

大成 DENTONS

# Manufacturing in Slovak Republic



# Foreword

Dear Readers,

The Dentons Europe offices cover a legendary territory for manufacturing and industrial projects, including Spain and France to the west, Russia, Kazakhstan and Uzbekistan to the east, Germany, Poland, Hungary and other Central European countries in the middle and from Italy to Turkey to the south. This territory offers a vast population with strong purchasing power and excellent infrastructure, combined with vast workforce resources and industrial expertise.

Dentons Europe has been at the forefront of the first industrial projects going east after the fall of the Berlin wall, actively advising on greenfield and brownfield projects as well as on acquisitions and joint ventures when Central European countries—Romania, Czech Republic, Slovakia and Poland—joined the European Union. We are now actively witnessing Asian investors' interest for manufacturing in Europe.

The legal environment in the countries we cover has greatly evolved. It is a strong advantage to have been present in some of the emerging economies of Eastern Europe, Caucasus and Central Asia for the past 20 to 30 years, as the legacy legal systems in these countries can still be felt, in particular with regard to land acquisition and environmental norms. Today many jurisdictions, including in Western Europe, offer state aid and tax incentives to attract the best manufacturing projects.

We are well placed to help you choose your entry doors to the European Union and to Eurasia.

We hope the Manufacturing Guide you have selected will be of interest. It aims to give you a general overview of key checkpoints for this jurisdiction. Do not hesitate to contact me or the authors of this guide for any further information.



**Pirouzan Parvine**

Partner Manufacturing Sector

Leader for Dentons Europe

[pirouzan.parvine@dentons.com](mailto:pirouzan.parvine@dentons.com)

+33 6 42 24 07 25

# Contents

- 07 ...      **Slovak Republic and the European Union****
- 08 ...      **Preparing to manufacture: greenfield and brownfield projects****
- A. Legal Forms of Business
  - Limited Liability Company
  - Joint-Stock Company
  - Registered Branch of Foreign Company
  - Limited Partnership
  - General Partnership
- B. Real Estate, Construction and Insurance
  - Acquisition of land in the Slovak Republic and long-term leases
  - Real Estate Permits
  - Insurance
- C. Administrative law – dealing with authorities – including anti-bribery laws
  - Most Common Licenses
  - Register of Public Sector Partners
  - Central Register of Contracts
- D. Employment
  - Key Employment Information:
  - Employees' Income Tax, Social Security and Health insurance contributions
- E. Tax and State Aids
  - Corporate Income Tax
  - VAT
  - Local Taxes
  - Transfer Pricing
  - State Aid
- F. Protecting your intellectual property and complying with data privacy obligations
  - Intellectual property rights
  - Data privacy obligations

**20 ...**

## **Operating**

- A. Health and Safety
- B. Environment Protection
- C. Trade Unions
- D. Industrial Risk & Insurance
- E. Commercial and Insolvency related risks related to suppliers
- F. Defending your intellectual property
- G. Regulation compliance
- H. Competition law investigations
- I. Tax investigations
- J. Dispute Resolution
- K. Compliance monitoring – anti-bribery, anti-money laundering and whistle blowing rules in the Slovak Republic

**26 ...**

## **Acquiring and selling a plant (buy side & sell side key check points)**

- A. Acquisition of Company
- B. Acquisition of Assets
- C. Merger control
- D. Tax risks
  - Risks
  - Recommendations
  - Statute of Limitation
- E. Intellectual Property & Technology acquisition
  - Things to watch out for

**32 ...**

## **Closing down – Moving away manufacturing from Slovak Republic**

**34 ...**

## **Contacts**



# Slovak Republic and the European Union



After the peaceful split of Czechoslovakia in 1993, the Slovak Republic started to exist as one of its successors. Slovakia has undergone a long journey to become a respected democratic country in the very center of Europe.

The EU integration process started at the very beginning of Slovakia's existence, and the country was successfully granted membership in the EU on May 1, 2004. The Slovak Republic belongs to those member states which benefit from the inter-borderless Schengen Area and a common currency, the Euro.

As a fully integrated member of the EU, Slovakia has completed all steps to harmonize its legislation with the requirements of European Law. EU Regulations have direct effect within the territory of Slovakia, and Directives are being transposed by the legislation body—National Council of Slovak Republic—in a timely manner. The state has prepared grounds for supervision over all sectors required by the EU.

The economy of Slovakia is strongly based on the automotive industry, and Volkswagen, PSA Peugeot, KIA and Land Rover all have production plants situated in Slovakia. Major business players in the sectors of food, gas and electronics are also present in the country.

Overall, Slovakia's government often supports major foreign and local investments through the provision of various types of cooperation and aid to investors. This makes Slovakia an attractive country in which to invest, providing investors with benefits connected with membership in the EU and the will of the government to increase the economic growth of the state.



**Preparing  
to manufacture:**  
greenfield and  
brownfield projects



## A. Legal Forms of Business

Slovak law provides for a variety of types of legal entities which may be used for business. Incorporating a company or other business vehicle is a simple process, resulting in a new company being entered into the respective register. Similar to other jurisdictions, in the Slovak Republic the vast majority of big businesses use a corporate structure.

Slovak Commercial Code recognizes (i) General Partnership (*verejná obchodná spoločnosť, v.o.s.*); (ii) Limited Partnership (*komanditná spoločnosť, k.s.*); (iii) Limited Liability Company (*spoločnosť s ručením obmedzeným, s.r.o.*); (iv) Joint-Stock Company (*akciová spoločnosť, a.s.*); (v) Simple Joint-Stock Company (*jednoduchá spoločnosť na akcie, j.s.a.*) and (vi) Cooperative (*družstvo*). There also exists the possibility to establish a registered branch of a company residing in another country. The most commonly used corporate entities are Limited Liability Company and Joint-Stock Company. The registered branch of a company residing in another country is also often used.

Since the Slovak Republic is an EU member state, it is possible to operate business through EU law entities (such as European Company – SE, European Economic Interest Group – EEIG, European Cooperative Society – SCE). However, this is not a very common practice.

### Limited Liability Company

This legal form is often used for smaller businesses with a simple ownership structure. The LLCs in Slovakia are quite simple and easy to maintain. That is the reason why they are also used by sole owners, and they are often also used as SPVs in case of sale or transfer of assets. However, the simplicity of LLC means that it is not very suitable for businesses with structured ownership or other inner relations.

The minimum share capital is €5,000 and may be paid in cash to the treasury of a newly established company (only if the statutory rules on maximum cash transfers are obeyed).

Statutory bodies of the LLCs are directors (one or more) and the general meeting of the shareholders of the company. LLCs may also create a supervisory board where needed.

The shareholders of the LLC are liable for their obligations only up to the amount of their unpaid contributions into the share capital (i.e. generally they do not bear responsibility for the obligations of the LLC).

## Joint-Stock Company

The Joint-Stock Company is one of the most popular legal forms of doing business in Slovakia. It is suitable for big businesses, or where a more complex corporate structure is needed. Interests of the owners of the companies are represented through their shares. Shares may be issued in book entry or as paper shares. Name registered shares may be both book entry and paper form. However, the bearer shares may be only in book entry form. Therefore, this kind of anonymization of the shareholders is not possible.

Slovak legal order recognizes private and public joint-stock companies. Private companies are those which have been established by issuing shares without public offering. Public companies may be either those issued by the use of public offering or those which are publicly traded on the securities market. In the Slovak Republic publicly traded joint-stock companies are not very common.

The minimum share capital is €25,000 and may be created either by monetary contributions or non-monetary contributions valued by an expert.

The adoption of resolutions of Joint-Stock Companies is more complex than in case of LLCs. Major decisions of the general meeting of the company must be in form of notarial deed.

The shareholders of a Joint-Stock Company do not bear responsibility for the obligations of the company.

Statutory bodies of Joint-Stock Companies are the board of directors (this is a collective body); the general meeting of the shareholders of the company; and the supervisory board (mandatory in comparison with an LLC).

