were acquired through investment aid for a period of at least five years.

## 2.3 LOW-COST AND SKILLED LABOUR FORCE

### 2.3.1 Labour force availability

The Slovak Republic has a working population of 2.6 million, with a strong tradition in engineering and mechanical production. The unemployment rate increased from 12.5% in 2009 to 14.0% in 2010. When analyzing labour force availability in the Slovak Republic it is also necessary to take into consideration the more than 126,700 people who have left the country to work abroad.

Major regional disparities have developed in Slovakia regarding unemployment rates, with the lowest being in the more developed west of the country (Bratislava, Trnava and Trencin regions) and the highest in central and eastern Slovakia (Banska Bystrica, Kosice and Presov regions). This phenomenon can be partially explained by the fact that the influx of FDI has been heavily concentrated in the western regions of the country. Bratislava alone absorbed 65.9% of total FDI up to the end of December 2008. The industrial region of Zilina, which ranked second, accounted for only 13.4% of total FDI.

TABLE 3: Unemployment rates in V4 countries (in %)

	2003	2004	2005	2006	2007	2008	2009	2010
Slovakia	17.6	18.2	16.3	13.4	11.1	9.6	12.5	14.0
Czech Republic	7.8	8.3	7.9	7.2	5.3	4.4	9.2	7.0
Poland	19.7	19.0	17.8	13.9	9.6	7.1	11.1	9.7
Hungary	5.9	6.1	7.2	7.5	7.4	7.9	10.3	12.0

Source: Statistics Office of the European Communities

<sup>14</sup> At least 50% has to come from the investor's own resources.

TABLE 4: Regional unemployment in the Slovak Republic for 2008 - 2010

	Unemployment Rate (%)			Available Employees		
	2008	2009	2010	2008	2009	2010
Bratislava Region	3.6	4.7	6.1	12,400	16,300	20,900
Trnava Region	6.2	9.1	12.0	18,300	27,500	36,600
Trencin Region	4.7	7.3	10.2	13,900	21,400	30,700
Nitra Region	8.8	13.0	15.4	31,700	45,700	54,100
Zilina Region	7.7	10.6	14.5	25,900	35,400	48,700
B. Bystrica Region	18.2	18.8	18.6	59,500	59,800	60,300
Presov Region	13.0	16.5	18.6	48,700	62,400	72,000
Kosice Region	13.5	15.5	18.3	47,200	55,800	65,800

Source: Statistics Office of the Slovak Republic

### 2.3.2 Labour costs

Although productivity rates are similar within the V4 region (i.e. the Visegrad Group, comprising the Czech Republic, Hungary, Slovakia and Poland), labour in Slovakia remains cheaper than in the Czech Republic, and, in spite of a slight increase, comparable to Hungary and Poland. It is approximately four times cheaper than in Western Europe.

TABLE 5: Labour costs in selected European Union countries

	EUR / hour				
	2006	2007	2008	2009	2010
Slovakia	5.3	6.8	7.4	7.5	7.9
Poland	6.0	6.8	7.5	6.9	7.0
Hungary	6.3	7.1	7.6	7.6	7.3
Czech Republic	7.1	7.9	8.1	9.6	10.0
France	30.3	25.3	29.2	32.9	33.1

Source: Statistics Office of the European Communities

Great disparities exist in labour costs between particular Slovak regions, with the highest costs being in Bratislava and Kosice regions and the lowest in Presov, Nitra and Banska Bystrica regions.

TABLE 6: Regional labour costs in the Slovak Republic

	EUR / hour			EUR / month		
	2007	2008	2009	2007	2008	2009
Bratislava Region	8.5	9.2	9.9	1,243	1,348	1,411
Trnava Region	6.8	7.2	7.5	986	1,048	1,064
Trencin Region	6.4	6.6	6.9	909	942	965
Nitra Region	5.8	6.4	6.6	824	918	929
Zilina Region	6.5	6.9	7.1	920	978	979
B. Bystrica Region	6.0	6.4	6.8	847	912	952
Presov Region	5.6	6.2	6.2	810	878	856
Kosice Region	7.3	7.7	7.6	1,030	1,089	1,041

Source: Statistics Office of the Slovak Republic

### 2.3.3 Labour law overview

According to Article 42 par. 1 of the Labour Code<sup>15</sup>, employment relations shall be established by written employment contracts between an employer and employees. Besides an employment contract, the Labour Code recognizes three other contract types: work performance contract<sup>16</sup>, work activities contract<sup>17</sup> and temporary student job contract<sup>18</sup>. These contracts are of minor importance and therefore will not be dealt with in this chapter.

