

SLOVAK REPUBLIC

Investment rules of the world

About

At DLA Piper, we have one of the largest finance and projects teams in the world with more than 600 dedicated lawyers and an established local law firm network. We share knowledge and skills in debt instruments, debt securities, funds, derivatives and portfolios, as well as energy, infrastructure and other projects, across Europe, the Middle East, Africa, Asia Pacific and the Americas.

When and wherever we work for you on finance and investment deals and projects, you can rely on our international platform; we are backed by the network and resources of one the largest and most-connected business law firms in the world.

We enjoy being part of your team, bringing experience across sectors, borders and financial products, supporting you on first-of-a-kind deals, in new markets and to grow.

With global perspective, we can help you to realize your financial strategy in whichever markets you do business.

Investment Rules of the World

With input from across our global network, this guide covers key legal topics for different financial activities and projects and gives you an overview of the points you may consider when initially looking at financing or investing in particular jurisdictions. Please [contact us](#) if you would like to discuss any legal issues or solutions for your business. We also welcome your feedback about this guide via investmentrules@dlapiper.com.



Slovak Republic

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Capital markets and structured investments

Issuing and investing in debt securities

Are there any restrictions on issuing debt securities?

There are restrictions on offering and selling debt securities under both Slovak law and EU law.

Any securities, including debt securities can be traded on the stock exchange market only one day following the publication of the prospectus, or offered to the public only after an approved prospectus has been made available to the public.

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What are common issuing methods and types of debt securities?

The most common types of debt securities issued in Slovakia are bonds. You can mainly deal in the following types of bonds:

- state bonds;
- municipal bonds;
- employee bonds;
- subordinate bonds; and
- ensured bonds (bank bonds as a specific kind of ensured bonds).

Furthermore, treasury bonds are often issued by the state, usually via the [National Bank of Slovakia](#). The maturity of the treasury bonds is typically shorter compared to government bonds, and cannot be longer than one year.

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What are the differences between offering debt securities to institutional / professional or other investors?

The [Slovak Securities Act](#) makes no distinction between professional and other investors for the purposes of public offering of securities.

However, the obligation to publish a prospectus does not apply to an offer which is addressed solely to qualified investors (ie professional clients).

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When is it necessary to prepare a prospectus?

Under the Slovak Securities Act the obligation to publish a prospectus shall apply to public offers of securities if the total value of each offer in the European Union, calculated over a period of 12 months, exceeds EUR1 million.

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What are the main exchanges available?

The [Bratislava Stock Exchange](#) (*Burza cenných papierov v Bratislave, a.s.*) is the responsible authority for trading on regulated markets. Regulated markets are divided into the:

- Regulated Free Market; and
- Listed Securities Market.

The establishment and position of the [Bratislava Stock Exchange](#) in the process of trading of securities is governed by the [Stock Exchange Act](#). The Stock Exchange Act also regulates the operation and dissolution, the trading of securities and other financial instruments, and the supervision of the [Bratislava Stock Exchange](#).

The Regulated Free Market

The Regulated Free Market is a stock exchange market. The traded securities and their issuers must meet the requirements provided under the [Stock Exchange Act](#). A security may be admitted to the Regulated Free Market only in the following circumstances:

- The security is a financial instrument.
- The security is a fungible security.
- The security's transferability is not limited.
- The security is a book-entry security.
- Securities issued by issuers located in another member state which permits the admission of definitive securities on the listed securities market may be admitted to the Regulated Free Market, provided that the Bratislava Stock Exchange discloses that the other member state permits the admission of definitive securities on its listed securities market.
- The security is issued in accordance with the law of the country where it was issued and the issuer complies with the applicable requirements for the issuance of securities under the laws of the country in which the issuer has its registered office.
- Bratislava Stock Exchange is not aware of facts which, if the security is admitted to trading on a regulated market, could cause damages for investors or pose a serious threat to their interests or be contrary to public interest.
- A prospectus has been approved and published, unless provided otherwise.
- The issue price of the security has been fully paid up.
- The security's subscription was successfully completed based on a public offer, or the period during which it was possible to receive applications for subscription of securities has lapsed (this does not apply to bonds which are issued continuously when the deadline for subscription is not fixed).
- Other requirements provided under the Act on Stock Exchange or a separate Act must also be considered.

The Listed Securities Market

The Listed Securities Market is a stock exchange market where the traded securities and their issuers meet the conditions provided under the Act on Stock Exchange described above, as well as separate conditions provided under the [Stock Exchange Act](#), depending on the type of security (bonds or shares).

A bond may be admitted to the Listed Securities Market only if the bond and its issuer satisfies the above stated conditions and the value of its issuance as determined by the issue price of the bonds is less than EUR200,000.

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Is there a private placement market?

Slovakia does not have an active private placement market yet.

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Are there any other notable risks or issues around issuing or investing in debt securities?

Issuing debt securities

Issuers are required to take responsibility for prospectuses, as well as for information provided in the documents promoting the issue of debt securities. Misleading statements in, or omissions from, any applicable offering document can give rise to both civil liability for damages, as well as criminal liability.

Investing in debt securities

No specific issues.

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Establishing and investing in debt / hedge funds

Are there any restrictions on establishing a fund?

Generally

Establishing, operating and abolishing a fund are regulated by the [Act on Collective Investment](#) and subject to supervision of the [National Bank of Slovakia](#).

Collective Investment

The regulations apply to activities undertaken in relation to collective investment which is a business activity comprising the following arrangements:

- collecting funds from investors in order to invest in accordance with a defined investment policy for the benefit of those persons from whom funds were collected;
- if the funds are collected from the public, collective investment can be carried out only on the basis of risk spreading;
- collective investment can be carried out only by creating a domestic collective investment entity, or by collecting funds through the offering of securities or investing in a foreign collective investment entity.

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What are common fund structures?

Common forms of funds include:

- open-end mutual funds/open-end foreign collective investment entities;
- close-end mutual funds/close-end foreign collective investment entities;

- standard funds (which comprise of mutual funds or investment funds with variable capital, for which funds are collected through public offer and with the purpose of investing the funds collected in transferable securities and other liquid financial assets on the basis of risk spreading);
- special funds (which comprise of mutual funds or investment funds with variable capital, for which funds are collected through public or private offer); and
- alternative investment funds, which are further divided into public special funds and special funds for qualified investors.

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What are the differences between offering fund securities to professional / institutional or other investors?

Raising funds on the basis of a public offer of securities or equity participation in the domestic investment funds with variable capital, provided these domestic investment funds are companies or cooperatives established in the Slovak Republic, is prohibited. Distribution of securities or equity participations in domestic investment funds with variable capital, provided these domestic investment funds are companies or cooperatives established in the Slovak Republic, can be carried out only by private offers and only addressed to professional investors.

Qualified Investors Fund

A Qualified Investors Fund is a special fund for qualified investors and domestic investment funds, which is a company or a cooperative established in the Slovak Republic. The establishment of a Qualified Investors Fund is not subject to licensing according to the [Act on Collective Investment](#).

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Are there any other notable risks or issues around establishing and investing in funds?

Establishing funds

Establishment and operation of a fund, except for a Qualified Investors Fund, is a regulated activity under the [Act on Collective Investment](#) rules and is subject to licensing and supervision by the [National Bank of Slovakia](#).

Investing in funds

No specific issues.

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Managing and marketing debt / hedge funds

Are there any restrictions on marketing a fund?

Generally in Slovakia, offering securities is either covered by the [Act on Collective Investment](#) or by the [Act on Securities](#).

Undertakings for Collective Investments in Transferable Securities (UCITS)

In Slovakia, standard funds, which can be mutual funds or investment funds with variable capital, are considered UCITS. A management company which decides to distribute securities of the standard fund it manages in another member state, is required to notify its intention to the [National Bank of Slovakia](#) prior to the commencement of such activity.

Alternative Investment Funds (AIFs)

Under the [Act on Collective Investment](#), which implemented the respective provisions of the [Alternative Investment Fund Managers Directive](#), distribution means direct or indirect offering of securities or equity participations in the collective investments entities, or their placement with the investors who have permanent residence or seat in the member state, at the initiative of the person managing this collective investment entity, or on its behalf.

A management company, which decides to distribute securities or equity participations in alternative investment funds or European alternative investment funds it manages in another member state, is required to notify its intention to the [National Bank of Slovakia](#) prior to the commencement of such activity.

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Are there any restrictions on managing a fund?

Fund management in Slovakia is regulated under the [Act on Collective Investment](#). Any legal or natural person is prohibited from carrying on regulated activities, such as fund management, without authorization, unless a statutory exemption applies.

