

3-1-1998

Investigating Slovakia's Business Climate after the Velvet Revolution

Matthew I. Van Horn

Follow this and additional works at: <http://digitalcommons.law.utulsa.edu/tjcil>



Part of the [Law Commons](#)

Recommended Citation

Matthew I. Van Horn, *Investigating Slovakia's Business Climate after the Velvet Revolution*, 5 Tulsa J. Comp. & Int'l L. 365 (1997).

Available at: <http://digitalcommons.law.utulsa.edu/tjcil/vol5/iss2/5>

This Casenote/Comment is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Journal of Comparative and International Law by an authorized administrator of TU Law Digital Commons. For more information, please contact danielbell@utulsa.edu.



INVESTIGATING SLOVAKIA'S BUSINESS CLIMATE AFTER THE "VELVET REVOLUTION"

Matthew I. Van Horn

I. INTRODUCTION

This Comment explores Slovakia's potential as a country for foreign investment. It addresses the positive aspects for foreign investment, but also reveals potential dangers that may be lurking. First, the recent history of Slovakia is explained and this background gives the potential investor an idea of how Slovakia reached its current state of independence after the fall of Communism. Slovakia has experienced recent economic success and current figures are given to show where it has achieved success and where it needs to improve. Information is also provided to give the investor an idea of how products may be marketed in or through the Slovak market. Further, the Comment addresses the recent overhaul of Slovakia's commercial legal system and how this system may offer opportunities for business entities. Finally, the Comment updates Slovakia's race to become an official member of the European Community and how its current political state is its own worst enemy in its bid to attract foreign investors to promote its privatization process.

II. BACKGROUND

The Slovak Republic has taken a long road back to democracy since its departure prior to World War II.¹ November, 1989, marked the end of Communism for Czechoslovakia and when the sun came up January 1, 1993, the State of Czechoslovakia was dissolved.² Czechoslovakia split into what is now two separate countries, the Czech Republic and Slovakia. The Slovakia half of Czechoslovakia has received less attention from scholars and the media than the more publicized Czech Republic with its breath-taking tourist city of Prague. Slovakia has a population just over

1. See Heather V. Weibel, Note, *Avenues for Investment in the Former Czechoslovakia: Privatization and the Historical Development of the New Commercial Code*, 18 DEL. J. CORP. L. 889, 890 (1993) (citing Karel Dyba & Jan Svejnar, *Czechoslovakia: Recent Economic Development and Prospects*, 81 AM. ECON. REV. 185, 185 (1991)).

2. See POL. HANDBOOK OF THE WORLD 840-842 (Arthur S. Banks, et al. eds., 1996). Between the fall of Communism (November, 1989) and the dissolution of Czechoslovakia (January, 1993) the country was referred to as the Czechoslovak federation. See *id.*

five million and is forty percent of the original Czechoslovakia geography, compared to the Czech Republic's respective ten million and sixty percent.³ Imagine an area approximately twice the size of the state of Vermont with a population roughly equal to the state of Missouri.⁴ The capital of Slovakia is the city of Bratislava, located less than forty miles down the Danube River from Vienna, Austria.⁵

Slovakia has historically been considered the more "economically and politically primitive, impoverished, [and] agrarian" half of Czechoslovakia.⁶ Slovakia was responsible for manufacturing and exporting the arms and explosives for Czechoslovakia's defense before the countries split.⁷

After the fall of Communism in 1989, the Slovak leaders, finding original success under the previous communist regime, used reform tactics different from those used by the more market-oriented Czech Republic leaders.⁸ This difference in leadership led to the separation of Czechoslovakia.⁹ The Slovak Constitution came into effect the day of the dissolution of Czechoslovakia (January 1, 1993).¹⁰

The Slovak Constitution is very much like the United States' Constitution in that it provides a proportional representative government guaranteeing the rights of ethnic minorities, including the freedom to choose national identity.¹¹ The Constitution guarantees citizens the right to own property and, at least in theory, prohibits discrimination against individuals.¹²

The structure of the democratic Slovak government consists of a legislative power held by the unicameral National Council of the Slovak Republic with 150 members.¹³ The members of the legislature are elected

3. See Otto Ulc, *Czechoslovakia's Velvet Divorce*, 30 E. EUR. QUARTERLY 331, 331 (1996).

4. See RAND MCNALLY ROAD ATLAS, 54, 98 (70th ed. 1994).

5. See THE EUROPA WORLD YEARBOOK at 2836 (July 1996); See also Samuel Brittan, *A Morning Outing in Mitteleuropa*, FIN. TIMES, Oct. 10, 1994, at 73.

6. Ulc, *supra* note 3, at 332.

7. See *id.* at 336.

8. See Banks, et al., *supra* note 2, at 840.

9. See *id.*

10. See *id.* One of the drafters of the Constitution, Peter Kresak, is a law school professor in Bratislava, Slovakia and taught Comparative Constitutional Law at the University of Tulsa School of Law during the fall 1996 semester.

11. See *id.* at 841-42.

12. See *id.* The Prime Minister, Vladimir Mečiar, and his ruling party, The Movement for a Democratic Slovakia (HZDS) have been criticized for not enforcing human rights standards required by typical democratic regimes or by the European Union. See *Slovakia: Review 1997*, EUR. REV. WORLD OF INFO., at 23, Apr., 1997, available in LEXIS, Quest Economic Database, Janet Matthews Information Service. Interestingly, capital punishment is not practiced in Slovakia. See THE EUROPA WORLD YEARBOOK, *supra* note 5, at 2836.

13. See Banks et al., *supra* note 2, at 842. Unicameral means that the legislation consists of a single legislative chamber and this single legislative chamber differs from the bicameral

by adult citizens of Slovakia and the seats of the legislature are currently composed of members from twelve different recognized political parties in Slovakia.¹⁴ Currently, representatives of the Movement for a Democratic Slovakia (HZDS)/Agrarian Party of Slovakia (RSS) hold the most seats with sixty-one.¹⁵ The Slovak National Council elects the President (Head of State) for a five-year term.¹⁶ The President is responsible for appointing the Prime Minister (head of government), and based on the Prime Minister's recommendations, the President appoints other government members of the executive body.¹⁷ Michal Kováč was elected by the National Council and sworn in as President of Slovakia in 1993 and Vladimir Mečiar, as a member of the Movement for a Democratic Slovakia, was sworn in for a third term as Prime Minister in 1994.¹⁸

President Kováč was originally backed by the Prime Minister Mečiar, however, their political relationship declined when Kováč resigned from Mečiar's political party HZDS.¹⁹ Mečiar restructured his cabinet to further his one-party, communist style of ruling.²⁰ President Kováč has continued to disagree with Mečiar as to how to govern Slovakia. Theoretical differences between the two leaders has resulted in political strife within Slovakia.

The Czech Republic and Slovakia established a common currency following the dissolution, but this was only temporary and was terminated in February, 1993, after trading dramatically decreased between the

legislative body found in the United States. See AM. HERITAGE C. DICTIONARY 1475.

