

# IFLR

INTERNATIONAL FINANCIAL LAW REVIEW

## INTERNATIONAL BRIEFINGS 2013



### Slovak Republic

Futej &amp; Partners

## Changes to immigration legislation

As of May 1 2013, several important changes to the Act on Residence of Aliens came into force in Slovakia including those relating to residence permits for the purpose of business. This applies to the members of statutory bodies of business companies who are not employed, as well as self-employed entrepreneurs.

(In Slovakia, a foreigner who is both a member of a statutory body and an employee must apply for temporary residence for the purpose of employment only. This means that employment purpose of stay will prevail over business purpose of stay.)

There are some benefits of temporary residence for the purpose of business over temporary residence for the purpose of employment, in particular the time period for granting the permit for business purpose may be three years while in case of employment purpose it is only a maximum of two years.

Recent changes in legislation, however, bring bad news to all those members of statutory bodies who were granted a temporary residence permit for business purpose: the process of prolongation of this type of temporary residence permit has become more complicated. Until the end of April 2013, the police department (which is in charge of the immigration agenda in Slovakia) was entitled to prolong a residence permit, if a businessperson (a member of a statutory body) proved that he or she had sufficient income from his or her business activities in Slovakia. Such third-country national was obliged to demonstrate taxable income from business activities for the previous tax period of at least the amount of 60-times the

subsistence minimum (which stands at €198.09 (\$265) per month, meaning the 60-fold minimum equates to €11,885.40).

As from May 2013, a statutory body which is asking for prolongation of temporary residence permit for business purpose will have to show both personal financial coverage of stay in Slovakia and income of the company in which he or she performs the function of the statutory body.

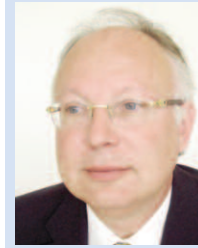
Personal financial resources must be demonstrated to the amount of at least 12-times the subsistence minimum (€2,377.08), for example in the form of a bank statement from the private bank account of a foreigner.

With regards to the income of the company, a third-country national must demonstrate that profit after taxation of the company in which he or she performs the function of a statutory body for the previous tax period amounts to at least 60-times the subsistence minimum. If that person has not conducted any business activities for the whole previous tax period, he or she must demonstrate a net profit of the company to the amount of five-times the subsistence minimum for each month of residence in the previous tax period.

If such profit was not gained, the police department will ask the Ministry of Economy for its opinion as to whether the business activity of the respective company is beneficial for the economic interests of the Slovak Republic.

This is a very new paradigm in Slovak immigration legislation. In practice it means that if a foreigner (a member of a statutory body) wants to get his or her residence permit prolonged, the company or cooperative in which he or she performs the function of a statutory body must gain profits after taxation for the previous tax period in the amount of at least €1,674.80, or the Ministry of Economy must be of an opinion that the business of that company is beneficial to Slovakia.

This may bring uncertainty to many foreign businessmen who are running



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companies in Slovakia. Not gaining profits is quite normal for a large number of companies. In practice, it will be important to see the approach of the Ministry of Economy. For the time being, however, certain suspicions may be reasonable. In this situation, it can be more practical to obtain a temporary residence permit for employment purposes. As indicated above, in Slovakia it is possible for an executive also to have a parallel employment relationship with the company. In this case he or she must apply for a residence permit for employment purpose, which is not linked to the kind of problem outlined above. There are some disadvantages of this type of residence permit, but the process of its prolongation is free of problems of this type.

Another change to the immigration law is the introduction of a new obligation of companies (and cooperatives) to notify the police department within three days that a foreigner who was granted a residence permit for a business purpose has stopped performing the function of a statutory body.

*Daniel Futej and Patrik Daniska*