



Fall | 18

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ESTABLISHING A BUSINESS ENTITY IN SLOVAKIA

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Establishing a Business Entity in Slovakia

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1. Types of Business Entities

The currently available corporate structures for conducting business are:

- General partnership
- Limited partnership
- Limited liability company
- Joint-stock company
- Simple joint-stock company
- Branch office

1.1 Description of the types of entities available in each jurisdiction through which to conduct business

While the liability of the members of partnerships for the debts of the company is, in general, unlimited, the other corporate structures offer limited liability for the shareholders. For this reason, the most frequent company types are the Limited Liability Company ("LLC") and the Joint-Stock Company ("JSC").

1.1.1.Limited Liability Company

A Limited Liability Company (Sk. "spoločnosť s ručením obmedzeným") is the most common form of commercial company in Slovakia.

A limited liability company may be founded by one or more (up to 50) individuals or companies irrespective of their nationality. A company with a sole member cannot be the sole member of another company (chaining ban). An individual may be the sole member of up to three companies. This rule also applies to foreign LLCs or individuals. The company cannot be established by an entity with tax or customs duty arrears. This does not apply to foreign companies or individuals.

The minimum capital requirement for an LLC is EUR 5,000 and the minimum contribution of each shareholder EUR 750. If the company has a sole founder, the registered capital must be paid up in full before it can be registered in the Commercial Register. If there is more than one founder, at least 30 percent of each member's contribution of the registered capital, and overall at least 50 percent of the minimum registered capital must be paid up before registration in the Commercial Register.

Monetary or non-monetary (in-kind) contributions are allowed, namely real or personal property, certain intangible assets, and existing and documented due debts. The value of in-kind contributions is subject to an official valuation and these contributions must be fully paid up before the registration of the LLC in the Commercial Register.

However, it is advisable to count on a reasonable starting amount for the registered capital for financing the launch of the business and thus avoiding the application of the insolvency or statutory economic crisis test from the very beginning.



1.1.2. Joint-Stock Company

A Slovak Joint Stock Company (Sk. "akciová spoločnosť") is similar to other European Joint-Stock Companies.

Joint Stock Companies may be established by one or more legal entities or by two or more individuals (resident or non-resident) and may have a public or private form. A JSC whose shares (or some of them) have been listed on the stock exchange in any EEA member state is considered a public Joint Stock Company.

The minimum registered capital for a JSC, regardless of the method of establishment, is 25,000 EUR (except for institutions such as banks, investment companies, securities dealers, and management companies, whose minimum registered capital must usually be significantly higher).

Shares are securities which give rights to shareholders to participate in the company's management, and to share in the profit and liquidation balance. Shares are issued in either registered (Sk. "akcie na meno") or bearer (Sk. "akcie na doručiteľa") form.

Registered shares may be issued as certified (Sk. "listinné") or book-entry (Sk. "zaknihované") securities, whilst bearer shares are issued in book-entry form only.

Generally, shares are freely transferable. However, the articles of association may restrict (but not prohibit completely) the transferability of registered shares (not bearer shares) to specific cases.

2. Steps and Timing to Establish

The aim of this section is to give a brief general overview of the necessary steps for the incorporation of a capital company (e.g., LLC or JSC) in Slovakia.

Generally, a company is established in two steps: i) by founding the company by adopting a foundation document, and ii) by registering the company with the Commercial Register.

After executing the foundation document, the company does not yet legally exist. In the period between its foundation and registration, the company does not have legal personality (it cannot acquire rights or obligations) and its statutory bodies do not yet exist. Company shareholders are only in the position of founders and not shareholders. However, acts related to the establishment of the company or acts taken with suspensive condition – approval of the acts by shareholders after the registration of the company – can be taken by all member of the statutory body of the company.

The company's founders must authorize a person to administer the paid-up capital before registering the company. The administrator, often one of the founders or a bank, is obliged to take custody of the founders' contributions. In addition, they are obliged to provide a written statement on how much capital has been paid up, which must be attached to the application for registration in the Commercial Register. Upon establishing the company, these deposits become the property of the company, which may from that moment on freely dispose of them.