Full registration with [National Bank of Slovakia](#) involves a significant authorization process – three-to-six months from completion of the application, which must include information on personnel and organizational prerequisites for operation, internal policies and procedures, etc.

Subject to the requirements provided under the [Act on Collective Investment](#), a company who wishes to manage alternative investment funds may be exempted from the full licensing process. Such exemption applies for instance in case of a person, who directly or indirectly through a company to which the person is personally linked or in a controlling relationship, manages portfolios of alternative investment funds, the total value of which is:

- under EUR100 million including assets acquired through leverage; or
- under EUR500 million where assets are not leveraged and investors have no redemption rights for five years.

In such case, the manager of investment fund must still be registered with the [National Bank of Slovakia](#).

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Entering into derivatives contracts

Are there any restrictions on entering into derivatives contracts?

Unless an exemption or exclusion applies, a person entering into a derivatives contract by way of business in Slovakia (such as a financial agent) will ordinarily have to be authorized under the [Act on Financial Intermediation and Financial Advisory Services](#).

This applies:

- if the transaction is one of the specified activities within the provision of financial intermediation as set out in Section 2 of the [Act on Financial Intermediation and Financial Advisory Services](#); or
- in case of securities dealer which will ordinarily have to be authorized under the [Act on Securities and Investment Services](#) if the transaction is one of the specified activities within the provision of investment services as set out in in Section 6 of the [Act on Securities and Investment Services](#).

Both financial intermediation and provision of investment services include activities such as:

- forwards;
- futures;
- swaps; and
- options.

The [European Market Infrastructure Regulation](#) applies to all derivative transactions and requires transactions to be reported to regulators, for transactions between dealers to be cleared or subject to other risk mitigation techniques such as initial margin and variation margin requirements.

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What are common types of derivatives?

Pursuant to the [Act on Securities and Investment Services](#), all of the following main types of derivative contracts are recognized under Slovak law:

- forwards;
- futures;
- swaps; and
- options.

The value of the derivative contracts is based on the value of the underlying assets. The main classes of underlying assets in Slovakia are:

- securities;
- interest rates;
- exchange rate indices of funds held in euros or a foreign currency;
- securities contracts; and
- commodities.

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Are there any other notable risks or issues around entering into derivatives contracts?

Since the global financial crisis in 2007-to-2008, derivatives and particularly over-the-counter derivatives have attracted significant regulatory attention. The European Commission has sought in particular to:

- enhance transparency by requiring the provision of comprehensive information on over-the-counter derivative positions;
- reclearing; and
- improve the management of operational risk by increasing the standardization of derivatives contracts.

As a result, the derivatives market has seen and continues to see the introduction of a significant amount of new regulation and this has led to substantial compliance costs for market participants.

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Debt finance

Lending and borrowing

Are there any restrictions on lending and borrowing?

In general, lending and borrowing in Slovakia are regulated by the [Civil Code](#) (which regulates loans) and by the [Commercial Code](#) which regulates credits). Special regulation may apply with respect to special types of loans or credits, such as, for instance, consumer credits.

Lending

Provision of loans or credits does not fall under the supervision of the [National Bank of Slovakia](#), unless a loan or credit comes from financial resources acquired from third persons on the basis of a public call. In these circumstances, and assuming none of the available exemptions apply, a lender will need to be authorized by the [National Bank of Slovakia](#) to conduct such business.

Public call means any announcement, offer or recommendation made by any person to collect funds for their own benefit or the benefit of a third party done by any means of publication, including personal contact with several persons, whether with individual persons or simultaneously with multiple parties. An announcement, offer or recommendation made solely through personal contact and to no more than ten persons is not considered a public call.

Housing loans provided to consumers are regulated by the [Act on Housing Loans](#) which regulates the information that needs to be provided to the consumer before the conclusion of the contract for a housing loan, the process of credit assessment, the consequences of breaching the obligations of the parties, as well as the obligations of financial agents and financial advisors.

Consumer loans and credits

Consumer loans and credits are subject to the requirements provided in the [Act on Consumer Credits and Other Credits and Loans for Consumers](#) which sets the requirements for:

- the information that needs to be provided to the consumer before the conclusion of the contract for a housing loan;
- the information that may be used in advertising consumer loans and credits;
- the process of credit assessment;
- the obligations of the creditors, as well as the information contained in the list of creditors which is maintained by the [National Bank of Slovakia](#);
- the form and content requirements applicable to consumer credit contracts and the consequences of non-compliance;
- the mechanism for calculation of the annual percentage rate; and
- the obligations of the financial agents and financial advisors.

Mortgage loans and municipal loans

Housing loans are loans provided only to consumers for the purposes of purchasing residential property. Mortgage loans are generally provided on the basis of the Act on Banks and may be granted to any party (provided that the conditions stipulated in the Act on Banks are fulfilled). However, a mortgage loan will still be considered a housing loan if provided to consumers for the purposes of purchasing residential property.

Mortgage loans and municipal loans are regulated by the [Act on Banks](#) and are subject to a range of regulatory requirements that do not apply to unregulated loans. For example, for regulated mortgage contracts, there are particular requirements for:

- the maturity period;
- the purposes of such mortgage contract; and
- the financing of such mortgage contract.

According to the [Act on Banks](#), a bank may not provide a loan or guarantee liabilities under a loan for:

- any acquisition of shares it issued;
- any acquisition of shares issued by a person who holds a qualified interest in the bank;
- any acquisition of shares issued by legal persons who control or are controlled by persons holding a qualified interest in the bank;
- any acquisition of shares issued by legal persons controlled by the bank; and
- the repayment of another loan granted for any of the above acquisitions of shares or to guarantee liabilities under such a loan.

Borrowing

While borrowers are generally not regulated, it is advisable for borrowers to consider whether either the mortgage or consumer lending regimes apply to their activities, in which case they will benefit from the protections mentioned above.

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What are common lending structures?

Lending in Slovakia can be structured in a number of different ways to include a variety of features depending on the commercial needs of the parties.

A loan can either be provided on a bilateral basis (a single lender providing the entire facility) or a syndicated basis (multiple lenders each providing parts of the overall facility).

Syndicated facilities by their nature involve more parties (such as agents who fulfil certain roles for the finance parties), are more highly structured and involve more complex documentation. Larger financings will typically be done on a syndicated basis with one of the syndicates taking the lead in coordinating and arranging the financing.

Loans can be structured to achieve specific objectives, e.g. bank overdraft, discount credit, consumer loan, acceptance credit, loan against securities, bridging loan etc.

Loan durations

The loans may be divided on the basis of their duration into:

- short- and medium-term loans, such as discount credits, consumer loans or acceptance credits; and
- long-term loans, such as mortgages, municipal credits or consumer housing loans.

Loan security

A loan can either be secured, unsecured or guaranteed. For more information, see [Giving and taking guarantees and security](#).

Loan commitment

A loan can also be:

- committed, meaning that the lender is obliged to provide the loan if certain conditions are fulfilled; or
- uncommitted, meaning that the lender has discretion whether or not to provide the loan.

Loan repayment

A loan can also be repayable on demand, on an amortizing basis (in instalments over the life of the loan) or on a scheduled basis (usually meaning the loan is repayable in full at maturity).

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What are the differences between lending to institutional / professional or other borrowers?

In general, lending to institutional/professional borrowers is subject to less regulatory oversight and is consequently less burdensome from a compliance perspective.

Lending in the context of mortgages and lending to consumers is a regulated activity and requires authorization from the [National Bank of Slovakia](#).

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Do the laws recognize the principles of agency and trusts?

Slovak law recognizes the principle of agency. For instance, it is possible to appoint an agent to act on behalf of other parties. Financial agents are listed in the [Register of Financial Agents and Financial Advisors](#) maintained by the [National Bank of Slovakia](#).

Slovak law does not recognize the principle of trust, so it is not possible to appoint a trustee to hold rights and other assets on trust for the lenders or secured parties.

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Are there any other notable risks or issues around lending?

Generally

Loan agreements and other finance documents are subject to general contractual principles. For example, the Slovak courts will not enforce a penalty that does not correspond to the amount of the loan. Lenders therefore, have to be careful about the rate of default interest charged on a loan.

Specific types of lending

Specific to the area of mortgage lending is the issue of whether a lender falls within the recently formed Slovak housing loans regime. The [Mortgage Credit Directive](#), implemented in Slovakia mainly through the [Act on Housing Loans](#) and a series of primary and secondary legislation, aims to prevent the irresponsible lending and borrowing practices that were exposed during the global financial crisis.

The Mortgage Credit Directive applies to first and second charge mortgages. It imposes a number of requirements on lenders including the need to:

- conduct affordability tests before lending;
- provide standard information about the mortgage to enable borrowers to compare products; and
- ensure that staff are suitably trained.

