

Setting Up and Owning a Slovak Company

Introduction to corporate entities under Slovak law:
joint stock companies and limited liability companies

www.allenoverly.com

In this brochure "Allen & Overy" means Allen & Overy Bratislava, s.r.o., Allen & Overy LLP and its affiliated undertakings.

© Allen & Overy Bratislava, s.r.o. May 2004. This note is for general guidance only. Reliance must not be placed or decisions taken on the basis of its contents without specific advice.

Setting Up and Owning a Slovak Company

Introduction to corporate entities under Slovak law:
joint stock companies and limited liability companies

Allen & Overy Bratislava, s.r.o.

Carlton Savoy Building Mostová 2 5th Floor 811 02 Bratislava Slovak Republic
Tel +421 (2) 5920 2400 Fax +421 (2) 5920 2424

CONTENTS

	page
INTRODUCTION	5
1. JOINT STOCK COMPANY – <i>akciová spoločnosť (a.s.)</i>	7
1.1 Formation of an a.s.	7
1.2 Parties	7
1.3 Memorandum of Association	8
1.4 The Constituent General Meeting	8
1.5 Constitution	9
1.6 Shares and convertible bonds	10
(a) General	10
(b) Form	10
(c) Transferability	10
(d) Preference shares	10
(e) Subscription for own shares/shares of controlling company	10
(f) Interim certificates	11
(g) Convertible bonds	11
1.7 Capital	12
(a) Reserve Fund	12
(b) Increase in the registered capital	12
(c) Reducing the registered capital	12
1.8 Management	13
(a) General Meeting	13
(b) Board of Directors	14
(c) Supervisory Board	15
1.9 Minority rights' protection	15
1.10 Liquidation	16
2. LIMITED LIABILITY COMPANY – <i>spoločnosť s ručením obmedzeným (s.r.o.)</i>	17
2.1 Formation of an s.r.o.	17
(a) Foundation	17
(b) Incorporation	18
2.2 Participation interest	18

	page
2.3 Capital	19
(a) Reserve Fund	19
(b) Increase in the registered capital	19
(c) Reducing the registered capital	19
2.4 Management	20
(a) General Meeting	20
(b) Executives	20
(c) Supervisory Board	21
2.5 Minority rights protection	21
2.6 Liquidation	21
3. DOCUMENTATION/ACTION LIST FOR AN S.R.O. AND AN A.S.	23
3.1 Establishment	23
(a) Limited liability company (s.r.o.)	23
(b) Joint stock company (a.s.)	23
3.2 Incorporation	23
(a) The standard documentation required for the Trade Licence Office	24
(b) Additional documentation required for the Trade Licence Office	24
(c) Documents required for submission to the court (joint stock company (a.s.))	24
(d) Documents required for submission to the court (limited liability company (s.r.o.))	25
3.3 Form of documents	25
4. RESTRICTION OF FOREIGN OWNERSHIP	26
4.1 Foreign ownership	26
5. LONG-TERM RESIDENCE PERMIT	27

INTRODUCTION

LEGAL FORMS OF CORPORATE ENTITIES UNDER SLOVAK LAW

The contents of this memorandum represent Allen & Overy's views on the relevant Slovak legislation as of 1st May, 2004.

Slovak law recognises the following legal forms of corporate entities:

- **Verejná obchodná spoločnosť** (abbreviation "**v.o.s.**") is a partnership, where at least two persons together carry on a business activity under a common commercial name, and each partner personally bears joint and several liability for the obligations of the partnership from all of their assets. In other words, they have unlimited liability;
- **Komanditná spoločnosť** (abbreviation "**k.s.**") is an entity in which one or more partners ("limited partners") are liable for the partnership's obligations up to the amount of the unpaid parts of their contributions as recorded in the Commercial Register, and one or more partners ("general partners") are personally liable for the partnership's obligations from all of their assets. The general partners, therefore, have unlimited liability;
- **Spoločnosť s ručením obmedzeným** (abbreviation "**s.r.o.**") is a limited liability company, whose registered capital¹ is made up of contributions agreed in advance by its members. The company itself is wholly liable for any breach of its obligations from all of its assets, but each member's liability for the company's obligations is limited to the unpaid part of their contribution as recorded in the Commercial Register;
- **Akciová spoločnosť** (abbreviation "**a.s.**") is a joint stock company, whose registered share capital is divided into a certain number of shares of a specific nominal value. The company itself is wholly liable for any breach of its obligations from all of its assets, but each member has no liability for the company's obligations. However, a member must pay up the nominal value of his shares in full;
- **Družstvo** is an entity (a "**co-operative**"), whose associates must consist of at least five members (unless two or more of the members are legal entities). However, there is no maximum number of associates. A *družstvo* is liable for any breach of its obligations from all of its assets, but its members are not liable for the obligations of the *družstvo*. Nevertheless, the articles of association for a *družstvo* may provide that all or some of the members are under an obligation to indemnify the co-operative in respect of its losses up to a certain limit in excess of their membership contribution; and
- **Organizačná zložka** (abbreviation "**o.z.**") is a branch of a foreign entity which is carrying on a "business activity" in the Slovak Republic, which has obtained a trade licence from a Trade Licence Office for such business, and which has been registered in the Slovak Commercial Register.

By far the most commonly used legal forms in the Slovak Republic are the *spoločnosť s ručením obmedzeným* (*s.r.o.*) (limited liability company) and the *akciová spoločnosť* (*a.s.*) (joint stock company). Therefore, the discussion below addresses the relevant issues only in relation to limited liability companies and joint stock companies.

¹ Please note that Slovak limited liability companies (*s.r.o.*) do not have shares but "participation interests" reflecting the amount of contribution to the registered capital of the limited liability company by the "participant".

1. JOINT STOCK COMPANY – *akciová spoločnosť (a.s.)*

This form of company is analogous to a German/Austrian *Aktiengesellschaft (AG)* and in certain aspects to an English company limited by shares or to a plc (although an *a.s.* may be private or even have a sole shareholder).

A shareholder in a joint stock company is not liable for the obligations of the company. A shareholder is, however, liable to the company to the extent of any amounts unpaid on the nominal value of the shares he holds. A joint stock company must include the designation “*akciová spoločnosť*”, “*akc. spol.*” or “*a.s.*” in its name. Joint stock companies that perform special activities (such as investment companies, investment funds and securities dealers) must include a reference to those activities in a legally recognised form in their company names.

1.1 FORMATION OF AN A.S.

A joint stock company may be a private joint stock company or a public joint stock company. A company that has issued all or a part of its shares on the basis of a public call for subscription of shares, or whose shares were admitted by a stock exchange to be traded on the stock market, shall be regarded as a public joint stock company. When all of the shares are subscribed for by a stockbroker under a ‘contract on the procurement for the issue of the shares’, this is also considered as an issue of shares based on a public call for subscription of shares, unless the contract includes a commitment by the stockbroker to sell the shares to designated persons in the contract. The company is regarded as a private joint stock company when all of its shares are subscribed for by the founders of the company in accordance with a private subscription agreement.

Whichever method is chosen, the company’s registered capital must be no less than SKK 1,000,000 (except for banks, where the registered capital must be no less than SKK 500,000,000; investment companies, where it must be no less than SKK 50,000,000; securities dealers, where it must be in an amount between SKK 6,000,000 and SKK 35,000,000, depending on the extent of its activities; and except for the pension management companies, where the registered capital must be no less than SKK 30,000,000) of which no less than 30 per cent. of the nominal value of any shares which are to be subscribed for in cash must be fully paid up prior to the Constituent General Meeting (see paragraph 1.4 below). Banks and insurance companies are also subject to various regulations dealing with their capital adequacy, as set out from time to time by their respective regulators.