Before being established, the company must obtain a business licence (such as a trade or other licence). The trade licence is certified by an extract from the Trade Register held by the Trade Licensing Office. The company acquires the trade licence, in the extent of the registered scope of business, from the date it was established.

A newly founded company must be registered with the regional Commercial Register before it



can become a legal entity. An application for registration in the Commercial Register must be filed within 90 days of the company's foundation, or from the date of delivery of a document establishing a trade licence or other entrepreneurial licence. Commercial Registers in the Slovak Republic are kept by eight specific District Courts. Corporate information on existing companies such as business name, address, authorized representatives, registered capital and certain other information can be found in these registers, accessible online at the website www.orsr.sk. In general, if an application to register a company in the Commercial Register fulfils all the requirements, and all of the necessary documents are supplied, then the company will be registered within two working days of the application being filed.

3. Governance, Regulation and Ongoing Maintenance

Brief summary of regulation of each type and ongoing maintenance; reporting requirements

Corporate governance is vested in the company's bodies and varies by the type and size of the company. For capital companies, the supreme body is always the general meeting of shareholders.

The supreme body of a Slovak LLC is its general meeting, which decides on the most important company matters.

The company's day-to-day business and representation is ensured by a statutory body consisting of one or more executive directors. The executive directors are entitled to act to the full extent on behalf of the company. If more executive directors are appointed, they may act individually or jointly. The executive director's right to act on behalf of the company may be limited in the founding document, but in

principle any limitations are not effective against third parties.

Generally, if executive directors breach their duties they are jointly and severally liable to the company unless they prove that they acted in good faith, with professional care or in the company's interests.

There is no board of directors in an LLC. A supervisory board (of at least three members) may be established voluntarily.

Executive directors must act with due diligence and care and follow the principles and resolutions passed by the company's general meeting in compliance with the law and the founding documents. They may not disclose sensitive and confidential information to third parties. If they breach these obligations, they are personally liable for all damage caused by the breach. They must also respect the non-competition clause envisaged by the Commercial Code, which may be extended by the founding documents.

The bodies of a JSC are like other European Joint Stock Companies, with a general meeting as the supreme body, board of directors as the executive body, and a controlling supervisory board.

Major corporate matters can only be decided by the general meeting. The powers of the board of directors, as a company's statutory body, are laid down in the articles of association. The shareholders exercise control over the members of the board of directors through the general meeting and indirectly through a supervisory board elected by and reporting to the general meeting. The board of directors has the power to decide all matters which are not specifically reserved for the general meeting, to care for the day-to-day business and to represent the company before third parties.



The number of directors must be specified in the articles of association. Unless otherwise provided in the articles of association, each director is authorized to act and sign on behalf of the company.

Unlike in an LLC, the supervisory board is an obligatory body of a Slovak JSC. It must have at least three members and it supervises the activities of the board of directors and monitors the company's financial records.

Generally, directors are jointly and severally liable to the company if they breach their obligations, unless they prove that their actions were in good faith, taken with professional care or in the company's interests.

As regards reporting requirements, the most common obligation is related to financial statements. The companies are obliged to deposit their financial statements in the central Register for Financial Statements in an electronic form. A company is obliged to deposit its financial statements by the deadline for submission of Corporate Income Tax Returns (31 March, or if the deadline is extended, not later than 30 June or 30 September).

If a company submits unapproved Financial Statements, the Company must deliver notification of their approval to the Tax Authority, however, not later than within 15 business days following their approval by a person authorized to act on behalf of the Company (i.e., a person responsible for communication with the Tax Authority).

Additionally, a declaration on the approval of the Financial Statements (and eventually the Annual Report) must be submitted to the Collection of Deeds of the Commercial Register within 30 days of the approval of the Financial Statements.

If a company meets the criteria for obligatory audit¹ of its Financial Statements, the company is obliged to file its Annual Report and an auditor's report on verification of the Financial Statements (including the auditor's report on verification of compliance of the Annual Report with the Financial Statements) with the Register of Financial Statements, within one year following the end of the accounting period for which the Financial Statements were prepared, at the latest.