There also exists a separate form of business called Simple Joint-Stock Company having a minimum share



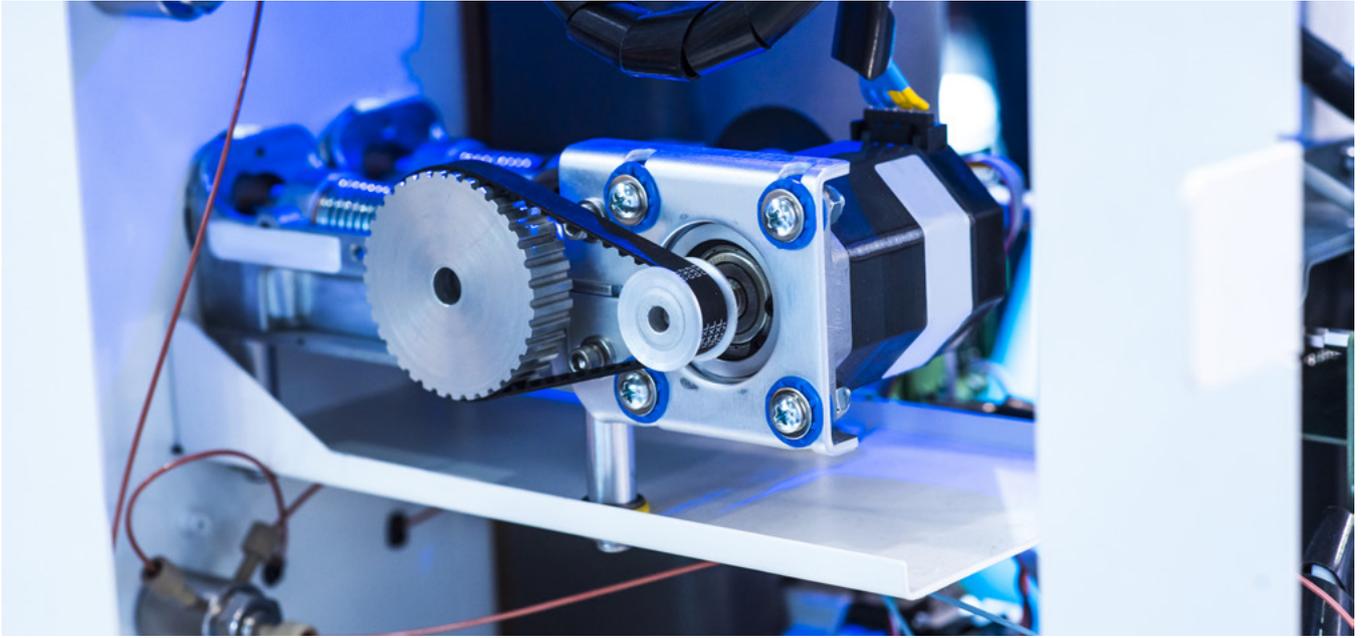
capital of €1. This has been created by the legislators to provide simple business with a legal form for start-ups. However, it has not been used very much, since the LLCs and regular Joint-Stock Companies fulfil the possible requirements of start-ups, and legal practice is developed in these areas.

## Registered Branch of Foreign Company

Different from other business vehicles, the registered branch does not have its own legal personality. Slovak Commercial Code does not limit the entrepreneurship of foreign entities within the territory of the country.

The branch has to obtain all respective licenses and permits to perform business activities within the Slovak Republic.

The Registered Branch of a Foreign Company acts as that foreign company, represented by an appointed Head of Branch and has to be registered into the Slovak Commercial Register.



### Limited Partnership

The Limited Partnership is a hybrid form of a company standing, having aspects of both personal and capital companies. It is owned by General Partners and Limited Partners.

The General Partners are fully liable for the obligations of the Limited Partnership to the extent of their own personal assets. The Limited Partners are, similarly to LLCs, liable for obligations only up to the extent of unpaid contributions to the share capital.

General Partners are also statutory bodies, and the Limited Partners only have the right to perform basic supervision over the activities and books of the partnership.

### General Partnership

General Partnership is the personal company, i.e. the liability of the partners of this entity is not limited, and for the obligations of the company, each shall be responsible to the extent of all personal assets.

A General Partnership may be established by at least two legal personalities (it does not depend on whether they are natural or legal persons).

This type of business does not have appointed statutory bodies, since the General Partners act on behalf of the company.

## B. Real Estate, Construction and Insurance

### Acquisition of land in the Slovak Republic and long-term leases

All real estate properties have to be registered in the Real Estate Cadastre. The information registered in the Real Estate Cadastre are considered as true, however it is possible to challenge them. Therefore, it is necessary to check the respective real estate before any transaction. When planning business operation in the Slovak Republic, it has to be considered whether the entity wants to acquire the respective property or a lease is sufficient.

**Statutory pre-emption rights:** The State has first refusal and other rights regarding certain real estate. Examples include: land located outside the developed area of the Municipality, certain protected environmental zones and monuments. Utilities providers have access and other rights to the land in connection with public infrastructure.

**Limits to division of agricultural land and forest land:** You cannot divide forest and agricultural land outside of the developed area of the Municipality into small pieces. Forest land must not be less than 0.5 ha and agricultural land must not be less than 0.2 ha. If you want to acquire a smaller piece of forest or agricultural land for your investment, you must first change its use. You must pay a special fee if you divide forest or agricultural land into pieces of less than 20 ha.

**Structure on the land is not a part of the land:** The owner of structure may be different to owner of the land. You do not need to buy the land under your investment if you have any other clear right to the land (e.g. easement).

**Acquisitions:** It is possible to acquire the real estate directly from the one legal entity to another. However, in more structured transactions (e.g. when the subject of the transaction is not only land or building, but the whole operation of certain business), the SPVs are often used, i.e. a new LLC may be created, then the selling party transfers the real estate in question to the ownership of such LLC and obtains all licenses and necessary permits. Subsequently, the ownership interest in that LLC is transferred to the buying party. When the business decides to acquire real estate, it is necessary to perform a due diligence audit, to discover the risks of the transaction. Acquisition of land by foreign entities is subject to special legislation and, in some cases, it may not be possible due to the reasons prescribed in such law.

**Lease:** An alternative to the acquisition is leasing. It is possible to lease land, building or the business operation itself. This is possible both for local and foreign investors. A lease is very popular, since it does not burden the investor with high input costs. Similarly, to the acquisition, it is necessary to check the respective contract to avoid unwanted complications. Moreover, Slovak legislation is quite strict on lease of real estate, therefore it is vital to check whether the lease contract and its provisions

### Real Estate Permits

**Master plan:** The local government municipality approves master plans as part of local planning documentation. If land in the area is not foreseen as an area to be built-up in the current master plan, a change to the master plan is required. The local government may decide on the change to the master plan either on its own initiative or upon the application of an interested third party.

The process of approving amendments to the master plan involves the municipality (typically the municipal assembly) taking the following steps: (i) approval of



the draft specification of changes, (ii) elaboration of a concept for changes and its approval and (iii) elaboration of the proposed changes to the master plan and approval of the amended master plan. The approving process is predated by a hearing of the changes, when other state authorities and even the public (having the possibility to object to the proposed changes) may be involved.

**Zoning/Development Decision:** The respective legislation provides that a structure may be constructed only on the basis of an appropriate zoning/development decision, issued in compliance with the master plan. The zoning/development decision is a condition for the issuance of a building permit.

The proceedings leading to the issuance of a zoning/development decision are initiated by the submission of a written application. The parties that may participate in the zoning/development proceedings include the builder, the owner, other persons whose real property rights may be affected by the decision (usually neighbors), the municipality and persons or authorities, as provided by law.

Unless otherwise stated, the zoning/development decision is valid, provided that an application for a building permit is submitted within two years.

**Building Permit:** Construction, building alterations and maintenance work may be undertaken only on the basis of a valid building permit issued by the Building Authority, other than for small structures which are subject to notification requirements.

