

Serbia: Serbian Business Registers Agency NOVEMBER 2017

started compulsory liquidation procedures

The Companies Act introduced in 2011 the obligation of the Serbian Business Registers Agency (**SBRA**) to institute compulsory liquidation over companies for failure to comply with legal obligations under the statute. SBRA is, *inter alia*, obliged to initiate compulsory liquidation over a company which has failed to:

- (a) submit its annual financial statements for the previous year until the end of the current year;
- (b) register a new statutory representative after the expiry of three months following the deletion of the previous representative from the register; or
- (c) increase its capital after it has fallen below statutory minimum.

It is not entirely clear whether the reason under (c) refers to the notion of registered capital or to net equity requirement. It is currently interpreted by SBRA to refer to the former and is therefore of no consequence, given that it is not possible to register decrease of registered capital below the statutory minimum.

SBRA has not followed through the mandate to conduct compulsory liquidation until very recently because in 2012, the Ministry of Economy ordered it not to. The Ministry had concerns that the statute does not provide enough leg for compulsory liquidation process to stand on its own (see below).

On 20 October this year, the Ministry changed its mind and gave SBRA a green light to start implementing the provisions on compulsory liquidation. Since then, SBRA has initiated over 800 procedures.

Compulsory liquidation is in principle meant to purge the register from inactive companies. However, concerns that halted the implementation of the procedure in 2012 remain.

No grace period

The Companies Act does not require SBRA to provide any warning notice or a remedy period (where non-compliance is remediable) to the company or its shareholders before it initiates compulsory liquidation procedure. SBRA has announced, however, that it would in practice allow one-year grace period starting from the non-compliance.

Unclear status of a company pending compulsory liquidation

The law does not address at all the scope of the company's permitted activities pending compulsory liquidation proceedings.

Treatment of creditors

The Companies Act completely lacks provisions on treatment of creditors pending compulsory liquidation. As a result, a company can be deleted from the register before it pays its creditors, who are left to pursue their claims against shareholders.

Distribution of liquidation proceeds

Liquidation proceeds are distributed to shareholders *pro rata* to their participation in the liquidated company's capital. However, the procedure for liquidation or distribution of non-cash assets is underregulated. It is not clear whether SBRA can decide on distribution of non-cash assets in case shareholders fail to reach an agreement on the manner of distribution.

What to expect in the future

Amendments to the Companies Act are currently being debated and it remains to be seen to what extent they will rectify the deficiencies in the regulation of compulsory liquidation. Draft amendments propose that SBRA must give a 30-day notice to the company to remedy the incompliance before it can commence compulsory liquidation. It is also proposed that pending the proceedings, the company may wrap up its existing business but may not enter into new deals. However, the proposed amendments in their current form do not adequately protect interests of creditors. There is no obligation to prepare initial and closing balance sheet and a liquidation report, and there is no procedure for registration and examination of creditors' claims. The present draft also omits to prohibit distributions to shareholders and closure of liquidation until all creditors are paid. Finally, the draft amendments keep unchanged the provision mandating compulsory liquidation in case capital falls below statutory minimum, thus perpetuating the dilemma whether this provision refers to registered capital or to net equity requirement.

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