

LEGAL FRAMEWORK OF FOREIGN INVESTMENTS IN SLOVENIA

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Forms of companies

Company Law

The Company Law enacted in 1993¹ follows traditional solutions from European legislation's, particularly from German, Austrian, partly from Italian and French legal surroundings. The above Law is based on the principle - one code for (i) general part of company law (Part one), for (ii) all of the forms of companies (Part two) and for (iii) forms of holding and subsidiary and other forms of bound companies including the form of French Groupement d'intérêt économique. The law deals also with (iv) amalgamations and transformations of companies (Part two). The penal provisions and final provisions are defined in parts three and four.

Harmonization with EC legislation concerning companies. The Law also accepted legislation of the EC and its harmonization intentions from the 1, 2, 3, 4, 6, 7, 8, 11 and 12 Directive of the Council of Ministers of the EC. The Law follows their solutions which are as much as possible included into the wording of the Law, too.

Forms of Companies

The particularity of Slovenian Company Law is the fact, that all forms of companies have the status of legal entities. There are only two exemptions. The economic activity could be also performed by any person, who registrates himself as independent entrepreneur. He doesn't need to fulfill any special condition and can perform every commercial activity, which is not prohibited by the special Law. Tiha družba (the silent partnership, comparable with *Stille Gesellschaft*) is special form of investment in existing company on the basis of contract between the company and silent partner, who can disclose his presents or not. The silent partner participates on the profit of company and obtains other rights and obligations appointed in the contract.

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¹ *Official Gazette of Republic Slovenia*, 30/993, in force from July 10, 1993.

There are four main forms of companies by the Law:

- Druzba z neomejeno odgovornostjo (the commercial partnership comparable with Offene Handelsgesellschaft, *Société en nom collectif*);
- Komanditna druzba (the limited partnership, comparable with *Komanditgesellschaft, Société en commandite*). It could be established in the form of double company, where personal liable companion is legal entity with limited responsibility (comparable with *GmbH & Co, KG*).
- Delniška druzba (the incorporated public company (IPuC), comparable with *Aktiengesellschaft, Société anonyme*; possibility of creating AG+Co KG). The amount of company's share capital must not be less than 3.000.000 Slovenian tolar.
- Druzba z omejeno odgovornostjo (the incorporated private company (iprC), comparable with *Gesellschaft mit beschraenkter Haftung, Société à responsabilité limitée*). The amount of company's capital must be at least 1.500.000 Slovenian tolar².

The companies can perform only economical activities for which they are registered. For some activities the special Law prescribes particular conditions (banks, insurance companies, companies, dealing with securities). The above private companies could be wholly owned by foreign persons or companies or exclusively in the ownership of domestic persons or companies. All intermediary private property solutions are permitted, too. Rights and obligations of all above forms are equalized.

Holding companies, subsidiaries (branch offices), foreign companies

Chapter 7 of the second part of the Law deals with Bound companies. Bound companies are two or more legally independent companies, which relationship is one of the following:

- one company owns the majority in another company;
- one company is dependent upon another company;
- trusts and companies within a trust (*Konzern*);
- two companies have mutual capital shares in each other;
- companies, tied with entrepreneur contracts (*Unternehmensvertrag*)

² The government may raise the amounts as specified above in Slovenian tolar (1 DEM = 71 SIT, as stand in September 1993), if the relation ECU/SIT is substantially changed; Art. 11.

(Art.460).

Following the French experience, the Slovenian Law knows also *Groupement d'intérêt économique* (gospodarsko interesno združenje).

Subsidiaries (in the meaning of branch-office, succursale, Filiale) are dealt with in Chapter 10 of the second part (Art. 561) of the Law. They should be registered, but substantially and procedurally simplified in comparison with companies.

Foreign company is a person registered or seated outside Slovenia. The status of such person, which rights and obligations are equal to those of domestic companies, shall be dealt with in accordance with its domicile legislation (Art. 559).