An application for a building permit is submitted by a person having adequate standing, typically the owner of the plot or of the respective building, or a person having relevant rights to the plot or building. Such standing must be demonstrated to the Building Authority. The same parties that may participate in

the proceedings regarding the zoning/development decision may also participate in the proceedings for the building permit. The construction supervisor and project architect may participate in the proceedings for the building permit, however only in part concerning the engineering project.

A building permit ceases to be valid if the structure is not commenced within two years of issuing the building permit, unless stipulated otherwise.

**Use Permit:** A building or any part of it suitable for separate use, may only be used following the issuance of a use permit.

The private parties that may participate in a use permit proceeding are the builder, the owner of the building and the owner of the relevant plot.

The Building Authority verifies, *inter alia*, whether the structure was built in accordance with the documents examined by the Building Authority during the building proceedings and whether the requirements set forth in the zoning/development decision and the building permit have been satisfied. The use permit may contain conditions for use of the building.

## Insurance

**Insurance for construction and buildings:** It is not mandatory to enter into insurance contracts with respect to construction and buildings, either finished or unfinished. However, it is recommended to do so for the purpose of avoiding inconveniences. Slovak insurance companies provide the full range of insurance products covering possible damages or other faults.

**Insurance for professionals' work:** Slovak legislation requires that professionals such as authorized architects enter into insurance contracts to cover possible damages caused by their work.

## C. Administrative law – dealing with authorities – including anti-bribery laws

### Most Common Licenses

Each business entity has to obtain a license for the activities it wants to perform. Most of the activities are handled under the trade licenses which are granted upon notification and, if applicable, fulfillment of obligations relating to representative liable for the performance of activities. However, there are also some specific fields of business where obtaining a license is subject to stricter obligations (e.g. operation of a healthcare facility, or operation dealing with certain types of chemicals, etc.). The extent of performed activities may be changed during the life of a company.

**Trade licenses:** Slovak legal order recognizes three types of trade licenses (free, crafts and regulated). The provision of any type of trade license is subject to notification to the respective trade license authority. Free trades may be performed without proving professional capacity. However, crafts and regulated trades require the business to submit documentation proving that there is an appointed person who supervises the respective process.

**Other licenses:** As mentioned above, specific business activities do not fall within the trade licenses. The process for obtaining such specific licenses is often similar to the process for obtaining regulated trade license. However, it usually requires more steps and it is under the decision-making power of the specific authority. Therefore, the notification principle is not applicable in most cases.

**Premises operation permit:** After the fulfillment of all corporate obligations, there may still exist obligations relating to obtaining other permits. The obligation to obtain a permit on the operation of premises is very common. Of course, it depends on the type of premises; however, the business is obliged to fulfil the obligations, and in that case the respective public health authority grants the permission.

### Register of Public Sector Partners

Recently, legislators have adopted a special act establishing Register of Public Sector Partners, which contains the list of private entities entering into contracts with the state, subject-matter of which is the provision of monetary or nonmonetary values to such private entities. List of data situated in this register contains e.g. identification of beneficial owners or a description of the shareholders' structure. Exemptions from obligations to register do exist.

Moreover, new legislation has been adopted providing for an obligation to disclose the beneficial owners of a company to the Commercial Register either at the time of first entry of the company to the Commercial Register or by a certain date for those companies which have been incorporated before this act came into effect.

### Central Register of Contracts

In addition to the abovementioned obligation, the Central Register of Contracts exists, where all contracts entered into between private entities and public authorities have to be disclosed. Slovak Civil Code rules that in case a certain contract between a private entity and public authority is not entered into the Central Register of Contracts, it must not be executed.

## D. Employment

In Slovakia the protection of employees is highly valued. There are rules which provide for the obligation of the employer to offer any respective vacancy to Slovak nationals registered with the Labor Office before offering to third country citizens. Minimum wage levels mean that an employer cannot offer the employee less than the statutory amount of money. In 2019, the minimum wage was set at €520 per month for an eight-hour daily working week. Recently an amendment to the Labor Code was adopted whereby the employer is obliged to provide the employee with bonuses for work performed at night, on weekends and on public holidays.

### Key Employment Information:

**Types of Employment Relationships:** Two categories of employment relationships exist in the Slovak Republic. The first category consists of those based on the basic employment contract, which may be entered into for a definite or an indefinite period and may be for full-time or part-time work. The second category consists of (i) an agreement on work performed by a student; (ii) an agreement on the performance of work and (iii) an agreement on work activity.

Employment relationships of the aforementioned first category offer more protection over the rights of the employee. However, these are used for ordinary employment. Rights of the employees may also be protected by facultative collective bargaining bodies.

The second category of employment relationships are used most often for temporary and part-time employment or for the employment of university students. The second category of employment relationships are not as rigid and may be terminated quickly.



### Employees' Income Tax, Social Security and Health insurance contributions

In the Slovak Republic there is an obligation on the employer to pay contributions to the social and health insurance companies for its employees each month. This is used to cover future pensions and healthcare costs. These contributions include healthcare insurance, illness insurance, pension insurance, invalidity insurance, unemployment insurance, guarantee insurance, harm insurance and the reserve fund. Contributions are borne by both the employer and employee which causes an increase in the total labor price.

The income of an employee is also burdened by the income tax which is payable by the employer at the same time as wages and contributions to social and health insurance companies. This has to be separate from the income tax imposed on the business companies.

## E. Tax and State Aids

### Corporate Income Tax

The Corporate Tax system in the Slovak Republic is quite strict. Any income gained by a Slovak entity (worldwide) and also the income of a foreign entity gained within the territory of Slovakia is subject to taxation.

The tax year is usually the same as the calendar year. Tax returns must be filed within three months after the end of the respective taxation period. There is a possibility to postpone this obligation for up to three months upon a written request addressed to the tax office.

The rate of corporate income tax is 21 percent or 35 percent in the case of income of entities residing in a state without an international taxation treaty with Slovakia. The withholding tax rate is 19 percent.

The tax base consists of the business entity's profit, decreased by the deductible costs and items.

Capital gains and dividends are also subject to income tax. Generally, the capital gains are taxed at 21 percent and dividends at seven percent. However, there are some exemptions to increase or decrease these percentages.

### VAT

The legislation ruling over the VAT has transposed the respective EU Directives. VAT is primarily imposed on the purchase of goods and services within the EU.

VAT is not automatically imposed after the establishment of a company. It is subject to registration. Mandatory registration and voluntary registration both exist. A business entity is obliged to be registered for VAT if its annual turnover is at least €49,790, otherwise registration is not mandatory; nevertheless, the business entity may ask that the tax office register it for VAT voluntarily.



The standard rate of VAT is 20 percent. A 10 percent VAT rate exists for specific products such as books, food items or medical drugs.

The tax period for VAT is a calendar quarter, if the taxpayer reached a turnover of less than €100,000. If the turnover exceeds this amount, the tax period is a calendar month.

The VAT tax return should be filed, and the tax should be paid by the 25th day of the month following the reporting period.

The VAT tax point in Slovak Republic is payable 15 days after the VAT reporting period, usually quarterly or monthly.

### Local Taxes

**Motor Vehicle Taxes:** are applicable for motor vehicles that are used for business purposes. The tax period is the calendar year. The tax return should be filed annually, by January 31 of the following year. The tax rate is determined individually by municipalities.

**Real Estate Taxes:** Tax, imposed on an annual basis, is applicable to plots, apartments and buildings. Tax on land per year is 0.25% of the tax base. Tax on buildings is determined by each municipality individually. The tax base is the area of the building in square meters.

### Transfer Pricing

- If prices applied in business relationships between related parties differ from comparable business relationships between unrelated parties, the related party is obliged to adjust the tax base to



a difference. In order to determine a difference, several methods of transfer pricing or their combinations are used. The Slovak Republic adopts the methods of transfer pricing pursuant to the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations which are based on the comparison of prices and the comparison of profit.

