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State aid in the Slovak Republic

Lubos Frolkovic and Petra Hollá
Wolf Theiss
Bratislava

Managers of companies in developed economies are spending many hours thinking about the benefits of relocating to Central and Eastern Europe. With the expansion of the EU there are almost no political risks, so chief executive officers can pull out their calculators and start counting.

The most decisive factors are generally considered to be low labour costs and low taxes. Slovakia has been winning over its neighbors due to its flat tax rate of 19%, no double taxation, and a 0% dividend tax. However, some investors are also influenced by financial and other advantages awarded by local governments to a company (state aid). If an investor wants to benefit from any state aid, it must comply with the criteria stipulated in European regulations, the Slovak Act on State Aid, and the Slovak Act on Investment Incentives.

Forms of state aid

The Slovak Act on Aid distinguishes between direct and indirect forms of state aid. The direct form of state aid consists mainly of: (i) subsidies, contributions, and grants; (ii) coverage of interest paid by the recipient of the state aid, or a part thereof; (iii) coverage of part of a debt payable by the recipient of the state aid; and (iv) recoverable financial support. The indirect form of state aid consists of: (i) the issuance of a state or bank guarantee; (ii) tax payment allowances; (iii) the sale of property owned by the state or a municipality for a lower than market price; (iv) free or subsidized advisory services; and (v) the rescheduling of a tax payment.

The government can only grant state aid if it is first approved by the European Commission (except in a few specific cases).

Investment incentives

In accordance with the Guidelines on National Regional Aid (98/C 74/06), the Slovak government provides investors with a specific form of individual state aid, namely investment incentives, to encourage initial investments and thus the creation of new jobs. Pursuant to Slovak law, investment incentives are aimed at initial investment that creates new jobs, and they are also used for the acquisition of tangible investment assets and intangible assets required to produce or render services; or to expand production or purchase an enterprise.

Investment incentives are provided in the following forms: (i) corporate income tax relief; (ii) contributions for the creation of new jobs; and (iii) contributions towards retraining staff hired to fill newly created jobs. To qualify for incentives, investments must fulfil the following conditions:

- They must be for: (a) the opening of a new facility to launch new production or services; (b) the expansion or upgrade of an existing production facility or existing services; (c) changes to the range of produced goods; (d) fundamental changes to the production process; or (e) the purchase of an enterprise or a part thereof from a businessperson in financial difficulties.
- Sk400 million (€12 million) or more must be spent on procuring tangible or intangible fixed assets, of which at least Sk200 million must be financed from the capital of the legal entity that has applied for investment incentives (in regions with unemployment of at least 10%, the above sums are decreased by half).
- The business specified in the investment incentives application must generate at least 80% of the aggregate revenues.
- The tangible or intangible fixed assets referred to above must be procured, and the business referred to in the application launched, within three years of the date of the decision to grant investment incentives.

The Ministry of Economy assesses eligibility for investment incentives in cooperation with the Slovak Investment and Trade Agency, which prepares a report on the application. Thereafter, the Ministry of Economy submits the application for the Commission's approval. If the Commission approves the application, then the Ministry of Economy submits the application to the Slovak government. When deciding whether to approve the proposal, the government considers the importance of the investment to the national economy and the impact of the investment incentives on competition in the relevant market of the Slovak Republic. However, investors should note that they have no statutory entitlement to incentives.

After Slovakia's accession to the EU in May 2004, the country harmonized the rules on providing state aid with EC legislation. Therefore, all of the above-mentioned national regulations comply with the state aid rules laid down at EU level (in particular articles 87 and 88 of the EC Treaty).