14. See Banks et al., *supra* note 2, at 843-845. In total there are eighteen recognized political parties in Slovakia even though only twelve parties are currently represented from the October 1, 1994 election. See *id.* A list of all the recognized Slovak political parties is as follows: Four of the eighteen are Governmental Parties; Movement for a Democratic Slovakia (HZDS), Agrarian Party of Slovakia (RSS), Slovak National Party (SNS), and Association of Workers of Slovakia (ZRS). See *id.* Eleven of the eighteen are Parliamentary Opposition Parties; Common Choice (SV), Party of the Democratic Left (SDL), Social Democratic Party of Slovakia (SDSS), Green Party (SZS), Farmers' Movement (HPS), Hungarian Coalition (HK), Coexistence (ESWS), Hungarian Christian Democratic Movement (MKdM), Hungarian Civic Party (MPP), Christian Democratic Movement (KDH), and Democratic Union of Slovakia (DUS). See *id.* Three of the eighteen are minor parties which failed to win representation in the fall 1994 legislative balloting; Democratic Party (DS), Communist Party of Slovakia (KSS), and Christian Social Union (KSU). See *id.*

15. See *id.* at 845. This percentage of representation comes after the election on October 1, 1994. See *id.*

16. See THE EUROPA WORLD YEARBOOK, *supra* note 5, at 2830. Similar to the United States, the President can not serve more than two consecutive terms. See *id.*

17. See *id.*

18. See Banks et al., *supra* note 2, at 840-41. President Kováč was sworn in on March 2, 1993 and Prime Minister Mečiar was sworn in on December 13, 1994. See *id.* The President will be up for reelection in 1998. See *id.* Mečiar's role as Prime Minister has been inconsistent. See *id.* He was defeated early 1994 in a parliamentary nonconfidence vote but, was re-elected September 30, 1994. See *id.*

19. See *id.* at 841.

20. See Banks et al., *supra* note 2, at 840-41.

two countries.²¹ The drop in trade leading to the destruction of the common currency probably came about because of a lack of confidence as to the value of the currency by both the Czech and Slovak citizens. Persons on each side probably feared that the currency was worth more in their own country than the value being paid for the goods coming from the opposing country. Today, both the Slovaks and the Czechs use the Koruna as currency but each Koruna has a different appearance and the Czech Republic's Koruna typically trades higher for the U.S. Dollar than the Slovak Koruna.²²

Slovakia is a landlocked country bordered by Poland to the north, by the Ukraine to the east, by Austria to the west, by the Czech Republic to the Northwest, and by Hungary to the south.²³ Formally under Hungarian rule until the early 20th Century, Slovakia's population is still composed of eleven percent Hungarians.²⁴

The Slovak Embassy reports that it has "good and friendly relations" with all its neighbors and that its signed and ratified Treaty on Good Neighborliness and Friendly Relations with Hungary "confirms the inviolability of the existing Slovak-Hungarian border ... renounc[ing] any territorial claims in the future."²⁵ However, a profile of Slovakia published in 1996, stated that growing nationalism within Slovakia has sparked poor relations with neighboring countries, including Hungary.²⁶

Specifically, a state treaty signed by Slovakia and Hungary in March, 1995 that was to resolve any Slovak-Hungarian problems has yet to be ratified by the Slovak Parliament.²⁷ Also, the Slovak Parliament passed a November, 1995 anti-Hungarian language law that virtually guarantees conflict with the Hungarian government and the Slovak Hungarian ethnic minority (representing 600,000 persons of Slovakia's population).²⁸ This anti-Hungarian legislation has strengthened the status of Slovak as the country's only official language and the Slovak government introduced

21. *See id.*

22. *See id.* at 840. The Slovak Koruna has an exchange rate fluctuating slightly around 29.00 koruny per US\$1. *See id.* The difference in appearance is very noticeable, based on my personal experience handling both forms of currency.

23. *See* EUROPA WORLD YEARBOOK, *supra* note 5, at 2828.

24. *See* Banks et al., *supra* note 2, at 840.

25. The Slovak Embassy. Slovak Republic-Foreign Policy, (visited June 11, 1997) <<http://www.slovakemb.com/foreign>>.

26. *See Slovakia: July 1996*, HILFE COUNTRY REPORT, at 45, July, 1996, available in LEXIS, Quest Economic Database, Janet Matthews Information Service.

27. *See Slovakia: Review 1997*, *supra* note 12, at 24.

28. *See* Banks et al., *supra* note 2, at 843. Specifically, when the Slovak Parliament is referred to in this context, the anti-Hungarian Slovak National Party (SNS) has formed an alliance with the Movement for a Democratic Slovakia (HZDS) the country's most powerful government party (the political party with the greatest representation in Slovakia's Parliament) and HZDS passed the November, 1995 anti-Hungarian language law. *See id.* *See also Slovakia: Review 1997*, *supra* note 12, at 24.

bilingual teaching in ethnic Hungarian schools, where teaching has historically been exclusively in Hungarian.²⁹ Despite what the Slovak Government reports, the relationship between Slovakia and its most powerful and progressively free market neighbor is not in the best shape.

The Slovak government is still in the early stages of privatizing a civilization which endured Communism for more than forty years.³⁰ In order to be a viable market for investors, Slovakia must successfully privatize industries that have been owned and run by the State. There must be a successful shift in taking ownership of industries out of the State's hands and placing it into the hands of private individuals. The Slovak government, in order to become aligned with westernized countries, must find a way to transform the communism way of life ingrained in the psyche of the Slovak citizens into a market-oriented way of life.

The Slovak government installed the first wave of large-scale privatization through a voucher (coupon) method when the Christian Democratic Movement party (KDH) controlled the Slovak government.³¹ The KDH designed the voucher method to transfer ownership in state-owned businesses from the Slovak State to private Slovak citizens.

Vouchers were distributed to 3.5 million Slovak citizens at a "nominal fee" and these vouchers were designed to be exchanged for either shares in companies or investment funds.³² The voucher system involved ownership interests in 600 different state companies totaling a nominal book value of \$6 billion U.S. Dollars.³³ This voucher-based system may have created the individual share-owning democracy that currently exists in the Czech Republic *if* it had not been abandoned in October, 1994 by the Mečiar-led Movement for a Democratic Slovakia (HZDS) party now running the formally KDH-lead Slovak government.³⁴ The HZDS government abandoned the KDH government drafted voucher system of privatization for a more insider-oriented privatization.³⁵

29. See Banks et al., *supra* note 2, at 843.

30. See Weibel, *supra* note 1, at 890. See also Karel Dyba & Jan Svejnar, *Czechoslovakia: Recent Economic Development and Prospects*, 81 AM. ECON. REV. 185, 185 (1991).

31. See Weibel, *supra* note 1, at 916; See also The Slovak Embassy, *supra* note 25.

32. Weibel, *supra* note 1, at 915; See also *Exchange of Vouchers for Shares Scheduled for May 18 in C.S.F.R.*, 9 INT'L. TRADE REP. No.20 856, 857 (May 13,1992).

33. See Weibel, *supra* note 1, at 915-16; See also *Slovakia: Review 1997*, *supra* note 12, at 29.

34. See *Slovakia: Review 1997*, *supra* note 12, at 29. This individual share-owning market economy is what exists in the United States and is based on the ability to freely trade shares of stock, therefore creating the natural change in share prices based on a companies performance and the supply and demand of the stock. See *id.*

35. See Colin Jones, *An Image Problem (Slovakia's Economic Policy)*, THE BANKER Mar. 1996, at 35. Critics have called this insider-form of privatization a "family circle privatization" because the selling of companies has been conducted by mostly management and employee buyouts. *Id.* at 37. The sales are made to the insiders at extra-low prices and are issued with easy "payment terms", usually only requiring a ten percent down payment. *Id.*

This insider-method of privatization has been implemented through large enterprises by selling stock owned by the State at lower prices to managers and employees of the enterprises being privatized.³⁶ Also, the government retains a controlling interest in the enterprises via the government's National Property Fund (NPF).³⁷

This change in methods of privatization has caused political friction but has not been very controversial among Slovak citizens. Original voucher holders were compensated with transferable bonds and the HZDS government assured holders that the insider-method will provide job security to individuals.³⁸ However, the Slovak citizens are unaware of how a free-trading stock market voucher system works and may not realize the benefits from the voucher system.³⁹

The insider-method of privatization, does little to establish private investment funds or facilitate the Bratislava Stock Exchange.⁴⁰ Furthermore, the HZDS government banned all informal over-the-counter share trading.⁴¹ Basically, the insider-method of privatization benefits the insiders of the companies being privatized and the government leaders, but harms the movement toward a true market-oriented economy.⁴²

In conjunction with the privatization of state-owned businesses in Slovakia, the government has implemented a property restitution program

36. See *Slovakia: Review 1997*, *supra* note 12, at 29-30.

37. See *id.* An example of the government's insider-method of privatization and how it hesitates to relinquish ownership rights of major Slovak enterprises can be seen by examining the "privatization" of the Slovnaft Company. *Id.* The National Property Fund ("NPF") owned seventy-five percent of Slovnaft, the largest industrial company and a producer of oil and gas in Slovakia. See *id.* The NPF, as part of the privatization process, was to reduce its ownership in Slovnaft to thirty-five percent and sell shares of the company to individual foreign investors. See *id.* But, in June, 1995, the government announced it wanted to retain ownership in Slovnaft and the NPF sold thirty-nine percent of the Slovnaft stock to the managers and employees of Slovnaft. See *id.* Selling stock to insiders at a lower cost harmed the financial interests of outside shareholders. See *Slovakia: Review 1997*, *supra* note 12, at 29-30.