### State Aid

- As mentioned, the Slovak government is cooperative when speaking about major investments. The aims of such behavior is to increase the employment rate and economic growth. The limits of state aid are set out by EU competition and other legal regulations.
- **Tax relief:** Slovak legislation provides for the possibility of government to reduce the tax obligation of major investment projects for up to 10 consecutive years.
- **Cash Grants:** The state may provide cash grants for the purpose of (i) purchase or lease of fixed assets; (ii) creation of new job positions and (iii) training of workers. Minimum general (proof of own sources, obligations relating to the duration of the project) and specific conditions exist, which must be met by the investor before and during the period of the project.
- **Manufacturing:** There are minimum thresholds on the value of the investment itself (in most cases €10,000,000) and on the minimum own investment into the manufacturing project and its machinery. There is a condition binding the investor to create new vacancies.
- **Technology Centers:** Similarly, the technology centers may be supported by the State. Overall, the minimum value of investment into technology center to be granted State aid is lower than in manufacturing projects. Therefore, it is easier to obtain grants.
- **Decision-making Process:** At the start, the investor has to submit a request to the respective public authority for the provision of the aid. This authority in cooperation with the experts will examine whether the conditions on provision of aid are met. In case of success, the public authority will issue an offer. The investor then has to submit an application for the aid to the government where consent will be given.
- **Funds from EU:** Investors may benefit from EU funds. The process to obtain funds from the EU is the same as in other member states. The investor has to apply to the public authorities, who will then assess the application, and—if the conditions are fulfilled—the investor may draw the funds.
- **Surveillance over State Aid:** Surveillance over the provision of state aid is performed on two levels. Aid measures can only be implemented after approval by the European Commission. Subsequent inspections on the national level are done by the Antimonopoly Office of SR, which has the power to control the state aid which may influence the national market. If the provided state aid and its impacts exceeds the Slovak market and may also influence relevant markets in other member states, the power of the European Commission is given.

## F. Protecting your intellectual property and complying with data privacy obligations

### Intellectual property rights

**Copyright Protection:** In the Slovak Republic, trademarks are valid for seventy years after the death of the author. Copyright protects literary, artistic and scientific works, musical works, photography and computer programs. If the author has created work during his/her employment, the employer is entitled to exercise economic rights to such work, if not agreed otherwise.

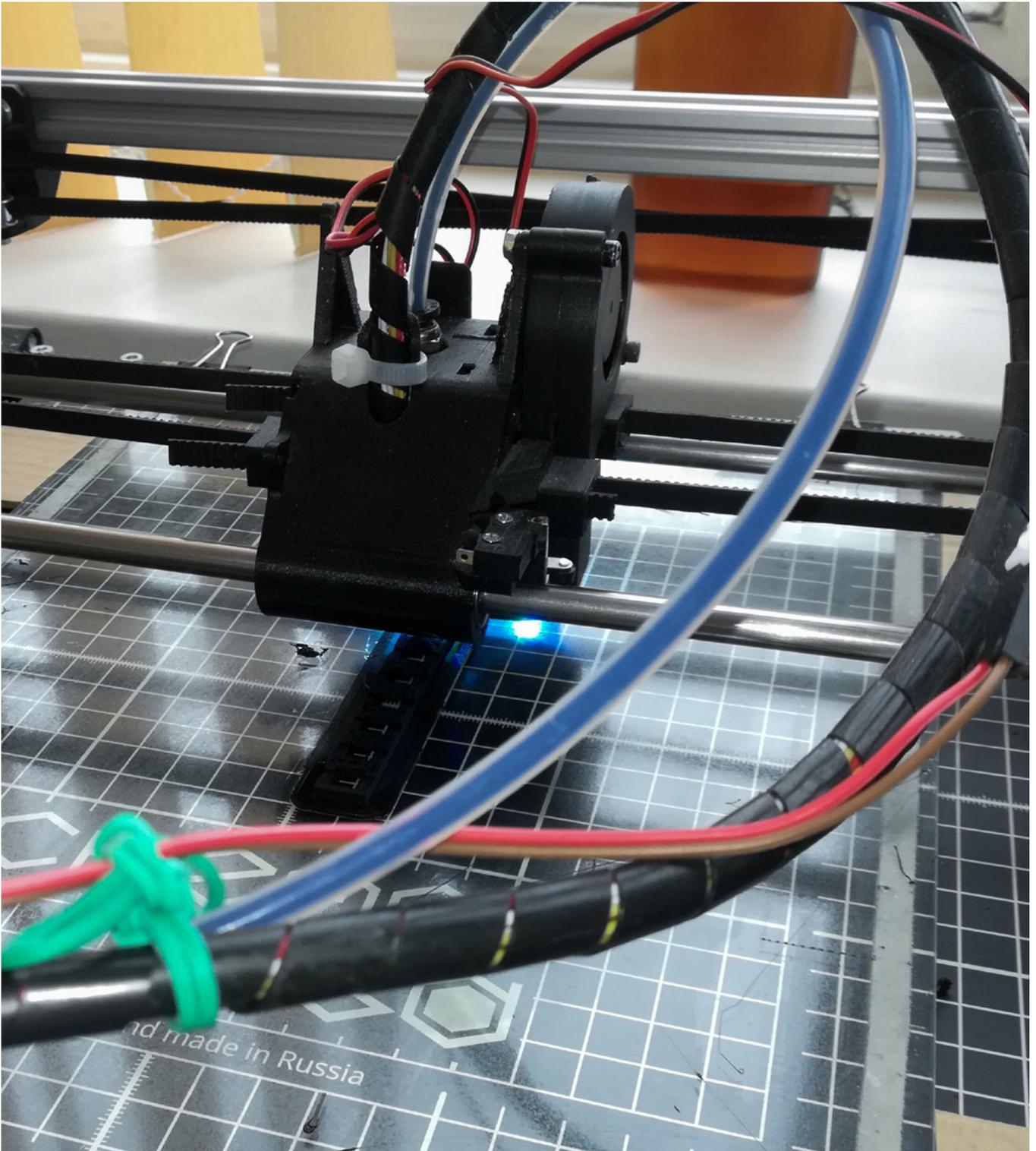
**Patents:** In the Slovak Republic, patents are valid for twenty years after the date of filing. An applicant shall file the patent application not later than 12 months after the date of priority. The application shall be executed in the Slovak language. If the applicant is not the inventor, the assignment deed proving its right must be submitted as well. Foreign entities must appoint a Slovak patent attorney when applying. In Slovakia the patents may be protected by the European Patent, however it has to be validated in Slovakia.

**Trademarks:** In the Slovak Republic, trademarks are valid for ten years after the date of filing. The trademarks may be renewed for another ten years for an unlimited number of times. The filing of a trademark may be opposed by entities which may claim that it breaches their own IP rights, within the period of three months from the publication of the application. The trademark may be created by signs, words, business name, letters, colors or other symbols which are capable to distinguish the goods and services of one business from other businesses. Foreign entities must appoint a Slovak patent attorney when applying. If the applicant is not the inventor, the assignment deed proving the applicant's right must be submitted as well.

**Industrial Design:** In the Slovak Republic, industrial designs are valid for five years after the date of filing. As an industrial design, the appearance of the product or its parts or its features as lines, contours, colors, shape, texture, etc. may be registered. The design application is subject to examination by the public authority. Foreign entities must appoint a Slovak patent attorney when applying. If the applicant is not the inventor, the assignment deed proving the applicant's right must be submitted as well.

### Data privacy obligations

The Slovak Republic as an EU member state is obliged to obey the rules of GDPR. The national legislation ascertaining this regulation was passed at the end of 2017 and was published on January 31, 2018 under no. 18/2018 Coll. (Slovak Data Protection Act). It became effective as of May 25, 2018. The Slovak Data Protection Act does not provide for many additional rules to those set out by the GDPR. Name of legal entities / names of sole traders are not covered by data protection regulation.



# Operating





## A. Health and Safety

Entrepreneurs are obliged to obey the rules on the safety and health of the employees at their workplace. The aim of the respective legislation is to maintain the security, health and work ability of the employees and to eliminate damages to the employer from devices, products, services and other financial losses.

Subject to the statutory rules, in particular, are (i) work conditions, (ii) buildings, (iii) infrastructure, (iv) machines and other technical devices, (v) work procedures, (vi) work organization, (vii) way of compensation for work (viii) and people. Business owners are obliged to take such technical, technological, organizational, personal and other measures as needed to protect the abovementioned.