An employment contract can be concluded either for a definite or an indefinite period of time. In line with the amendment to the Labour Code effective as of March 1, 2010, a fixed-term contract may be concluded for a maximum of two years and can be extended or concluded again only two times.<sup>19</sup> A probationary period of three months may be agreed to in the employment contract and may not be prolonged. Within the probationary period, both employer and employee may terminate the employment contract for any reason whatsoever, or without stating any reason.

According to Article 85 par. 5 of the Labour Code, the maximum weekly working time is 40 hours, although in some particularly arduous or hazardous occupations the figure may be lowered to 33.5 hours. Overtime work shall not exceed 8 hours per week and 150 hours in a calendar year.

<sup>15</sup> Act No. 311/2001 Coll. the Labour Code.

<sup>16</sup> According to Article 226 of the Labour Code a work performance contract may be concluded only for performance of specific work or a specific work task and only on condition that the anticipated extent of work does not exceed 350 hours in a calendar year.

<sup>17</sup> According to Article 228a of the Labour Code a work activities contract may be concluded only if work activities do not exceed 10 hours per week.

<sup>18</sup> According to Article 227 and 228 of the Labour Code a temporary student job contract may be concluded only if work activities do not exceed 20 hours per week. The contract has to be concluded in writing.

<sup>19</sup> Fixed-term contracts may be concluded or extended for a period longer than 2 years only if specific conditions stipulated in Article 48 par. 4 - 6 of the amendment to the Labour Code effective as of March 1, 2010.

According to Article 59 par. 1 of the Labour Code, an employment contract can be terminated subject to the mutual agreement of the parties, immediate termination or termination by notice.

According to Article 68 par. 1 of the Labour Code, the employer may terminate an employment contract immediately only in the event that the employee in question has been convicted of an intentional criminal act or a serious breach of discipline. The opportunities for an employee to terminate an employment contract immediately are limited to exceptional circumstances.

Both an employee and an employer can terminate an employment contract by written notice within the statutory notice period of at least 2 months. An employee may give notice to an employer for any reason whatsoever, or without giving any reason. By contrast, an employer may only give notice to an employee for one of the reasons expressly stipulated in the Labour Code. Article 63 stipulates the following reasons:

- a) Employer's business or part thereof is wound up or relocated;
- b) Employee is made redundant by virtue of a change in duties, technical equipment, reduction in the number of employees with the aim of increasing work efficiency, or other organisational changes;
- c) According to medical assessment, the employee has lost the ability to perform his/her previous work due to his/her health conditions;
- d) Employee does not meet legal requirements for due performance of the agreed work;
- e) Employee does not duly fulfil his/her work tasks, even though he/she was instructed by the employer to rectify insufficiencies, in writing, twice within a period of 6 months;
- f) Employee commits a serious breach of discipline;
- g) Employee commits ongoing but less serious breaches of discipline.

Collective redundancy is defined by the law as a situation where an employer terminates an employment relationship for reasons a) and b) as stated above with at least 20 employees over a period of 90 days. The employer is obliged to negotiate collective redundancies with trade unions, or directly with the employees concerned in the case that no trade unions exist, as well as with the National Employment Office and provide them with written information on the reasons, structure and time schedule of the collective redundancies and number of employees concerned.

According to Article 76 par. 1, an employee is entitled to a severance payment amounting to at least double their average monthly salary, but only if their employment relationship has been terminated due to the reasons given under letters a) - c) above. An employee who has worked for an employer for at least five years is entitled to a severance payment of at least three times the amount of his average monthly salary.

The Labour Code enables employers, on the grounds of objective operational reasons, to use temporary employees assigned to them by the Agency for Temporary Employment. Under the temporary assignment regime, the employer does not have a direct employment contract with the employees. The employees are employed by the Agency for Temporary Employment and subsequently assigned to the employer for an agreed time period. This regime is used by a number of investors during high-season periods to meet increased production targets.

### 2.3.4 Measures promoting employment

A set of crisis measures was adopted by the Slovak Parliament as of March 1, 2009, in order to avoid a significant increase in the unemployment rate as a result of the ongoing financial crisis. Amendments to the Labour Code and the Act on Employment Services introduced instruments such as “Flexikonto”<sup>20</sup>, allowances for employment retention or contributions to labour costs for creation of new jobs so that the negative impacts of the global crisis on the employment rate in Slovakia would be minimized.

