

Serbia: Amendments to the Takeover Act

JANUARY 2017

On 28 December 2016, the Serbian Parliament adopted amendments to the Takeover Act ("**Amendments to the Takeover Act**"), which became applicable on 6 January 2017.

Thresholds for mandatory takeover bid

The threshold for mandatory takeover bid remains unchanged. ToB is triggered if a person, acting alone or in concert with another, acquires, directly or indirectly, shares of a listed target, as a result of which it ends up holding more than 25% of the voting shares of such target. However, the amendments introduce changes to the provisions regulating ToB upon further acquisitions by the same acquirer. Having gone through the mandatory takeover bid process, the same acquirer is obliged to make a new takeover bid only after it acquires at least additional 10% of total issued voting shares of the target or when, irrespective of the number of additionally acquired shares, further acquisition of shares results in the acquirer holding more than 75% of total issued voting shares of the target. If, however, the acquirer acquires pursuant to a takeover bid more than 75% of total number of voting shares of the target, no mandatory takeover bid obligation exists in case of further acquisitions.

Exceptions from the obligation to launch mandatory takeover bid

The list of exceptions from the obligation to launch mandatory takeover bid has been expanded to include:

- acquisition of shares issued by a bank in the capital increase procedure solely for the purpose of implementation of a recovery plan, restructuring or implementation of other orders imposed by the National Bank of Serbia;
- acquisition of shares issued by an insurance or reinsurance company in the capital increase procedure solely for the purpose of implementation of a solvency plan or other orders imposed by the National Bank of Serbia;

If any of the exceptions to the obligation to launch a mandatory ToB applies, the acquirer is obliged to submit to the Securities Commission documentary evidence that the conditions for the application of an exception are met, within four calendar days from the occurrence of the event or circumstances constituting the exception. A failure to do so is a misdemeanour and the applicable fine is up to RSD 200,000 (approx. EUR 1,600) for the acquirer and up to RSD 50,000 (approx. EUR 400) for its director.

Acting in concert

The amendments do not interfere with the existing definition of 'acting in concert', which stipulates that persons acting in concert are persons who cooperate (presumably with the offeror) on the basis of an agreement, whether express or tacit, oral or written, aimed at acquiring control over voting shares, coordinating the exercise of voting rights or frustrating the successful outcome of another's bid.

The amendments merely expand the list of persons which are presumed to be acting in concert by spelling out that:

1. members of the management in the companies acting in concert are also deemed to act in concert between themselves;
2. members of the management are deemed to act in concert with their companies.

Purchase Price

The heart of the amendments concern the rules for determination of the purchase price offered in takeover bid. The shares of a target are deemed liquid if, during the period of six months preceding the date when the mandatory takeover bid obligation is triggered, at least 0.5% of the total number of issued voting shares of the target have been trading, providing that during at least one three-month period within such six-month period, at least 0.05% of the total number of issued voting shares of the target have been traded in the course of more than 1/3 of all trading days each month. In this case, the mandatory takeover bid price is the higher of:

1. weighted average price in the period of six months prior to the date when the mandatory takeover bid obligation is triggered; and
2. the highest price at which the bidder or the persons acting in concert with the bidder acquired shares in the period of 12 months preceding the date when the obligation to launch the bid was triggered, including the price paid for the acquisition of the shares which triggered the obligation to launch the takeover bid;

If the shares of the target company are not liquid, then the price to be offered in the takeover bid is

the higher of:

1. the price calculated in accordance with point 2. above;
2. the book value of the voting shares, according to the last annual financial statements of the target; and
3. the value of the target's voting shares as estimated by an auditor appointed by the target from among the list of auditors prepared by the Securities Commission as of the date when the mandatory takeover bid obligation is triggered. If the acquirer fails to submit to the Securities Commission a timely request for the approval of ToB (15 business days from the ToB triggering date), it is obliged to provide an evaluation of the value of the shares as of the date of the request filing and the higher of the two estimates prevails.

It follows that if the shares have not been traded within the relevant reference period, ToB is not possible without a study on the evaluation of the target. The requirement that the valuation be as of the date of the ToB trigger event or, as the case may be, the date of the request filing means that the evaluation must be performed and the evaluation report prepared within 15 business days, which is the deadline for the filing of the ToB.

The obligation of the acquirer to top-up the shareholders who responded to a ToB if the acquirer acquires additional target shares at a higher price within one year from the completion of a ToB, continues. However, what is new is the obligation of such acquirer to submit to the Securities Committee documentary evidence of the top-up obligation and the payment.

If the acquirer had acquired shares and did not have a ToB obligation because an exception applied, it can freely set the price in a subsequent takeover bid process, if the ToB is launched within two years from the initial acquisition.

Deadlines and the procedure

The deadline for publishing intent to launch a ToB is extended from one to two business days, while the deadline for filing a ToB to the Securities Commission is extended from 15 calendar days to 15 business days. The deadline for the Securities Commission to decide on the takeover bid request is also prolonged, from seven to ten business days.

As a general rule, once the obligation to launch ToB is triggered, the acquirer and the parties acting in concert with it cannot lawfully acquire additional shares of the target other than in the takeover process. They also cannot dispose of their existing shares until the takeover process is completed. Exceptionally, the existing shares may be disposed of even before the launching or completion of the takeover bid process if, within a period of 30 days prior to the intended disposal of the shares, the

acquirer makes a public announcement that it does not intend to pursue a takeover bid process but instead plans to dispose of the shares so to fall below the 25% threshold. The announcement must specify the number of shares held by the acquirer and its concerted parties and the number of shares to be disposed of. Following the disposal, the acquirer has to notify the public of the number of disposed shares and the price at which they were sold. This is to be further elaborated in the Securities Commission's by-laws.

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