The full nominal amount of the share capital subscribed for by each founder must be paid up within one year of the registration of the company in the Commercial Register. Late payment bears interest of 20 per cent. per annum (unless otherwise specified in the Articles of Association). Additional consequences of late payment are also specified in the Commercial Code.

A contribution in kind may only consist of assets that can be valued in monetary terms. The contribution in kind must be paid up² before the entry of the registered capital in the Commercial Register. The value of the contribution in kind must be determined by one expert’s appraisal that must include, *inter alia*, a description of the contribution in kind, the method of its appraisal, and information as to whether its value corresponds to the issue price of the subscribed shares to be paid for by this contribution.

1.2 PARTIES

A single founder may establish a joint stock company, provided that the founder is a legal entity. Otherwise, two or more founders are necessary. If the company is established by two or more founders, a Memorandum of Association must be executed. If a sole founder establishes the company, instead of a Memorandum of Association, a Foundation Deed is to be executed. The Memorandum of Association or the Foundation Deed must be executed in the form of a notarial deed. The Articles of Association of the company shall form a part of the Memorandum of Association or, where applicable, the Foundation Deed.

² This means that a movable thing must be handed over to the Company, or, with respect to an immovable thing or a right, a declaration of the founder that he contributes the immovable thing/right to the Company must be handed over to the Company.

1.3 MEMORANDUM OF ASSOCIATION

The Memorandum of Association or the Foundation Deed must include the following details:

- (a) the business name, the registered office of the company and the scope of its business;
- (b) the proposed amount of the registered capital;
- (c) the number of shares, their nominal value and the form thereof; if shares of different classes are to be issued, this should include their designation rights; if registered shares with limited transferability are to be issued, this should include any limitations as to the transferability of the shares;
- (d) the issue price for which the company issues the shares;
- (e) the number of shares to be subscribed for by the individual founders;
- (f) where the founder decides to make contribution in kind, the nature of the contribution in kind and the valuation of such contribution for the fulfilment of the issue price of shares subscribed for by the founder;
- (g) the determination of the administrator of contributions; and
- (h) the planned costs of establishing the company.

Should a joint stock company be established on the basis of an announcement to subscribe for shares, the Memorandum of Association must also specify the following:

- (a) the place and date of the share subscription;
- (b) the procedure in the event that the shares are over-subscribed;
- (c) the place and date for the payment of parts of subscribed shares and the amounts thereof; and
- (d) the procedure for convening the Constituent General Meeting of subscribers.

Each advantage that may be provided to the persons who have participated in the foundation of the company, or in activities leading to the obtaining of its trading licence, must be agreed in the Memorandum of Association; no other advantage may be provided to such persons.

1.4 THE CONSTITUENT GENERAL MEETING

The founders must ensure that the registered capital is fully subscribed. If there is a shortfall, this is compensated for by offering to the public the opportunity to subscribe for shares. The invitation to subscribe for shares must be appropriately publicised. A share is subscribed for by entry into the subscribers' list or by the delivery of a subscriber's expression of will. *Upon an invitation to subscribe for shares, no shares may be subscribed for by contributions in kind.*

The Constituent General Meeting must be convened within 60 days of the last subscription for shares. If it is not, the subscription will be null and void and the founders will be jointly and severally liable to return all subscription monies received. The Constituent General Meeting may only take place if the aggregate nominal value of the subscribed shares is equal to the proposed registered capital, and if not less than 30 per cent. of the nominal value of the contributions has been paid up. The Constituent General Meeting is quorate if subscribers representing more than 50 per cent. of the aggregate nominal value of the subscribed shares are present, provided that the said subscribers have fulfilled their obligation to pay the specified parts of the nominal value of the subscribed shares. The approval of subscribers who have subscribed shares with a nominal value representing in total more than 50 per cent. of the nominal value of shares subscribed by all subscribers attending the Constituent General Meeting is required to pass resolutions.

The Constituent General Meeting shall: (i) decide to establish the company; (ii) approve the Articles of Association; and (iii) elect such company bodies which the General Meeting is authorised to elect according to the Articles of Association. The Constituent General Meeting may depart from the Memorandum of Association only if this is approved by all the subscribers attending the meeting, with the exception of approving an increase in the registered capital.

The holding of the meeting, the resolutions passed, the list of subscribers, the nominal value of the share capital subscribed and the amounts paid up by individual subscribers, together with the names of the persons elected to the Board of Directors, must be notarially recorded. The petition for registration must be signed by all members of the Board of Directors and submitted to the relevant Commercial Register. Once the joint stock company is registered, the shares can be issued if their nominal value has been fully paid. If the shares are not fully paid, interim certificates are issued. These can be exchanged for shares only when their nominal value has been fully paid.

Such a meeting is not required if the founders agree to pay up the entire share capital themselves without raising funds through a public call for subscriptions. The presence of all founders (unless the Memorandum of Association gives the same rights to a certain percentage of founders) gives the meeting the same status as the Constituent General Meeting. Decisions taken by the founders must be notarially recorded.

Please note that an offer to the public to subscribe for non-listed shares generally triggers the prospectus duty pursuant to the provisions of the Securities Act. That means that a public offering of these shares is only possible on the basis of a published prospectus approved in advance by the Financial Markets Authority (“FMA”) unless otherwise stipulated in the Securities Act. The Securities Act lists certain exemptions under which there is no duty to prepare and publish a prospectus. Please note that with regard to listed shares, the relevant provisions of the Stock Exchange Act and specific listing prospectus requirements apply.

1.5 CONSTITUTION

The constitution of a joint stock company is laid down in the Memorandum of Association or in the Foundation Deed and the Articles of Association.

The Articles of Association shall specify:

- (a) the business name and the registered office of the company;
- (b) the scope of its business;
- (c) the amount of the registered capital and the manner of payment of shares; the conditional amount of the registered capital if the General Meeting has decided on a conditional increase of registered capital, or the approved amount of the registered capital if the General Meeting has authorised the Board of Directors to increase the registered capital;
- (d) the number and nominal value of shares of each class issued and their type (registered shares or bearer shares), and any limitation of transferability of the registered shares;
- (e) the procedure for convening a General Meeting, the scope of its powers, and its decision-making procedures;
- (f) the number of members of the Board of Directors, the Supervisory Board and other bodies, as well as the definition of the scope of their powers and their decision-making procedures;
- (g) the initial amount of the Reserve Fund (see paragraph 1.7(a)), plus the procedure for supplementing the Reserve Fund;
- (h) the rules governing the distribution of the company’s profit;
- (i) the consequences of any default in the payment for the subscribed shares;
- (j) the manner of increasing and reducing the registered capital; and
- (k) the procedures for amending and modifying the Articles of Association.

The details of the company’s officers (Directors and Supervisory Board members) are not included in the Memorandum of Association. This is because these are elected by the Constituent General Meeting or founders along with the recording of their approval of the formation of the company.

1.6 SHARES AND CONVERTIBLE BONDS

(a) General

A share represents the rights of a shareholder to participate in the company's management, its profits and in any residual funds upon the company's winding-up.