## B. Environment Protection

**Environmental Impact Assessment (EIA):** If your investment is likely to have a significant impact on the environment, you must obtain an Environmental Permit. You must prepare an EIA Report with optional approaches for implementing your investment. Then you must file this Report with the authority leading the proceedings for the Environmental Permit. After obtaining opinions from the environmental authorities, and public discussion on the EIA Report, the authority issues an Environmental Permit. For less significant investments, the authority may decide that the investment does not require an EIA. Examples of investments requiring an Environmental Permit include: power plants with certain parameters, wind farms, the production of natural gas, mining, industrial plants and industrial parks. An Environmental Permit is valid for seven years.

**Zoning requirements:** You must obtain a zoning permit for your investment. If there is a local zoning plan (there usually is) your investment must comply with it. You may obtain a zoning permit only after you have secured an EIA. The zoning permit will be valid for two years. You may not need a zoning permit if the local zoning plan is detailed enough or if the government certifies your investment as significant. Significant investments must meet certain criteria, e.g. investment costs exceeding €100 million or having more than 300 new employment positions.

**Agricultural and forest land:** If you want to locate your investment on agricultural or forest land you must obtain a permit to use the land for construction. You must pay a special fee, depending on the area and quality of the land.

**Polluter pays principle:** Generally, the “polluter pays” principle applies to contaminated land, water and to waste storage in breach of the law. The new land owner may be liable for land contamination if the authority has not identified the polluter (i.e. that it is old contamination). In some circumstances the new owner of water equipment may be liable for the water pollution. The land owner also may be liable for waste storage that is in breach of the law, if the land owner has neglected to protect the land.

**Operating permits:** Make sure you identify all the required operating permits for the installation you intend to operate. Take into consideration all expected types and levels of emissions from the installation (e.g. sewage, waste, air emissions). You may need an IPPC Permit if your installation is on the list of activities that may pollute the environment significantly. You also need to obtain operating permits before your project starts operations.



## C. Trade Unions

Employees may participate on the decision-making of the employer through collective bargaining. Collective bargaining is vital and is the most important form of creation and development of relations between employees and the employer. Collective bargaining agreements are only concluded with trade unions. Collective bargaining agreements apply even for employees who are not members of a trade union. If the parties cannot agree on the collective bargaining agreement, employees have a right to declare a strike. The aim of collective bargaining is the adjustment and regulation of work conditions including the (i) wage conditions, (ii) employment conditions, (iii) relations between employers and employees.

Slovak law recognizes two types of collective agreements which are (i) undertaking collective agreement and (ii) high level collective agreement. The Labor Code, in certain cases, requires the participation of employees’ representatives, if appointed (e.g., in the case of employment termination).

## D. Industrial Risk & Insurance

For a successful business, it is necessary to assess and be prepared to bear the consequences of Industrial Risk. One of the measures that a business may take is to enter into voluntary insurance contracts. Insurance for assets acquired by loans or throughout other sources of financing outside of the acquiring company may be required by the providers of financing, since there is often a pledge over such acquired assets. We strongly recommend that the business assess the possible risks of its operation and then enter into an insurance contract.

Private insurance companies provide a full variety of insurance products which may be individualized according to the needs of the particular client. The insurance products provide protection for the following, but are not limited to: (i) assets and interruption of operation, (ii) machines and electronics, (iii) construction and montage, (iv) transport, (v) aircraft, (vi) damage liability, (vii) professional damage liability, (viii) environmental liability and (ix) management bodies damage liability.

### **E. Commercial and Insolvency related risks related to suppliers**

When entering into business relationships, and even during the course of relationships with local suppliers, it is vital to check various online registers.

A Commercial Journal is maintained by the Ministry of Justice containing information on e.g. insolvency or other problems of all locally registered business entities. A list of tax debtors is maintained by the Financial Administration and a list of social contribution debtors is maintained by the state owned Social Insurance Company. By checking these registers, the business may avoid relationships with untrustworthy entities.

If the situation of payment default of suppliers occurs, it is necessary to check whether there is a record on insolvency or restructuring proceedings held against the respective supplier. If that is the situation, then it is necessary to perform all steps to lodge the receivables against such supplier. Otherwise, the receivables may not be fulfilled and may cease to exist.

If the supplier is not in insolvency or restructuring proceedings, then the business may proceed to receivables recovery process. It is possible to file a motion to the respective court to issue a payment order. If the supplier does not fulfil its obligations, then the payment order or other decision of the court is title to perform the execution by the bailiff.

### **F. Defending your intellectual property**

All intellectual property is protected by law. Breach of IP rights is mostly caused by the use of the intangible property without the consent of the author, creator or the owner of the intellectual property. Breach of IP rights may be sanctioned and compensated under the norms of the administrative, civil and criminal law.

The most efficient way to defend intellectual property is to file a motion at the respective civil court where the claimant may require the defendant to e.g. (i) stop the breach, (ii) compensate the damage and lost profit or (iii) return the unjust enrichment.

### **G. Regulation compliance**

Manufacturing and production specific compliance regime applies. Among other general obligations, the business must comply with the rules on quality, metrology, testing and technical normalization with respect to the products or their parts. Public authorities perform surveillance over the fulfillment of these obligations and are entitled to impose sanctions in case of breach.

### **H. Competition law investigations**

Competition law oversight within the Slovak Republic is performed by the Antimonopoly Office. According to the law, the Antimonopoly Office is entitled to perform inspections at the business premises.

During the course of the inspection, public officials may take measures (e.g. seal or seize documents, premises, etc.) to obtain all the information necessary to conduct the proceedings. For this purpose, the business is obliged to cooperate, in particular the business is obliged to allow the public officials to enter the premises or vehicles and must provide all necessary information. Of course, the business also has its rights and may challenge the activity of the Antimonopoly Office.

## I. Tax investigations

In Slovakia, tax investigations are performed by the respective Tax Authority. The purpose of the tax investigation is to assess whether the business has designated the amount of the payable taxes in the appropriate manner. The tax investigation may last an entire year. It is strongly recommended to provide the tax authorities with your full cooperation.

Tax control should be done to the extent necessary to achieve its objective, which means that the tax administrator should not burden the business in its execution, but must take all necessary measures in order to ascertain as accurately and most objectively as possible the facts necessary to achieve its purpose.

According to the Tax Code, it is no longer required that only the local tax administrator execute the investigation but also each appropriate tax administrator. This applies to tax administrators, which are municipalities.

The municipality may carry out tax audits only if the local authorities are responsible for the administration of the controlled tax and for the controlled entity.

## J. Dispute Resolution

**Litigation:** Litigation is the usual dispute resolution method. Normally one judge, or a panel of three judges in the second instance courts, decides on the cases. Civil courts deal with all types of civil and commercial disputes unless the parties choose arbitration. Civil courts also decide on appeals for the revision of public authority decisions.

**Arbitration:** An arbitration agreement can be made before or after a dispute arises. Arbitration is more flexible. There are permanent arbitration courts which operate in cooperation with business community

organizations. You may also choose arbitrators other than from permanent arbitration courts. Many arbitration proceedings use ICC or UNCITRAL rules. Arbitration awards must be recognized by a state court in order to be enforceable. The civil court may only cancel an arbitration award in limited cases. Arbitration is not allowed for all types of disputes (exemptions include disputes relating to the ownership title of real estate and disputes in bankruptcy proceedings).

**The role of the parties and the judges:** In civil court proceedings the claimant and the defendant have equal rights, and the court must adjudicate their interests in the trial. The general rule is that the claimant has to prove its claims, while the defendant has a right to state its defence and present counter-arguments. Judgments are based on statutory law. Judgments are not generally binding in the courts.