Company in crisis

Pursuant to the [Commercial Code](#) a company is considered 'in crisis' if it is:

- bankrupt (i.e. insolvent or in default); or
- under the threat of bankruptcy (i.e. the ratio of its equity to liabilities is less than the statutory limit ratio of 8:100).

A creditor who grants a loan to a company 'in crisis' or until the declaration of bankruptcy or the restructuring permit, may not be able to recover (some or) the full amount of the loan if it was aware of the company's financial position at the time the loan was granted.

Standard form documentation

Bilateral finance transactions are typically documented on bank standard form documentation prepared in-house.

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Are there any other notable risks or issues around borrowing?

Borrowers should be aware of the potential implications of the EU's [Bank Recovery and Resolution Directive \(BRRD\)](#), which outlines certain measures for dealing with failing financial institutions. The BRRD has been implemented mainly by the [Act on Resolution in the Financial Market](#).

This regulative framework is applicable to financial institutions incorporated in the European Economic Area (EEA), but does not apply to EEA branches of non-EEA incorporated entities.

The [Act on Resolution in the Financial Market](#) which has, among others, implemented also the Article 55 of the BRRD, gives authorities the power to 'bail in' obligations of failed EEA financial institutions. Institutions to whom the resolution applies shall include a contractual term in any agreement creating a liability. The creditor or party to the agreement recognizes that the liability may be subject to write-down or conversion, and agrees to be bound by any reduction in the principal or outstanding amount due, or conversion or cancellation that is effected by the exercise of the write-down or conversion power by the resolution authority, provided that such liability is:

- not excluded;
- not a deposit under Slovak law;
- governed by the law of third country; and
- entered into or changed after the date on which the [Act on Resolution in the Financial Market](#) became effective (this does not apply to a change of obligation, including an automatic change, that does not affect the fundamental rights and responsibilities of the party of this obligation).

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Giving and taking guarantees and security

Are there any restrictions on giving and taking guarantees and security?

Some of the key areas affecting the giving of guarantees and security are as follows.

Capacity

It is important to check the constitutional documents of a company giving a guarantee or security to confirm whether it is duly established, and whether a separate resolution of the shareholders is not required in order to duly provide such guarantee or security. The safe approach is often to have the shareholders of the company approve the giving of the guarantee or security by resolution. Furthermore, it is necessary to ensure that the directors of the company act on behalf of the company in compliance with the way of acting prescribed by the constitutional documents and way of acting registered in the Commercial Register.

Insolvency

Guarantees and security may be at risk of being contested in bankruptcy proceedings, if the guarantee or security was granted by a company without adequate consideration, caused the debtor's bankruptcy or made during the debtor's bankruptcy and granted during one year prior to the initiation of bankruptcy proceedings. If it is a legal act without adequate consideration made in favor of a party related to the debtor, it is also possible to contest the guarantee or security made during the three years prior to the initiation of bankruptcy proceedings.

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What are common types of guarantees and security?

Guarantees

In general, by providing a guarantee, the guarantor undertakes that it will fulfil the obligation of the debtor (as a whole or part), in case the debtor fails to duly perform its obligation. The law does not differentiate between the performance of payment obligations or any other kind of obligation. Therefore, the guarantee may also be granted in order to secure the obligation of the debtor to provide services etc.

Common forms of security

Basic types of security that can be created under Slovak law include:

- pledges;

- secured transfer of a right; and
- bills.

Under Slovak law it is possible to grant security over all of the assets of a company or individual assets. Granting security will tend to be achieved by way of:

- pledge over a business share;
- pledge over the real estate;
- pledge over the receivables or over accounts receivables;
- a pledge over assets which are identifiable and can be controlled by the creditors (such as equipment); or
- secured transfer of right to the real estate.

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Are there any other notable risks or issues around giving and taking guarantees and security?

Giving or taking guarantees

To be valid, a guarantee has to be granted in writing. A guarantee may be provided with or without consideration.

If several guarantors secure the same obligation, each of them is liable for the entire obligation. In case one of the guarantors fulfils the obligation, it has the right to recourse towards the other guarantors.

The guarantee does not expire if:

- the obligation expired due to the debtor's inability to fulfil it and the obligation may be fulfilled by the guarantor; or
- due to the dissolution of the legal entity that is the debtor.

Giving or taking security

Depending on the type of security, security may have to be granted in writing and notarization may be required.

Once granted, security in the form of a pledge needs to be properly perfected before it is valid against third parties. Perfection formalities can range from having the secured asset delivered to the security holder, registration of the pledge in the notarial register of pledges or in the Commercial register and notice being given to third parties.

Like guarantees, a pledge may be at risk of being contested in bankruptcy proceedings, if the security was granted by a company without adequate consideration, caused the debtor's bankruptcy or was made during the debtor's bankruptcy and was granted during the one year period prior to the initiation of bankruptcy proceedings.

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Financial regulation

Law and regulation

What are the main laws and regulations that apply to entities that are involved in finance and investments generally?

Generally

Act No. 186/2009 Coll. on Financial Intermediation and Financial Advisory Services, as amended (*Zákon o finančnom sprostredkovaní a finančnom poradenstve a o zmene a doplnení niektorých zákonov*) (regulating mainly financial intermediation and financial counselling)

Act No. 747/2004 Coll. on Supervision of the Financial Market, as amended (*Zákon o dohade nad finančným trhom a o zmene a doplnení niektorých zákonov*) (regulating the supervision of the financial markets as exercised by the National Bank of Slovakia)

Act No. 483/2001 Coll. on Banks, as amended (*Zákon o bankách a o zmene a doplnení niektorých zákonov*) (regulating the establishment, organization, management, business operations, and termination of banks)

Act No. 566/2001 Coll. on Securities and Investment Services, as amended (*Zákon o cenných papieroch a investičných službách a o zmene a doplnení niektorých zákonov*) (regulating mainly securities and investment services)

Act No. 429/2002 Coll. on Stock Exchange, as amended (*Zákon o burze cenných papierov*) (regulating the stock exchange)

Act No. 492/2009 Coll. on Payment Services, as amended (*Zákon o platobných službách a o zmene a doplnení niektorých zákonov*) (regulating the payment services and establishment and operation of payment systems, payment institutions and electronic money institutions)

Act No. 530/1990 Coll. on Bonds, as amended (*Zákon o dlhopisoch*) (regulating bonds)

Act No. 202/1995 Coll. the Foreign Exchange Act, as amended (*Devízový zákon*) (regulating trading in foreign exchange assets, foreign exchange authorities and foreign exchange supervision)

Act No. 566/1992 Coll. on National Bank of Slovakia, as amended (*Zákon o Národnej banke Slovenska*) (regulating the activities of the National Bank of Slovakia)

Act No. 118/1996 Coll. on Deposit Protection, as amended (*Zákon o ochrane vkladov a o zmene a doplnení niektorých zákonov*) (regulating the protection of deposits held in accounts with banks and branches of foreign banks)

Act No. 371/2014 Coll. on Resolution in the Financial Market, as amended (*Zákon o riešení krízových situácií na finančnom trhu a o zmene a doplnení niektorých zákonov*) (regulating the procedure to be followed in connection with resolution in the financial market of the Slovak Republic)

Act No. 343/2015 Coll. on Public Procurement, as amended (*Zákon o verejnom obstarávaní a o zmene a doplnení niektorých zákonov*) (regulating procurement processes in Slovak Republic)

Act No. 18/2018 Coll. on Protection of Personal Data and on amending and supplementing of certain acts (*Zákon o ochrane osobných údajov a o zmene a doplnení niektorých zákonov*) (regulating processing of personal data in Slovak Republic)

Consumer credit

Act No. 129/2010 Coll. on Consumer Credits and Other Credits and Loans for Consumers, as amended (*Zákon o spotrebiteľských úveroch a o iných úveroch a pôžikách pre spotrebiteľov a o zmene a doplnení niektorých zákonov*) (regulating the provision of consumer credits)

Act No. 250/2007 Coll. on Consumer Protection, as amended (*Zákon o ochrane spotrebiteľa*) (regulating the rights of consumers and the obligations of producers, traders, importers and suppliers)

Act No. 40/1964 Coll. Civil Code, as amended (*Občiansky zákonník*) (regulating the property relations of natural persons and legal entities as well as property relations between such persons and the state)

Mortgages

Act No. 90/2016 Coll. on Housing Loans, as amended (*Zákon o úveroch na bývanie a o zmene a doplnení niektorých zákonov*) (regulating the provision of housing loans)

Corporations

Act No. 513/1991 Coll. Commercial Code, as amended (*Obchodný zákonník*) (regulating the status of entrepreneurs, commercial obligations and some other relations relating to entrepreneurial activity)

Funds and platforms

Act No. 43/2004 Coll. on Old-Age Pension Saving Scheme, as amended (*Zákon o starobnom dôchodkovom sporení a o zmene a doplnení niektorých zákonov*) (regulating the scope and financing of old-age pension scheme)

Act No. 650/2004 Coll. on Supplementary Pension Scheme, as amended (*Zákon o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov*) (regulating the supplementary pension scheme and the transformation of supplementary pension insurance companies)

Investment funds

Act No. 203/2011 Coll. on Collective Investment, as amended (*Zákon o kolektívnom investovaní*) (regulating the rules of collective investment)

Other key market legislation

Capital Requirements Regulation (Regulation (EU) 575/2013) (capital requirements)

European Market Infrastructure Regulation (Regulation (EU) 648/2012) (derivatives)

Market Abuse Regulation (Regulation (EU) 596/2014) (market abuse)

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Regulatory authorization

Who are the regulators?

