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ESTABLISHING A BUSINESS ENTITY IN SLOVAKIA

ILN CORPORATE GROUP

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1. Types of Business Entities

The currently available local corporate structures for conducting business are:

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

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 and the joint-stock company.

1.1.1. Limited liability company

Limited liability company (In Slovak: "*spoločnosť s ručením obmedzeným*") is the most common form of commercial company in Slovakia.

It may be founded by one or more (up to 50) individuals or companies, irrespective of their nationality. A company with a sole shareholder cannot be the sole shareholder of another limited liability company (chaining ban). This rule also applies to foreign limited liability companies or individuals. An individual may be the sole shareholder of up to three companies.

The company cannot be established by a founder with tax, customs duty or social insurance arrears, unless a consent of the respective authority is issued. Moreover, limited liability company also cannot be established by a person recorded as a debtor in the Slovakian Register of issued authorizations to perform issued enforcement authorisation. This limitation does not apply to foreign companies or individuals.

The minimum capital requirement for a limited liability company is EUR 5,000 and the minimum contribution of each shareholder is EUR 750. If the company has a sole founder, the registered capital must be paid up in full before it is registered in the Commercial Register. If there is more than one founder, at least 30 per cent of each shareholder's contribution to the registered capital, and overall, at least 50 per cent 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 movable property, certain intangible assets, and existing and documented due debts. The value of in-kind contributions is subject to an expert valuation and these contributions must be fully paid up before registration of the company 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 (In Slovak: "*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 joint stock company 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 joint stock company, regardless of the method of establishment, is EUR 25,000 (special, significantly higher, registered capital requirements apply for the joint stock companies intended to operate e.g. as banks, investment companies, securities dealers, and management companies).

Shares are securities entitling the shareholders to participate in the company's management, and to share in the profit and liquidation balance. Shares are issued as either registered (In Slovak: "*akcie na meno*") or bearer (In Slovak: "*akcie na doručiteľa*") shares.

Registered shares may be issued as certified/paper form (In Slovak: "*listinné*") or book-entry (In Slovak: "*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, 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 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 Slovak Commercial Register.

After executing the foundation document, i.e., in the period between its foundation and registration, the company does not legally exist yet. In other words, it does not have legal personality and it cannot acquire rights or obligations except for some specific circumstances. A company can only perform actions that lead to its formation. Some legal actions must subsequently be approved by the company after its registration.

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.

To carry out business activity, the company must obtain the corresponding business licence, namely a trade licence or other licence under special regulation. A trade licence, being the most common business 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, upon incorporation.

Each newly founded company acquires a legal capacity of their own upon incorporation, i.e., registration with the Slovak Commercial Register. In Slovakia, the Commercial Register is administered by the appointed District Courts.

Corporate information on the companies registered in the Commercial Register such as business name, address, authorized representatives, registered capital and certain others can be found online at the website www.orsr.sk (the online data is not sufficient for legal purposes). In general, if an application to register a company in the Commercial Register fulfils all of the requirements, and all of the necessary documents are supplied, then the

company is registered within two working days of the application being filed, this period may be extended, even significantly, due to the workload of the courts.

As from February 1, 2023, the option of so-called "simplified limited liability formation and simplified branch formation" has been added to Slovak law with the purpose of providing a possibility of simple establishment of a company under certain conditions. Registration is done electronically.

Simplified establishment of a limited liability company is available in particular if:

- Company to be established has no more than five shareholders,
- Only the selected businesses corresponding to free trades (not more than 15 free trades),
- Only financial contribution, i.e., no contribution in kind is allowed,
- The executive director must be Slovak national, or a person registered in Slovak register of natural persons (e.g., citizen of Slovakia, foreigner granted asylum) and he or she must be appointed as the administrator of deposits of the new company.

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 the capital companies, general meeting of its shareholders is always the supreme body.

The supreme body of a Slovak **limited liability company** 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 than one executive director is appointed, they may act individually or jointly (they do not formally constitute a board as there is no board of directors in a limited liability company). The executive director of a company may only be a natural person. 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 ineffective vis-à-vis third parties.

A supervisory board, consisting 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 **joint stock company** are similar to other European joint stock companies, with a general meeting as the supreme body, board of directors as the executive body, and an overseeing 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 by law reserved for the general meeting or supervisory board, to care for the day-to-day business and to represent the company towards 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.

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 and in the company's interests.