Foreign investments in Slovenia

General forms of foreign investments in Slovenia

A serious and short resume of such wide problematic like foreign investments is rather impossible since the legislation framework concerning foreign investments is very extensive. Foreign investors' motivation for investments in Slovenia could be based on the following advantages: geographical position, relatively high productivity, rather developed infrastructure, investment bonuses, professional administrative (public servants) staff, cheap and qualified workers. All sectors of economy are opened to foreign investments with few exceptions (i.e. fields of military equipment, rail and air transportation, communications, insurance, publishing, mass media are not allowed to be wholly foreign owned). The legislation can be described as literal and foreign investments promoting-oriented.

Forms of foreign investments. Foreign investments are allowed in one of the following ways:

- wholly owned company,
- contractual joint ventures,
- concessions.

Investments, capital. Foreign investor's share can be in ready money, rights or in nature (equipment). Foreign investor can invest movables or real property. Ready money investments can be in domestic (also conversion of foreign debts) or foreign currency; reinvestments from profits are possible. Import of equipment is free and free of import duties and taxes, if the share of foreign investor represents at least 20% of the total assets of the company and if the agreement exceeds the period of five years. There are no limitations concerning foreign investors' status.

Transferability of profits and repatriation of capital. The Law on foreign investments guarantees free movement of profits and freedom of repatriation of the investment itself. Foreign shareholders can after payments of taxes and other fiscal

duties free and without any limitations transfer profits in foreign currency. The transfer may be executed following the provisions of agreement concerning establishment of the company. The law does not prescribe any obligation concerning reinvestments, but the agreement may use other solutions. There are several income tax relieves if the profits are reinvested.

Proceedings are conducted by Ministry for economic affairs and development and the steps are the following:

- (i) conclusion of sales contract or of act of establishment of company;
- (ii) administrative procedure at the above ministry (documentation and appendices: original act of establishment of company, activities of the company resume, evidences of identities of foreign investor and domestic partner, payment of administrative taxes evidence), and its decision;
- (iii) procedure at the register of companies (district court).

The company acquires its own legal personality with the registration into register of companies. Approximation for timing: maximum 30 days for procedure at the Ministry plus two weeks at the register; can be shortened if both procedures are run parallel. Import of foreign investor's equipment demands a special proceedings³.

Wholly or partially foreign owned company

Wholly or partially foreign owned company may take any of the legal forms allowed by the company legislation, namely the form of commercial partnership, limited partnership, incorporated public company or incorporated private company.

Company can be created with:

- (i) establishment of a new wholly owned company as a domestic legal entity under the same conditions applicable to domestic legal or natural persons;
- (ii) partial or full acquisition of share(s) in a domestic company or
- (iii) creation of a new company where domestic and foreign partners make their equity contributions.

³ Proceedings for (i) establishment of foreign wholly-owned company, (ii) issuing approval for import of foreign investor's equipment, (iii) issuing approval on investment contracts, (iv) issuing approval on formation of joint ventures, issued by the competent ministry published in *Mednarodno poslovno pravo*, April 1992/41, p. 19-22.

Joint Ventures

Joint ventures in Slovenia are dealt with rather known legislation: after acquiring independence Slovenia took over almost the whole federal legislation concerning joint ventures.

Relationships between the partners are of purely contractual nature. The foreign investment itself does not change the legal status and/or ownership structure of the undertaking in which it has been made. The foreign partner acquires the right to participate in the management of company and to share in the profits in the proportion to his invested capital. The share of profits accruing to the foreign partner and the manner of return of his capital are set out in the contract.

Our opinion is, that the form of joint venture as defined in Slovenian legislation cannot be defined as relevant and adequate for franchising as is customary in Western Europe because joint venture (i) is based on investments in the same enterprise made by both parties and because of the fact that (ii) risks and profits are based upon the percentage invested. Namely franchising is not based on the same presumptions: (i) generally the franchisee bears the investment risks and earns the profits, whereas the franchiser receives royalties-based income, payments for goodwill and for services rendered, products sold, etc. The law on joint venture could be applied in the event of creating a master system, as well as for some systems similar to franchising or in systems bordering on franchising.