The [National Bank of Slovakia](#) is responsible for the supervision of the financial markets.

The supervisory tasks of the [National Bank of Slovakia](#) include:

- laying down prudential business rules and other requirements in relation to the business activities undertaken by supervised entities;
- monitoring compliance with the relevant laws and regulations of Slovakia, as well as with legal acts of the EU;
- conducting proceedings, issuing authorizations, licenses, permissions and approvals, and imposing sanctions and remedial measures;
- issuing other decisions, opinions, methodological guidelines and recommendations relating to financial markets supervision;
- conducting on-site and off-site supervision of supervised entities; and
- preventing the legalization of proceeds of criminal activity and financing of terrorism.

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What are the authorization requirements and process?

Relevant firms must apply to the [National Bank of Slovakia](#) for authorization.

The regulator must assess whether the application meets the required threshold conditions. In the case of issuance of a banking license, the regulator must complete the assessment within six months of the submission of the complete application.

The application fee depends on the type of the application ranging from EUR40 to EUR5,000.

The regulator will also approve key individuals (e.g. senior management) in their roles.

Authorized firms and individuals are listed in a number of different registers (e.g. Register of Alternative Investment Fund Managers) maintained by the National Bank of Slovakia.

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What are the main ongoing compliance requirements?

Threshold conditions (such as having adequate financial resources and compliance arrangements in place) are an ongoing compliance requirement for authorized firms.

Failure to comply with the threshold conditions and the more detailed regulatory rules can result in sanctions for firms and regulated individuals, and even result in a loss of regulated status.

Legal entities undertaking a regulated activity without being authorized or exempt may also be subject to various monetary and non-monetary sanctions issued by the [National Bank of Slovakia](#).

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What are the penalties for failure to be authorized?

A natural person undertaking a regulated activity without being authorized or exempt, commits a criminal offence and is liable to imprisonment.

Pursuant to the [Act on Criminal Liability of Legal Entities](#), a legal entity may also be held liable for undertaking a regulated activity without being authorized or exempt. In this case, the sanctions for such conduct may include winding-up of the legal person, forfeiture of property, pecuniary penalties, prohibition to undertake certain activities or disclosure of the court decision.

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Regulated activities

What finance and investment activities require authorization?

Generally

A person must not carry on a regulated activity in Slovakia unless authorized or exempt.

Activities supervised by the [National Bank of Slovakia](#) require authorization. As part of its supervision of the financial markets, the [National Bank of Slovakia](#) is responsible for the supervision of legal entities and natural persons charged with obligations under the laws of Slovakia in the area of banking, capital markets, insurance business, pension insurance or pension schemes, as well as with the supervision of the property associations with a designated purpose and groups of persons and property associations with a designated purpose charged with the same obligations as stated above.

Consumer credit

Pursuant to the [Slovak Act on Consumer Credits and Other Credits and Loans for Consumers](#) a creditor is only entitled to provide consumer credit if it has been authorized to do so by the [National Bank of Slovakia](#).

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Are there any possible exemptions?

The available exemptions relate to the nature of the agreement, the lender and the borrower, the number of repayments to be made and the total charge for credit. In case of consumer credit exemptions do not apply, according to the Slovak Act on Consumer Credits and Other Credits and Loans for Consumers, no one shall, in the course of his business, offer or provide consumer loans without authorization or beyond the scope of the authorization of banking licence or other authorization to carry out banking activities.

There are two types of exclusions available when regulated activities may be undertaken without authorization from National bank of Slovakia, as follows:

General exclusions

Certain persons may carry on a regulated activity without being authorized. In certain cases regulated activities carried on by overseas persons may be undertaken without authorization. For example, exercising passporting rights allows firms, provided they are authorized to provide financial services in one jurisdiction, to provide such services in another jurisdiction without the need for authorization in this host jurisdiction.

Specific exclusions

For each type of regulated activity there are a number of specific exemptions that could also apply. For instance persons that provide investment services exclusively for their parent undertakings, for their subsidiaries or for the subsidiaries of their parent undertakings do not require authorization.

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Do any exchange controls or other restrictions on payments apply?

Slovakia does not operate any foreign currency controls.

For cases of money transferring from non-EU member states, imports of foreign currency may need to be declared in the custom declarations, but there is no legal restriction on moving money in and out of the country.

Compliance with the EU rules on payments (EU Payments Regulation and the Transfer of Funds Regulations) must be ensured.

There may also be anti-money laundering and tax considerations to take into account.

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What are the rules around financial promotions?

A financial promotion is a communication of an invitation or inducement to engage in investment activity made by a person in the course of business.

An investment firm and a bank authorized by the [National Bank of Slovakia](#) may use bound investment agents for the promotion of investment services and secondary services, provided that the bound investment agent is registered in the relevant register.

A bound investment agent may perform financial intermediation only for one financial institution.

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Entity establishment

What types of legal entity are generally used to undertake financial or investment activity?

Generally

The most common types of legal entities used to undertake financial or investment activity are joint stock companies, which are body corporates with separate legal personality.

A joint-stock company has registered capital which is divided into shares with a specified nominal value. It can have any number of shareholders. A joint-stock company is liable for the breach of its obligations with its entire property and therefore its liability is limited to the value of this property. The shareholders are not liable for the obligations of the company. However, each shareholder is liable to the company for the issue rate of the subscribed shares. Some activities require a particular type of legal entity to be used. For example, pursuant to the [Slovak Act on Banks](#), banks may only be incorporated in the form of a joint stock company.

The list of shareholders is available at the [Central Securities Depository](#). Joint-stock companies can be either public or private. A public joint-stock company has all or part of its shares accepted for trading on a regulated market in the European Economic Area. Joint-stock companies can have a sole corporate shareholder (not a natural person) or at least two shareholders (who are natural persons). The company must execute a memorandum of association (or founding deed, where there is a sole shareholder), which includes the company's articles of association.

Funds

Pursuant to the [Act on Collective Investment](#), investment funds are most commonly set up as joint-stock companies although for certain types of investment funds, such as collective investment undertakings, other types of corporate entities may be used.

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Is it possible to conduct lending or investment business through a branch or establishment?

Yes.

A company can conduct lending or investment business in Slovakia through an establishment (also known as a 'branch') but this does not create a separate legal entity.

The branch office of a foreign company does not have a separate legal personality from its parent company, but has its own management (director of a branch), accounting and tax requirements. It must be registered in the [Slovak Commercial Registry](#), although liability for the operations of the branch remains with the parent.

Overseas companies carrying on a trade in Slovakia through a 'permanent establishment' will be subject to Slovak corporation tax.

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FinTech

FinTech products and uses

What are the most common technology products and FinTech applications used or being developed in the finance and investment marketplace?

Peer-to-peer funding platforms and marketplace lending

There is no strict definition for marketplace lending given the wide variety of entrants and financing techniques involved. The principal characteristics of new marketplace lenders, however, would include:

- operating from or through a non-bank lending platform established as a specialist corporate or special purpose vehicle (SPV) based structure;
- applying technology to leverage and optimize the lending platform and user experience; and
- connecting borrowers and lenders through the platform rather than applying funding arising from a wider deposit-based relationship.

Marketplace lending is available to address most forms of traditional bank funding products. Recently products have included:

- virtual credit cards;
- consumer loans;
- student lending products;
- small and medium-sized enterprises (SME) lending; and

- residential property and commercial property mortgage lending.

Recently, peer-to-peer (P2P) products in Slovakia have included:

- (non-regulated) consumer loans;
- loans in order to pay down payments for property mortgages; and
- lending to SMEs.