38. See *id.* Although, these bonds can only be used to purchase shares of the NPF or instead of paying moneys toward retirement and health contributions. See *id.* The voucher holders were compensated with five-year transferable bonds worth \$330 U.S. Dollars, with an annual paying interest rate of 19.5%. See *id.* This interest rate provides a relatively good return that keeps the Slovak citizens participating in the privatization process happy. See *id.*

39. See Weibel, *supra* note 1, at 911-912 (explaining that it is not a guarantee that Slovak citizens will be eager to participate in the voucher system and it is unfounded that Slovak citizens will behave like "experienced stockholders" because they have been without a free market system for so long); See also Vratislav Pechota, *Privatization and Foreign Investment in Czechoslovakia: The Legal Dimension*, 24 VAND. J. TRANSNAT'L L., 305, 316 (1991).

40. See *Slovakia: Review 1997*, *supra* note 12, at 29.

41. See *id.* Banning informal over-the-counter share trading would eliminate the possibility for individuals to amass any significant amount of stock from any one company or permit an increase in the number of individuals that can own shares in a company. See *id.*

42. See *id.*

to protect individual property rights.⁴³ This protection and placement of individual property rights, as opposed to State owned, will result in a more free market society. This transportation of property rights from the state to the private individual has been implemented by the Slovak government in a restitution program that seeks to return property "expropriated during the Communist regime from 1948 to 1989" to the original owner of the property.⁴⁴

Two laws govern this restitution process.⁴⁵ The first law is returns property confiscated between 1955 and 1959 and compensates the original owner of mostly small, individually owned businesses.⁴⁶ The second law is broader and "provides for the return of 'nationalized, confiscated, or otherwise expropriated' property between the years 1948 and 1989."⁴⁷ This law is designed to compensate permanent residents of Slovakia who originally-owned a great deal of property.⁴⁸

The privatization in Slovakia is slow.⁴⁹ The economic complexities, political struggles, and bureaucratic red tape necessary to complete such a task is overwhelming. The above methods of privatization are just some of the ways the government may continue to privatize Slovakia and much debate in Slovakia still exists as how to successfully privatize.⁵⁰ The good news for the foreign investor is that the privatization of Slovakia is now too far advanced to be reversible and that privatization of the state industrial sector is expected to be completed by the end of 1997.⁵¹ The bad news is that the privatization of the state industrial sector, as it currently stands, will be self-serving for the current rulers of the Slovak govern-

43. See Weibel, *supra* note 1 at 911-12; See also Michael L. Neff, *Eastern Europe's Policy of Restitution of Property in the 1990's*, 10 DICK. J. INT'L L. 357, 357 (1992).

44. Weibel, *supra* note 1, at 915 (describing how the Slovak Government was formally the Czech and Slovak Federal Republic (the CSFR) after the fall of Communism in 1989 but before the split of the countries in 1993. The restitution program was statutorily implemented before the countries split and when they were still referred to as CSFR. The statutes have remained in force in Slovakia as well as the Czech Republic); See also Pechota, *Privatization and Foreign Investment in Czechoslovakia: The Legal Dimension*, 24 VAND. J. TRANSNAT'L. L. 305, 307 (1991).

45. See Weibel, *supra* note 1, at 913 (citing Pechota, 24 VAND. J. TRANSNAT'L. L. 305, 307 (1991)).

46. See *id.* (citing Pechota, 24 VAND. J. TRANSNAT'L. L. 305, 309 (1991)).

47. *Id.* (citing Pechota, 24 VAND. J. TRANSNAT'L. L. 305, 310 (1991)). This law is referred to as the Restitution Act of February 21, 1991. See *id.*

48. See *id.* (citing Pechota, 24 VAND. J. TRANSNAT'L. L. 305, 310 (1991)).

49. See *id.* at 916.

50. See Weibel, *supra* note 1, at 911-12, (citing Pechota, 24 VAND. J. TRANSNAT'L. L. 305, 315-16 (1991)).

51. See *Slovakia: Review 1997*, *supra* note 12, at 30. Although the HZDS government continues to favor the one-party communist style of ruling, it has disregarded the view of its "junior coalition partner", Association of Workers of Slovakia (ZRS), to stop the privatization process all together. *Id.*

ment.⁵²

III. ECONOMIC INDICATORS

On April 11, 1996 Standard and Poor's investment-rating agency upgraded its rating of the National Bank of Slovakia's long-term liabilities in foreign currency from BB+ to BBB-.⁵³ Long-term liabilities in Slovak Crowns were assigned an A rating, while the short-term liabilities in the Slovak Crowns received an A-1 rating.⁵⁴ Also, IBCA, one of the leading European investment rating agencies assigned the National Bank of Slovakia's long-term debt a BBB- rating in August, 1996.⁵⁵ These confident ratings are impressive and good news for a bank located in a country that is still in the process of riding itself of the impact of four and half decades of communist management.

Despite the political struggle over Slovakia's privatization and the slow-down due to the defeat of the voucher program, recent economic progress has been impressive, better than the Czech Republic or Poland.⁵⁶

When Slovakia achieved its first full year of independence in 1993, the gross domestic product (GDP) had fallen to a level 25% lower than its GDP in 1989.⁵⁷ Under Communism, unemployment was minimal in Slovakia. After the fall of Communism, Slovakia experienced high unemployment, high inflation, and a decrease in exports and industrial output.⁵⁸ Currently, with the private sector accounting for 60 percent of all of Slovakia's economic activity, improvements have occurred.⁵⁹ The rise of the GDP coupled with other positive economic trends indicates that Slovakia can have a successful investor-friendly economy.⁶⁰

The Slovak Republic posted a 4.8 percent economic growth in 1994

52. *See id.*

53. *See* The Slovak Embassy, Slovak Republic - Business and Economy, (visited June 11, 1997) <<http://www.slovakemb.com/foreign>>. Standard and Poor's (S&P) is one of the two major independent rating agencies that assigns investment quality ratings to investment bonds. BRIGHAM & GAPENSKI, FINANCIAL MANAGEMENT THEORY AND PRACTICE 905 (1994). The highest S&P rating of a bond is a triple A (AAA) and the lowest/most risky rating is a single C8 rating. *See id.* Single A(A) and triple B(BBB) ratings are strong enough to be called "investment grade" bonds. *Id.*

54. *See* The Slovak Embassy, *supra* note 53. The "-1" denotes that this single A rating is the strongest of the single A ratings. BRIGHAM & GAPENSKI, *supra* note 53, at 905.

55. *See* The Slovak Embassy, *supra* note 53.

56. *See* Colin Jones, *Disturbing Signals*, BANKER, Mar. 1997, at 41, 44.

57. *See id.* at 44.

58. *See* Adam LeBor, *Slovak PM Stands Down*, NEW STATESMAN & SOC'Y., Mar. 18, 1994, at 10.

