

## NEW SLOVAK INVESTMENT SCREENING REGIME

On 5 February 2021 the Slovak Government approved a bill amending the Act on Critical Infrastructure, which introduces a new screening regime for certain sector-based investments (the "**Investment Screening Regime**"). The amending act, which was approved in an accelerated legislative process, will become effective on 1 March 2021. The grounds on which the authorities may challenge proposed investments are broad and thus open to interpretation - which may present an obstacle for future transactions in Slovakia.

### NEW NOTIFICATION OBLIGATIONS

Under the Investment Screening Regime, the owner of critical infrastructure must notify the relevant Ministry<sup>1</sup> about any (i) change of ownership in the critical infrastructure including by way of a sale of business (asset deal), (ii) direct or indirect change in ownership (share deal) exceeding 10 percent of the registered capital or voting rights, or in the exercise of influence of a comparable magnitude. The owners of critical infrastructure must also notify the Ministry of any commencement of insolvency proceedings, execution proceedings, as well as of any enforcement of a pledge or similar right in relation to the owner or its assets, regardless of whether these proceedings take place in the Slovak Republic.

The new Investment Screening Regime will apply also to indirect acquisitions, therefore, any acquisition within the corporate structure of a group having a shareholding interest in a relevant Slovak company might also trigger the requirement to obtain consent from the Slovak government.

### SCREENING OF INVESTMENTS IN ENERGY AND INDUSTRIAL SECTORS

While the new notification obligations apply to all critical infrastructure, the Investment Screening Regime introduces a specific screening procedure for investments (both direct and indirect) made in the Energy and Industrial sectors.

The following sub-sectors fall within the in-scope sectors:

#### Energy

- Mining
- Electric power engineering
- Gas
- Oil and petroleum products

#### Industrial sector

- Pharmaceuticals
- Metallurgical industry
- Chemical industry

<sup>1</sup> Ministry of Economy, Ministry of Investment, Regional Development and Informatization, Ministry of Transportation and Construction, Ministry of Environment, Ministry of Health, or Ministry of Agriculture and Rural Development. The relevant ministry is dependent on the particular type of the infrastructure.

The relevant applicant must apply for the assessment of the transaction by the Ministry of Economy, which will evaluate the transaction in terms of the public order or national security of the Slovak Republic, other member state of the EU or the EU's interests (the "**Strategic Interests**") within 60 days upon receipt of the application.

If the Ministry of Economy concludes that the transaction hinders the Strategic Interests, it will propose that the Government refuses to consent to the transaction. The Government may subsequently decide to (i) consent to the transaction (ii) refuse to consent to the transaction, or (iii) grant a conditional consent.

A standstill obligation will apply until the Ministry of Economy's review of the transaction is complete.

## **SANCTIONS AND CONSEQUENCES OF BREACH**

If the Government refuses to consent to the transaction, an exercise of rights and obligations under this transaction related to Slovak critical infrastructure is prohibited. The applicant may challenge the Governmental decision at the Supreme Court within a 30-day period upon receipt of the decision.

Furthermore, the relevant Ministry may sanction the breach of the notification obligations with an administrative fine of up to EUR 50,000.

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