At the time of writing (May 2011), the Slovak government is proposing a series of significant reforms to the Labour Code. Among the planned changes are: removal of an employee’s right to a parallel severance payment and notice period; new rules covering holiday entitlements; increased flexibility for employees taking maternity leave; and lengthened probationary periods for senior managers. These and other revisions to the Labour Code were approved by the cabinet on April 28, 2011, and will now be submitted to parliament, where MPs are expected to propose further changes.

## 3. STARTING A BUSINESS

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### 3.1 ESTABLISHING A LIMITED LIABILITY COMPANY

Investors entering the Slovak market may choose between several corporate forms introduced either by the Commercial Code<sup>21</sup>, such as a limited liability company, joint-stock company, general partnership or limited partnership, or by EU law, such as a European company<sup>22</sup>. A limited liability company (in Slovak: spoločnosť s ručením obmedzeným; abbreviation: s.r.o.) is the most commonly used corporate form and is therefore dealt with in detail in this chapter.

There are no limitations on foreign investors when it comes to setting up companies. A foreign natural or legal person may establish any form of company either together with other foreign or Slovak persons or alone as a sole shareholder. In this respect, foreign natural and legal persons enjoy the same rights and bear the same obligations as Slovak persons and may not be discriminated against.

According to Article 108 of the Commercial Code, minimum registered capital of EUR 5,000 is required. Article 111 par. 1 requires that at least 50% of the registered capital is paid before the proposal for registration of the company is filed in the Commercial Register.

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<sup>20</sup> From March 1, 2009, to December 31, 2012, employers have the option of giving employees time off, during which the employees are entitled to their basic salaries, but must later work the time-off hours for no further payment, based on a written agreement with the employees’ representatives. Flexikonto can only be applied in the event of a temporary shortage of work caused by substantive operational reasons, and provided a written agreement with the employees’ representatives exists.

<sup>21</sup> Act No. 513/1991 Coll. the Commercial Code.

<sup>22</sup> Council Regulation (EC) No. 2157/2001 of October 8, 2001, on the Statute of a European company (SE).

A limited liability company may be established by a sole shareholder irrespective of whether they are a legal or a natural person. Two restrictions exist in this regard. Firstly, a company owned by a sole shareholder must not be a sole shareholder in another limited liability company. Secondly, a natural person must not be a sole shareholder in more than three companies. The maximum number of shareholders is limited to 50.

The corporate bodies of a limited liability company are the shareholders' meeting, executive director and supervisory board.

A shareholders' meeting is composed of all shareholders and decides on all major issues including the appointment and dismissal of the executive director, modification of the statutes and memorandum of association, increases and decreases in the registered capital, etc. The Commercial Code contains detailed regulations on how individual sessions are to be convened and organized.

An executive director is a statutory representative of the company. The company may have several executive directors. Only a natural person can be appointed as an executive director. In the event that there are several executive directors, each of them is entitled to act individually on behalf of the company unless stipulated otherwise in the memorandum of association.

Establishment of a supervisory board is optional. The participants may decide to establish a supervisory board in the company's memorandum of association. The supervisory board must be composed of at least three members appointed by the shareholders' meeting.

The process of establishing a limited liability company is relatively simple and takes about three weeks. Signing of the memorandum of association is followed by acquisition of the necessary trade licences and finally by registration of the company in the Commercial Register of the competent district court. It is important to stress that a limited liability company acquires legal personality status upon its registration in the Commercial Register.

Note that no restrictions are imposed on the import and export of capital, and repatriation payments may be made in any currency<sup>23</sup>. According to Article 8 of the Foreign Exchange Act, the National Bank of Slovakia has to be notified by residents and branches of non-residents in Slovakia about any collections, payments and transfers relating to direct investments, loans and securities abroad and in relation to non-residents, as well as about the establishment of accounts abroad and balances thereof.

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<sup>23</sup> Article 7 of Act No. 202/1995 Coll. the Foreign Exchange Act.

## 3.2 ESTABLISHING BUSINESS PREMISES

### 3.2.1 Purchase of real estate

The Roman principle of “superficies solo cedit” is not reflected in the Slovak legal system. As a result, land and buildings can be acquired separately by different entities.

The Civil Code specifies several possible ways of acquiring the title to real estate, such as a written contract, inheritance, the decision of a public authority, or by other means stipulated in the law. In most cases, real estate is acquired on the basis of a written contract. It is important to note that in the case of a written contract the title is acquired only upon constitutive registration in the Land Register. The registration procedure takes a minimum of 15 days.