59. *See* Klaus Wieners, *Emerging Markets*, BUS. ECON., July 1996, at 18. Sixty percent rates as one of the highest percentages of private sector share of the GDP for any of the emerging Eastern Markets. *See id.* Except for the Czech Republic's private sector making up seventy percent of its GDP, not many eastern countries come close to Slovakia. *See id.*

60. *See* LeBor, *supra* note 58, at 10.

and a 6.4 percent economic growth in 1995.⁶¹ This expansion has been due to an increase in investment spending and export growth.⁶² Additionally, private consumption has grown with the increase in real wages facilitating Slovakia's economic growth.⁶³ Inflation has steadily decreased from 13.4 percent in 1994, to 9.9 percent in 1995, to 6.1 percent through June 1996, lower than expected.⁶⁴ Unemployment has been falling each year since the fall of Communism; Unemployment fell again in 1995 to 13.1 percent.⁶⁵ Private sector jobs as a result of mass-privatization, especially in the service industries, have produced this decline in unemployment.⁶⁶

These recent economic figures coupled with reduced inflation rates resulted in a relatively stable Slovak Koruna.⁶⁷ The year ending exchange rate for the Slovak Koruna to the U.S. Dollar on years 1992 through 1996 has fluctuated between 28.9 to 32.1 Korunas per U.S. Dollar.⁶⁸

Nonetheless, Slovakia's foreign trade deficit in the first half of 1996 increased to Sk26.975bn (\$900 million U.S. Dollars), brought about mainly by increases in imports.⁶⁹ Although exports grew 2.1 percent year-on-year in the first half of the year, imports jumped 23.6 percent, composed mainly of fossil fuels and mineral oil.⁷⁰ The commodities most commonly exported by Slovakia in the first half of 1996 were iron and rolled steel.⁷¹

The amount of foreign investment in Slovakia is minimal compared with Slovakia's neighbors the Czech Republic, Hungary, and Poland.⁷² In

61. See *Slovakia Review 1997*, *supra* note 12, at 40. This economic growth is a GDP real growth measurement. See *id.*

62. See *id.* at 25.

63. See *id.* at 25. The real wages for workers grew ten percent in 1995 compared with a five-percent growth in 1994. See *id.*

64. See *A Small Market Draws Interest*, CHAIN STORE AGE WITH SHOPPING CENTER AGE, Jan. 1997 at 16.

65. See Jones, *supra* note 56, at 44. This 13.1% unemployment, though, is still considered high when compared to the United States and other westernized countries. See *id.*

66. See *A Small Market Draws Interest*, *supra* note 64, at 16.

67. See V. Anantha-Nageswaran, *Slovak Crown Remains Well-Supported*, EUROMONEY PUBLICATIONS 1996, at 69. The Slovak Kurona is also referred to as the Slovak Crown. See *id.*

68. See Jones, *supra* note 56, at 44.

69. See The Slovak Embassy, *supra* note 53. This 1996 foreign trade deficit comes after a year ends balance-of-trade of almost zero in 1995. See *id.* In 1995, the Slovak exports reached a value of U.S.\$8.47 billion and imports reached a value of U.S.\$8.41 billion with the Czech Republic, Germany, Hungary, Poland, Austria and Russia as Slovakia's main traders. See *id.*; See also *Slovak Trade Deficit Widens*, FIN. TIMES, July 24, 1996, at 2.

70. See *Slovak Trade Deficit Widens*, *supra* note 69, at 2.

71. See *id.*

72. See Anthony Robinson & Vincent Boland, *Survey of Slovakia*, FIN. TIMES, Dec. 16, 1994 at 55.

1995, Slovakia received only U.S.\$700 million in foreign investments.⁷³ This small level of foreign investment is probably do to the "political instability" in Slovakia.⁷⁴ Slovakia needs to remain accessible to the international capital markets so that it may receive enough financing for developing its infrastructure and industry.⁷⁵

Slovakia's current deficit of 5 percent of its GDP is likely to remain, but Slovakia's limited domestic financial resources make reducing the deficit critical.⁷⁶ To lower and eliminate its deficit, it is imperative that Slovakia attract foreign investments and rely less on its limited internal resources. To that end, Slovakia must provide its foreign investors with a stable investment climate.

Slovakia's bond market is stable and is continues to grow with no shortage of future issuers.⁷⁷ Predictably, the total amount of corporate and bank bonds being offered is still quite low compared to the total number of government bonds issues.⁷⁸ The average interest rate yield on bank and corporate bonds is between 11% and 13%.⁷⁹

Slovakia maintains a stock exchange in Bratislava named the Bratislava Stock Exchange (BSSE).⁸⁰ Its existence was greatly influenced by the initial wave of coupon privatization, and a large number of small companies with low liquidity trade on the market.⁸¹ The market did experience strong growth during the first half of 1996 and the liquidity of the market more than doubled when rules were imposed that limited the amount of equity an individual could own.⁸²

The BSSE functions under a membership principle similar to the stock exchanges in the United States.⁸³ A member must obtain a license from the Ministry of Finance and have their membership approved by the Stock Exchange Chamber before being allowed to trade on the market.⁸⁴ Trading is conducted electronically and carried on through the "senior

73. See *Slovakia: Review 1997*, *supra* note 12, at 40.

74. Robinson & Boland, *supra* note 72, at 55.

75. See *id.*

76. See Blum, *Czechs and Slovaks Win Praise for Their Progress*, FIN. TIMES, Mar. 2, 1994, at 3.

77. See ING Barings et al., *Slovakia*, EUROMONEY, Feb. 1997 at CE 12(2).

78. See *id.*

79. See *id.*

80. See *id.* The BSSE is a self-regulated company owned by financial institutions, investment and brokerage houses and is the main organizer of securities in Slovakia. See *id.*

81. See *id.* If equity does not exist in a liquid market then possible buyers and sellers are difficult to attract where owners of the equity have no market in which to sell their equity. See ING Barings et al., *supra* note 77, at CE 12(2). Cash is the most liquid form of currency. See *id.* If equity does not remains liquid then people will look less favorably at purchasing the equity because they have a more difficult time selling the equity for cash. See *id.*

82. See *id.*

83. See *id.*

84. See *Id.*

and junior markets of listed securities, and the registered securities market.⁸⁵ Disputes between members of the stock exchange are addressed in the Stock Exchange Arbitration Court.⁸⁶

The Slovakia equity market is \$2.3 U.S. Billion and equivalent to the size of stock markets in Budapest and Warsaw, but smaller than the Prague market.⁸⁷ The average price/earnings ratio (P/E) forecasted for 1996 was 11.6 which was slightly higher than Poland's and Hungary's but lower than the Czech Republic.⁸⁸

Laws surrounding Slovakia's securities markets have lessened the confidence of investors and continue to affect security prices.⁸⁹ First, an amendment to Slovakia's Securities laws makes it possible for companies to withdraw from trading on the stock market.⁹⁰ Once a company is delisted, the Securities Registry will no longer publish information about the company and its shares.⁹¹ This lack of information will reduce Slovakia's "capital market's transparency."⁹² This decrease of available public information is a step back for a country recently introduced to democracy and its apparent ease and openness to information of private industries.

Further, Slovakia's "bankruptcy laws make it virtually impossible for external creditors to force indebted companies into bankruptcy."⁹³ "Of the 1,500 bankruptcy petitions that were filed in 1995, only one resulted in a

85. ING Barings et al., *supra* note 77, at CE 12(2).

86. *See id.*

87. *See id.* Slovakia's equity market represents 12% of its GDP. *See id.* Considering the population of Budapest and Warsaw, and the history of their equity markets, it is a good sign for Slovakia that its equity market is the same size as Budapest's and Warsaw's equity market. *See id.*

88. *See id.* Price/Earnings Ratio (P/E) is the price per share of stock divided by the earnings per share. *See* BRIGHAM & GAPENSKI, *supra* note 53, at 59. The P/E ratio shows how much investors are willing to pay per dollar of reported profit and a higher P/E ratio is an indicator of firms with high growth prospects, other things held constant. *See id.* A P/E ratio of 11.7 is a confident ratio. *See id.*

89. *See* ING Barings et al., *supra* note 77, at CE 12(2).

90. *See id.*

91. *See id.*; *See also* Jones, *supra* note 56, at 41. The old security rules (Act 600/1992) required all deals to take place on the organized market. *See* Slovakia Begins to Entice, EUROMONEY, Apr. 1996, at 107-108. Further, to protect small investors, the old securities laws prevented one person from holding more than 30 percent of one company. *See id.* If one person held more than thirty percent, the amount over the thirty percent had to be sold. *See id.* These old helped to keep the market transparent and gave investors confidence in the Slovak market. This change in security rules is a reflection of the influence of the Mečiar government. *See id.*

92. Jones, *supra* note 56, at 41. In 1995 a securities law was passed that improved "the securities market's transparency, raised broker's capital strength, and improv[ed] shareholders' rights." Jones, *supra* note 35, at 36. This law, though, was short-lived until an amendment to securities laws in 1997 made the securities market, once again, less transparent. *See id.*

93. Jones, *supra* note 56, at 41.

company liquidation."⁹⁴ The Slovak courts apparently prefer to leave companies as going concerns instead of liquidating. It appears that Slovakia courts will not force a company into bankruptcy even when a company fails to pay interest payments to a bondholder. This record offers little confidence to the credit holder (i.e. investor/ bondholder) of a company. If Slovak courts continue this trend, foreign investors will be less likely to purchase bonds in private companies if they are unlikely to receive their interest payments and lack the power to force liquidation.