The Articles of Association determine the nominal value of all classes of shares to be issued. The aggregate of the nominal values of such shares must correspond to the amount of the registered capital. The nominal value of a share must be determined by a positive whole number. Generally, a joint stock company may issue shares with various nominal values.

(b) Form

A share may be issued in the form of a physical share or in the form of a book-entered share. The type of a share can be either registered or bearer, but bearer shares can only be issued in the form of book-entered shares.

It should be noted that the Securities Act includes provisions for the compulsory dematerialisation of bearer shares. Dematerialisation means registration in the recognised Securities Centre where each share is represented by a relevant record. As of 1st July, 1999, bearer shares have to be registered with the relevant Securities Centre. Compulsory dematerialisation of bearer shares technically overrides their "bearer" nature, and, despite the fact that they may be still described as bearer shares, the issuer or other relevant person may obtain access to all the details of the holders of such bearer shares.

Registered shares can be issued either in dematerialised (book-entered) form or in physical (paper) form. If the shares are issued in physical form, the Securities Centre is to keep the list of shareholders for the company, and share transfers only become effective upon registration in such list of shareholders.

(c) Transferability

Both registered and bearer shares are generally transferable and the Articles of Association cannot restrict the transferability of either publicly tradable shares or bearer shares. On the other hand, the Articles of Association may limit, but not exclude, the transferability of registered shares. If the Articles of Association make the transferability of registered shares subject to the consent of the company, they must also specify the reasons why the company may refuse to give consent, and the terms on which the company is obliged to consider a shareholder's application for consent. If the Articles of Association lay down no reasons for the refusal to give consent, the company will be obliged to give its consent to the transfer of the registered shares. If the Articles of Association make the transferability of registered shares subject to the consent of the company, the consent of the company shall also be required for the establishment of any pledge over these shares; otherwise the pledge over such shares will not be valid.

(d) Preference shares

The Articles of Association may provide for the issue of a class of shares with preferential rights concerning dividends (preference shares) if the aggregate of their nominal value does not exceed 50 per cent. of the registered capital. The Articles of Association may provide for the issue of preference shares which do not entitle the holder to vote at General Meeting. Such shareholders have all the other rights attached to shares. However, non-voting preference shareholders automatically acquire voting rights if the company fails to pay a dividend.

(e) Subscription for own shares/shares of controlling company

A company is not allowed to subscribe for shares which constitute its own registered capital. On the other hand, a party acting in its own name and on the account of the company may acquire the company's shares, provided that:

- (i) the subscription of the shares is approved by the General Meeting of the company, which must also lay down conditions under which the company may acquire its own shares;
- (ii) the nominal value of all of its own shares that the company owns, including shares obtained by another party in its own name but on the account of the company, may not exceed 10 per cent. of the registered capital;
- (iii) by acquiring the shares, the shareholder's equity shall not decrease below the value of the registered capital of the company, together with the Reserve Fund, or other funds established by the company, as required by law; and
- (iv) the issue price of the acquired shares is fully paid.

Nevertheless, regardless of the reason for the acquisition of the company's own shares, the acquired shares must be disposed of by the company within three years of their acquisition, unless the nominal value of the shares acquired (including the shares which the company may have acquired through a person acting in its own name but on the company's account) does not exceed 10 per cent. of the subscribed capital.

If a company acquires its own shares or if a controlled company acquires the shares of its controlling company in contravention of the rules laid down in the Commercial Code, such shares must be disposed of within one year of their acquisition. Should they not be disposed of within that period, a court can dissolve the non-complying company. Moreover, during the period in which a company holds its own shares or a controlled company holds the shares of its controlling company, the rights to vote attaching to such shares are suspended. In addition, the company needs to comply with the following requirements:

- (a) if the company's own shares are included among the "assets" shown in the balance sheet, an adequate reserve of the same amount needs to be included into the "liabilities" shown in the balance sheet; and
- (b) the company must inform its shareholders annually if it has acquired some of its own shares.

(f) Interim certificates

Until the full face value of a share is paid up, the rights of the subscriber are represented by an interim certificate that is issued on the company's incorporation and replaced on full payment of the share's face value. An interim certificate may be issued only as a registered security.

Interim certificates may in principle be bought and sold (and traded) in the same way as shares. Please note, however, that the transferor of an interim certificate guarantees the payment of the outstanding portion of the subscription price for the shares which the interim certificate is meant to represent.

(g) Convertible bonds

By a resolution of the General Meeting, the company may issue convertible bonds, giving the right to convert the bond into shares of the company or the pre-emptive right to the subscription of shares in the company, provided that the General Meeting decides on a conditional increase of the registered capital at the same time. The shareholders of the company have the pre-emptive right to acquire convertible bonds issued by the company. The right to the conversion of a convertible bond into shares of the company and the pre-emptive right to the subscription of shares in the company may be the subject of a separate transfer.

Holders of convertible bonds may require either the issue of shares, or an entitlement to claim pre-emption rights to shares, during the period determined by the terms and conditions of the bonds. It should be noted that the pre-emption rights of holders of convertible bonds override the pre-emption rights of shareholders. Any bonds issue (subject to certain exemptions applicable to bond issues satisfying certain tests required by the Slovak Bonds Act) requires the approval of the FMA and, in certain circumstances, also the approval of the National Bank of Slovakia.

1.7 CAPITAL

(a) Reserve Fund

The company must establish a Reserve Fund of a minimum of 10 per cent. of its registered capital upon its registration. This fund must be replenished on an annual basis by the amount equal to 10 per cent. of the net profit declared in the ordinary closing of its accounting books, unless a higher amount is stipulated in the Articles of Association. The company shall replenish the Reserve Fund in the manner described above until it reaches an amount representing at least 20 per cent. of the registered capital. The Board of Directors decides on the use of the Reserve Fund, unless the Articles of Association stipulate otherwise.

(b) Increase in the registered capital

An increase in the registered capital of a joint stock company requires a two-thirds' majority vote by the shareholders of each class attending the General Meeting called for this purpose, unless the Articles of Association provide the Board of Directors with the right to increase the registered share capital. The General Meeting called to decide on the capital increase must comply with certain special requirements.

Several methods of capital increase are recognised, and a wide range of matters should be taken into account when making a decision between: (i) an issue and subscription for new shares; (ii) an increase conditional upon the execution of convertible and preferential bondholders' rights to require delivery of new shares; (iii) an increase using retained profit or another company's free assets with a subsequent (A) pro rata distribution of new shares amongst existing shareholders or (B) increase of the nominal value of existing shares; and (iv) a combined increase of registered capital. The increase of capital may be effected through a public subscription of shares. In relation to share subscription and payment of their issue price on an increase in the registered capital of the company, the relevant provisions of the Commercial Code and the Securities Act regarding public subscription for shares upon establishment of the company will apply where appropriate.

The decision to increase the registered capital must express the increase in SKK.

(c) Reducing the registered capital

Any proposal for a reduction in the registered capital must be presented to the General Meeting and must be approved by a two-thirds' majority vote of shareholders attending the General Meeting. If several classes of shares have been issued, a two-thirds' majority of shareholders attending the General Meeting for each class of shares is required. The reduction of the registered capital may not affect convertible bondholders' rights. The resolution of the General Meeting on the reduction of the registered capital must include the following:

- (i) the reason and purpose for the proposed reduction;
- (ii) the amount by which the registered capital shall be reduced;
- (iii) the procedure for implementing the reduction;
- (iv) the proposed use of the funds gained by the reduction;
- (v) a statement of the amount of the shareholders' remuneration, if the funds gained by the reduction of the registered capital are distributed among the shareholders; a statement as to whether these funds are to be used to release the duty of the shareholders to pay the unpaid portion of the issue price of the shares if the issue price of the shares has not been fully paid; and
- (vi) the period for submitting shares to be exchanged for shares with the lower nominal value, or for denotation of the lower nominal value on the shares, or for submitting the shares to be withdrawn, if the company issued physical share certificates.