Capital markets

Recommended firms

Tier 1

Allen & Overy
Linklaters
White & Case

Tier 2

Cechová & Partners
Cernejová & Hrbek
Csekés Világi Drgonec & Partners
Freshfields Bruckhaus Deringer
Squire Sanders & Dempsey
Wolf Theiss

The Slovak capital markets are not among the most active. While this is unlikely to change much in the next few years, top-tier firms are

spending time advising clients in connection with the International Swaps and Derivatives Association (Isda) and Government Management Reform Act (GMRA) master agreements. This should provide a boost to the securities and derivatives markets, which are fairly small and lack significant investments.

It will also be interesting to see how the continued regional expansion by central and eastern European companies will affect workloads. Leading law firms can expect a part of any resultant increased activity in the next year.

On the whole, the busiest capital markets firms are the international firms. Market insiders note that White & Case in particular seems to be busier than everyone else.

Allen & Overy

Allen & Overy's capital markets practice consist of only partner Hugh Owen and Patricia Olsovská, yet the firm is one of the most active players in this sector. In the last 12 months, the duo helped Isda prepare a netting opinion for Slovakia. On the equity side, the firm advised York Capital Finance on the acquisition of a significant minority stake in SkyEurope Holding. The deal included the purchase of equity shares and convertible bonds for €38.8 million and a concurrent rights offering that raised €17.5 million.

Leading lawyers

Patricia Olsovská
Hugh Owen

Linklaters

Linklaters is another firm with a relatively active capital markets practice. In the past year, Linklaters advised SkyEurope Airlines on continuing issues related to the company's 2005 joint listings on the Vienna and Prague stock exchanges. The offerings were a first for a Slovak company offering shares through an international initial public offering (IPO). The firm also advised natural gas storage company Nafta on the de-listing of its global depository receipts from the Luxembourg Stock Exchange.

Leading lawyers

Jason Mogg
Daniel Torsher

White & Case

White & Case is widely regarded as one of the best financial legal firms in the Slovak Republic. Michal Dlouhy, who one competitor called "the capital markets expert" and

who also covers the Czech Republic, leads the team.

Activity in the Slovakian capital markets sector is light, but White & Case always seems to keep busy in this area. One of the year's highlights was its advice to joint lead managers Morgan Stanley and Société Générale in the placement of €1 billion 4.37% notes due 2017 issued by the Slovak Republic. The notes were part of the government's €2 billion Euro medium term notes programme.

International investment fund AIG Global made a public offering of its unit shares in the Slovak Republic; White & Case guided the fund through the registration and procurement process. The firm also conducted an analysis on prospective investments into equity and debt securities for investment bank Dresdner Kleinwort.

Continuing with its investment clients, White & Case advised Franklin Templeton Investment Funds in connection with obtaining a public offering of its unit shares in the Slovak Republic.

The Slovakian commercial bank Slovenská Sporiteľňa consulted White & Case on issues relating to the 1992 Isda Master Agreements and GMRA agreements with various banks and financial institutions.

Leading lawyers

Ivo Bárta
Michal Dlouhy
Juraj Fуска

Freshfields Bruckhaus Deringer

Paul Luiki heads the capital markets area of Freshfields Bruckhaus Deringer and has a "decently busy" practice, according to the firm's peers. On the deals front, Freshfields advised the International Capital Market Association on the effectiveness of the netting provisions of the GMRA in relation to the Slovak Republic. Freshfields also represented Japanese client Mitsubishi on the GMRA. The firm also helped Goldman Sachs International with the perspective sale of principal protected notes (PPN) on the secondary market.

Leading lawyers

Paul Luiki

Wolf Theiss

Lubos Frolkovic and Erik Steger head the Bratislava office of Wolf Theiss in the Slovak Republic. The firm advised regular client Erste Bank on the establishment of its €5 billion structured notes programme in Slovakia and in other central and eastern European countries.

Erste Bank also turned to Wolf Theiss in the issuance of a \$26.8 billion debt programme in Slovakia, the Czech Republic, Hungary, Poland, Austria and Luxembourg. Elsewhere, the firm advised real-estate fund Immoeast on its €2.75 billion capital increase, and updated its prospectus in the Slovak Republic and other regional jurisdictions.