Proceedings are conducted by Ministry for economic affairs and development and the steps are the following: (i) written application must be lodged by contracting parties / legal representatives / lawyers / other persons in 30 days after conclusion of contract or formation of j-v (designation of competent body, subject of application, request for issue of approval on registration of investment contract, applicant's name, signature and address, plus appendices), (ii) solution of ministry. Complaint possible. Import of foreign investor's equipment demands a special proceedings.

Concessions

Private ownership of natural resources is not allowed. Nevertheless, the investment legislation permits the granting of a concession to a foreign investor for the exploitation of renewable or non-renewable of natural resources or of public goods. Concession may be granted to a foreign investor operating from abroad or through a wholly-owned company in Slovenia. The appointed authority for granting of concession of renewable natural resources or goods in public usage is local authority or the state; the concession for non-renewable resources or goods is granted by the state.

Foreign trade regulation

The most important acts in field of foreign trade are: Law on Foreign Exchange Business⁴, Law on Credit Transactions with Foreign Countries⁵ and Law on Foreign Trade⁶.

Law on Foreign Exchange Business

The present Law on Foreign Exchange Business entered into force on June 25, 1991. The main principle is the internal convertibility of the domestic currency. Residents settle their obligations towards foreign persons in foreign currencies or in domestic through authorized banks⁷. They may sell foreign currencies, resulting from received payments, as far as they have not settled with them immediately their obligations abroad.

Authorized banks⁸ sell foreign currencies to the residents on the foreign exchange market. Most of banks determinate special exchange rate for their business with legal entities and special for the business with the inhabitants. Private exchange offices may also sell the foreign currencies to the inhabitants. The banks and exchange offices are free in forming the exchange rates. Regularly is the rate on the foreign exchange market a little higher in comparison with the rate of Bank of Slovenia⁹. By free purchase of currency the residents can cover their obligations, in connections with all current transactions.

Residents may have foreign exchange accounts for receiving the payment from following transactions:

- (i) performance of capital investment works abroad;
- (ii) transactions involving brokerage in foreign trade;
- (iii) agency, shipping and tourist-agency transactions and transactions involving credit cards issued abroad;
- (iv) registration fees and other similar payments to domestic legal persons which are not involved in business for profit;

⁴ Zakon o deviznem poslovanju, *Official Gazette of Republic Slovenia*, 1/1991.

⁵ Zakon o kreditnih odnosih s tujino, *Official Gazette of Republic Slovenia*, 1/1991.

⁶ Zakon o zunanji trgovini.

⁷ According to the law the residents are persons and legal entities with their residence or sit in Slovenia, as well as foreign persons and legal entities performing business in the territory of the Slovenia.

⁸ Banks with the special license of Bank of Slovenia.

⁹ The difference among different rates is to 5%. In 1994 the exchange rate for inhabitants is under the rate of Bank of Slovenia.

- (v) drawing of foreign currency funds from credits granted by international organizations in order to meet the obligations of domestic users of credits of foreign contractors who were chosen on the basis of international bidding in connection with this credit;
- (vi) performance of the activities in a free zone;
- (vii) the sale of foreign goods in a domestic consignment warehouses;
- (viii) foreign currency investments in a domestic enterprise by a foreign person.

In principle the residents have their accounts in domestic currency. They receive their payments from performing business abroad in domestic currency by authorized banks in two working days following the payment. Residents may compensate their obligations with the foreign persons.

Contracts among residents (assignment, factoring etc.), concerning foreign obligations, are allowed. Unlike companies inhabitants may have their accounts in foreign currency by the authorized bank.

For export the capital abroad a special permission is demanded. The purpose of permission is controlling the export of capital. In 1994 Slovenia also accepted the special law preventing washing of money. On the other side there are no boundaries to transfer abroad profit, which is result of joint venture or investment in Slovenian enterprise. Foreigners may invest in securities in principle without special limits¹⁰.