Registration in the Land Register is binding unless proven otherwise. It is therefore possible for anybody to claim “real” ownership of a property, even though there is a valid registration of the title in the Land Register. To avoid any difficulties it is recommended that purchasers undertake a detailed due diligence of title transfers during the previous 10 years as this period corresponds to the 10-year ownership prescription period.

According to a general principle introduced as of May 1, 2004, by Article 19a par. 1 of the Foreign Exchange Act, foreign natural and legal persons may acquire real estate in the Slovak Republic without any limitations. The only exception applies to land that is owned solely by the Slovak Republic, and to agricultural and forest land. In order to acquire forest and agricultural land citizens of other EU member states are required to have used the land for at least 3 years prior to acquiring it and, at the same time, to have obtained a residency permit.

### 3.2.2 Lease of business premises

Foreign natural and legal persons are not limited in their freedom to lease real estate in the Slovak Republic. Only lease contracts for more than five years are registered in the Land Register. It is important to stress that non-residential premises can only be leased for the purpose designated in the use permit.

### 3.2.3 Construction and reconstruction

According to Slovak law, structures may be erected only after the acquisition of a building permit issued by a competent building office (usually the municipal office in the territory in which the structure is going to be erected). Such a permit may be applied for by the owner of the land on which the structure will be built or by another person having special rights to the land resulting from a lease contract or easement.

The building procedure has three separate stages: zoning permit, building permit and use permit. Under certain conditions the zoning and building permits may be joined in a single procedure.<sup>24</sup>

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<sup>24</sup> Article 39a par. 4 of the Building Act; this applies in the case of minor construction and structures in areas where there is a zoning plan.

During the zoning permit procedure, the building office considers whether a particular structure with generally defined parameters can be erected in a particular area. The zoning permit is issued on the basis of, and must comply with, the zoning plan prepared by the municipalities and state authorities. Other specific studies might be required by the building office before or during the procedure.

In the building permit procedure the building office undertakes in-depth examination of the project documentation. Architectural designs are part of the project documentation and must fully comply with the zoning permit issued in the previous stage.

Note that before zoning and building permits are issued, the building office canvasses the opinions of a large number of diverse public authorities. If any of these authorities objects, it may significantly complicate the procedure. The procedure might further be complicated by objections and appeals from the owners of neighbouring land and buildings, as they are parties to the building permit procedure. Once a building permit is obtained, construction work may begin. After construction work is terminated, a use permit must be applied for. According to Slovak law, structures may not be used without a valid use permit. The entire zoning and building permit procedure takes approximately 6 to 12 months depending on different factors and possible complications.

If specific structures designated for the performance of activities could have significant impact on the environment, an Environmental Impact Assessment (EIA) may be required by the law.<sup>25</sup> An EIA is a fairly complicated administrative procedure and takes approximately 18 months. Please note that if an EIA is required by law, it is not possible to apply for a zoning permit without a final opinion, the final document issued at the end of an EIA.

## 4. CLOSING A BUSINESS

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### 4.1 GENERAL OVERVIEW

The Commercial Code provides foreign investors who wish to terminate their business activities in the Slovak Republic with several exit mechanisms. The first and perhaps the easiest method is the transfer of business shares in the Slovak company to another legal or natural person. A foreign investor may also decide to dissolve the Slovak company with liquidation or without liquidation, depending on whether the company has any assets. Launching a bankruptcy procedure is also one of the options for dissolving a company. According to Article 68 par. 1 of the Commercial Code, a company ceases to exist on the date of its deletion from the Commercial Register of the competent district court.

As the limited liability company is the most commonly used corporate form, exit mechanisms for this corporate form will be dealt with in the following chapters.

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<sup>25</sup> Act No. 24/2006 Coll. on Environmental Impact Assessment; the list of activities where an EIA is required can be found in Annex 8 of the act.

## 4.2 TRANSFER OF BUSINESS SHARES

Unless stipulated otherwise in the memorandum of association, a shareholder may transfer his business share in a company to another shareholder of the same company only after the approval of a shareholders' meeting. Transfer of a business share to a third party is more complicated. According to Article 115 par. 2 of the Commercial Code, a shareholder may transfer his business share to a third party only if the memorandum of association allows such a transfer. It is therefore recommended that such a provision be taken into consideration when drafting the memorandum of association. A written contract is required and the signatures of the parties must be certified by a notary public.