All creditors must be informed individually within 30 days of a decision of the General Meeting to reduce the registered capital and, in addition, the decision must be published at least twice in the official Commercial Gazette. This is not required if the registered capital is reduced, by a reduction of the nominal value, exclusively

to cover the company's losses. The reason for the reduction of the registered capital must be explicitly stated in the resolution of the General Meeting; otherwise the resolution of the General Meeting is void.

After all the procedures required for satisfaction or securing creditors' rights have been complied with, and after the subsequent registration of the capital reduction (the registration of the capital reduction in the Commercial Register has a constitutive character), the capital reduction may be carried out. The capital reduction may be done by: (i) decreasing the nominal value of the shares; or (ii) withdrawing a certain number of shares.

1.8 MANAGEMENT

The control of a joint stock company is similar to other European continental systems, with a Board of Directors and a *Supervisory Board*. The powers of the *Board of Directors* are laid down in the Articles of Association, while 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 to the General Meeting. Certain matters can only be decided by the General Meeting.

(a) General Meeting

The General Meeting is the supreme governing body of a joint stock company. The General Meeting must be held at least once a year, although it may be called at other times. The Board of Directors is obliged to convene a General Meeting if it is requested to do so by a qualified group of shareholders.

In the case of a one-shareholder joint stock company, this shareholder shall execute all the powers of the General Meeting.

There is no requirement for any mandatory threshold in order for a General Meeting to be quorate. Therefore the Articles of Association should address this matter appropriately. On the other hand, should the Articles of Association fail to do so, it seems that the presence of any shareholder creates a quorum.

The scope of the powers of the General Meeting includes (and must include unless stipulated otherwise below) the power to:

- (i) amend the Articles of Association;
- (ii) decide on the increase or the reduction of the registered capital, decide on the granting of authorisation to the Board of Directors to increase the registered capital and to issue bonds;
- (iii) appoint and remove members of the Board of Directors, unless the Articles of Association provide that such members shall be appointed and removed by the Supervisory Board;
- (iv) appoint and remove members of the Supervisory Board and other company bodies as stipulated in the Articles of Association, other than Supervisory Board members elected by the company's employees;
- (v) approve the regular, extraordinary or consolidated financial statements, the annual financial statements and all decisions regarding the division of profit or settlement of losses, the disbursement of profits, the distribution of profits and the determination of royalties;
- (vi) decide to replace shares issued in physical form with book-entered shares and vice versa;
- (vii) decide on the winding-up of the company and on changing its legal form;
- (viii) decide on the termination of the trading of the company's shares on the market for quoted securities, and on the company ceasing to be a public shareholding company;
- (ix) approve the rules for determining the remuneration of members of the bodies of the company, if the Articles of Association do not provide that the rules regarding remuneration shall be approved by the Supervisory Board;
- (x) decide on other matters delegated to the General Meeting by the Commercial Code or the Articles of Association.

The General Meeting shall decide matters by a majority vote of the attending shareholders, unless the Commercial Code or the Articles of Association state otherwise³. The Commercial Code stipulates that a decision of the General Meeting which necessitates a change in the Articles of Association (such as a decision to increase or reduce the registered capital, to authorise the Board of Directors to increase the registered capital, to issue priority bonds or convertible bonds, to wind up the company or to change its legal form) requires a two-thirds' majority of the votes of shareholders present and shall be issued in the form of a notarial deed. A two-thirds' majority of votes of the shareholders present shall also be required to pass a resolution to terminate the trading of the company's shares on a market for quoted securities. The Articles of Association may establish a larger quorum necessary for the acceptance of a resolution of the General Meeting.

Any of the following agreements between a shareholder and the company or any of its bodies or members of its bodies are forbidden:

- to obey instructions from the company or some of its bodies on how he is to vote;
- to vote for a proposal presented by bodies of the company; or
- to exercise the voting rights in a certain manner or to abstain from voting as consideration for advantages provided by the company.

However, these rules above do not prevent agreements between shareholders providing for, *inter alia*, agreements on voting in General Meetings.

(b) Board of Directors

The names of board members who can bind the company and the actions which they have taken to bind the company must be entered in the Commercial Register, which represents the evidence of this fact for third parties. Specific corporate restrictions relating to acts of the board are not effective *vis-à-vis* any third parties, although the Articles of Association and decisions of a General Meeting or Supervisory Board may create limits which are internally binding. The minimum number of board members is three and they are elected by the General Meeting, unless the Articles of Association delegate this power to the Supervisory Board.

The Board of Directors is the statutory body of the company that manages its operations and acts on its behalf. The Board of Directors decides on all matters of the company, except for those matters reserved to the authority of the General Meeting or the Supervisory Board. The Board of Directors must ensure the regular conduct of the company's accounting and is requested to present to the General Meeting for approval the regular, extraordinary or consolidated financial statements and a proposal on the division of profits or settlement of losses, in compliance with the Articles of Association of the company. The Board of Directors must submit to the General Meeting a report on the business activities of the company and the state of its property, at least once a year. The Board of Directors is obliged to inform the Supervisory Board without delay of all facts that may essentially influence the development of the business activities of the company and the state of the company's assets.

Members of the Board of Directors who act improperly in the performance of their duties are jointly and severally liable for any damage they cause to the company. A creditor of a company may lodge a claim with the company for damages against members of the Board of Directors in his own name and on his own account if his demand cannot be satisfied from the company's assets. In certain cases, members of the Board of Directors may face criminal liability.

The Board of Directors must convene an Extraordinary General Meeting if it ascertains or believes that it is possible that the company's losses exceed one-third of the registered capital, and present suggested measures to the General Meeting.

The Commercial Code establishes a ban on competitive conduct by members of the Board of Directors. Unless the Articles of Association provide for further limitations, a member of the Board of Directors may not:

- (i) in his own name, or on his own account, enter into business deals related to the company's business activities;

³ i.e. the Articles of Association can specify both a higher and lower majority, except for certain reserved matters where a two-thirds' majority is required by law.

- (ii) mediate the company's business deals for third parties;
- (iii) participate in the business of another company as a member with unlimited liability; or
- (iv) exercise the powers of a statutory body or be a member of a statutory or similar body of another legal entity having a similar scope of business, unless the company of whose statutory body he is a member "has an interest in the other company's business"⁴.

(c) Supervisory Board

The Supervisory Board supervises the exercise of powers by the Board of Directors and the company's business activities. Members of the Supervisory Board are entitled to inspect any document and report concerning the company's activities. The Supervisory Board must review regular, extraordinary and consolidated financial statements as well as proposals for the settlement of losses, and must submit its comments to the General Meeting.

The Supervisory Board may convene a General Meeting whenever the interests of the company so require and propose any necessary measures at the General Meeting.

The Supervisory Board must consist of not less than three members. Two-thirds of the Supervisory Board members are elected and removed by the General Meeting, and (provided that there are more than 50 full-time employees at the time of election) one-third by the employees of the company. The Articles of Association may stipulate a higher number of Supervisory Board members to be elected by the employees; however, this number may not be higher than the number of members elected by the General Meeting. Members of the Supervisory Board are elected for a period stipulated in the Articles of Association, which must not exceed five years.