The BSSE has extended its efforts to develop and maintain close relations with the stock exchanges of foreign countries and is a member of different federations of stock exchanges.⁹⁵ The members of the BSSE who want to become integrated with the European Union have motivated these efforts.⁹⁶ Even more revealing as to BSSE's interest in becoming more involved with the European Union, the BSSE recently became one of the founding members of the Federation of Euro-Asian Stock Exchanges.⁹⁷

The economy in Slovakia has fared better than predicted, but, still its performance has been considered in "comparison with any of the transition economies of central and eastern [e]urope."⁹⁸ The rosy economic figures are in response to the time before the Mečiar government was the strongest political force in Slovakia. A conflict exists, in that, Slovakia needs foreign investments to compensate for its minimal domestic resources, but at the same time the privatization strategies and government fiscal policies that have produced above average economic indicators are now being converted by the Mečiar led administration.

IV. VIABLE MARKET INFORMATION

Slovakia's peaceful separation from the Czech Republic and the advanced state of its "economic development" could give U.S. companies excellent opportunities in Slovakia's economic market.⁹⁹ Slovakia's market is relatively small and composed of 5.3 million people but is growing at an annual rate of 54%.¹⁰⁰ The total labor force is composed of 2.5 million people, with 32% in industry, 12% in agriculture, 10% in construction, and 44% in communication and other areas.¹⁰¹ Slovakia's popula-

94. *Id.*

95. See ING. Barings et al., *supra* note 77, at CE 12(2).

96. See *id.*

97. See *id.*

98. Kevin Done, *Survey of Slovakia*, FIN. TIMES, Dec. 20, 1995, at 33.

99. Mark J. Mowry, *Czech Republic/Slovak Republic: Birth of new nations should yield opportunities*, BUS. AM., Apr. 19, 1993, at 32.

100. See Slovak Embassy, *supra* note 53; See also *A Small Market Draws Interest*, *supra* note 64, at 16.

101. See Slovak Embassy, *supra* note 53.

tion, though, is aging and the growth rate by the year 2050 is projected to be negative.¹⁰²

Slovakia's main industries are chemical, food processing, metallurgy, engineering, energy, paper/wood processing, textiles, electrical engineering, mining and building materials.¹⁰³ Further, agriculture accounts for 10% of Slovakia's GDP.¹⁰⁴

The Danube river provides access to links Slovakia's market to Germany, Austria, Hungary, Bulgaria, and Romania.¹⁰⁵ Also, Slovakia's location provides excellent access to the former Soviet market and represents a stable market in which to reach other developing eastern economic markets.¹⁰⁶ As an associate member of the European Union, Slovakia has free access to the European Union markets.¹⁰⁷ Another good sign for Slovakia is that its improved market conditions has apparently made it less dependant on exporting to the former Russia.¹⁰⁸

Despite its ability to reach other markets, Slovakia itself has few large retail markets.¹⁰⁹ Bratislava, the capital and largest city, has a population of less than 500,000 persons.¹¹⁰ Slovakia's small size makes its essential that industries in Slovakia remain active in other foreign markets.¹¹¹ Another problem is that many products may be imported to Slovakia cheaper than what it costs to produce the products in Slovakia.¹¹² Slovakia's market will be competing heavily with the mature western Europe markets.

Slovakia harbors a well-qualified educated workforce with a high percentage of university graduates.¹¹³ Slovakia has low labor costs that could be advantageous for U.S. and other western companies investing in business ventures.¹¹⁴ The labor costs in Slovakia are lower than those in Western Europe, 30% lower than those in Hungary, 20% lower than in

102. See *A Small Market Draws Interest*, *supra* note 64, at 16.

103. See Slovak Embassy, *supra* note 53.

104. See *id.*

105. See Slovak Embassy-Business and Economy, Investment Climate, (visited June 11, 1997) <<http://www.slovakemb.com/business>>.

106. See *id.*

107. See *id.* Keep in mind that an associate member of the European Union is granted far less rights than a statutory member of the European Union. See *id.*

108. See Done, *supra* note 98, at 35. "The share of Russia in Slovak exports has fallen to less than 4% but Slovakia remains highly dependant on Russia for its oil and gas imports, and overall Russia still accounts for 17% of the value of Slovak imports." *Id.* at 35.

109. See *A Small Market Draws Interest*, *supra* note 64, at 16.

110. See *id.*

111. See Stephen S. Cohen & Andrew Schwartz, *The Tunnel at the End of the Light: Privatization in Eastern Europe, Doing Business in Central and Eastern Europe*, 7 TRANS. L. 7, 22 (1994).

112. See *id.*, at 22.

113. See Slovak Embassy, *supra* note 105.

114. See *id.*

Poland, and 10% lower than in the Czech Republic.¹¹⁵ As a result of its recent growth, Slovakia has seen its average monthly wage for employees in firms with twenty-five or more employees rise fifteen percent from 1995 to 1996.¹¹⁶

Slovak managers already employ "modern management techniques ... " and "[t]he mentality of management at many ... large companies ... [in Slovakia] has made good progress in learning western management techniques in finance, and also in organization, in rationalization, and improving standards of quality."¹¹⁷ Also, the Slovak government funds programs to help support business entrepreneurs creating new jobs in Slovakia.¹¹⁸

Management, though, is having problems motivating workers that lived under the communist way of doing business for so many years.¹¹⁹ "Managers of new private companies say they must dismiss dozens of people to find one not afflicted by the lackadaisical work ethic fostered by the Communist system."¹²⁰ "Another element plaguing new businesses is the "hierarchical[sic] mentality" that is ingrained in the psyche of eastern Europeans.¹²¹ The "incentive structures" found in the former "Communist enterprises" discouraged "middle-level" managers from taking initiatives to innovate or improve quality.¹²² Remember that Slovakia workers come from a society of zero unemployment where a person could never lose their job. The "middle-level" managers, instead, go along with the system and do not promote the "entrepreneurial" attitude needed to formulate successful free-market businesses.¹²³

American and other Western goods are typically well regarded and in demand in Slovakia.¹²⁴ The products most likely in highest demand in Slovakia and other developing eastern European countries will be computer hardware and software, pollution control equipment, telecommunications equipment, building products, and managing consultant services.¹²⁵ Big participants in Slovakia's quasi-free market society include Western phone companies, and retailers/supermarkets such as,

115. *See id.*

116. *See A Small Market Draws Interest, supra* note 64, at 16.

117. *See Done, supra* note 98, at 35 (quoting Mr. Jean-Christophe Ganz, manager of the Bratislava branch of ING Bank, one of the first foreign banks to develop operations in Slovakia).

118. *See Slovak Embassy, supra* note 53.

119. *See Cohen & Schwartz, supra* note 111, at 21.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *See Mark J. Mowrey, Czech Republic/Slovak Republic: Birth of new nations should yield opportunities, BUS. AM., Apr. 19, 1993, at 32.*

125. *See id.*

listed in order of amount of investment, K-Mart, the Dutch group Ahold, SPAR from Germany and Austria, Delvita from Belgium, and Tengelmann from Germany.¹²⁶

The Slovakia phone business is an opportune market opening for Western/foreign investors.¹²⁷ The phone industry has been under State ownership since the beginning of communism in Slovakia; but the Ministry of Transport, Post and Telecommunications will soon begin transforming Slovaenske Telekomunicacie SP, one of the last big Central European phone companies, into a joint stock company.¹²⁸ The State is to sell 18% to 30% of the phone company to a foreign partner.¹²⁹ The privatization process, though, has been slow and the company's equipment is extremely outdated.¹³⁰ The phone company is investing to improve its appearance so to attract western investors.¹³¹

Along with the telecommunications sector, other infrastructure industries that are being rebuilt since the fall of Communism are considered the best candidates for privatization and may be well suited for foreign investors.¹³² These businesses "could produce tradable shares to generate capital markets."¹³³ Further, these industries do not have to compete with other businesses and are easy to manage.¹³⁴ Infrastructure industries exist in a vacuum avoiding the competition of normal a free-market. These industries could be a place for western investors to begin placing capital.