HOW ARE MARKETPLACE LENDING PLATFORMS FUNDING THEMSELVES?

Marketplace lending includes P2P-type structures often operated through an electronic platform provider as well as crowdfunding and also direct-to-retail financing mechanisms. Funding platforms are mostly backed by individual investors but financial institutions are also starting to invest in the platforms (mainly in the case of crowdfunding).

Blockchain, smart contracts and cryptocurrencies

WHAT IS BLOCKCHAIN?

Blockchain provides a new approach to holding and authenticating data. It is a database operating through distributed ledger technology in which data is recorded on computers, by way of a P2P mechanism, based on pre-agreed consensus algorithms in the applicable participating network. It is a form of database where data is stored in the chain in either fixed structures called 'blocks' or algorithm functions called 'hashes'.

Each block includes unique features such as its unique block reference number, the time the block was created and a link back to the previous block. Each block is reviewed by a number of nodes and the block is only added to the database if the node reaches consensus that the block only contains valid transactions. Content includes digital assets and instructions which reflect the transactions and parties to those transactions. The ability to track previous blocks in the chain makes it possible to identify transactions back to the first ever transaction completed, enabling parties to verify and establish the authenticity of the assets in the latest block. This makes blockchain exceptionally accurate and secure.

Specialist users on the system apply advanced computing software to identify time stamped blocks, verify the accuracy of the block using sophisticated algorithms and add the verified block to the chain. As the number of participants increases, the replication of the data over a wider base makes it harder for any person to alter the data in the chain. Any attempted addition or modification to the information on a block needs to be approved by all users in the network and verification of any block can only happen through a 'proof of work' process. This process requires vast amounts of computing power, making it practically impossible to insert fake transactions into a block.

As a result, the data is identified and authenticated in near real-time, providing a permanent and incorruptible database sufficiently robust to operate as a store of value (e.g. in the case of cryptocurrencies such as bitcoin) or providing an indisputable record for example relating to securities transfer.

Blockchain is a decentralized system, created and maintained by users of the network rather than being dependent on any central or third-party intermediary. It may be public and open ('permissionless' or 'unpermissioned') or structured within a private group ('permissioned').

Permissionless blockchains include bitcoin and ethereum, in which anyone can set up a node that once authorized, can validate, observe and submit transactions. The identities of the participants are not known (other than the unique and random identities known as an 'address'). Permissioned ledgers restrict participation in the network and only the specific participants are given access and are known within the network. The network is private, and only organizations that have been authorized can participate and view transactions.

WHAT ARE SMART CONTRACTS AND DECENTRALIZED AUTONOMOUS ORGANIZATIONS (DAOs)?

Developments in blockchain are also providing an ability to transfer and rely on instructions verified within the electronic system in the form of so called 'smart contracts'. These contracts have been converted into code and are then executed and enforced by the blockchain network on the occurrence of an event. This reduces the need for intermediaries to collect, store and act on communicated information.

Smart contracts are essentially pre-written computer codes which are stored and replicated on distributed ledger platforms such as blockchain. Execution takes place over the network, eliminating the need for intermediary parties to confirm the transaction, leading to self-executing contractual provisions. These contracts can be as simple as moving a balance from one account to another or advanced,

more-complex interactions with the outside world using so called 'Oracles'. With Oracles, the contract code consults with a service outside of the blockchain network to make a decision. This may entail receiving a confirmation that an event has occurred, such as payment, which automatically executes a further step in the contract, such as the transfer of an asset, which might be in digital form or by delivering instructions to a person or warehouse to release the asset for delivery.

DAOs are essentially online, digital entities that operate through the implementation of pre-coded rules. These entities often need minimal to zero input into their operation and they are used to execute smart contracts, recording activity on the blockchain. DAOs can be particularly challenging to regulate depending on their software engine, the nature of transactions they are completing or other unique features. Questions of ownership and responsibility for resulting acts of DAOs can also be brought to question if any technical issues arise with their operation.

WHAT IS A CRYPTOCURRENCY?

The European Banking Authority definition of a cryptocurrency is that it is a digital representation of value that is neither issued by a central bank or public authority, nor necessarily attached to a fiat currency, but is issued by natural or legal persons as a means of exchange and can be transferred, stored or traded electronically. The European Central Bank (ECB) defines a cryptocurrency (or virtual currency) as a "type of unregulated, digital money, which is issued and usually controlled by its developers, and used and accepted among the members of a specific virtual community". The oldest and best-known cryptocurrency is bitcoin (itself based on the bitcoin platform) although many other cryptocurrencies now exist. For example, the most widely-known alternatives to bitcoin include ether based on the ethereum platform and litecoin (these cryptocurrencies are now actively traded with a large developing infrastructure for holding, pricing and exchanging currency).

Initial coin offerings and token-based products

WHAT IS AN INITIAL COIN OFFERING (ICO)?

ICOs are a form of digital currency or token using blockchain technology. ICO is a popular method of raising funds primarily for startups (even though in Slovakia their use is rather limited). ICOs come in a wide variety of forms and may be used for a wide range of purposes. It is essential to examine the legal and regulatory basis for any ICO as an unauthorized offering of securities is illegal in Slovakia and may result in criminal sanctions in a number of jurisdictions. Legal analysis of the underlying token will determine if it should be treated as a specified investment or form of regulated security, or is more appropriately a form of asset that is not itself subject to the regulatory regime.

Typical attributes provided by tokens will include:

- access to the assets or features of a particular project;
- the ability to earn rewards for various forms of participation on the platform; and
- a prospective return on investment.

Key aspects to consider will include the:

- availability and limitations on the total amount of the tokens;
- decision-making process in relation to the rules or ability to change the rules of the scheme;
- nature of the project to which the tokens relate;
- technical milestones applicable to the project;
- basis and security of the underlying technology;
- quantity of coins or tokens that are reserved or available to the issuer and its sponsors and the basis of existing rights;
- quality and experience of management; and
- compliance with law and all regulatory requirements.

The nature of the business and the purpose and structure of the token offering will typically be set out in a white paper available to potential purchasers.

Artificial intelligence and robo advisory systems

Automated financial advice tools, also known as 'robo advisors' are software tools driven by artificial intelligence (AI) that provide a variety of investment advice services from portfolio selection to personal finance planning. The systems are generally operated on a platform /personal dashboard basis; a user can input a set of personalized data to be processed by the AI algorithms which produce optimized outcomes around specified parameters. Although generally of application in the asset management sector, AI and automated advice tools also impact the banking and private wealth advisor sectors. Robo advisors are one of many ways that minimize human involvement, although recent trends have included a growth in popularity of hybrid structures which combine AI and human inputs.

Data analysis and cloud computing

DATA ANALYSIS

Data analysis is a process through which data can be inspected, transformed or modeled with the goal of discovering new information and providing an ability to draw conclusions. Data analysis is usually directed to improve the process of decision-making, although there are multiple approaches and diverse techniques, each under a variety of names, that can be used to analyze data.

CLOUD COMPUTING

Cloud computing enables delivery of IT services through internet-based tools and applications, rather than direct connection to a physical server. Cloud-based storage makes it possible to save masses of data on remote servers (privately-owned cloud, or a third-party server), accessible through the internet rather than by way of a physical connection. With the vast data processing and storage capabilities offered by cloud computing technology and virtually no infrastructure barriers to entry, there are a number of applications in building and running FinTech businesses and the technology has had a significant impact in recent years. Use of third-party clouds allows companies to focus on their business without the need to invest as much as they otherwise would in their own IT infrastructure.

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Are there any restrictions, specific laws, regulations or procedures that apply to FinTech products?

General financial regulatory regime

[National Bank of Slovakia](#) is the main regulatory body for the financial market as a whole, including both retail and wholesale markets.

GENERAL

In general, a person cannot carry on a regulated activity in the Slovak financial sector without being regulated by the National Bank of Slovakia. Therefore, there is a need for specific authorization where a particular activity carried out as a business in Slovakia may or may not fall under the regulation. This mostly applies to activities of traditional financial market institutions, as most FinTech services and innovations currently do not fall under the regulatory power of the National Bank of Slovakia.

STATEMENT OF THE NATIONAL BANK OF SLOVAKIA ON FINTECH SERVICES

On 27 April 2016, the National Bank of Slovakia warned against the use of peer-to-peer (P2P) or crowdfunding methods for providing loans, as these types of contracts, as well as the entities providing them, currently do not fall under its regulatory competence.

On 8 April 2019, the National Bank of Slovakia, in cooperation with the Ministry of Finance of the Slovak Republic launched, an innovative hub. It aims to support the implementation of modern technologies in the Slovak financial market and to improve the rules of their functioning.