The Commercial Code stipulates a similar ban on competitive conduct with regard to the members of the Supervisory Board as is stipulated in the case of the Board of Directors.

1.9 MINORITY RIGHTS' PROTECTION

Before describing the rights of minority shareholders, two basic principles should be mentioned: (i) a shareholder cannot exercise his rights to the detriment of the rights and legitimate interests of the other shareholders; and (ii) the company must treat all shareholders in the same way and on the same terms.

Pursuant to the Commercial Code, special minority rights' protection is granted to a shareholder or shareholders whose shares have a nominal value amounting to at least five per cent. of the registered capital of the company. These shareholders are granted the following rights:

- (a) to require the convocation of an Extraordinary General Meeting to discuss matters proposed by them;
- (b) to include an item in the agenda of a General Meeting, which must be considered by the General Meeting;
- (c) to require the Supervisory Board to review the exercise of the Board of Directors' authority concerning specific matters;
- (d) to require the Board of Directors to demand, in the name of the company, payment of the issue price of shares from shareholders who are in delay with payment, or to demand that the company reclaim payments which the company paid out to shareholders in conflict with the Commercial Code;
- (e) to require the Supervisory Board to demand, in the name of the company, damages for payment of the issue price of shares if the company, in conflict with the Commercial Code, has subscribed for shares constituting its own registered capital, or for other claims which the company has against members of the Board of Directors;
- (f) to require the Supervisory Board to demand, in the name of the company, payment of the issue price of the shares if the company has issued shares constituting its registered capital in conflict with the Commercial Code; and

⁴ This is the term used in the Commercial Code – the interpretation is unclear since it does not use the terms "controlled" and "controlling" companies, which are used elsewhere in the Commercial Code.

(g) to require the Supervisory Board to enforce, in the name of the company, rights which the company has against members of the Board of Directors as guarantors according to the Commercial Code.

Should the Board of Directors fail to convene an Extraordinary General Meeting as required, the qualifying shareholders are entitled to ask the court to do so instead.

1.10 LIQUIDATION

A company shall officially cease to exist on the date of its deletion from the Commercial Register. The company's deletion from the Commercial Register is preceded by its winding-up, followed by its liquidation. There is no liquidation if the company's assets and liabilities are transferred to its legal successor. Liquidation is not required if the company has no assets, or if a bankruptcy petition has been rejected due to a lack of property, or if the bankruptcy proceeding was cancelled because the bankrupt's property is not sufficient to cover expenses and remuneration of the bankruptcy trustee, or if there are no assets left after the bankruptcy proceeding.

In the case of the voluntary winding-up of a company, it may be simultaneously decided that it shall be transformed into another form of company or be taken over, merged or split (de-merged). The General Meeting may decide to wind up the company, but this requires a two-thirds' majority vote unless the Articles of Association stipulate a higher majority threshold.

If all of the assets of a company have not been transferred to its legal successor, the liquidation is carried out. The liquidation of the company is entered in the Commercial Register. During the liquidation, the business name of the company should be supplemented with an addendum "under liquidation". The General Meeting appoints a liquidator. A liquidator can only undertake, on behalf of the company, those actions aimed at the company's liquidation. The liquidator notifies all known creditors of the fact that the company is in liquidation. He publicises the fact that the company is in liquidation together with a notice asking the company's creditors, as well as other persons and bodies concerned, to file relevant claims or exercise other rights within a stipulated period, no shorter than three months.

On a winding-up, after satisfying all creditors' claims, the balance is distributed amongst the shareholders in compliance with the Articles of Association and, if no special rules are included therein, pro rata to the nominal value of their shares. If the shares are not fully paid up, only those parts that have been paid are redeemed, and the remaining portion of the balance is distributed among the shareholders pro rata to the nominal value of their shares.

2. LIMITED LIABILITY COMPANY – *spoločnosť s ručením obmedzeným (s.r.o.)*

This form of company is rather similar to a German/Austrian *Gesellschaft mit beschränkter Haftung* (GmbH). It is appropriate where a simpler and less regulated company is required. It is not appropriate if shares are to be publicly traded.

A Slovak limited liability company (*s.r.o.*) does not have shares but instead has “participation interests” which reflect the amount of contribution to the registered capital of the limited liability company by the “participant”. Participation interests in an *s.r.o.* are not securities (as shares are in a joint stock company) and no share certificates are issued. The ownership relations are determined by the Memorandum of Association and evidenced in the relevant Commercial Register. They are reflected in extracts from the Commercial Register.

Generally, a participant only has one participation interest in an *s.r.o.*. The size of a participation interest may be different for each participant, and it may be extended or reduced, but each participant may own only one participation interest. On the other hand, one participation interest may be owned by two or more persons. The participants are recorded in the company’s list of participants and registered in the Commercial Register.

A participation interest represents the participation of the participant in rights and obligations related to the company, including voting rights and rights to participate in the distribution of profit. Usually, the proportions of the participation interests of the participants are equal to the proportions of the amounts of their contributions to the registered capital, although, unlike in a joint stock company, the Memorandum of Association may alter this rule. *The amount of any participant’s contribution to the registered capital must be an amount of at least SKK 30,000 and must be a multiple of SKK 1,000. The minimum registered capital of an s.r.o. (the sum of the participants’ contributions) is SKK 200,000.*

The liability of a participant in this type of company is limited to the amount unpaid on the participant’s capital contributions. Third parties are entitled to demand satisfaction of their rights from a participant up to the unpaid amount. A participant’s position in respect of this liability is similar to the position of a guarantor.

Executives are liable for damages caused by them through any breach of their duties. The members of the Supervisory Board have a similar liability to the company. More detailed information on this is given below.

The business name of the company must include the designation “*spoločnosť s ručením obmedzeným*” or either of the abbreviations “*spol. s r.o.*” or “*s.r.o.*”.

2.1 FORMATION OF AN S.R.O.

(a) Foundation

An *s.r.o.* may be set up by a single founder, even if that person is an individual. The maximum number of participants is 50.

A limited liability company owned by a single participant may not found, or become a sole participant in, another limited liability company. A natural person may be a sole participant in a maximum of three limited liability companies.

The foundation document of an *s.r.o.* is known as the Memorandum of Association. If there is only one participant, instead of a Memorandum of Association, a Foundation Deed is to be executed. Following the amendment to the Commercial Code effective as of 1st February, 2004, the form of a notarial deed for the execution of a Foundation Deed is no longer required. All references to the Memorandum of Association in this text also apply to the Foundation Deed, unless otherwise stipulated.

The Memorandum of Association may stipulate that the participants may be required by the General Meeting (in addition to their general duty to pay the agreed amount of their contribution to the registered capital) to

contribute an amount to cover any losses of up to 50 per cent. of the registered capital of the company pursuant to the amount of their contributions, but without affecting the size of their participation interest.

The Memorandum of Association must specify the following:

- (i) the company's name and its registered office;
- (ii) the scope of the business of the company;
- (iii) stipulated information on the participants;
- (iv) the amount of the registered capital, including details of each participant's contribution to the registered capital;
- (v) details of the company's first directors;
- (vi) details of the company's first Supervisory Board members (if any);
- (vii) details of the administrator of the paid contributions of the participants;
- (viii) details of the Reserve Fund, if the company creates one on its incorporation (see paragraph 2.3a);
- (ix) a description of any advantage(s) given to persons involved in the setting-up of the company or in the procurement of licences required for the company's business; and
- (x) the expected costs of setting up the company.