126. See Tomas Drtina, *The Internationalization of Retailing in the Czech and Slovak Republics*, SERVICE INDUSTRIES J., Oct. 1995, at 191-203. I say "quasi free-market society" because in some industries such as telecommunications and infrastructure construction the Slovak government requires that it play a role in partial ownership of the business. See *id.* See also *Kmart Corp.*, SUPERMARKET NEWS, Mar. 11, 1996, at 2. Kmart has since agreed to sell seven stores in the Slovakia to Tesco, a leading U.K. food retailer for approximately \$117.5 million. See *id.*

127. See Dean Calbreath, *Western Suitors Line Up for Slovak Phone Privatizing*, WALL ST. J., Feb. 21, 1997, at A9E.

128. See *id.* Although this transformation of ownership out of the State's hands is to begin soon the Slovak government has been reporting for the last three years that it would begin privatizing the phone company. See *id.* One blame for the government's tardiness is that Slovenske Telekomunicacie SP has been "spruc[ing] itself up before initiating the bidding process to find a Western investor." *Id.*

129. See *id.* at A9E.

130. See *Slovakia Defends its Record*, FIN. TIMES, Feb. 28, 1997, at 6. Joseph Kalman, Slovak's deputy prime minister and minister for European affairs, said that besides privatizing the phone system, Slovakia "would be concentrating on privatization in the banking and health sectors..." *Id.* at 7. See also Calbreath, *supra* note 127, at A9E.

131. See Calbreath, *supra* note 127, at A9E. "Over the past few years the company [Slovenske Telekomunicaci] has pumped nearly all its profits back into operations- launching a \$1.8 billion program to build digital telephone exchange stations, a fiber-optic cable network and data communications lines as well as extending its main network into remote areas." *Id.*

132. See Cohen & Schwartz, *supra* note 111, at 19.

133. *Id.*

134. See *id.*

The infrastructure industries, though, remain heavily regulated and partially owned by the State.¹³⁵ This could be a concern for investors desiring to maintain control and have a say as to how the industry conducts business.

The retail market has continued to improve since the economy began improving after the effects of the fall of Communism wore off.¹³⁶ Retail sales were up 8.6 percent in 1995, the first significant growth since 1990.¹³⁷ For the first six months of 1996, retail sales grew 2.2 percent with a turnover of 137.8 billion SK (Slovak Crown), with private companies having sales of 129.5 billion SK.¹³⁸ The retail market is very split though.¹³⁹ The top five retail companies have a combined market share of only 5.2 percent and the largest Slovak retailer accounting for only for 1.7 percent of the market.¹⁴⁰ It is also predicted that the current distribution patterns in Slovakia will be restructured to function more like those in Western countries.¹⁴¹

The role of foreign retailers in the Slovakia market is very important.¹⁴² Knowledge of the international system is an important step that must be taken by Slovakia as well as foreigners.¹⁴³ Also, links between Slovakia and foreign suppliers and foreign capital resources for large investments will help to expand foreign retailer investment in Slovakia.¹⁴⁴

Specialized shops will be decreasing in number and will be forced to raise their standards in the competitive atmosphere of a market economy.¹⁴⁵ Further, gasoline stations will restructure so as to offer more consumer goods.¹⁴⁶

Finally, companies originally expanding to the Slovakia region first applied "western formulas" when merchandising their products.¹⁴⁷ Slovak consumers, though, have developed their own demands and standards in the products they purchased before westernization began taking place in Slovakia.¹⁴⁸ The retailers who decide to enter the Slovak market must

135. *See id.*

136. *See A Small Market Draws Interest, supra* note 64, at 16.

137. *See id.*

138. *See id.*

139. *See id.*

140. *See id.*

141. *See id.*

142. Drtina, *supra* note 126, at 191-203.

143. *See Id.*

144. *See Id.*

145. *See Id.*

146. *See Id.*

147. *See Drtina, supra* note 126, at 191-203.

148. *See id.* For example, the Slovak consumers do not necessarily want to purchase goods from the West, but want to purchase local goods they are used to purchasing and using. *See id.* Slovak consumers look to the local goods first and purchase western products after they

combine western ways of marketing and merchandising and at the same time recognize the different cultural mores and values that Slovak's associate themselves with.¹⁴⁹ Foreign investors in the retail market must meet Slovak's demands in a way that Slovak's will appreciate.¹⁵⁰

V. LEGAL ASPECTS OF DOING BUSINESS IN SLOVAKIA

Great costs are imposed on foreign investors by inadequate legal structures.¹⁵¹ Part of a positive investment climate is mature legislation and court systems. If Slovakia is to attract investment capital, it must quickly provide a predictable legal framework for foreign investors. The Slovak Government must rid its market of legal uncertainties and the negative message that legal uncertainties send to investors.

Slovakia has attempted to do just that. First, Slovakia's new constitution has provided potential investors with protections that did not exist under Communism.¹⁵² Further, Slovakia has attempted to refine and amend its "investment systems" that it and the Czech Republic began in 1988 with the passing of the Enterprise and Foreign Participation Act.¹⁵³ Passing the 1988 Act, along with other legislative amendments, led to the inception of a "comprehensive commercial code in 1992."¹⁵⁴

All provisions of the Commercial Code (Code), originally developed for Czechoslovakia, have continued full effect in Slovakia.¹⁵⁵ The Code is a combination of the "Civil, Economic, and Trade Codes, along with eighty-four other laws ... and acts."¹⁵⁶ The Code helps potential investors, whether individuals or business entities, move through the investment avenues that were not available nor predictable before the fall of Communism.¹⁵⁷

can not find the local goods they are looking for. *See id.*

149. *See id.*

150. *See id.*

151. These costs are in the form of transaction costs. High transaction costs occur when investors must try to predict the outcomes within an uncertain legal framework. Also, issues of repatriation, currency exchange, and tax consequences can become unpredictable and produce high transaction costs under an undeveloped legal system. These issues are not discussed in length in this paper but should be taken into consideration when considering how unattractive an undeveloped legal system may be to a foreign investor.

152. *See* Sarah Andrus, Note, *The Czech Republic and Slovakia: Foreign Participation in Changing Economies*, 17 HASTINGS INT'L & COMP. L. REV. 611, 611-12 (1994).

153. *Id.* at 612 (citing Czechoslovak Chamber of Commerce & Industry, CSFR: Your Partner for Trade and Investment (1992)).

154. *Id.* (citing Czechoslovak Chamber of Commerce & Industry, CSFR: Your Partner for Trade and Investment (1992)).

155. *See id.* at 620.

156. *Id.*

157. *See id.* at 621.

A positive aspect of the Code is that foreign investors conducting commercial transactions are treated the same under Slovak law as local citizens of Slovakia.¹⁵⁸ Before the creation of the Code there were many authorization requirements necessary for a foreigner to satisfy before conducting business in Slovakia.¹⁵⁹ Now, foreign investors need only "to register in the Commercial Registry and indicate the scope of their transaction."¹⁶⁰ This registration technique lessens the amount of paper work previously required.¹⁶¹ Further, the new registration technique has lessened the arbitrary authority originally granted to the Federal Ministry of Finance to determine rights of the foreign investor.¹⁶²

The Slovakia Embassy reports that:

foreign businessmen, either as corporate or natural person can engage in business activity in the Slovak Republic by: establishing a branch office in the Slovak Republic, relocating an existing registered office to the Slovak Republic, establishing a 100% foreign owned business entity in the Slovak Republic by purchasing equity in a Slovak Republic registered business, [or by] engaging in a business activity under provisions of the Trade Licensing Act.¹⁶³

The Embassy also lists possibilities for direct foreign investment. These include "joint-ventures, greenfield investment, and participation in the privatization process."¹⁶⁴ The Code also recognizes four types of business entities that fit similar descriptions of the business entities recog-

158. *See id.*

159. *See* The Slovak Embassy, *supra* note 105.

