BDK Newsletter

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Serbia: Corporate

New Companies Law

The new Companies Law (the **Law**), which came into force on 4 June 2011, will become applicable on 1 February 2012. Serbian companies are obliged to harmonize their organizations and corporate enactments with the new requirements of the Law by that date or they will risk involuntary liquidation.

How exactly the harmonization process will work is not quite clear, given that the end date for harmonization is the same date when the Law becomes applicable. It is also inconvenient that during the interim period, new companies would have to be established according to existing legislation, only to undergo harmonization with the new Law several months after being established.

The Law introduces significant novelties with respect to both limited liability companies and joint-stock companies.

I Memorandum of Association:

The Memorandum of Association (**MOA**) is a constitutive document for all types of companies. The initial MoA has to be notarized, while the amendments thereto do not require notarization.

Joint stock companies must have articles of association (**AoA**), in addition to the MoA. Once adopted upon the establishment of a joint-stock company, the MoA does not have to be amended. Any corporate changes have to be reflected only in the AoA.

II Company's seat and delivery of notices and other documents:

The Law introduces the possibility for companies to register an address for service of process, notices and documents, which can be different from the registered seat. It is also possible to register an e-address in the commercial register for reception of electronic documents.

Furthermore, the Law prescribes that a document, other than service of process, is deemed delivered after the expiration of eight days following the second sending of the document in question, provided that the second sending does not occur earlier than 15 days after the first sending.

III Representatives and proxies:

For the first time in Serbian legal history, the Law introduces the possibility of appointing corporate directors. In addition to a corporate director, the company must also have at least one individual representative. The corporate director, however, may be authorized to represent without limitations.

Another novelty in the field of representation is the regulation of a director's resignation. Resignation will have to be registered in the commercial registry. A resigning director is obliged to remain in office and handle urgent matters until a new director is appointed but not longer than 30 days from the resignation.

Procura is regulated in a more detailed manner and it is specified that the appointment of a procurist is within the competence of the shareholders' assembly. A procurist may not:

1. represent the company in court and arbitration procedures;
2. enter into transactions for acquisitions, sale or encumbering of real estate or shares;
3. sign bills of exchange or give guarantees;
4. enter into a loan agreement.

IV Corporate forms:

(i) Limited liability company

(a) Share capital

Unlike the previous Law, which prescribed that a limited liability company may have up to 50 shareholders, the Law does not impose a maximum number of shareholders in this type of a company.

The minimum amount of share capital of a limited liability company is reduced from EUR 500 to RSD 100 (approx. EUR 1). No part of the share capital has to be paid upfront- the entire subscribed share capital can be paid within five years from the adoption of the MoA. A failure to pay the subscribed capital is not, however, foreseen as a reason for compulsory liquidation. The Commercial Register will convert the existing capital expressed in EUR into RSD amounts *ex officio*.

Labor and services can no longer be contributed to the company's capital. However, vested rights acquired in exchange for contributions in labor and services, which were permitted under the previous legislation, will remain intact.

(b) Pre-emption right

According to the new Law, the shareholders of a limited liability company continue to have pre-emption right regarding the sale of shares. However, unlike under the previous legislation, this right can be abolished by the MoA. The pre-emption right of the company itself has been abolished, as it has not had any practical meaning thus far.

(c) Additional contributions

The Law expressly allows the so-called additional contributions, which is a *sui generis* institute and is neither a capital contribution leading to a capital increase nor a shareholder loan. Additional contributions can be converted into capital or repaid to the shareholders. In the latter case, the creditors of the company have the same rights as in case of capital reduction.

(d) Management structure

Without apparent practical reason, changes are introduced with respect to the management structure in limited liability companies. Management can be organized as:

- unicameral (one or more directors); or
- bicameral (one or more directors and a supervisory board).

The main competences of the supervisory board are internal supervision of the company and appointment and removal of director(s). Furthermore, advance consent of the supervisory board is required for the following activities (unless the MoA or a shareholder's resolution dispenses with this requirement):

- acquisition, sale or encumbrance of shares held by the company in other entities;
- acquisition, sale or encumbrance of real property, if such transaction is outside the ordinary course of business;
- taking and granting loans, giving guarantees or other security.

(ii) Joint stock companies

The Law replaces the distinction between open and closed joint stock companies with the dichotomy of public companies and non public (private) companies.

Transfer of shares in public companies is performed in accordance with the Law on Capital Markets (see BDK Newsletter 10/2011 at www.bdklegal.com/code/navigate.php?Id=143), while shares in private companies can be bilaterally traded based on an SPA.

Minimum share capital of a joint stock company (whether public or private) is RSD 3,000,000 (currently approx. EUR 30,000 25% of the total subscribed share capital, but not less than RSD 3,000,000, has to be paid up front, while the remaining amount of the subscribed capital must be paid-in within two years from the adoption of the MoA, in regard to public companies, or five years, in regard to private companies.

The Law permits that a shareholders' assembly be held electronically. From 1 January 2014, public companies will be obliged to enable their shareholders to grant voting proxies electronically.

Management of joint stock companies can be organized as:

- unicameral: (in private companies this means one or more directors (three or more directors comprise a board of directors), while in public companies this management structure entails a board of directors as a mandatory body); or
- bicameral (in private companies this entails a supervisory board and one or more executive directors (three or more executive directors comprise an executive board), while in public companies this entails a supervisory board and an executive board).

V Mergers:

The obligation to publish a draft merger agreement now applies to both limited liability companies and joint-stock companies. Furthermore, the Law prescribes that each creditor with a claim exceeding RSD 2,000,000 (approx. EUR 20,000) has to be notified in writing of the intended merger. A creditor may require additional security, renegotiation of the agreement giving rise to its claim, or the separate management of the merged companies' properties until the claim is settled, however only if the financial situation of the companies involved in the merger jeopardizes the prospect of such creditor collecting its claim.

VI Compulsory liquidation:

The Chairman of the Commercial Registry is in charge of initiating compulsory liquidation in the following cases:

- if the company loses its business license (regarding licensed activities);
- if the company is registered for a limited period of time and this period expires, without the registration being extended;
- if the company does not increase its capital within 6 months from such capital falling below the prescribed minimum;
- if the company registration is annulled by a court of law;
- if the company fails to register a new representative or liquidator within three months from the removal or resignation of the registered representative or liquidator;
- if the company fails to file its annual financial statements.

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