(b) Incorporation

After foundation (execution of the Memorandum of Association or Foundation Deed), the company has to be registered in the Commercial Register to become a legal entity.

The application for registration of a limited liability company in the Commercial Register must be submitted not later than 90 days after the foundation of the company. The application must be signed by all the executives, and their signatures on the application have to be verified by a notary.

Prior to the submission of the application for registration, each founder (participant) must pay not less than 30 per cent. of its contribution to the registered capital, as agreed in the Memorandum of Association. Generally, the remaining unpaid capital must be paid up within five years of the entry in the Commercial Register. Interest of 20 per cent. may be charged on any overdue element, with the further sanction of possible expulsion from the *s.r.o.* - provided that the Memorandum of Association does not stipulate otherwise. The total amount of paid contributions, together with the amount of the value of any contributions submitted in kind prior to the registration of the company, must not be less than SKK 100,000. If there is a sole founder, the total amount of registered capital must be fully paid up before registration.

For contributions in kind, some additional requirements apply. They must consist only of assets which can be valued in monetary terms, and one independent expert appraisal of the value of the contributions in kind must be obtained (this also applies to joint stock companies).

The company is incorporated as of the day of its registration in the Commercial Register, i.e. once the resolution of the relevant District Court concerning the registration of the company in the Commercial Register is effective.

2.2 PARTICIPATION INTEREST

The participation interest reflects the participant's rights and duties *vis-à-vis* the *s.r.o.*. Each participant may have only one interest, although it may be held jointly. The size of the interest is dependent on the contribution of the participant to the registered capital of the company and may be increased if that participant makes a further investment.

Transfer of the participation interest to a person who is not another participant is only permitted if this is expressly provided for in the Memorandum of Association. Such transfer may be subject to the approval of the

General Meeting, if this is stipulated in the Memorandum of Association. Transfer of the participation interest to another participant is subject to the approval of the General Meeting, unless the Memorandum of Association stipulates otherwise. This fact emphasises the rights of founders to keep control over the composition of the company's participants.

Following the latest amendment to the Commercial Code, effective as of 1st January, 2002, it is possible to create a pledge over a participation interest in a limited liability company, but only if transfers of participation interests are specifically allowed under the Memorandum of Association. If transferability is allowed, subject to certain conditions (e.g. an approval of the General Meeting), then the same conditions which are applicable to the transfer of the relevant participation interest are applicable to the creation of a pledge over that participation interest. A pledge over a participation interest becomes effective only upon being registered in the Commercial Register, following an application by either the pledgor or the pledgee. The signatures on a pledge agreement must be verified by a notary.

The participant's rights in respect of the management and control of the company are set out either in the Memorandum of Association or in the Articles of Association. Each participant has the right to take part in supervising the activities of the *s.r.o.* through the General Meeting. Each participant has one vote per each SKK 1,000 of investment in the *s.r.o.*, unless the Memorandum of Association or the Articles of Association determine otherwise. The participants are additionally entitled to ask for information from the company's executives (see paragraph 2.4b) and may access the company's documents personally.

A participant is entitled to a share in the profits of the company in the same proportion as its paid-up contribution to the total registered capital, unless the Memorandum of Association or the Articles of Association (where applicable) provide for some other distribution.

2.3 CAPITAL

(a) Reserve Fund

An *s.r.o.* is obliged to establish a Reserve Fund. The Reserve Fund may be created at any time, but must be created, at the latest, within one year of the company recording a profit. The first contribution to the reserve fund must be at least five per cent. of the first annual profit and must be repeated annually thereafter; however, the total contribution to the reserve fund need not exceed 10 per cent. of the registered capital.

(b) Increase in the registered capital

The participants have the right, in priority to third parties, to subscribe for new contributions proportionally to their existing contributions, unless the Memorandum of Association or Articles of Association stipulate otherwise.

The original contributions must be fully paid before the registered capital of an *s.r.o.* can be increased by further cash investment. This is not required in the case of an increase of the registered capital by a contribution in kind or for an increase from the company's free assets, but in both instances the decision must be approved by the General Meeting. If the registered capital was increased from the company's assets, the amounts of the participants' contributions are accordingly increased pro rata.

The increase in the registered capital of an *s.r.o.* becomes effective *as of the date of the resolution by the General Meeting of the company*, though the resolution of the General Meeting must subsequently be registered at the Commercial Register. The resolution of the General Meeting to increase the registered capital must express the increase in SKK.

(c) Reducing the registered capital

The General Meeting of the company is entitled to resolve to reduce the company's registered capital. A reduction in the registered capital is permissible as long as it does not fall below SKK 200,000 and no participant's investment falls below SKK 30,000.

Creditors' protection requirements, similar to those for a joint stock company, are applicable for an *s.r.o.* before a capital reduction may be completed. The executives are obliged to publish the information on the reduction of the registered capital twice. This announcement must include a request that any creditor should register information regarding its claims with the company. The company is obliged to give reasonable assurance in respect of the submitted claims or to satisfy them.

The reduction of the registered capital may be completed only on fulfilment of the above-mentioned conditions.

2.4 MANAGEMENT

(a) General Meeting

The General Meeting is the supreme governing body of an *s.r.o.*. The executives must convene the General Meeting at least once a year. A qualified group of participants (holding participation interests in the value of at least 10 per cent. of the registered capital) is entitled to ask the executives to convene the General Meeting or to convene the General Meeting themselves if the executives do not do so within a certain period of time.

The General Meeting has authority to decide on the following issues:

- (i) the actions taken by the founders before the company was incorporated;
- (ii) the regular, extraordinary or consolidated financial statements, and distribution of profits or settlement of losses;
- (iii) amendment of the Articles of Association;
- (iv) amendment of the Memorandum of Association, if the law or the Memorandum of Association allows the General Meeting to do so;
- (v) the increase or the reduction of the registered capital;
- (vi) contributions in kind;
- (vii) the appointment, removal and remuneration of the executives;
- (viii) the appointment, removal and remuneration of the members of the Supervisory Board;
- (ix) the exclusion of a participant from the company;
- (x) the winding-up of the company and any change of its legal form; and
- (xi) other matters delegated by the Commercial Code, Memorandum of Association or the Articles of Association.

Additionally, the General Meeting is entitled to reserve for itself the ability to decide on certain matters, which would otherwise be under the competence of other bodies of the company.

The quorum for the General Meeting is satisfied when members having more than one-half of all votes are present.

Decisions are taken by a simple majority of votes of the participants present, except where the Memorandum of Association or the law requires a higher number of votes. The Commercial Code stipulates that a decision of the General Meeting on matters under (i), (iii), (iv), (v), (vi) and (x) above requires a two-thirds' majority of the votes of the participants.

A participant's right to vote at the General Meeting is limited when the General Meeting decides on the contribution in kind of the participant or on the exclusion of the participant from the company.

(b) Executives

The company is represented by one or more executives. The first executive(s) is/are appointed by the Memorandum of Association and the General Meeting appoints further executives. The executives can act

independently, unless the constitutional documents provide otherwise. Decisions about the management of the *s.r.o.* must be taken by the majority of executives. Generally, the position of the executives is similar to that of the Board of Directors in a joint stock company.