**How long does it take:** In 2015, on average the first instance court decided civil and commercial disputes in 401 days. For revisions of public authority decisions, the first instance court needed on average 374 days. These are the statistics published by the European Commission. In fact, court proceedings in the first instance court take more time: two to three years on average. The appeal court usually decides a case within two years. If the appeal is successful the appeal court may, in certain circumstances, return the case to the first instance court. This may happen up to three times, then the appeal court must decide the case (with no return to the first instance proceedings). In order to enforce a final judgment, the successful party must apply to the executor for an enforcement order. New procedural codes apply since 2016, which might help to speed up the proceedings.

## K. Compliance monitoring – anti-bribery, anti-money laundering and whistle blowing rules in the Slovak Republic

**Anti-Money Laundering:** The Slovak AML Act imposes obligations on each business which carries out cash transaction worth at least €10,000, regardless of whether the transaction is executed individually or as several follow-on transactions that are or may be linked.

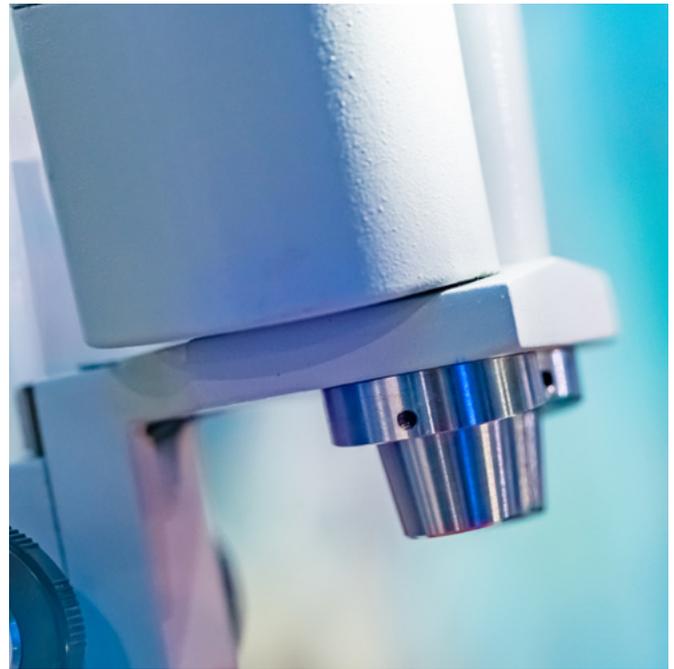
The Slovak AML Act provides for, in particular, but not limited to, the following obligations of business. The business entity is obliged to (i) assess whether an up-and-coming or traded business is unusual; (ii) verify its business partner; (iii) refuse the transaction if the client cannot be verified or if the client refuses to prove on behalf of which person's name he is acting; (iii) detain an unusual business transaction and report such transaction to the respective public authorities; and (iv) draft a program of its own actions against the legalization of proceeds from crime and terrorist financing.

In case of non-compliance, the fine may be up to €331,939.

**Cash Payments:** There are limits for cash payments. The cash transactions between two natural persons arising from one legal relationship must not exceed €15,000. If at least one of the cash transaction parties is a business entity, the limit is €5,000.

A business entity which violates the limits of a cash transaction either as a providing or receiving party may be sanctioned with an administrative fine up to €150,000.

**Criminal Liability of Legal Persons:** In the Slovak Republic, the Act on Criminal Liability of Legal Persons regulates the fundamentals of the direct criminal liability of artificial persons, types of penalties imposed on artificial persons and procedure for the



official authorities and courts in criminal proceedings against artificial persons.

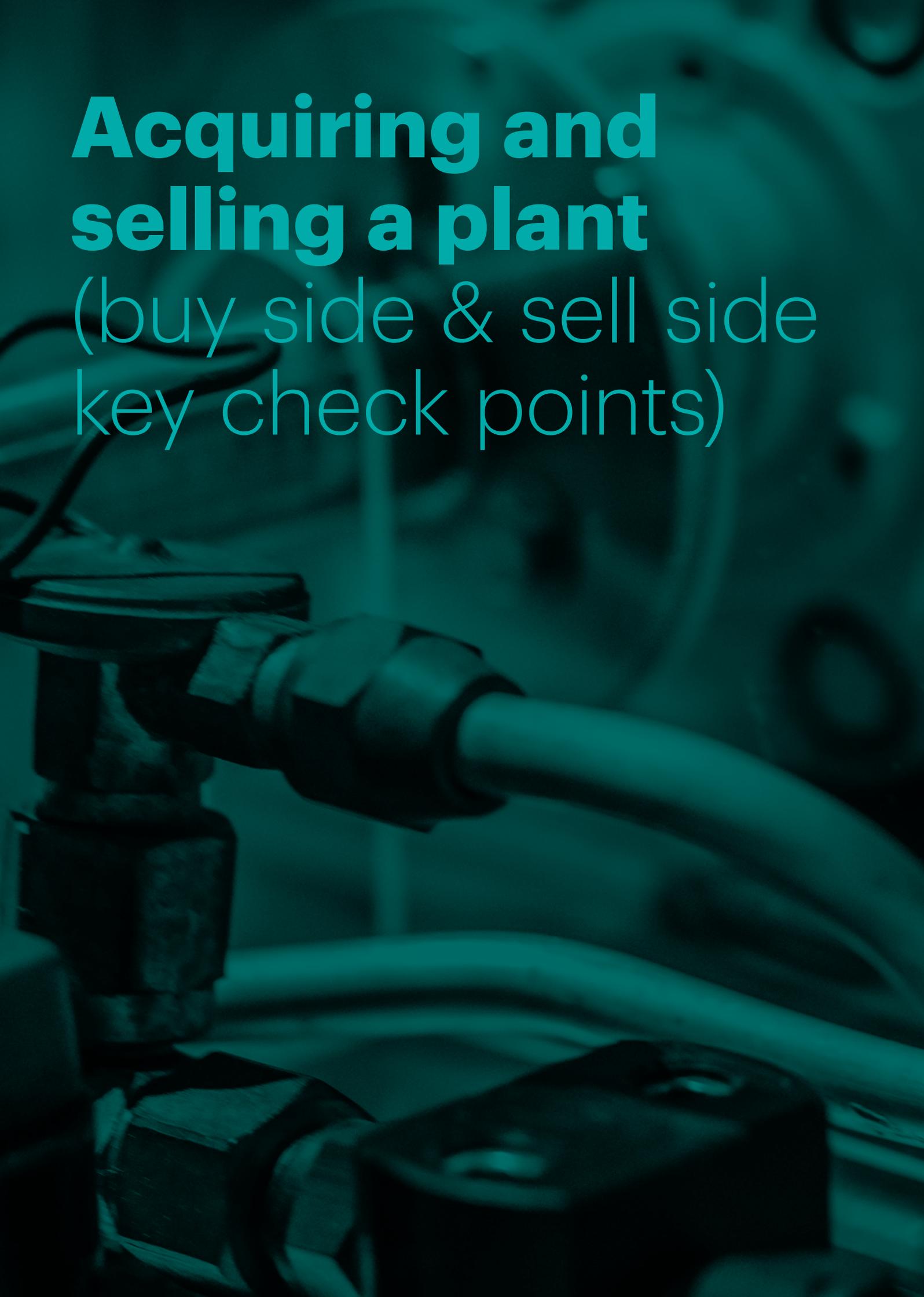
The criminal liability of an artificial person will be rendered as a consequence of an action of (i) a statutory body, or persons which are its members, (ii) persons who perform supervision activities or surveillance (even in cases in which this supervision body has no other relation to the artificial person) and (iii) persons who exercise a decisive influence over the management of an artificial person.

The persons who exercise decisive influence shall mean so-called "shadow" managers who are not members of the statutory or any other inspection body but who control the company de facto.

A court may impose the following penalties for a criminal offence committed by a legal entity: (a) winding up of a legal entity, (b) forfeiture of assets, (c) forfeiture of thing, (d) financial penalty, (e) prohibition on activity, (f) prohibition to receive grants or subsidies, (g) prohibition to receive assistance and support provided from the funds of the European Union, (h) prohibition on participation in public procurement, (i) publication of condemnatory judgment. Criminal liability of a legal entity does not cease to exist due to the declaration of bankruptcy, liquidation, winding up or forced administration. Criminal liability of a legal entity which has been wound up shall pass on to all of its legal successors (this applies also to pending penalties). A criminal liability of a legal entity shall not pass on to an individual.