160. Andrus, *supra* note 152, at 621.

161. *See id.* (citing Act No. 112/1990, Enterprise With Foreign Property Participation Act of Apr. 19, 1990, art.3 and Act No. 113/1990, Economic Relations With Foreign Countries Act of Apr. 19,1990, art.7c, both reprinted in David E. Birenbaum & Dimitri R. Racklin, *Business Ventures in Eastern Europe and the Soviet Union: The Emerging Legal Framework for Foreign Investment* sec 3.01, at app. C-1 and C-2 (1990)).

162. *See id.* Originally, the Federal Ministry of Finance could change a business enterprise's "name, seat, and basic capital." *Id.* at 620. It could decide if a foreign investor could engage in business in Slovakia and would grant this right only if the goals of the investor were "in concordance with the goals of an expedient integration of [Slovakia's] national economy into the international division of labor." *Id.* at 619. It also had power to decide if a business was allowed to transfer rights and obligations to another enterprise. *See id.* at 619-20 (citing Act No. 113/1990, Economic Relations With Foreign Countries Act of Apr. 19, 1990, art. 8, '1; art.8, '2; art. 15 '1; art. 15 '4, reprinted in Birenbaum & Racklin, , *Business Ventures in Eastern Europe and the Soviet Union: The Emerging Legal Framework for Foreign Investment* sec 3.01, at C-2 (1990)).

163. Slovak Embassy, *supra* note 105.

164. *Id.* A joint venture is usually a business undertaking between a foreign investor and a Slovak business. *See id.* A greenfield investment is a new investment or start-up business. *See id.* Privatization process projects include investing in infrastructure projects and other industries originally owned by the state. *See id.*

nized in the United States.¹⁶⁵ These entities are a Public Commercial Company (Commercial Partnership), a Limited Liability Partnership, a Limited Liability Company, and a Joint-Stock Company.¹⁶⁶ Like the corporations laws in the United States, "a Slovak limited liability company or a joint stock company is founded when its articles of association are notarized" by the local district court.¹⁶⁷

At first glance, the Slovak laws surrounding the purchase of real estate appear to deter foreigners from investing in Slovakia. "Under the Slovak legislation, foreign legal entities and individuals classed as non-residents may not normally buy real estate in Slovakia."¹⁶⁸ Land in Slovakia may only be purchased in the following ways.¹⁶⁹ The Slovak government will provide property to Slovak citizens that was confiscated by "the communist regime between 1948-89" as part of Slovakia's restitution program.¹⁷⁰ Real property can also be claimed through a Slovak citizen's inheritance.¹⁷¹ Slovak citizens can also purchase real property in a privatization auction.¹⁷² Finally, interests in real property can be achieved through investments in previous state-owned enterprises as part of the privatization process.¹⁷³

The Slovak Commercial Code, though, has made purchasing real estate a reality for foreign investors. If the "foreign business entity has entered the Commercial Code Register," it changes the business entity's status and it is considered as a foreigner-resident.¹⁷⁴ The business entities, composed of non-resident Slovaks', registered in the Commercial Code Register and classified as a "foreigner-resident" have the right to acquire real estate in the Slovakia Republic.¹⁷⁵ This allows foreigner investors to purchase land in Slovakia for capital projects. This classification as "foreigner-resident" is an interesting way for the Slovak Legislature to circumvent the general rules against foreigners purchasing real estate in Slovakia.

165. *See id.*

166. Slovak Embassy, *supra* note 105. The Commercial Partnership comes with unlimited liability to all the partners of the business. *See id.* The Limited Partnership involves partners with limited liability and those with unlimited liability. *See id.* The Limited Liability Company is dealt with most in the Code and requires an initial investment of U.S.\$33,300 and "the founding partner is liable for the obligations of the company up to the amount of his initial investment." *Id.* The Joint-Stock Company occurs "mainly in the privatization process, as most of the state enterprises are transformed into joint-stock companies." *Id.*

167. *See* The Slovak Embassy, *supra* note 105.

168. *Id.*

169. *See id.*

170. *Id.*

171. *See id.*

172. *See id.*

173. *See* The Slovak Embassy, *supra* note 105.

174. *Id.*

175. *Id.*

The tax laws of Slovakia have also been overhauled to attract potential foreign investors.¹⁷⁶ On January, 1 1993, a new tax system was put in place in the Slovak Republic.¹⁷⁷ The objective of the new system was to bring the Slovak tax system closer to the tax systems in Western countries.¹⁷⁸ The Czech and Slovak Republic originally had a "complex set of seven different tax laws that subjected American imports and exports to double taxation..."¹⁷⁹ The new tax code, though, is less complicated and attempts to make Slovakia's "taxing and accounting systems" as modern and equivalent to the rest of the European Union nations.¹⁸⁰

The tax system before 1993 imposed twenty percent on the first 200,000 Slovak Crowns of income and then another forty percent on any income over 200,000 Slovak Crowns.¹⁸¹ Further, any joint ventures in the banking or insurance industry was taxed sixty-five percent.¹⁸² Under the old system, the Federal Ministry of Finance had power to reduce a corporation's tax rates during its first two years of existence.¹⁸³ This reduction, though, was rarely granted.¹⁸⁴

Also, under the old tax system, the employers of corporations had to take a personal income tax out of the wages of each individual employee.¹⁸⁵ The tax on each employee was different based on "employee's age, family status, number of dependants, salary, and health."¹⁸⁶ This made for a very confusing and expensive process.

The new tax system imposes a flat corporate tax rate of forty percent pursuant to Public Law No. 286/1992 and Government Regulation No. 145/1993.¹⁸⁷ Foreigners are required to only pay taxes on the income made in the Slovak Republic.¹⁸⁸ Also, non-profit companies are not required to pay taxes.¹⁸⁹ Further, other industries typically providing development services to Slovakia and conducting business in innovative ways

176. See Andrus, *supra* note 152, at 612.

177. See *id.*

178. See *id.*

179. *Id.* (citing Czechoslovak Chamber of Commerce & Industry, CSFR: Your Partner for Trade and Investment 29 (1992)).

180. *Id.*

181. See *id.*, at 626 (citing Antonin Kerner, Commercial Companies 4 (an unpublished manuscript)).

182. See Andrus, *supra* note 152, at 626.

183. See *id.*

184. See *id.*

185. See *id.* (citing Birenbaum & Racklin, *Business Ventures in Eastern Europe and the Soviet Union: The Emerging Legal Framework for Foreign Investment* sec. 3.01, at sec. 5.09(d) (1990)).

186. Andrus, *supra* note 152, at 626 (citing Antonin Kerner, Prices, Rents, Taxations 5 (an unpublished manuscript on file with author)).

187. See Slovak Embassy - Business and Economy, Taxation (detailed information), (visited June 11, 1997) <<http://www.slovakemb.com/business>>.

188. See *id.*

189. See *id.*

to improve the natural environment are granted tax immunity.¹⁹⁰ For example, income received in the development of housing projects, small hydroelectric plants, wind power plants, thermal pumps, solar installations, installations for the production of biogas, and installation for the production of materials that biodegrade within five calendar years is tax exempt.¹⁹¹ Further, projects designed to collect, transport, and process dangerous wastes, and installations for recycling all receive a tax break.¹⁹² These tax breaks could provide an excellent opportunity for Western energy and waste management companies.

It is apparent that the Slovak laws for business have improved greatly in a short period of time. This new legal structure, though, is immature and very little case law exists to interpret the new laws. This lack of judicial assistance makes it difficult for investors to predict how conflicts and other potential investment and tax issues will be resolved.