The innovative hub is designed for those, with a real business plan, interested in the FinTech area. Thanks to the innovative hub, interested parties can have a dialogue with National Bank of Slovakia experts who will help them understand the details of business requirements in the financial market. In order to establish communication with the National Bank of Slovakia, a contact form has been created to enable the National Bank of Slovakia to obtain a basic overview of the intention of the FinTech applicant. "The innovation hub

will provide those interested in doing business in this area with information about the ecosystem of innovative business models and help them navigate the relevant regulatory requirements," explained the Executive Director for Financial Consumer Regulation and Protection from National Bank of Slovakia.

Electronic payments platforms and regulation of peer-to-peer lenders

ELECTRONIC PAYMENTS PLATFORMS

In recent years, many innovative payment solutions have been introduced to the Slovak market, such as contactless payments (introduced by VISA and MasterCard in alliance with the mainstream banks) and increasingly popular mobile payments. One of the most used and popular applications for mobile payments in Slovakia is VIAMO, which enables money transfers to a mobile phone number, without knowing the actual account details of the receiver.

With respect to the electronic money (e-money) institutions, such institutions need to be granted authorization by the National Bank of Slovakia in order to handle e-money and perform payment transactions related thereto. E-money is money that is exchanged exclusively electronically. E-money transfers (EFT), credit or debit cards are all examples of e-money.

PEER-TO-PEER LENDING REGULATION

Currently, P2P lending is not regulated in Slovakia and therefore does not fall within the regulatory competence of the National Bank of Slovakia.

Regulation of payment services

In order to provide payment services and to issue and manage e-money in Slovakia, it is necessary to obtain an authorization which is granted by the National Bank of Slovakia pursuant to [Act No. 492/2009 Coll. on payment services](#). Failure to provide services without a respective license is a criminal offence.

To become authorized by the National Bank of Slovakia, a payment services business or business wishing to issue and manage e-money will need to meet certain criteria, including initial capital, functional procedures for safeguarding of the financial funds, adequate, appropriate organizational prerequisites for conducting the services, etc. One notable provider of payment services in the Slovak FinTech sector is a payment gateway called TrustPay.

Application of data protection and consumer laws

Slovak Republic reflected adoption of the European General Data Protection Regulation (GDPR) in Act No. 18/2018 Coll. on Protection of Personal Data and on amending and supplementing of certain acts (Data Protection Act). The Data Protection Act became effective as of 25 May 2018. The Data Protection Act repealed the previous Act No. 122/2013 Coll. on protection of personal data. The Data Protection Act) regulates the processing of personal data within Slovakia. Where a business determines the purposes and manner in which any personal data is processed, it will be regulated by the Data Protection Act and certain notification and compliance obligations will apply. In addition to the above, Act No. 351/2011 Coll. on electronic communications, as amended regulates unsolicited direct marketing by electronic means. Furthermore, Act No. 250/2007 Coll. on consumer protection, as amended and Act No. 266/2005 Coll. on the consumer protection at distance financial services, as amended shall apply as well, as they provide general legislative regulations relating to consumer protection.

Nowadays, GDPR alongside with the Data Protection Act are regulating processing of personal data in Slovak Republic.

Money laundering regulations

The basic legislative framework is primarily determined by [Act No. 297/2008 Coll. on protection against legalization of proceeds from crime and on protection against financing of terrorism](#), as amended (AML Act). The AML Act empowers the National Bank of Slovakia to supervise and control fulfilment of anti-money laundering obligations by the entities that fall into its regulatory competence (i.e. in particular, businesses offering services such as lending, payment services and issuing and administering other means of payment). The National Bank of Slovakia also actively cooperates with the Financial Intelligence Unit (a central national police unit specializing in the prevention and detection of money laundering and terrorist financing), in order to enforce the AML Act.

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What type of funding arrangements and incentives are available to FinTech businesses?

Early stage

SEED INVESTMENT

Initial investment in FinTech businesses may be provided by family and friends of the founders and other high-net-worth individuals (often known as business angels) in return for an equity stake. Such seed investment is often used to fund the establishment and early growth of the business before larger investment is available. The investing individuals may also provide know-how and expertise to assist in the company's development. The seed investors would typically not require the same controls over the business as, for example, venture capital providers.

CROWDFUNDING

The crowdfunding sector is not yet well established in Slovakia, however there have been other projects which have been successfully funded through crowdfunding. Therefore, in the future this may be an appropriate source of funding for a FinTech business in its early stages. Crowdfunding involves members of the public investing in a business by pooling their resources through an intermediary platform, such as Crowdberry or Conda.

There are two main types of crowdfunding: equity and reward-based.

- Equity crowdfunding involves company shares being given in exchange for investment in the business.
- Reward-based crowdfunding provides investors with a tangible benefit, such as early access to a platform or application that the business is developing.

Crowdfunding offers a large number of private investors an opportunity to make small-scale investments in early-stage businesses to which they may otherwise not have had access.

ACCELERATORS

Accelerators are currently not a common way of offering support, facilities and funding for startups in Slovakia, even though an international incubator/accelerator for startups, RubixLab, is present in Slovakia. Slovak startups usually take part in the programs of foreign accelerators, such as Ycombinator or Blackbox (e.g. M.Dot – a startup that allows users to create web pages through their mobile phones – took part in Blackbox and was subsequently acquired by GoDaddy).

Even though it seemed that real estate project Binarium (created by the co-founder of IT security company ESET, Miroslav Trnka) could have become a Slovak accelerator, currently this is not the case and it serves more as a co-working space. Nevertheless, Binarium could in the future offer its tenants (mostly businesses in the technology sector) the possibility to attend professional events targeted at the community of IT specialists and technologists. However (at least so far), Binarium does not plan to provide the targeted mentoring programs nor financial investment that would normally be provided by startup accelerators.

Venture capital and debt

Venture capital (VC) funding is a type of equity investment usually targeted at early stage FinTech companies with an established business and some trading history. VC provides a viable alternative to traditional lending given that the business is unlikely to have the tangible asset base or long track record needed to attract traditional debt funding from financial institutions. In Slovakia, examples of VC funds investing into FinTech startups and technology startups more generally include Neulogy, G4 and LUKA & BRAMER GROUP.

Corporate venture capital (CVC) is a type of VC and involves an equity investment by a corporate fund. Even though it is uncommon in Slovakia, one example of CVC is the acquisition of PoSam (a leading Slovak IT business) by Deutsche Telecom (DTAG) in 2010.

An additional funding option is venture debt, which is typically structured as a loan (or series of loans), secured against a company's assets and includes an equity element allowing the debt provider to purchase shares in the company. However, venture debt providers will usually only invest into companies that have already received investment through VC.

Warehouse and platform funding

Even though warehouse financing, as a form of inventory financing, may not be the best option for all FinTech companies, it remains a potential option to obtain financing for those companies that own a portfolio of assets.

Another alternative form of funding is through peer-to-peer (P2P) lending platforms such as Zltymelon.sk or ZincEuro.sk, which bring individual borrowers and lenders together without the involvement of traditional banks. P2P lending does not involve equity investments; interest is paid on the money borrowed instead.

Senior bank debt and capital markets funding

SENIOR BANK DEBT

Once a FinTech company is established and has a track record, bank debt becomes a more viable source of funding, either on a secured or unsecured basis depending on the creditworthiness and asset base of the business. In contrast to capital markets funding, bank funding will generally involve the imposition of financial covenants and controls that will apply over the life of the facility. Bank finance may be particularly important for working capital, overdrafts, accounts management and general liquidity purposes.

CAPITAL MARKETS FUNDING

Although formally capital market funding is available in Slovakia, due to the fact that Slovakia itself is a small market and there is limited liquidity in the market, capital market funding is not a commonly used method of obtaining funding.

Even though it is possible to raise finance by way of an Initial Public Offering (IPO) on the [Bratislava Stock Exchange](#), this is not a popular funding arrangement for companies. If a company grows to a certain size and considers an IPO, it usually reaches out to bigger and more active capital markets and stock exchanges in the region, such as those stock exchanges in Warsaw, Vienna or Prague.

Moreover, it is worth noting that over 95% of trades on the Bratislava Stock Exchange represent bond trades. Even though obtaining funding by way of issuing bonds to retail investors might be a reasonable option to raise more competitive funding, due to the costliness of the whole process it would not be a viable funding option for the vast majority of startups.

Incentives and reliefs

In order to encourage companies to invest in research and development (R&D), businesses that invest in R&D can, under the condition stipulated by Act No. 595/2003 Coll. on income tax, benefit from a 'super-deduction' of their R&D expenditure (costs) from their tax base.