# **Acquiring and selling a plant**

(buy side & sell side  
key check points)





## A. Acquisition of Company

**Acquisition of ownership in LLC:** The Slovak Commercial Code allows to transfer the ownership interests (i.e. shares) in the LLC by using the specific contract type. The Commercial Code requires that the contract for the transfer of the ownership interest be concluded in written form. Another formal requirement is the certification of signatures of the parties, i.e. both the acquirer and the transferor. The validity of the contract for the transfer of a business share requires, in addition to formal requirements, the fulfillment of the content requirements.

If the acquirer of the ownership interest is not a shareholder of a company whose ownership interest is being transferred, the acquirer has a specific obligation to declare that it is acceding to the Articles of Association of company.

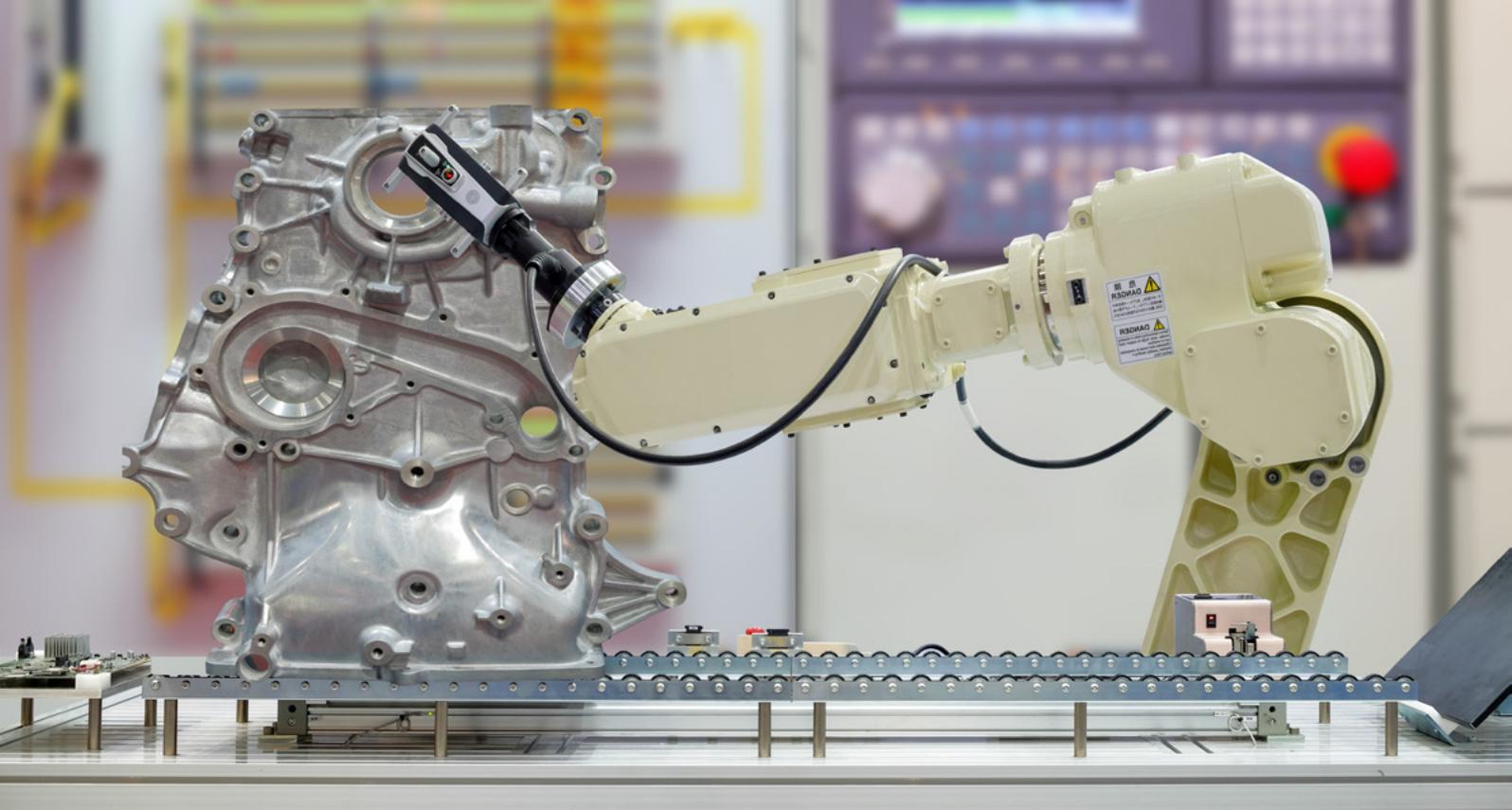
As mentioned before, in Slovak practice it is common to buy the whole business by the acquisition of ownership interests in the company. Moreover, the fresh LLCs are used as the SPVs for the transfer of the real estate. This has its reason in fact that in the fresh LLC there is a lower risk of occurrence of the potential issues from the history of the property or the company itself (e.g. ownership disputes).

**Acquisition of ownership in Joint-Stock Company:** In general, the transfer of shares—irrespective of their form—always takes place on the basis of a contract, but depending on the form of the shares, the law modifies the individual terms of the transfer.

The transfer of shares takes place under a contract for the purchase and sale of shares or under a securities donation agreement. Depending on the type of contract, its further details are set out in the Commercial Code (Purchase Agreement) or the Civil Code (the Donation Agreement).

The contract for the purchase and sale of shares is required to specify the type of securities transferred. This means that the shares that are being transferred must be identified precisely. Also, the number of securities transferred, their purchase price and their ISINs, if any, is also given.

The contract for the purchase of a paper security as well as the securities donation contract must be in writing and must also meet the conditions required by the Securities Act. The transfer of the registered shares to the name is then effected by the endorsement (i.e. by the



written statement of the shareholder on the list). The endorsement shall indicate the name, address and birth number of the natural person who is the shareholder, the signature of the shareholder transferring the share and the date of the transfer of the registered share. If a company maintains a list of shareholders, the change in the shareholder's share in the shareholder list is also required in order to effect the transfer of a registered share to the company.

The transfer of book-entered shares takes place pursuant to a special law - registration of the transfer in the Central Securities Register kept by the Central Securities Depository of the Slovak Republic.

## **B. Acquisition of Assets**

**Acquisition of the Operation:** Slovak legal order provides for the possibility to acquire operation. Operation is a sum of all the tangible and intangible components that belong to the entrepreneur and which together form an organized whole-enterprise. Thus, the business does not include only buildings, land and movable assets that are used for business purposes and funds, but also, for example, the company's registered trademarks or copyright works to which the company has property rights. Part of the business includes components such as know-how, built-in management and organizational structure.

It is thus possible to sell separately such a part of an operation where separate accounts are kept, from which it is possible to learn what matters and other rights and values serve to operate this part of the business. It does not matter how exactly it is called (operation, plant) and whether it is registered separately in the business register.

The sale of the operation means that all the rights and obligations to which the sale relates are being transferred on the acquirer. Likewise, the rights and obligations arising from employment relationships with employees of an enterprise are transferred from the seller to the buyer. The buyer also passes all rights arising from industrial or other intellectual property that relate to the business of the marketed business.

The buyer will acquire ownership of the items that are the subject of contract at the effective date of the contract. Real estate properties will be transferred after the permission of the deposit into the real estate register. The Commercial Code provides that the seller is obliged to surrender and the acquirer to take over the items included in the sale at the effective date of the sales contract. There will be executed minutes of the take-over of the operation, which have to be signed by both parties..

## C. Merger control

The notification of a concentration to the Office can be prior to the conclusion of the contract or before another legal fact giving rise to the merger, acquisition of control or the establishment of a joint venture occurs, provided that the concentration is subject to the control of the Office. Before the rights and obligations arising from the concentration are exercised, the Office must be notified.