VI. SLOVAKIA'S POLITICAL CLIMATE AS IT RELATES TO BUSINESS TRANSACTIONS

High costs can be associated with investing capital in a country with political unrest. Potential investors can be discouraged when a country is experiencing political turmoil. Slovakia's political system, i.e. Vladimir Mečiar of the Movement for a Democratic Slovakia, has been Slovakia's nemesis for attracting foreign investors.

The importance of Slovakia joining the European Union can not be overstated. To take advantage of its strong ties to the Czech Republic and its advantageous geographical position, Slovakia needs to become a European Union member.¹⁹³ Without an entry to the European Union Slovakia will be hard pressed to maintain its impressive economic record in the long run.¹⁹⁴ Also, without European Union membership, Western investors' will have a bad attitude toward Slovakia's privatization and investment opportunities.¹⁹⁵

Vladimir Mečiar has been elected Prime Minister of Slovakia for the third time and rules with a far left-wing style.¹⁹⁶ He "is one of the great survivors of the post-communist politics."¹⁹⁷ He is a nationalist. His policies are anti-democratic and look to keep Slovakia far from European Union Membership. Slovakia's economic achievements have been over-

190. *See id.*

191. *See id.*

192. *See id.*

193. *See Slovakia: July 1996, supra* note 26, at 43.

194. *See id.*

195. *See id.*

196. *See* Vincent Boland, *Doubts Sweep over Slovak sell-off*, FIN. TIMES, Dec. 14, 1994.

197. Anthony Robinson, *Surefooted in the Slovak turbulence-Vladimir Mečiar*, FIN. TIMES, May 3, 1995, at 1.

shadowed by its failure to adhere to "democratic, free market values."¹⁹⁸ Vladimir Mečiar and his administration is to blame for these low democratic standards.

For example, Mečiar's "government controls the state-run television and radio" and recently "gained indirect influence over several national and regional newspapers..."¹⁹⁹ Mečiar's government also passed a law that allows the government "to intervene in matters belonging to the jurisdiction of universities and faculties, deans and academic senates."²⁰⁰ Mr. Mečiar has attempted to use the Slovak courts to "stifle expression" and replace the head of Slovak Television, Radio and News Agency "with Mečiar's own political allies."²⁰¹ Mečiar has also "proposed press legislation that will mean that journalists would be exposed to fines and could be jailed for criticizing the government."²⁰² Mečiar's political tactics are ruthless and incredible. He and his government have been responsible for scaring off foreign investment from Slovakia.

Mečiar is suspected of kidnapping the son of his rival, President Michal Kováč, in the hopes of embarrassing the President.²⁰³ The President's son was forced to drink whiskey and given electric shocks before being dumped out at a police station.²⁰⁴ The U.S. investigated the matter but Slovak police detectives were dismissed from the investigation and a key witness to the kidnapping was killed in a car explosion.²⁰⁵ Mr. Mečiar's antics sound like something from pre-1989 days in Czechoslovakia or scenes from a movie. However, despite his anti-democratic style of ruling, Mr. Mečiar is supported by many citizens in Slovakia.

"Sociologically, he is popular among the weaker, less educated elements..." of Slovakia.²⁰⁶ Mr. Mečiar's "appeal, ... is concentrated geographically in the economically depressed..." areas of Slovakia.²⁰⁷ The

198. *Nation in need of a political truce: Europe's youngest state faces a long list of problems...*, FIN. TIMES, Oct. 23, 1996, at 1.

199. *Mečiar, Magyars, and Maps*, ECONOMIST, Aug. 10, 1996, at 38. The national and regional newspaper were purchased by "a former top Communist Party official and the father of Slovakia's current intelligence chief." *Id.*

200. *A Slovak Premier Cum Theatre Critic*, ECONOMIST, Nov. 9, 1996, at 60. Further, the minister of culture, Ivan Hudec, "weighed in with a purge of museum directors.., and fired the director of Slovakia's National Theatre." *Id.* These types of government actions seem to be business as usual. *See id.*

201. Jane Perlez, *Dismissal of Slovak Editor Called Setback for Press Freedom*, N. Y. TIMES INTERNATIONAL, Nov., 29, 1996, at 15. Mr. Mečiar's government dismissed the editor and chief of the only "true independent newspaper tied neither to the Government nor to the opposition." *Id.*

202. Klaus Engelen, *Slovakia must grab last chance*, EUROPEAN, July 11, 1996 at 24.

203. *See* Jane Perlez, *Abduction Casts New Doubt on Slovakia Chief*, N. Y. TIMES, Dec.17, 1996, at 3.

204. *See id.*

205. *See id.*

206. Robinson & Boland, *supra* note 72, at 54.

207. *Id.* These areas include hinterland of the Vah Valley. *See id;* *See also* Vincent Boland,

older, uneducated population in these economically depressed regions remembers the communist period of low unemployment. These voters are attracted by Mr. Mečiar political slant toward the old ways of life and against the westernization of Slovakia. The good news for outside investors is that these voters are old. New generations of voters who desire the capitalists' free-market will soon take the place of Mečiar's supporters.

Slovakia as has not gone unnoticed by the United States as an investment opportunity. A "Treaty Concerning the Reciprocal Encouragement and Protection of Investment" was signed and executed by George Bush in 1992.²⁰⁸ This treaty was a "bilateral investment treaty" between the United States and the Czech and Slovak Republic.²⁰⁹ It was designed to "aid the growth of the private sector in the Czech and Slovak Republic by protecting and thereby encouraging U.S. private investment."²¹⁰ The U.S. treaty is said to be "more comprehensive than European" bilateral investment treaties similar to the U.S. treaty.²¹¹ The treaty hopes to ensure American investors are treated fairly in the Czech and Slovak Republics and that profits earned by U.S. citizens can be successfully repatriated. This treaty should be a confidence booster to potential U.S. investors.

Also under President Bush, the U.S. Congress set up a board to manage a sixty-five million-dollar investment fund to help promote democracy in Slovakia.²¹² Not all has gone as planned with the fund, though. The entire board resigned in March, 1996, and President Clinton is now to decide whether to appoint new members or combine the fund with other funds for the Czech Republic or Hungary.²¹³ The board's resignation comes at a bad time considering the current situation in Slovakia.

VII. CONCLUSION

Slovakia has jumped by leaps and bounds since the fall of Communism in 1989. It enjoys an expanding GDP and reasonably low unem-

Survey of Slovakia, FIN. TIMES, Dec. 20, 1995, at 42. "Here, among the foothills of the Low Tatra mountains, are the smokestacks of the country's heavy industry - aluminum, cement, timber, tanks." Boland, *Survey of Slovakia*, FIN. TIMES, Dec. 20, 1995, at 42. It is a region of company towns and high unemployment, bad air, poor housing, and the odd flu epidemic in the smoggy, snowy winter." *Id.*

208. *Czech and Slovak Federal Republic-United States: Treaty Concerning the Reciprocal Encouragement and Protection of Investment, with Protocol and Three Related Exchanges of Letters, and Materials Submitted to the U. S. Senate*. 102nd Cong., 2nd Sess., TREATY DOC. 102-31.

209. *Id.* The treaty was entered into force for the Czech Republic and Slovakia, as separate states, on January 1, 1993. *See id.*

210. *Id.* (quoting George Bush's Letter of Transmittal).

211. *Id.* (quoting George Bush's Letter of Submittal).

212. *See* Matthew L. Wald, Board Resigns At U.S. Fund For Czechs and Slovaks, N. Y. TIMES, Mar 3, 1996, at 9.

213. *See id.*

ployment compared to the time following the split with Czech Republic. Besides a productive and efficient economy, Slovakia also offers a relatively untapped market and access to many other developing Eastern European markets. Slovakia has taken impressive steps with its adoption of its commercial code. Slovakia's commercial code has made it possible for foreign investors to establish business entities within Slovakia under the same treatment as Slovak citizens. Its politicians, though, have tarnished the shiny investment opportunities held by Slovakia. Specifically, Vladimir Mečiar and his Movement for a Democratic Slovakia party have been responsible for scaring away the Western investors that could help Slovakia become a true democratic society and a member of the European Union. A change in government leadership needs to occur in order for Slovakia to become a safer, more predictable place to invest.