At the time of this writing, Lubos Frolkovic was representing Biotronik Vertriebs on the recovery of receivables for the industrial company.

Leading lawyers

Lubos Frolkovic
Erik Steger

Banking and project finance

Recommended firms

Tier 1

Allen & Overy
Linklaters
White & Case

Tier 2

Cechová & Partners
Cernejová & Hrbek
Csekes Világi Drgonec & Partners
Squire Sanders & Dempsey

Tier 3

Freshfields Bruckhaus Deringer
Jaroslav Ruzicka CMS Cameron McKenna
Weinhold Legal

The Slovak Republic's banking market is more active than its capital markets, though still not at the level of the neighbouring Czech Republic. For one thing, a lot of the banks are not as keen to use external legal counsel due to pricing pressures.

Export financing has become an important banking service, and banks such as Citibank Slovakia are working on these types of deals. The international law firms are the ones benefiting the most from advising banks on these transactions.

Another banking hotspot is real-estate financing. There were a record number of real-estate acquisitions last year in everything from administrative buildings to industrial projects, shopping malls and residential projects. Most of the ranked firms were active in this area, which is beginning to have a positive effect on the economy.

Energy-related projects such as greenfield development projects are an emerging trend; environmental issues are as important a topic in Slovakia as in many other countries. This is an area that many firms are hoping will lead to new business relationships.

Allen & Overy

Igor Pálka heads the banking and finance department at Allen & Overy, and is regarded as the “one of the best banking lawyers” in the country. “A&O has a well rounded practice and a good client base, which generates a lot of work,” according to one peer. Another said: “It is still the best banking firm in the country.”

Allen & Overy advised a European bank on a syndicated loan facility to a steel company. Other recent highlights include its advice to two banks on structured finance deals with large foreign direct investors. The firm also acted for a bank on an amortizing term facility granted to a state company.

In regulatory matters, the firm advised a renowned bank on the trading of investment instruments and a financial company on the provision of consumer credit products.

The firm has a strong project finance department as well, and in the past year Allen & Overy advised Slovintegra on its investment in a company developing an 80MW cycle plant in the Levice industrial park.

The firm has also been assisting HVB Bank on the financing of the development of the Westpoint logistic centre. Finally, it advised Vseobecná Úverová Banka (VÚB) on the increase of its export credit facility available to Banco Nacional de Cuba for the reconstruction of the Santa Cruz power station.

Martin Magál, specialist in syndicated lending and project finance, returned to the firm after a stint at VÚB as a general counsel. He was promoted to partner in May 2007.

Leading lawyers

Patricia Olsovská
Igor Pálka

Linklaters

Linklaters has always had an edge in the banking and finance sector for two reasons – its unique regional presence and the quality of its lawyers. Managing partner Daniel Torsher is a highly experienced lawyer with a proven track record; he and partner Patrik Bolf have had another impressive year.

Recent highlights include the assistance Linklaters provided to Ballymore Properties on a €320 million syndicated loan facility for its Slovak subsidiary, Ballymore Eurovea; the firm also participated on a group restructuring project.

Patrik Bolf and two Linklaters associates are representing client SkyEurope Airlines on an aircraft leasing and financing transaction for a number of Boeing 737s that the airline is acquiring.

Cross-border work has also increased tremendously recently, and the firm was acting for Polish BRE Bank on the establishment of its Slovak operations.

The firm has also been acting for power company Enel on the completion of units three and four of the Mochovce nuclear power plant. Linklaters has also been advising Samsung Electronics on a greenfield LCD display manufacturing project. The firm is also participating in a deal for the construction of a hard coal power plant on behalf of its German power and natural gas utility client, RWE.

Leading lawyers

Patrik Bolf
Daniel Torsher

White & Case

White & Case had another successful year, mainly because of its strong relationships with the some of the biggest banks in the region. Partners Ivo Bárta and Marek Staron advised Citibank Slovakia on the bank's first export financing deal, to Nuh Enerji Elektrik Uretim, a wind energy project in Turkey.