Executives have to perform their duties with professional care and in the interests of the company and all its participants. They are required by law to obtain, and in their decision-making process to take into consideration, all available information concerning each particular matter to be decided. Executives may not put their own interests, the interests of only some participants, or the interests of third parties before the interests of the company.

Executives who breach their duties are jointly and severally liable to compensate the company for any damage caused to the company as a result. However, if they can prove that their actions were *bona fide* and taken with professional care, executives will be exempted from any liability. No liability rests on the executives for any actions meant to give effect to a resolution of the company's General Meeting, provided that such resolution is in compliance with the law and the Articles of Association.

Any agreements between the company and its executive(s) excluding or limiting their liability will be void. Furthermore, the company may only waive or enter into a settlement concerning its right to damages against the executives after a period of three years. The company's claims for damages against its executives may also be presented by the company's creditors (in their own name and on their own behalf) if the company's assets are insufficient to settle the creditor's claims. If the company is in bankruptcy, the above rights of the creditors can be made against the former executives only by the bankruptcy trustee.

(c) Supervisory Board

It is not obligatory for an *s.r.o.* to establish a Supervisory Board. The Memorandum of Association may stipulate that if the company establishes a Supervisory Board, then it must have at least three members. The General Meeting elects the members of the Supervisory Board. The Supervisory Board's role is to oversee the executives' activities and the activities of the company generally. An executive of the company cannot be a member of the Supervisory Board.

The members of the Supervisory Board should attend the General Meetings, but there is no sanction if they choose not to attend.

The members of the Supervisory Board are responsible for their actions under similar principles as the executives.

2.5 MINORITY RIGHTS PROTECTION

In a limited liability company, the law provides that a participant holding 10 or more per cent. of the registered capital may require the convocation of a General Meeting to discuss matters proposed by him. If the directors fail to convene the General Meeting, the qualifying shareholder is entitled to do so himself.

Participants that together hold at least 10 per cent. of the registered capital are jointly entitled to make proposals for decisions to be taken by the participants of the limited liability company outside the General Meeting.

Apart from the forum of the General Meeting, any participant is entitled to demand and to be provided with information from the directors about any matter related to the company and to inspect any part of the company's documentation.

2.6 LIQUIDATION

Generally, the same principles apply for the liquidation of an *s.r.o.* as for a joint stock company (*a.s.*) as mentioned above.

A company shall officially cease to exist on the date of its deletion from the Commercial Register. The company's deletion from the Commercial Register shall be preceded by its winding-up, followed by its

liquidation; however, there is no liquidation if the company's assets and liabilities are transferred to its legal successor. Liquidation is not required if the company has no assets, or if a bankruptcy petition is rejected due to a lack of property, or if bankruptcy proceedings are cancelled because the company's property is not sufficient to cover the expenses and remuneration of the bankruptcy trustee, or if there are no assets left after the bankruptcy proceedings.

The participants have a general freedom to apply to the court running the Commercial Register for an *s.r.o.* to be wound up, provided that any conditions set out in the constitutional documents or required by law are satisfied. If it is stipulated by the Memorandum of Association or by the Articles of Association, the executive(s) may also apply to the court for an *s.r.o.* to be wound up.

On a winding-up, each participant receives his proportionate part of the remaining balance of the *s.r.o.*'s assets based on the amount of his investment which is paid up.

One should be careful in making a decision to become a participant in an *s.r.o.*, because it is not possible simply to cease to be a participant. A court judgement is required should a participant wish to withdraw from a company, such judgement being conditional only upon the fulfilment of certain conditions. An exclusion of a participant for reasons other than a failure to pay the agreed contribution to the registered capital also requires a court judgement.

3. DOCUMENTATION/ACTION LIST FOR AN S.R.O. AND AN A.S.

As a matter of Slovak law, the formation of a company is divided into two stages, as follows:

- (a) establishment; and
- (b) incorporation.

3.1 ESTABLISHMENT

The establishment of a company is deemed to be the moment when the founders execute the foundation documentation. The establishment does not create a legal personality for the established company and, therefore, the company is not yet entitled to trade. However, the founders may take certain legal actions which lead to the company's incorporation or which are connected thereto. For such action the founders bear joint and several liability, unlimited by reference to the assets of, or contribution to, the company.

Documents to be executed upon the establishment of a company include:

(a) Limited liability company (s.r.o.)

- (i) Memorandum of Association or Foundation Deed;
- (ii) Articles of Association (although these are not mandatory for an *s.r.o.* – all relevant facts could be included in the Memorandum of Association).

(b) Joint stock company (a.s.)

- (i) Notarial Deed on Establishment;
- (ii) Memorandum of Association or Foundation Deed;
- (iii) Articles of Association.

The above corporate documents can be signed either by the present representatives of the founders or by proxies under a power of attorney.

Each power of attorney must be issued and signed in accordance with the applicable signatory rules of each of the founders.

Regarding formal requirements applicable to powers of attorney, please refer to paragraph 3.3, "Form of documents" below.

3.2 INCORPORATION

Incorporation is the act of the regionally competent court operating the Commercial Register deciding on the company's entry into its records. Once a complete application for the registration of the company is filed with the competent court, the court should decide on the registration of the company within five working days from delivery of that application.

Once the company is incorporated, it gains its corporate existence and personality, and is capable of suing and being sued.

There are numerous documents to be submitted to the court prior to incorporation.

(a) The standard documentation required for the Trade Licence Office

The standard documentation required for the **Trade Licence Office** is as follows:

- (i) a filled-in form of the Trade Licence Office;
- (ii) corporate documentation proving the establishment of the company; and
- (iii) an extract from the criminal records of:
 - the director (if a simple trade is applied for or when the director is the same person as the responsible representative);
 - the director and the responsible representative (if a specific trade is applied for and the director is not the same person as the responsible representative).

(b) Additional documentation required for the Trade Licence Office

Additional documentation required for the Trade Licence Office is as follows:

- (i) documents proving the director's/responsible representative's qualification (usual documents include: graduation certificate, confirmation of professional practice, certificate of specific examinations);
- (ii) a copy of the long-term residence permit/permanent residence permit for the director/responsible representative (if applicable) unless the director/responsible representative is a citizen of an EU/OECD Member State; and
- (iii) an extract from the criminal records for the home jurisdiction of the director/responsible representative (if applicable).

(c) Documents required for submission to the court (joint stock company (a.s.))

For incorporation of a joint stock company, the following documents need to be submitted to the **court**:

- (i) an application for the incorporation;
- (ii) the Memorandum of Association or the Foundation Deed;
- (iii) the Articles of Association;
- (iv) the decision made by the Supervisory Board regarding the election of the Board of Directors, if the Supervisory Board of the company elects the Board of Directors according to the approved Articles of Association;
- (v) the declaration of the founder nominated to administer the founders' contributions (or a bank) that the agreed amount of contributions to the registered capital is paid up;
- (vi) corporate documentation proving the corporate existence of each of the founders and establishing the signing rules;
- (vii) corporate decisions of all founders' authorities who are competent to decide on the relevant investment (e.g. Board of Directors, Supervisory Board or in some cases even the General Meeting);
- (viii) specimen signatures of the directors;
- (ix) copy of the long-term residence permit/permanent residence permit for the executive members of the Board of Directors (if foreigners) unless the executive members are citizens of an EU/OECD Member State; and
- (x) trade licence.

