

# **Serbia: Moratorium on enforcement of claims** MAY 2014

## **against companies in privatization restructuring extended**

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The Serbian Parliament adopted in urgent proceedings the Amendments to the Law on Privatization extending the existing moratorium on enforcement of creditors' claims held against the companies in privatization restructuring. The amendments are effective as of 13 May 2014.

The previous version of the privatization law provided that the moratorium, imposed back in 2003, was to expire on 30 June 2014. The Constitutional Court of Serbia declared this provision unconstitutional in November 2013, however, it postponed the publication of the decision until 15 May 2014 in order to give the government additional time to resolve the situation of 153 companies in restructuring.

On the eve of the publication and thus the effectiveness of the Constitutional Court's decision, the Serbian Parliament rushed to amend the unconstitutional provision of the privatization law. However, the Parliament did nothing more than extend the moratorium for at least another five months.

According to the amended privatization law, all creditors (state and private) of a company undergoing restructuring are obliged to submit to the Privatization Agency a request for payment of their claims, accompanied with an enforcement order, an enforcement title and other documentation evidencing the existence of the creditor's claim until 12 June 2014. There is no obligation of the Privatization Agency or any other authority to notify the creditors of the new requirement to report their claims.

Following the receipt of a creditor's request for payment, the Privatization Agency has 90 days to "determine the amount of the claim" and submit "a proposal to the creditor for settlement of the claim". This applies even if the creditor has an enforcement order or a final judgment determining the amount of the claim. The amendment fails to specify the legal nature of the Privatization Agency's claim determination and settlement proposal.

The creditor has further 30 days from the expiry of the above-mentioned 90-day deadline to accept or refuse the Privatization Agency's determination and settlement proposal. Only thereafter is the

creditor entitled to continue the enforcement proceedings that had been stayed as a result of the moratorium or to initiate enforcement proceedings (if there had been no pending proceedings prior to the moratorium). The creditor is obliged to submit to the enforcement court the Privatization Agency's settlement proposal. The amended law does not resolve what happens if the Privatization Agency exceeds the 90-day deadline for the submission of its settlement proposal to a creditor. It remains unclear whether in that case the enforcement petition of the creditor who did not receive any settlement proposal within the deadline would be deemed incomplete and thus vulnerable to rejection by the court. It is also fundamentally unclear what is the role of the Privatization Agency's settlement proposal in enforcement proceedings.

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