White & Case worked with CSOB, the local subsidiary of Belgian KBC Bank, on a €150 million financing for the multifunctional River Park real-estate development project in Bratislava. The firm has a continuing relationship with CSOB, advising the bank on regulatory and corporate issues.

Real-estate financing is extremely active in the country and White & Case had its fair share of activity in the last year. The firm acted for Erste Bank in a €50 million financing to Trigranit for the development and construction of Lakeside Park, a commercial centre in Bratislava. White & Case is also in the process of representing VÚB in a €31 million financing to Zeon to build a shopping centre in the city of Nitra.

One of the firm's more innovative land acquisition deals was the development of a logistics centre in the town of Senec for American hedge fund DB Zwirn and its local partner Randion.

Leading lawyers

Ivo Bárta
Marek Staron

Squire Sanders & Dempsey

Squire Sanders & Dempsey has a strong presence in central and eastern Europe, and has been a consistent performer in the Slovak Republic for the past 15 years. The firm has a longer association in Slovakia than many of

the international firms that now have a presence in the country.

The firm confirmed its presence in the rankings this past year, advising New Emerging Cities Fund in acquisition financing from VÚB. The proceeds were used to purchase an industrial park in the western part of the country.

Hild Group, a Hungarian financial services company, retained Squire Sander Dempsey for advice on issues concerning mortgage-backed annuity products. The firm also negotiated with Merrill Lynch for a substantial line of credit on behalf of Hild. The American investment bank also acquired a 20% equity stake in Hild Group.

Other highlights include advising Slovak bank Slovenská Sporiteľňa with the formation of a private-equity fund.

Leading lawyers

Kevin Connor
Andrew Sandor

Freshfields Bruckhaus Deringer

The banking and finance department of Freshfields Bruckhaus Deringer continued to represent two of the firm's long-standing Italian clients in the past year – UniCredito and Sanpaolo IMI. The firm acted for UniCredito on regulatory issues relating to the bank's takeover bid for Bayerische Hypo- und Vereinsbank. For Sanpaolo IMI, Freshfields worked on notification requirements in connection with the merger between Banca Intesa and Sanpaolo IMI under Slovak Law.

Leading lawyers

Paul Luiki

Jaroslav Ruzicka CMS Cameron McKenna

The office of Jaroslav Ruzicka makes its debut in our rankings this year after recommendations from peers and clients. Due to the firm's association with CMS Cameron McKenna and CMS Reich-Rohrwig Hainz, which have excellent regional presence, the firm's Bratislava office has been generating a lot of work in recent years. “It has one of the most efficient real estate practices in Slovakia and the surrounding region,” according to one competitor. Another said: “Real-estate is one area the firm excels in.”

The firm recently advised KBC Bank on a €300 million financing for the development of a shopping centre. In a similar deal, the firm represented client Eurohypo in obtaining acquisition financing for a shopping centre in the town of Senec. The firm also advised Bank

Austria Creditanstalt on a financing for a Slovak-Austrian joint-venture company.

Leading lawyers

Dana Nemčíková

Weinhold Legal

Weinhold Legal had a strong year and is becoming a more potent force in banking and finance in the Slovak Republic. Rastislav Kuklis leads this practice area in Bratislava, and is considered a rising star in the market.

The firm was involved in several financing deals. Kuklis and his team advised HVB Bank in a syndicated loan arrangement for the Fezko Group in October 2006. Weinhold Legal assisted the Anglo-Irish Bank in the financing of a series of Slovak and Czech acquisitions by a Scottish real-estate investor.

Notable banking clients include Citibank, Commerzbank, Erste Bank, ING, Komerční banka and Provident Financial.