The Annual Report does not have to be approved by the shareholder. However, the Annual Report must be discussed. In order to have this fact proved, we recommend having the Annual Report approved by the shareholder.

This obligation can be fulfilled by filing the auditor's report and Annual Report in an electronic version with the electronic registry of the Tax Authority of the Slovak Republic.

Requirements for local shareholding/directors

For shareholders, there are no requirements in respect of their nationality – they may be either a Slovak or foreign individual or company.

As for the members of various boards, they may be either a Slovak or foreign individual or company (except for members of statutory bodies and supervisory bodies in a joint stock

¹ The Financial Statements must be approved by an auditor if the company fulfils, in the period for which the Financial Statements are prepared, and in the period preceding the period for which the Financial Statements are prepared, at least two of following conditions for each period:

- the total value of the company's property is more than €1,000,000;
- net turnover is more than €2,000,000;
- the average number of employees is more than 30.



company or a limited liability company). Individuals must meet several requirements, for example, they must be 18 years of age, have a clean criminal record, consent with their registration, and fulfil other conditions imposed by law.

Foreign nationals do not need a residence permit for Slovakia to be registered with the Commercial Register in a Slovak company. However, a non-EU or non-OECD citizen must have a residence permit for Slovakia.

Minority shareholders' rights and protection

In general, under the Slovak Commercial Code, the misuse of a shareholders' rights, in particular misuse of a majority or a minority of votes in a company, is prohibited.

In the case of an LLC, Slovak law does not specify majority/minority shareholders nor grant efficient protection to minority shareholders. The Slovak Commercial Code grants specific rights to shareholder(s) whose contribution amounts to at least 10% of the registered capital. Such shareholder(s):

- i) may request the convening of a general meeting (however, other shareholders are not obliged to participate in the general meeting) or
- ii) may propose a per rollam vote for a specific resolution.

Minority shareholders can, however, use for protection general rights that the Slovak Commercial Code grants to all shareholders (right to be informed by executive directors, right to demand cancellation of a resolution of a general meeting if statutory or agreed conditions were breached, etc.).

Another form of protection of a minority shareholder is the fact that any change to the founding document that extends the obligations of shareholders or limits or restricts the rights of

shareholders must be approved by all shareholders that are affected by such change.

As regards a JSC, the general rule is that no shareholder can exercise its right to the detriment of another shareholder's rights and legitimate interests and that the company must treat every shareholder equally.

Similarly to an LLC, the Slovak Commercial Code specifies qualified shareholders and grants them specific rights. These qualified shareholders are defined as having at least 5% of the registered capital. Such shareholder(s):

- i) may request the convening of a general meeting (however, other shareholders are not obliged to participate in the general meeting);
- ii) may request that a specific point be added to the general meeting's agenda;
- iii) may request the supervisory board to review actions of the board of directors;
- iv) may request the board of directors to claim the payment of the outstanding part of the issue price from shareholders in default,
- v) may request the board of directors to claim from shareholders the restitution of performance provided contrary to the law and
- vi) other.

In addition, similarly to an LLC, the minority shareholders in a JSC can, however, use for protection general rights that the Slovak Commercial Code grants to all shareholders (right to be informed by executive directors, right to demand cancellation of a resolution of a general meeting if statutory or agreed conditions were breached, etc.).



4. Foreign Investment, Thin Capitalization, Residency and Material Visa Restrictions

No significant barriers to entry for an offshore party

There are no significant barriers for an offshore party to be a shareholder in the above company types. However, some restrictions may apply to certain types of businesses (e.g., certain regulated activities may be reserved for Slovak or EU nationals or nationals of a country which has concluded a reciprocal treaty with Slovakia).

Capitalization obligations

The capital requirements for an LLC are set out under Section 1.1.1 of this summary and the capital requirements for a JSC are set out under Section 1.1.2.