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Portfolio sales

Loan transfers and portfolio sales

What are common ways of buying and selling loans?

A loan can be transferred on an individual basis or packaged up with other loans and transferred as a portfolio.

The ways of transferring loans are:

- **Novation** – By means of novation, the existing contract (rights and obligation) is replaced with a new contract. Transfer of a loan to the third party should be concluded as a tripartite agreement between the existing parties and the transferee, whereas the rights and obligations of the transferor shall be transferred to the transferee.
- **Assignment of receivables** – An assignment of receivables constitutes a transfer of rights only, not obligations. Subject to any contractual restrictions, the assignment of receivables can be done without the consent of the debtor (but an assignor is obliged to notify the debtor, without undue delay, of the assignment of the receivables). Accessory rights and all other rights connected with the receivables shall be transferred together with the assigned receivables.

The form and content of the transfer documentation will depend on the nature of the loan which is being transferred. For complex transactions, a more bespoke form of transfer agreement shall be used.

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What are the main considerations when transferring a loan and related security?

There are a number of issues to consider before transferring a loan or portfolio of loans. These issues are often covered as part of a due diligence exercise. Some of the key considerations include:

- **confidentiality** – whether the transferor of the loan is allowed to disclose information relating to the loan to a potential transferee;
- **data protection** – whether there is any personal data or other restricted information in the loan that should not be disclosed to a potential transferee;
- **lender eligibility** – whether there are any restrictions around the type of entity to which the loan can be transferred (e.g. in case of consumer credit loans, which can be provided only by a credit institution authorized by the [National Bank of Slovakia](#));
- **undrawn commitments** – whether there are any continuing obligations for further funding or other material obligations on the part of the lender that may fall on the transferee or reduce claims made by the transferee;
- **transfer mechanics** – whether there are any steps that need to be taken to transfer the loan in accordance with its terms; and
- **consent** – whether a transfer requires the consent or notification of any other parties.

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Projects

Financing / investing in energy / infrastructure

To what extent are energy and infrastructure assets publicly or privately owned?

Generally

The ownership of energy and infrastructure assets in Slovakia varies according to the asset class. The main asset classes are usually considered to be:

- economic infrastructure (energy, aviation, rail, telecommunications, water, roads and waste); and
- social infrastructure (education, health and justice/prisons, housing).

Key sectors are considered below.

Energy

The gas and electricity industries in Slovakia are partially privatized, with the generation, distribution and supply services provided by a number of private sector companies. The relevant private sector companies own the generation and distribution assets.

The [Regulatory Office for Network Industries](#), as the national regulation authority, performs its tasks pursuant to [Act No. 250/2012 Coll. on regulation in network industries, as amended](#) and determines the relevant prices and conditions of their application in network industries, as well as the conditions for the regulated activities performance. The Regulatory Office for Network Industries is a state authority which is independent from state authorities, municipal authorities, other public authorities or other persons. The Regulatory Office for Network Industries shall exercise its competence fairly and independently. Within its performance it is not subject to any political or business groups.

Telecoms infrastructure

The telecommunications networks (fixed and mobile) in Slovakia are privately owned by a number of service providers.

The [Regulatory Authority for Electronic Communications and Postal Services](#) is the regulator for the telecommunications sector in Slovakia. It also regulates television broadcast services, wireless communications services as well as postal services.

Transport infrastructure

LIGHT RAIL

Typically, light rail assets (such as trams) are owned by respective local municipalities by way of designated local transport companies.

HEAVY RAIL

The heavy rail sector is mainly operated by the following three state-owned companies [Železnice SR \(ŽSR\) – Slovak Railways](#), [Železniná spolonos Slovensko a.s.](#) and [Železniná spolonos Cargo Slovakia a.s.](#)

The rail sector is regulated by the Ministry of Transport and Construction of the Slovak Republic.

Furthermore, there are number of private companies such as [RegioJet a.s.](#) or [Leo Express a.s.](#) that operate railway passenger transport services in Slovakia. The arrival of a private railway carriers has started a competitive rivalry for the passengers between the private and state-owned carriers resulting in a general increase of standard of the railway transportation.

ROADS, BRIDGES AND TUNNELS

[Národná diaľničná spoločnosť a.s.](#) (National Highway Company) is a joint-stock company that was established in 2005 and its sole shareholder is the Slovak Republic acting through the [Ministry of Transport and Construction of the Slovak Republic](#). The main activities of the company include the building of highways and motorways, management and maintenance of motorways and highways and charging for the use of Slovak motorways and highways. The company operates in the territory of the Slovak Republic through its 15 management and maintenance centers.

A government entity, [Slovak Road Administration](#), operates, maintains and improves the motorways and major first class roads (i.e. the strategic road network) in Slovakia. Slovak Road Administration is regulated by the Ministry of Transport and Construction of the Slovak Republic. Slovak Road Administration has its regional representation through organizational units deployed under a single name Investment Construction and Management of Roads, specifically in the following cities: Bratislava, Banská Bystrica, Žilina and Košice.

Local roads owned by the municipalities in Slovakia are the responsibility of local authorities (municipalities) or responsibility of legal entities established by the municipalities with the purpose of maintaining roads.

AVIATION

Aviation in Slovakia is (for the most part) privatized. With respect to the airport infrastructure, there are airports that are owned by the Slovak Republic as well as airports that have been privatized. Aviation in Slovakia is regulated by the [Transport Authority](#) and by the Ministry of transport and construction of the Slovak republic.

THE TRANSPORT AUTHORITY

The Transport Authority was established by the [Act on Regulatory Authority for Electronic Communications and Postal Services and on Transport Authority](#) in January 2014 as a state administrative body with nationwide competence in the area of railways and other guided transport, civil aviation and inland waterway transport. The Transport Authority undertakes activities in the area of railways and other guided transport, civil aviation and inland waterway transport, cooperates in the area of its competences with the Ministries and other state administration bodies, with the EU bodies as well as with a number of relevant international bodies. The Transport Authority is financed from the state budget. The Transport Authority is an independent body and state administration bodies, entities, authorities, nor any other persons may manipulate or interfere the activities of the Transport Authority.

Other infrastructure

SOCIAL INFRASTRUCTURE (SCHOOLS, HOSPITALS, EMERGENCY SERVICES CENTERS/PRISONS)

Typically, these are mainly owned by the public sector and are regulated by the state authority depending on the type of social infrastructure. The majority of social infrastructure assets in the Slovak republic are directly financed by the government. Subject to value for money considerations, private finance may also be used in the procurement of social infrastructure assets.

Education

The ownership of a school's infrastructure can be public or private. Schools of the Slovak Republic must be included in the network of schools and registered with the [Central register of the schools](#) maintained by [Slovak Centre of Scientific and Technical Information](#) which is governed by the [Ministry of Education, Science, Research and Sport of the Slovak Republic](#).

Hospitals

Ownership of hospitals can be public or private, both types must hold a license for operating granted by the [Ministry of Health of the Slovak Republic](#). The regulatory authority in this area is the [Health Care Surveillance Authority](#).

DEFENSE

Typically, defense assets are state-owned.

WASTE

The [Ministry of Environment](#) is the relevant state authority responsible for setting goals with respect to the waste management in Slovak Republic in order to develop an appropriate approach for using materials in the area of cycle, recycle, devaluation and destruction of waste.

WATER

Water and wastewater (sewerage) services in Slovakia are delivered by private sector companies (water companies) which own the relevant infrastructure assets. In Slovakia, the ownership of public water and wastewater pipelines, can be only owned by legal entities with registered seat in the territory of Slovak Republic. The [Regulatory Office for Network Industries](#) is the relevant regulator of the water sector in Slovakia.

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Are there special rules for investing in energy and infrastructure?

Generally

In general, there is no specific regime governing or restricting investment in energy or infrastructure in Slovakia over and above existing regulation for investors and funders, however, a particular proposed investment may be subject to regulatory control. As regards the planning and implementation of the energy or infrastructure project, the legal/regulatory position relevant to that project must be considered (e.g. whether any permissions or consents of or licenses issued by the public authorities are required, etc). Key sector-specific issues are flagged in the sections below.

Whether an investor can invest in a public sector project will depend on the terms of the procurement of such project and, in respect of an existing/operational project, that will depend on whether there are any contractual restrictions on 'Change of Control'. This is less of a concern on private sector infrastructure projects although investors would need to consider whether any licenses/consents/permits would be affected by their acquisition of an interest.

Energy

The energy market in Slovakia is heavily regulated. In particular, there is a complex regulatory framework regarding licensing, subsidies and demand/charging mechanism and these are subject to regular updates. Therefore, the investors need to have a good understanding of the current framework. Investors need to understand how technology changes may impact on the overarching regulatory framework and vice versa.