Leading lawyers

Rastislav Kuklis

Mergers and acquisitions

Recommended firms

Tier 1

Allen & Overy

Linklaters

White & Case

Tier 2

Cechová & Partners

Cernejová & Hrbek

Csekés Világi Drgonec & Partners

Squire Sanders & Dempsey

Tier 3

Dedak & Partners

DLA Weiss-Tessbach

Freshfields Bruckhaus Deringer

Jaroslav Ruzicka CMS Cameron McKenna

Peterka & Partners

Weinhold Legal

The Slovak M&A market paints a more interesting picture than the financing markets. It has been quite busy, with forecasts for continued activity in the near-future. Private-equity investors have recently entered the market, becoming a new force in M&A. The deals their investments have created have led to increased work for the leading firms, raising levels of optimism to new heights.

“This has been a record year,” a partner at a leading firm said. “Privatization work has been almost fully replaced by a steady flow of medium-sized and big deals.”

Through global M&A activity, subsidiaries of European and international companies are entering the Slovak market. Financial law firms are providing companies with continuing corporate and commercial support to deal with eventualities.

One of the highlights of the year so far was the €20 billion merger between local banks HVB Bank Slovakia and Unibanka to create UniCredit Bank Slovakia, one of the biggest takeovers in the region.

Allen & Overy

“Allen & Overy Bratislava gives good practical advice, and is effective in negotiating with counterparts,” said one client of the firm. “I can’t speak Slovak but they make up for the language barrier.”

M&A is a specialty area for Allen & Overy, and the firm enjoyed a strong year. The country’s transactional market is coming of age, boosted by the emergence of private-equity investors.

The firm acted for York Global Finance II in the acquisition of a significant minority stake in SkyEurope Holding. The €38.8 million deal involved the subscription of a combination of equity shares and convertible bonds. There was also a simultaneous rights offering for existing investors which raised another €17.5 million.

Allen & Overy advised Palma Tumys when the food manufacturer sold off a 72% equity stake to investors at Slavia Capital Group. When AIG New Europe Fund disposed of its 36% minority stake in Orange Slovensko, it turned to Allen & Overy for advice. A wholly owned subsidiary of France Télécom was the eventual buyer.

In another standout deal, the firm acted for Central European Media Enterprises (CME). The Bermudan broadcaster acquired an 80% controlling interest in local company TV Markíza. Allen & Overy also represented wireless carrier Telenor in the divestiture of 100% of its holdings in two Slovakian subsidiaries, Nextra and Telenor Networks.

Leading lawyers

Hugh Owen

Igor Pálka

Linklaters

Linklaters has traditionally dominated the Slovak M&A market, and this year was no different. Partners Daniel Torsher and Patrik Bolf led a team of four associates advising French insurer Axa for the acquisition of a minority stake in an insurance company.

Other acquisitions the firm participated in were Gold Fields’ takeover of a mining prop-

erty group, and British private-equity fund Aggmore’s interest in acquiring a 100% stake in a Slovak development company. Linklaters also represented private-equity fund Capitalia Sofipa on its acquisition of Roen Group.

Leading lawyers

Patrik Bolf

White & Case

White & Case returns to the top tier after another year of steady performances. Marek Staron, one of the best M&A lawyers in Slovakia, co-heads the M&A practice with Ivo Bárta. The firm appeared in a series of headline-grabbing transactions, such as its representation of Telefónica O2 as the Spanish telecoms operator made acquisitions in the Slovak Republic. White & Case is also representing UniCredito Italiano in the merger between HVB Bank Slovakia and Unibanka.

Over the past year, the firm has acted for Abertis Telecom in the company’s tender offer for the radio communication business of Slovak Telecom. Marek Staron and his team also guided the European Bank for Reconstruction and Development in the sale of its shares in Slovak aluminium manufacturer Svalco to Penta Investments.

Mittal Steel has been using White & Case as counsel to tender offers to acquire two Slovak companies, SMTL and Livinit. The firm also advised Mittal in the steelmaker’s takeover of a portfolio of receivables from bank loans provided to another Slovak company.