Law on Credit Transactions with Foreign Countries

This law regulates transactions among domestic and foreign persons, in which one person obtains financial sources for determinate or indeterminate purposes with obligation of paying the interests. Besides mentioned the credit transactions in accordance with the Law are also sale contracts with postponed termination of payment for more than 12 months and all types of guarantees. Detailed rules regulating classification of transactions are issued by Bank of Slovenia.

Domestic persons in sense of this Law are natural persons and legal entities with their seat on the territory of Slovenia performing the economical activity. Domestic person may grant credits to foreign persons under the conditions prescribed by the Bank of Slovenia. There are no special boundaries for domestic persons to sell the goods and services to foreigners on credit.

¹⁰ The privatization rules prohibit foreigners to obtain some types of stocks, issued in process of transforming the ownership of state companies.

Domestic persons may obtain credits abroad in their own name and on their own account or with inter mediation of authorized bank, which may conclude transactions also in its own name and on foreign account. For performing transactions in the field of credit transaction with foreigners the bank must obtain the special permission of Bank of Slovenia. The transaction in which the guarantee of Republic Slovenia is demanded is allowed only under special conditions determined by the Law. The Republic Slovenia can conclude credit arrangements and issue guarantees only on the basis of special law, which is passed by the Parliament individually for every transaction and in which the source of credit repayment shall be specified.

All credit contracts must be in writing. Before conclusion of contract domestic person must check the identity of creditor and source of money. On the request of Bank of Slovenia domestic person must give the information about all facts and details and submit all documentation, concerning conclusion of credit transaction. All credit transaction must be registered by the Bank of Slovenia, which prescribes detailed rules for procedure and form of registration. The non-registered contracts are void on the territory of Republic Slovenia.

Law on Foreign Trade Transactions

The purpose of the Law, entered into force on March 17, 1993 is to liberalize and to simplify foreign trade transactions. The Law regulates:

- (i) special forms of foreign trade operations;
- (ii) special export and import provisions;
- (iii) temporary export and import;
- (iv) performance of service by foreign legal entities;
- (v) performing economic activities abroad.

The main changes in comparison with former foreign trade regime are:

- (i) there is no need to registrant foreign trade transactions and for domestic persons there is no distinction between performing business on domestic and foreign markets;
- (ii) all companies have the same legal status;¹¹
- (iii) the licensing for barter and re-export transactions is abolished.

¹¹ Companies with foreign capital have before some preferences.

Special forms of foreign trade operations are transactions which represent an exception to the general rules. The special provisions is determinate for long term production contracts, equipment leasing, frontier traffic and sale of goods in duty free shops.

The export and import of goods and services are in principle free. The Government may prescribe that export or import of specific goods be carried out to specified quotas or to license. On that basis Government issued the classification of goods according to individual regimes of import and export. The Government may also prescribed special conditions and criteria for export and import of services. The import quotas are not valid for the import of goods representing capital investment in domestic companies in accordance with the contract establishing company or conclusion about increasing of capital.

The temporarily import and export is allowed under the condition of use for the purposes for which the goods were temporarily exported or imported. It is free regardless of whether the export or import is subject to the quota. The permission for temporarily export and import is issued by the Customs office in accordance with regulations of ministry responsible for economic relations with foreign countries.

Goods to be imported must comply with standards and technical and quality norms, if they are prescribed. Prohibited is also import of goods which trade is prohibited in country of their origin. Other prohibition may be determinate by the regulations of competent ministry. The first two limitations are not valid in custom free zones.

Foreign persons may perform services under condition of fulfilling all requirements prescribed for performing. Furthermore, they must report to the tax authority the initiation of the execution of specific services. The Government may prescribe for them also further conditions and criteria, such as reciprocity, obligation of establishing legal entity on the territory of republic Slovenia, employment of Slovenian residents. The foreign exhibitors on the exhibitions in Slovenia may sell their items for domestic currency without limitation.