Investors should also consider whether the acquisition of any interests in the energy sector (at an entity or asset level) would cause any issues with any license conditions or the granting of specific subsidies.

Telecoms infrastructure

The [Act on Electronic Communications](#) regulates an environment for this sector, including access and interconnection between the networks, rights and obligations to third party real estate in connection with the establishment and operation of networks, as well as the competence of the state authorities to regulate the prices.

The industry is privatized, therefore investors should consider if any permits/consents/licenses will be affected by their interest.

Transport infrastructure

RAIL

There is an extensive and complex regulatory framework governed by the [Act on Tracks](#) and by the [Act on Transport on Tracks](#), which also includes the conditions for acquiring a license for provision of transport services and which shall be taken into consideration in respect of involvement in this sector. Depending on how an investor wishes to invest in a project (specifically what type of entity or asset), there is a varying degree of difficulty for investors to enter into an existing project. Moreover, investors should consider if, depending on the way of investment, any permits/consents/licenses will be affected by their investment.

ROADS

The administration of the roads is, in accordance with [Roads Act](#) the responsibility of the state, municipalities or other public sector entities. The respective public sector entity is also responsible for carrying out the maintenance of the roads, however, such duties may be delegated to private sector partners, based on the respective procurement rules. With respect to the highways, the state may procure the construction of and future operation of the highways by a private sector partner under a concession contract awarded on the basis of the public procurement procedure. The precise scope of the restrictions (e.g. whether change of control is allowed) will depend on the contractual terms.

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What is the applicable procurement process?

Public procurement in Slovakia is governed by the [Act on Public Procurement](#) which is based on EU Directives. There are some sector-specific regulations and exemptions applicable, for instance, to the rail sector, as well as with regard to the provision of services in water sector, energy or defense.

Under the key principles applying to the procurement process, contracts procured by the public sector are awarded fairly, transparently and without discrimination on the grounds of nationality and that all potential bidders are treated equally.

Investing in energy and infrastructure

Public procurement is relevant where public sector entities are seeking to outsource delivery of a new project. On an infrastructure project, a potential investor would have to bid in its own capacity or as part of a consortium, to deliver the overall deal which could include design, build, operation, maintenance and financing of the relevant energy or infrastructure asset.

In most cases, the public sector entity will need to publish a contract notice in the [Journal of Public Procurement \(Vestník verejného obstarávania\)](#), as well as in the [Official Journal of the European Union \(OJEU\)](#) and run one of the following procedures:

- **Public tender** – This procedure is suitable for easy-to-evaluate projects and tenderers simply submit a tender in response to the notice published in [Journal of Public Procurement](#) and in [OJEU](#). Change and negotiations to the tender are not permitted.
- **Restricted procedure** – There is a shortlisting of at least five tenderers following a stage in which the tenderers submit their requests for participation in the tender. Change and negotiations to the tender are not permitted.
- **Competitive dialogue** – This procedure suits the purposes of complex infrastructure projects and involves a shortlisting of at least three bidders who are invited to dialogue with the public sector to develop detailed solutions which are capable of being accepted by the public sector entity.

- **Negotiation procedure with publication** – This procedure involves a shortlisting of at least three bidders who are invited to dialogue with the public sector. It is used when there is a need to develop a detailed innovative solution, whereas due to the nature or complexity of the subject matter of the order, the order cannot be awarded without the dialogue and in the previous public tender or restricted procedure all of the submitted offers were unacceptable.
- **Direct negotiation procedure** – Direct negotiation can be used for public procurement only under particular restrictive conditions stipulated by the [Act on Public Procurement](#). Such conditions include, for instance, the fact that:
 - no entity submitted an offer in the previous public tender or restricted procedure, or no entity fulfilled the criteria of such previous procedure;
 - the requested services or goods may be provided only by a particular entity; or
 - the requested goods are produced only for research, development, study or experimental purposes.

Investors may, however, seek to invest in a project (by acquiring an interest in a private sector partner) that has already been procured and is operational. Typically, such investments are controlled by contractual mechanisms (particularly on publicly procured projects) within the original awarded contract rather than procurement regulations themselves.

Depending on the structure of the deal, any acquisition of an interest or variation to the existing project may have procurement-related considerations.

Financing energy and infrastructure

On a publicly procured contract, the public sector entity may have prescribed requirements on the funding arrangements which have to be followed.

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What are the most common forms of funding / investing in energy and infrastructure?

Funding

The most common form of private sector funding in energy and infrastructure in Slovakia (including in relation to public-private partnerships) are loans made on a project-finance basis and provided by financial institutions on medium- to long-term bases, or provision of own resources by the private sector partner.

Funding/funding products can also be, sometimes, provided by the [European Investment Bank](#) or [European Bank for Reconstruction and Development](#).

Investing

The most common form of investing in energy and infrastructure includes 'equity' investment in a special purpose project company (either a green field company or a functioning project) or in entities that may have a portfolio of interests.

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Restructuring

Enforcement and sanctions

When can there be regulatory investigations?

When the [National Bank of Slovakia](#) considers that an authorized firm or regulated individual may have breached the ongoing compliance requirements, it will launch a formal investigation. This may result in regulatory sanctions.

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What regulatory penalties may apply?

When a rule breach has taken place, the [National Bank of Slovakia](#) may impose a financial penalty against the firm and/or regulated individuals, or withdraw regulated status.

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What criminal penalties may apply?

Following formal investigation, the court may impose criminal penalties for any criminal offences, including:

- fraud, capital fraud;
- violation of obligations of trust;
- money laundering; and
- conducting business activities when not authorized.

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Tax

Tax issues

Are stamp, registration, transfer or other similar taxes applicable?

Are there stamp, registration, transfer or other similar taxes payable on the advance, transfer or assignment of a loan?

ADVANCE OF LOAN

No stamp, registration, transfer or other similar taxes are payable on the advance of a loan.

TRANSFER OR ASSIGNMENT OF A DEBT UNDER A LOAN

There are no stamp, registration, transfer or other similar taxes payable on the transfer or assignment of a debt under a loan. Some administrative fees may, however, apply.

Are there stamp, registration, transfer or other similar taxes payable on the taking, transfer or assignment of a mortgage, debenture or other security?

No stamp, registration, transfer or other similar taxes are payable on the taking, transfer or assignment of a mortgage, debenture or other security. Some administrative fees may, however, apply.

Are there stamp, registration, transfer or other similar taxes payable on the issue, transfer or assignment of a debt security (e.g. a bond)?

No stamp, registration, transfer or other similar taxes are payable on the issue, transfer or assignment of debt securities. Various fees, the rate of which depends on the relevant financial institutions, may apply to the issue of debt securities.

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Do tax authorities take priority on enforcement?

On the enforcement of security, do tax authorities take priority over secured lenders or secured debt security holders (e.g. secured bond holders)?

No. Only the National Bank of Slovakia takes priority on the enforcement of security relating to secured lenders and secured debt security holders.

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Is withholding tax on interest payments applicable?

Is there withholding tax on interest payments under a loan?

Yes, withholding tax is imposed on interest payments under a loan.

If so:

What is the rate of withholding?

The rate of withholding tax in the case of interest payments by a taxpayer resident in the Slovak Republic to a taxpayer also resident in the Slovak Republic, is 19%.

In the case of interest payments paid to a taxpayer resident outside of the Slovak Republic but in a jurisdiction which has concluded a double tax treaty with the Slovak Republic, the withholding tax rate is 19% or such lower rate as may be stipulated in that double tax treaty, if applicable. In the case of interest payments paid to a taxpayer resident outside of the Slovak Republic in a non-contracting state (jurisdiction that has not concluded a double taxation treaty or an international treaty providing for the exchange of information for tax purposes with the Slovak Republic), the withholding tax rate is 35%.

What are the key exemptions?

Interest payments to banks or other lenders, in each case, resident in the Slovak Republic, are not subject to withholding tax.

An exemption may be applicable, in whole or in part, under a double tax treaty.

An exemption from withholding tax may also be applicable under the EU Interest and Royalties Directive, as implemented in the Slovak Republic, provided that certain conditions are met.

Would the same analysis apply to interest payments under a debt security (e.g. a bond)?

Yes.

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Are foreign lenders and debt security holders subject to tax on interest payments?

Will the lender be taxed on interest payments under a loan in the jurisdiction of the borrower (other than by way of the application of withholding tax (if any)), assuming the lender is not otherwise resident in that jurisdiction for tax purposes (e.g. by virtue of incorporation, residence or local branch)?

No.

Would the same analysis apply to interest payments under a debt security (e.g. a bond)?

Yes.

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