Apart from the minimum registered capital, there is another requirement, which is the creation of a reserve fund. A reserve fund is obligatorily created by an LLC and a JSC from profit in the current accounting period, as shown in the approved individual annual financial statements. In the case of an LLC, the company is obliged to create it from net profit reported in the annual financial statements for the first year of the company's profitability, namely in an amount of at least 5% of net profit but no more than 10% of registered capital. In the case of a JSC, the company creates a reserve fund in the amount of at least 10% of the registered capital upon its incorporation. A JSC is obliged to supplement this fund annually by a sum determined in the articles of association, but at least in the amount of 10% of the net profit reported in the annual financial statements, until the reserve fund attains the amount determined in the articles of association, but at least the amount of 20% of registered capital.

The Slovak Commercial Code also defines specific limitations for companies that are considered to be "in crisis". A company is in crisis if i) it is bankrupt ii) or it is threatened by bankruptcy. A company is **bankrupt** if it has negative equity or is insolvent and a company is **threatened by bankruptcy** if the ratio of its equity and liabilities is less than 8 to 100. The threat of bankruptcy is not connected with the immediate threat of bankruptcy, or a restructuring proceeding, but is connected with several consequences. The main consequence or limitation is that all payments received from shareholders, statutory representatives and related parties, which the company received during its crisis, cannot be returned to these parties before it overcomes the crisis. Moreover, even with the potential settlement of liabilities, the company cannot be in crisis again. The payments received during the crisis are considered to be payments replacing the company's own resources.

Special business or investment visa issues

Citizens of the EU do not need any special permit to live and work in Slovakia. An EU citizen who is the holder of a valid identity card or travel document, is entitled, without any further conditions or formalities, to reside in Slovakia for three months from his/her entry into Slovakia. If the EU citizen resides in Slovakia for more than three months he/she is obliged to apply for registration of residence in Slovakia. An application for the registration of residence must be filed in an official form in person at a police department within 30 days from the lapse of three months from the entry into Slovakia.

A third country national may apply for one of the following types of residence: i) temporary residence, ii) permanent residence and iii) tolerated residence. Temporary residence can be granted for one of the purposes listed in the



Act on Residence of Foreigners (e.g., employment, study, family reunion). A permanent residence permit entails foreign nationals to long-term residence in Slovakia as well as journeys abroad and back. It is a more stable type of residence, which is granted to foreign nationals for a longer period than temporary residence. Foreign nationals with a permanent residence permit enjoy the same rights and duties as all citizens of Slovakia in most areas of life (e.g., employment, health care, social affairs, and public life on the regional level). Tolerated residence is a special type of residence, which can be granted to a foreign national exceptionally for a short time period in order to overcome a specific situation.

While the employment of an EU national in Slovakia is easy and simple, a third country national may be employed in Slovakia only under specific conditions, such as if he/she: i) is an EU Blue Card holder, ii) was granted temporary residence for the purpose of employment on the basis of a confirmation on the possibility to fill in a vacancy – a single permit, iii) was granted a work permit and temporary residence for the purpose of employment, iv) was granted a work permit and temporary residence for the purpose of family reunion within the first 12 months from being granted the residence, v) was granted a work permit and temporary residence of a third country national with acknowledged long-term residence in another EU Member State within the first 12 months from being granted the residence and vi) other.

Restrictions on remitting funds outside of the jurisdictions (withholdings, etc.)

Dividends from profits generated as from 2017 and paid to an entity or an individual resident in a country that has not concluded a tax treaty with Slovakia are subject to a 35% withholding

tax. Dividends distributed by a Slovak resident entity (from 2017 profits) to an entity residing in a country that has concluded a tax treaty with Slovakia is exempt from a withholding tax. Dividends distributed by a Slovak resident entity (from 2017 profits) to individuals residing in Slovakia or a country that has concluded a tax treaty with Slovakia are subject to a 7% withholding tax (the rate may be modified by the tax treaty).

Interest paid to a non-resident entity is subject to a 19% withholding tax (the rate can be reduced by a tax treaty or exempt under EU legislation). A 35% withholding tax applies if the payment is carried out to a resident of a country without a tax treaty. The same applies for royalties.

This memorandum is for information purposes only.

Under no account can it be considered as either a legal opinion or advice on how to proceed in particular cases or on how to assess them. If you need any further information on the issues covered by this memorandum, please contact Mr. Jan Makara (makara@peterkapartners.sk) and Mr. Jaroslav Krupec (krupec@peterkapartners.sk).

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