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TAKEOVER LAW

(Zakon o preuzimanju akcionarskih društava, Official Gazette of the Republic of Serbia No.46/06)

On 25 May 2006, the Serbian Parliament adopted the Law on Takeover of Joint-Stock Companies (hereinafter referred to as the “**Law**”). Together with the newly adopted Law on Market of Securities and Other Financial Instruments (*Zakon o tržištu hartija od vrednosti i drugih finansijskih instrumenata, Official Gazette of the Republic of Serbia No.46/06*), the Law sets forth detailed legal regime pertaining to the market of securities.

❖ *Companies that may be subject to takeover*

Only the shares that have been traded at the stock exchange for at least 3 months prior to the intended takeover can be the subject-matter of a takeover bid. This practically means that the shares of open joint-stock companies (companies with more than 100 shareholders) that are not quoted at the stock exchange or have not been traded at the organized market for at least 3 months prior to the intended takeover, may not be acquired if such acquisition would trigger the obligation to make a take-over bid under the Law. The Law provides that any shares acquired in contravention of the Law shall not entitle their owner to vote, until the pertinent breach is remedied.

❖ *Principle of non-discrimination*

A takeover bid must be addressed to all shareholders of the target company, at the same price and under the same conditions. A bid may only be conditioned by acquisition of a minimum number of shares. If such minimum is not achieved, the offeror is not allowed to purchase any of the shares deposited in response to the bid.

❖ *Threshold for mandatory bid*

A takeover bid is mandatory when a person acquires the shares, which, together with the shares of the same issuer already owned by that person or its related party, represent 25% of the total number of the issuer's voting shares. Related persons are considered to be the same person with respect to all other provisions of the Law that refer to particular thresholds.

In case the takeover bid results in the ownership of less than 75% of the total number of voting shares of the target company, any further acquisition by the same party triggers its obligation to make a takeover bid. If, however, a person acquires, pursuant to a

takeover bid, more than 75% of voting shares, it is obliged to make a new takeover bid only after it acquires at least additional 5% of voting shares of the target or at least 3% of voting shares within the period of 18 consecutive months. In both cases, the offered price may not be lower than the highest price paid by the acquirer for the shares of the target company.

❖ *Price and means of payment*

The price offered in a takeover bid may not be lower than the average price at which the shares of the target company had been traded at the stock exchange during the period of 3 months immediately preceding the announcement of the decision to launch a bid or on the business day immediately preceding such announcement, whichever is higher. If the offeror had acquired shares of the target company before launching the bid at the price higher than either of the two aforementioned stock exchange prices, then such offeror must offer the higher of the following two prices: the highest price at which it acquired shares of the target company during the period of 12 months preceding the intended takeover bid or the average price at which it acquired shares during the period of 2 years preceding the intended takeover bid, provided that it acquired during such period at least 10% of target's shares.

The shares of the target company may be paid in cash, in shares, in debentures issued in Serbia or by a combination of any of these. As an exception, shares from the portfolio of the Share Fund may be paid only in cash.

The offered price must be fully secured by: depositing the amount or securities required for the payment of all shares to which the bid pertains at a special account opened with the Central Registry or, in case of a foreign bidder, a bank licensed in Serbia; loan agreement executed with a bank licensed in Serbia and providing for a loan in the amount required to pay all targeted shares; or procuring an independent, on-demand guarantee issued by a bank licensed in Serbia.

❖ *Exceptions to the obligation to make a takeover bid*

The Law provides for a number of exceptions to the obligation to file a takeover bid, including the following cases:

- purchase of shares owned by the Republic of Serbia or funds in its ownership (the Share Fund, the Pension and Disability Insurance Fund and the Development Fund), pursuant to a privatization tender procedure or at stock exchange (the exception also applies in case of acquisition of shares owned by private shareholders, when such shares are sold together with the shares held in the portfolio of the Share Fund);
- acquisition of shares issued by the banks, when the seller is the Republic of Serbia or the Agency for Insurance of Bank Deposits, unless the Government decides otherwise;
- if a shareholder had acquired more than 25% of voting shares before the Law came into force.

❖ *Sports organizations and broadcasting companies*

The Law prohibits acquisition by the same person of more than 5% of voting shares of sports organizations and broadcasting companies, unless a special law provides otherwise.

❖ *Procedure*

An announcement of the decision to launch a takeover bid and request for approval of the bid must be submitted to the Securities Commission within 1 business day following the triggering acquisition. The Securities Commission is obliged to render its decision within either 2 business days or 10 days following the receipt of a complete and orderly application (depending on whether co-operation with the competition or anti-money laundering authority is required).

A request for approval to improve a bid must be filed no later than 3 days prior to the expiry of the bid. The Securities Commission is obliged to decide upon such request within 1 business day, provided the request is orderly and complete.

The Securities Commission takes into account the following elements and criteria when deciding whether to approve or disapprove a request:

- completeness and credibility of the data stated in the bid and documents supporting the application;
- whether the price is determined in accordance with the Law; and
- in case of an increase of the price initially offered, whether the offeror has secured additional funds.

The validity period of a takeover bid may not be shorter than 21 days and longer than 45 days. In case of bid improvement, the validity period may be extended for additional 7 days, provided that the total validity period of the bid is not longer than 60 days. In case of competing bids, the validity of all bids may be prolonged until the expiry of the bid last filed, but the total period of validity of all bids may not exceed 70 days.

A request for approval of a competing bid may be filed until 1 day before the expiry of the pending bid. In that case, the Securities Commission shall decide upon the request on the same day.

A bid may be withdrawn only if a competing bid is filed or in the event of bankruptcy of the target company.

❖ *Squeeze out and mandatory buy out*

If the bid results in acquisition of at least 95% of shares of the target company, the offeror has the right squeeze out the remaining shareholders within 120 days following the expiry of the deadline for acceptance of the bid, by granting them the same conditions as in the bid. Conversely, the shareholders who did not accept the takeover bid may force the majority shareholder to purchase their shares. Such request may be made within 6 months following the acquisition of 95% of shares by the majority shareholder.

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CONTACT: Law Office KOJOVIĆ Advokati/Attorneys at Law, Cara Dušana 48, SCG-11 000
Beograd

Tel: (+381 11) 3033 747; 638 754; Fax: (+381 11) 2628 669

E-mail: office@kojoviclaw.com

www.kojoviclaw.com