The client list for White & Case includes companies such as Cez, Deutsche Telecom, Electricite de France International, Mazda, Skanska, and Deloitte.

Leading lawyers

Ivo Bárta

Marek Staron

Squire Sanders & Dempsey

Squire Sanders & Dempsey is a “top-notch firm,” according to a rival, while another said he has had “a good experience” dealing with the firm. Peers mentioned the names of Kevin Connor, Julian Juhasz and Peter Suba as the firm’s leading lights. “They have done a great job for the firm, over the years,” said a competitor.

For the past year, the firm has been advising the Slovak government on its attempt to privatize the state-owned Rail Cargo Slovakia, part of the liberalization strategy of the transport ministry. Squire Sanders & Dempsey assisted Dana Corporation in the divestiture

of its business conducted through a Slovak subsidiary.

The firm acted for CA IB as the company's merchant banking division acquired a minority stake in CS Cargo, a logistics company with subsidiaries in the Slovak Republic and Russia. Squire Sanders has represented SkyEurope Airlines in a variety of commercial and corporate matters.

Peter Suba and his team represented Parker Hannifin in the sale of its manufacturing subsidiary in central Slovakia.

Leading lawyers

Kevin Connor
Julian Juhasz
Peter Suba

Freshfields Bruckhaus Deringer

Paul Luiki leads the five-lawyer M&A team for Freshfields in Bratislava. The well regarded partner has been praised for his work by his peers and clients alike.

Freshfields represented one of the main bidders in the 2006 privatization of ZSSK Cargo. The firm also advised Tesco Holdings on corporate matters, from due diligence and on through to the company's acquisition of the Carrefour hypermarkets in Slovakia. Weatherford Artificial Lift Systems also used the firm's services when the industrial wholesaler acquired a Slovak cable manufacturer.

Leading lawyers

Paul Luiki

Jaroslav Ruzicka CMS Cameron McKenna

Jaroslav Ruzicka in association with CMS Cameron McKenna and CMS Reich-Rohrwig Hainz makes its way into our rankings after a busy 12 months in 2006 and 2007. The firm advised Österreichische Post on its acquisition of Slovak direct mail company Kolos. The firm also represented Dansk Eternit Holding on the building products manufacturer acquisition of a local distributor of building materials in Slovakia.

At the time of writing, RWA Beteiligungen had recently hired the firm to advise the German company's acquisition of Slovak company Sempol.

Leading lawyers

Dana Nemčíková

Peterka & Partners

Peterka & Partners enters the *IFLR1000* rankings for the first time after participating in several important transactions last year, as well

as receiving positive feedback from its peers. The M&A practice is led by partner Premysl Marek after Ondrej Dusek left the firm in January 2007. The firm acted for French water services company Veolia Eau in its acquisition of Stredoslovenská Vodárenská Prevádzková Spoločnosť, a water production and distribution company. Peterka & Partners also worked on the intra-group merger of I Wittmann & Syn and Zvolenska Mliekaren for Senoble, a European dairy producer.

Leading lawyers

Premysl Marek

Weinhold Legal

Weinhold Legal works mainly in medium-sized transactions and has started to increase its presence in the Slovak market. The firm advised Slovak Telecom in the sale of its radio communication business. Another Weinhold deal that caught the attention of the market was its representation of ProLogis Group on several commercial real-estate acquisitions in the Slovak Republic. The firm offered ProLogis due diligence in addition to handling acquisition contracts.

The firm has also recently provided assistance to Enel. The Italian energy company was the winning bidder in the privatization of Slovenské Elektrárne, an electricity producer.

Weinhold Legal acted for Wiko in the company's Slovak joint venture with a company from Matador Group. The firm also advised Finnish steel company Rautaruukki on the acquisition of a Slovak company.

Leading lawyers

Tomás Cermák
Róbert Kováčik