If the company is founded upon a call for subscription of shares, the following additional documents must be attached to the application for incorporation:

- (xi) the call for subscription of shares in the published version, together with a document proving its publication;

- (xii) subscribers' list, or counterparts, or copies of the written expression of the will of the subscribers; and
- (xiii) Notarial Deed from the Constituent General Meeting.

(d) Documents required for submission to the court (limited liability company (s.r.o.))

For incorporation of a limited liability company, the following documents need to be submitted to the court:

- (i) application for incorporation;
- (ii) the Memorandum of Association or Foundation Deed;
- (iii) the declaration of the founder nominated to administer the founders' contributions (or a bank) that the agreed amount of contributions to the registered capital is paid up;
- (iv) corporate documentation proving the corporate existence of each of the founders and establishing the signing rules;
- (v) corporate decisions of all founders' authorities competent to decide on the relevant investment (e.g. Board of Directors, Supervisory Board or in some cases even the General Meeting);
- (vi) specimen signatures of the directors;
- (vii) a copy of the long-term residence permit/permanent residence permit for the executive members of the Board of Directors (if foreigners) unless the executive members are citizens of an EU/OECD Member State; and
- (viii) the trade licence.

3.3 FORM OF DOCUMENTS

Each signature on a legally relevant document, such as power of attorney or a resolution approving an investment, must be notarised, i.e. the notary must confirm the identity of the signatory. The signatory's authority should be obvious from the document proving the corporate existence of a founder and, if not, it should be obvious from another legally binding document executed by an authorised signatory.

Each document (if in a foreign language) needs to be accompanied by an official (sworn) translation into Slovak.

The Slovak Republic acceded to the Hague Convention on automatic mutual recognition of official documents (the so-called "Apostille Convention") in June, 2001 and the process of its ratification has now been finished. Therefore, in relation to any notarisation and any production of any public document in a jurisdiction which is a party to the Hague Convention, instead of the previously required "superlegalisation" requirement, there is now only the requirement of affixing the seal "Appostille (Convention de La Haye du Octobre 1961)" in the form amended to the Hague Convention.

4. RESTRICTION OF FOREIGN OWNERSHIP

4.1 FOREIGN OWNERSHIP

There are no special restrictions related to the foreign ownership of companies in the Slovak Republic. Indeed, it is specifically provided in the Commercial Code that foreign persons enjoy the same rights and have the same obligations as Slovak persons in relation to the ability of a foreign person to participate in the founding of a Slovak legal entity or to become a partner or sole owner of an existing legal entity.

From 1 May 2004, non-residents are allowed to acquire real estate in the Slovak Republic. However, this does not include land that may be owned solely by the Slovak Republic, land to which the Slovak Republic has a statutory pre-emptive right or agricultural and forested land.

By implementing this amendment, the Slovak Government considers its obligations from the Negotiations under the European Agreement on Accession and other international agreements to be fulfilled. Nevertheless, under the Accession Negotiations with the EU, the Slovak Republic gained a seven year transitional period preventing the EU citizens, with the exception of farmers, from acquiring agricultural and forested land. Following 1 May 2004, EU citizens who have run a farm for at least three years from 1 May 2004 and who have registered for temporary residence under the Foreigners Residence Act No. 48/2002 Coll., as amended, (such individuals qualify as farmers) will be entitled to acquire agricultural land.

5. LONG-TERM RESIDENCE PERMIT

According to Act No. 48/2002 Coll. on Residence of Foreigners, a foreigner is allowed to stay for a long-term period on the territory of the Slovak Republic only after obtaining a temporary residence permit. However, citizens of EU member states are exempt from the requirement for a long-term residence permit as they enjoy the same conditions as Slovak citizens.

Each foreign director of a limited liability company and foreign executive member of the Board of Directors of a joint stock company needs to obtain such a permit prior to the registration of the company with the Commercial Register. This obligation, however, does *not apply* to EU citizens or citizens of OECD Member States. In the case of the incorporation of a company, the permit, if required, has to be obtained prior to the registration of the company in the Commercial Register.

Under Slovak law, a temporary residence permit is issued only for the time necessary to achieve the purpose of the stay of the foreigner in the Slovak Republic, but for no longer than a period of one year.

The period of one year may be extended upon the request of the foreigner. The request for the extension has to be presented to the Foreign Police Department not later than 60 days before the expiry of the permit. Such extension can be granted for a maximum of three years, if the stay of the foreigner is expected to last at least three more years. The temporary residence permit can be extended by up to five years for the purposes of conducting business or for the purposes of employment, if the previous temporary stay of the foreigner on the territory of the Slovak Republic lasted more than 10 years.

The application for a temporary residence permit has to be submitted by the applicant at the Consulate or Embassy of the Slovak Republic in the country where his passport was issued, or in his country of residence. This application must be submitted on an official form. Along with the application, the applicant must also submit his passport, as well as three photographs (3 cm x 3.5 cm).

The following documents, dated not earlier than 90 days before the filing of the application, must be presented with the application:

- (a) documents proving the purpose of the stay (usually an authorised copy of the Memorandum of Association of the company or branch in the Slovak Republic, or an authorised copy of the General Meeting decision on the election or appointment of the foreigner);
- (b) proof of trustworthiness of the applicant from the country of the applicant, as well as an extract from the Slovak Criminal Register;
- (c) documents proving financial means of support for the period of stay, which must amount to a minimum of two times the value of the minimum wage for each month of the stay (according to current legislation, a foreigner needs at least SKK 12,160 for one month's stay). This financial back-up has to be proved for the period of at least one year;
- (d) documents proving medical insurance effective within the territory of the Slovak Republic; and
- (e) confirmation of the accommodation available in the Slovak Republic for the period of the stay (usually a verified copy of a lease agreement proving that accommodation is provided in a flat or house (or possibly a hotel)). Signatures have to be verified by a public notary. In the case of a house, an authorised copy from the Land Register is also required, dated not earlier than 90 days before the filing of the application.

The Consulate or Embassy *may also require* a medical certificate, dated not earlier than 30 days before filing, which proves that the applicant does not suffer from an infectious disease, as well as a document proving that the applicant will not be a burden on the system of social security in the Slovak Republic.

The Consulate or Embassy of the Slovak Republic forwards all applications to the Foreign Police Department.

The legal period allowed for a decision by the Foreign Police Department and the issue of the residence permit is 90 days from the presentation of the complete application with attachments.

Allen & Overy Bratislava, s.r.o.

Carlton Savoy Building Mostová 2 5th Floor 811 02 Bratislava Slovak Republic
Tel +421 (2) 5920 2400 Fax +421 (2) 5920 2424
www.allenoverly.com

Allen & Overy maintains a database of business contact details in order to develop and improve its services to its clients. The information is not traded with any external bodies or organisations. If any of your details are incorrect, please contact joanna.sagnia@allenoverly.com

In this brochure "Allen & Overy" means Allen & Overy Bratislava, s.r.o., Allen & Overy LLP and its affiliated undertakings.

© Allen & Overy Bratislava, s.r.o. May 2004. This note is for general guidance only. Reliance must not be placed or decisions taken on the basis of its contents without specific advice.

Allen & Overy LLP or an affiliated undertaking has an office in each of: Amsterdam, Antwerp, Bangkok, Beijing, Bratislava, Brussels, Budapest, Dubai, Frankfurt, Hamburg, Hong Kong, London, Luxembourg, Madrid, Milan, Moscow, New York, Paris, Prague, Rome, Shanghai, Singapore, Tokyo, Turin, Warsaw

May 2004