Supervisory board is an obligatory body of a Slovak joint stock company. It must have at least three members and it supervises the activities of the board of directors and monitors the company's financial records. If a company has more than 50 employees (regular, not temporary personnel) two thirds of the members of the Supervisory Board are elected and removed by the General Meeting and one third by the company's employees.

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 of 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 the company fails to submit the financial statements in due time (no later than 9 months from the preparation of the financial statements) and is in delay with fulfilment of this obligation by more than 6 months, the court will, upon lapse in vain of a remedy period granted by the court, decide to cancel the company even without a proposal.

If a company meets the criteria for obligatory audit[1] 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 financial statements and the annual report must be approved by the respective company body (general meeting or sole shareholder) within 12 months from its date.

Requirements applicable to local shareholding/directors

There are no requirements or limitations in respect of nationality of the shareholders – they may be either a Slovak or foreign individual or company.

The board members of limited liability company and joint stock company may be either Slovak or foreign individuals. 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. Members of the supervisory bodies may at the same time not be the members of the BoD.

[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 €4,000,000;
- net turnover is more than €8,000,000;
- the average number of employees is more than 50.

In respect of non-EU or non-OECD citizens appointed as the statutory bodies of the Slovak companies (executive directors, members of the BoD) a residence permit in Slovakia obtained for business purposes is required.

Minority shareholders' rights and protection

Misuse of a shareholders' rights, in particular misuse of a majority or a minority of votes in a company is generally prohibited.

In the case of limited liability companies, Slovak law does not specify majority/minority shareholders nor grant specific protection to the 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 convening of a general meeting (however, other shareholders are not obliged to participate in the general meeting), or

ii) may propose a voting for a specific resolution outside general meeting[2].

Exercise of general shareholder's 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.) can also be used by the minority shareholders.

Any change to the founding document that extends obligations of the shareholders or limits or restricts the rights of the shareholders must be approved by all shareholders that are affected by such change.

As regards joint stock companies, 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.

Slovak law specifies qualified shareholders and grants them specific rights. These qualified shareholders are defined as having at least 5% of the registered capital. Such shareholders are entitled to:

i) request the convening of a general meeting (however, other shareholders are not obliged to participate in the general meeting);

ii) request that a specific point be added to the general meeting's agenda;

iii) request the supervisory board to review actions of the board of directors in the designated matters;

iv) request the board of directors to claim the payment of the outstanding part of the issue price from shareholders in default,

v) request the board of directors to claim from shareholders the restitution of performance provided contrary to the law.

In addition, the minority shareholders may make use of the 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

[2] The articles of association may extend this right to shareholders with smaller contribution.

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 limited liability companies are set out under Section 1.1.1 of this summary and the capital requirements for joint stock companies 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 both limited liability companies and joint stock companies.

The Slovak law also contains specific limitations for the companies that are considered to be "in crisis". A company is "in crisis", if (i) it technically meets the conditions for bankruptcy or its bankruptcy is imminent, or (ii) its equity to liabilities ratio is less than 8 to 100. The threat of bankruptcy is not directly connected with the immediate threat of insolvency or restructuring proceedings, but it is connected with several consequences. One of the consequences is that a company, if it is in crisis, or if it would fall into crisis as a result of such performance, may not return the "performance replacing its own resources". "Performance replacing own resources" includes providing credit or loan or other similar performance with the same economic effect to the company during its crisis (or even before its crisis, if the payment term was postponed or extended during the company's crisis) by *inter alia* a person/entity whose direct or indirect share represents as least 5 percent of the registered capital or on the voting rights or he/she has a similar influence on the company or a person acting on their behalf and some other qualified persons (statutory representatives and related parties, etc.). Periods for the return of "performance replacing own resources" are suspended during the periods when it cannot be returned due to the mandatory provisions of Slovak commercial law. If the "performance replacing own resources" is returned to the creditor despite the statutory prohibition, members of the statutory body (e.g. directors, members of the BoD) who held office at the time the performance was provided and those who held offices as the members of the statutory body in the period in which the company did not claim the return of the performance shall be jointly and severally liable for its return towards the company as well as the company's creditors.

Special business or investment visa issues

Citizens of the EU/EEA/Switzerland (hereinafter jointly "EU citizen") 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, etc.), for a certain period of time, after which a third country national must apply for renewal of the temporary residence. 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.

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 9 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 (as 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.