## 4.3 DISSOLUTION OF A COMPANY

### 4.3.1 Dissolution of a company without liquidation

Dissolution of a company without liquidation takes place if the Slovak company does not have any assets. In such a case the company must file an application for its deletion from the Commercial Register before the competent district court. The application must be accompanied by a resolution of the shareholders' meeting on the dissolution of the company.

Dissolution of a company without liquidation is also possible if an application for bankruptcy procedure was rejected due to lack of assets or there were no assets left in the Slovak company once the bankruptcy procedure was terminated. In this case the bankruptcy court submits a valid and effective bankruptcy decision to the competent district court, which subsequently deletes the company from the Commercial Register.

Dissolution of a company without liquidation is also possible if the assets and liabilities of the Slovak company were transferred to its legal successor. According to Article 69 of the Commercial Code, assets and liabilities are transferred to the legal successor in the case of a merger (in Slovak: zlúčenie), a take-over (in Slovak: splynutie) or a split (in Slovak: rozdelenie). In the case of a merger, the assets of one or more dissolved companies are transferred to another already existing company which becomes the legal successor of the dissolved companies. In the case of a take-over, the assets of at least two dissolved companies are jointly transferred to a newly established company which becomes the legal successor of the dissolved companies. In the case of a split, the assets of one or several dissolved companies are divided and transferred to several other companies.

The law requires that draft merger contracts, take-over contracts and splits are approved by shareholders' meetings of the participating companies. An application for deletion of a dissolved company from the Commercial Register or an application for the registration of a merger, a take-over or a split in the Commercial Register must be submitted jointly by all participating companies.

### 4.3.2 Dissolution of a company by liquidation

Dissolution of a company by liquidation takes place if the assets of the company have not been transferred to its legal successor and there are no reasons for a bankruptcy procedure to be initiated. The main objective of liquidation is to settle all the economic relationships of a company in a definite way.

A company enters liquidation on the date of the adoption of its shareholders' decision to dissolve the company. The power to act on behalf of the company is transferred from the executive director to the liquidator appointed by the shareholders' meeting. The liquidator must notify all creditors of the company about the commencement of liquidation and must publish this information in the Commercial Bulletin together with a call for creditors to notify their claims against the company within a period of at least 3 months. Once the claims are satisfied, remaining assets are divided between the shareholders on the basis of the shareholders' meeting resolution. Subsequently, the liquidator must apply for the deletion of the company from the Commercial Register before the relevant district court.

## 5. DISPUTE RESOLUTION

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### 5.1 ARBITRATION

#### 5.1.1 Domestic arbitral awards

In the Slovak Republic, arbitration is governed by the Arbitration Act<sup>26</sup>, which is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law of 1985.

According to the Arbitration Act, parties may agree in an arbitral clause to the contract or in an arbitration agreement to submit to arbitration all or any differences which have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not. The law requires such an agreement to be in writing, under sanction of invalidity. The absence of a written agreement may be rectified by a joint declaration of the parties before the arbitration tribunal prior to the beginning of a procedure at the latest.

According to Article 1 par. 2 of the Arbitration Act, only disputes that can be resolved by a settlement before a court can be decided by arbitration. The law specifies disputes that are expressly excluded from arbitration, such as disputes arising in connection with the ownership and other proprietary rights concerning immovable property, the personal status of private persons, enforcement of judgments, and bankruptcy and restructuring procedures.

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<sup>26</sup> Act No. 244/2002 Coll. on Arbitration Procedure.

Arbitration is considered domestic if the arbitration procedure takes place in the Slovak Republic. An arbitration procedure can take place before one or more arbitrators appointed by the parties or before an arbitration tribunal.

Note that in the event of international differences, a domestic arbitration tribunal decides on the basis of the legal order agreed by the parties. However in the case of domestic differences, the arbitration tribunal always decides on the basis of the legal order of the Slovak Republic. The arbitration tribunal can decide on the basis of principles of equity only if this is expressly agreed by the parties.

An arbitration award has the same legal effects as a valid and effective court decision and can be executed under the same conditions. An arbitration award may be reviewed by another arbitrator (or other arbitrators) only if expressly agreed by the parties.

Opportunities for the parties to challenge an arbitration award before the courts are very limited. The reasons stipulated in law generally concern violation of basic procedural rules. The parties may not challenge the arbitral award before a court by arguing improper interpretation and application of the facts and law by the arbitrator.

### **5.1.2 Foreign arbitral awards**

The Slovak Republic is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed on June 10, 1958, in New York (hereinafter the “New York Convention”).<sup>27</sup> The recognition and enforcement of foreign arbitral awards is also governed by the Arbitration Act. However, in the case of conflict the New York Convention prevails.