In the Slovak Republic transactions shall qualify as concentrations subject to control by the Office where the following criteria are met:

### A

- The combined aggregate turnover of the parties to the concentration is at least €46,000,000 attained for the closed accounting period preceding the establishment of the concentration in the Slovak Republic; and
- At least two of the parties to the concentration attain a turnover of at least €14,000,000 each in the Slovak Republic for the closed accounting period preceding the establishment of the concentration; and at the same time

### OR

### B

- The combined turnover attained for the closed accounting period preceding the establishment of the concentration in the Slovak Republic,
  - (i) If it is a matter of concentration where at least by one of the parties to the concentration is €14,000,000, and simultaneously the global combined turnover for the closed accounting period preceding the establishment of the concentration attained by another party to the concentration is at least €46,000,000;

- (ii) If it is a matter of concentration where a party to the concentration over whose enterprise or part of enterprise the control shall be acquired is at least €14,000,000 (in addition to the global combined turnover as in the previous point);
- (iii) If it is a matter of concentration where at least by one of the parties to the concentration creating jointly controlled enterprise is at least €14,000,000 (in addition to the global combined turnover as in the previous point).

Since preparing the notification of concentration can be a complex process, a prior informal and confidential discussion of the concentration with the Office is recommended and can greatly contribute to increasing the effectiveness of the process of approving concentrations.

## D. Tax risks

### Risks

Different ways of buying a business have different tax consequences. If an existing business is acquired or sold, the following options shall be considered: (1) buying shares; (2) buying a business as a going concern; or (3) buying assets only. Each has different tax effects that require careful consideration.

When considering buying real estate, carefully examine its tax status because this may have an impact on the VAT treatment and may affect the timing of the transaction. The sale of real estate used for business purposes and is at the time of sale included in business assets is subject to corporate income tax and VAT with exemptions provided by law relating to the timing of the transaction.

If you buy Slovak assets subject to VAT, make sure that the correct amount of VAT is subject to charge and that you can recover it. If necessary, apply for a tax ruling.

Income stemming from the sale of shares is also exempt from corporate income tax, subject to certain conditions. In addition, where a transferor of a business share is a registered VAT payer, and at the time of sale it carries out a taxable transaction, it is exempt from VAT under certain conditions.

If you are considering buying a going concern, i.e. an operating business, it is necessary to delimitate the business or assets subject to the transaction. Unless the transaction has a proper structure, and you obtain special tax certificates, you may be liable for the tax debt of the seller

Due care should be given when assuming a debt from a seller of Slovak assets, since you may not be able to deduct interest on that debt.

### Recommendations

There are a number of legitimate and tax efficient investment structures of which you can take advantage. These include: share exchanges, tax consolidations, closed-end investment funds, step-ups on acquired assets and others.

Duly examine the relevant tax treaties, place your Slovak subsidiary properly into your corporate structure; in this way you may incur little or no withholding tax.

You can receive corporate income tax relief (tax holiday) in the amount of up to 35 percent. The total amount of income tax relief depends on the region where you want to invest. You can receive corporate income tax relief for a period of up to five years. Business related expenses are tax deductible (conditions apply).

### Statute of Limitation

The statute of limitation for the recovery of tax liabilities is six years from the moment when the tax liability became due. However, since this period may be paused or prolonged by certain events, the maximum statute of limitations is 20 years.

## E. Intellectual Property & Technology acquisition

### Preserving priority of your IP rights in the Slovak Republic:

First notification of an invention, a design or a trademark to the IP register in another country can give rise to rights in the Slovak Republic. Your first notification must comply with the rules in the relevant international agreements. If you notify the Slovak Patent Office within the specified period after the first notification, you will have a priority right to register them in the Slovak Republic. For inventions and utility designs, the period is 12 months. For industrial designs and trademarks, it is three months.

### Things to note if you are party to an assignment or license:

Copyright assignments and exclusive licenses must be in writing and must list the fields of use (e.g. reproduction, communication to the public, public display, lease).

Only the holder of an exclusive copyright license may claim for breach of economic copyright. Unless the license agreement provides otherwise, the exclusive licensee may only claim for breach of economic copyright within the scope covered by the license agreement.

Both the holder of an exclusive license of industrial property rights entered in the register of the Slovak Patent Office and the licensee may claim infringement in the same scope as the owner of the rights (unless the license agreement provides otherwise).

### Things to watch out for

#### **Employment contracts do not generally give you derivative rights to IP created by your employees:**

Under employment contracts, you as employer acquire economic copyright in works created by your employees in course of their employment. The same principle also applies to rights to obtain a patent, utility and industrial design in relation to works, inventions and designs.

#### **Make sure you get ownership title to the 'carrier' of copyrighted works:**

Generally, the transfer of economic copyright to work does not automatically transfer the ownership title to the medium (carrier). This needs to be provided for in a separate transfer agreement.

#### **Make sure your architect gives you multiple rights to plans:**

Generally, if you acquire from the author a copy of an architectural design or urban architectural design, you may use it only once. You have to include the right to repeated use in the contract.

#### **You may need a Patent Attorney or a lawyer:**

**It is advisable that you find a patent attorney to represent you** in matters before the Slovak Patent Office and with other IP matters.



# Closing down

– Moving away  
manufacturing from  
Slovak Republic



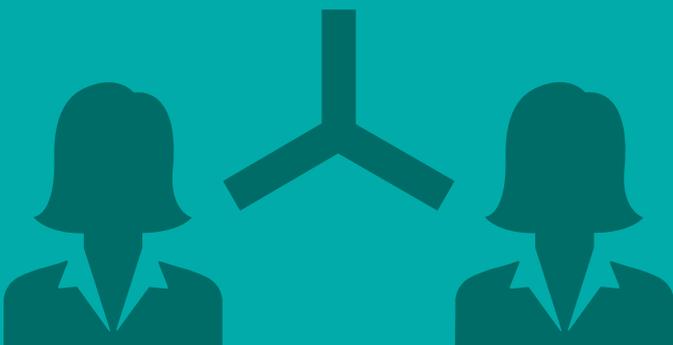
When moving away the manufacturing, the shareholders either may consider selling the whole company or its business to another entity as a whole or they may decide to liquidate the company. The purpose of the liquidation is to identify all the assets of the company, to settle liabilities to their creditors, including liabilities to the state budget, and to divide the liquidation balance amongst the shareholders.

The process of liquidation entails the following steps.

- Prior to entering the company into liquidation, we recommend that you determine the company's financial position (prepare the prescribed financial statements);
- Prepare minutes from the General Assembly;
- Register the company's entry into liquidation in the Commercial Register and notification of this fact in the Commercial Bulletin;
- Announce the company's entry into liquidation to the tax office, the social and health insurance company;
- Reconcile the general meeting and approval of the liquidation process of the company;
- Communicate with tax office, customs office and municipality and request permissions to remove the company; and
- Remove the company from the Commercial Register.



# Contacts



# Contacts

## Sector Leader



### **Pirouzan Parvine**

Manufacturing Sector  
Leader Europe/Partner  
D +33 6 42 24 07 25  
[pirouzan.parvine@dentons.com](mailto:pirouzan.parvine@dentons.com)

## Key contact



### **Katarína Pecnová**

Counsel  
D +421 2 2066 0220  
[katarina.pecnova@dentons.com](mailto:katarina.pecnova@dentons.com)

## **Dentons Europe CS LLP**

Business Garden Štefánikova  
Štefánikova 15  
Bratislava, 811 05  
Slovakia

## **ABOUT DENTONS**

Dentons is the world's largest law firm, delivering quality and value to clients around the globe. Dentons is a leader on the Acritas Global Elite Brand Index, a BTI Client Service 30 Award winner and recognized by prominent business and legal publications for its innovations in client service, including founding Nextlaw Enterprise, Dentons' wholly owned subsidiary of innovation, advisory and technology operating units. Dentons' polycentric approach, commitment to inclusion and diversity and world-class talent challenge the status quo to advance client interests in the communities in which we live and work.

**[dentons.com](https://www.dentons.com)**

© 2019 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.