Please note that the Slovak Republic has adopted the reciprocity reservation previewed by Article 1 Clause 3 of the New York Convention and therefore the New York Convention is applied only to awards issued by other contracting states. The Slovak Republic also applies the New York Convention with respect to the enforcement of arbitral awards from non-contracting states provided that such states also apply the convention in relation to arbitral awards issued by the Slovak Republic.

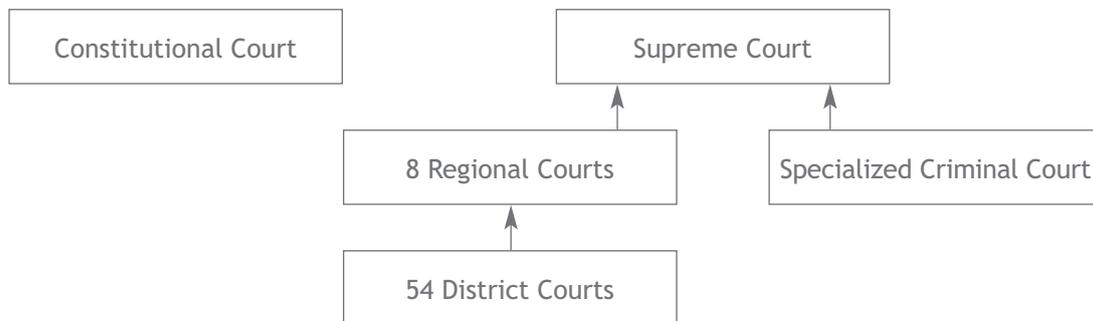
An arbitral award is considered foreign if issued in a country other than the Slovak Republic. Foreign arbitral awards must be executed under the same conditions as domestic arbitral awards. No specific recognition decision is required and a foreign arbitral award is recognized simply by the competent execution court taking the award into consideration as if it were a domestic arbitral award. Provisions of the Arbitration Act on the refusal of recognition and enforcement of foreign arbitral awards correspond to those of Article V of the New York Convention.

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<sup>27</sup> The New York Convention was published by the Order of the Ministry of Foreign Affairs under No. 74/1959 Coll. and became effective in the Czechoslovak Republic as of October 10, 1959.

## 5.2 LITIGATION

The Slovak Republic has a two-level court system composed of the Supreme Court, 8 regional courts and 54 district courts. The court system is further supplemented by the Constitutional Court. Military courts were abolished as of March 1, 2009, and their competences were transferred to the general courts.



District courts are competent to try proceedings in the first instance. Regional courts hear cases as appellate courts and only certain specific cases as the court of first instance. The Supreme Court has the function of an appellate court and appellate review court. Being the supreme judicial body, the Supreme Court never acts as the court of first instance. Apart from civil matters the courts also decide on criminal matters.<sup>28</sup>

The civil procedure is governed by the Civil Code of Procedure.<sup>29</sup> Under the Civil Code of Procedure courts decide in civil, commercial, employment, family and economic disputes. They also review the lawfulness of decisions by administrative bodies.

Cases tried by district courts and regional courts as courts of first instance are decided by a single judge. Cases tried by regional courts as appellate courts and by the Supreme Court are decided by panels of 3 or 5 judges. The Civil Code of Procedure distinguishes between an appeal as an ordinary remedy and extraordinary remedies such as appellate review, extraordinary appellate review and reopening of a case.

The civil procedure is usually a time-consuming process and may take up to several years. Serious delays may occur. Arbitration therefore often represents a faster and cheaper option. Note that apart from the court fee, the losing party in a case is also obliged to pay the attorney representation fees of the opposing party.

<sup>28</sup> The criminal procedure is governed by Act No. 301/2005 Coll. the Criminal Code of Procedure.

<sup>29</sup> Act No. 99/1963 Coll. the Civil Code of Procedure.

## 6. CONCLUSION

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Since the 1998 general election, the Slovak Republic has undertaken profound economic and social reforms in many areas, ranging from public finance to employment, education, health and social security. Since adopting these reforms, the Slovak Republic has become one of the fastest growing economies in the European Union.

The influx of foreign direct investment into the Slovak Republic has grown continuously since 2000, with many foreign investors only recently discovering Slovakia. Today the country is recognized as one of the most attractive investment destinations not only in the growing Central and Eastern European markets but in Europe as a whole.

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