MARJANOVIĆ LAW

Draft Law on the amendments to the Law on Companies

September 2017

In accordance with the adopted Negotiating position regarding the Chapter 6 on the negotiations for Serbia's accession to the European Union, the draft Law on the amendments to the Law on companies has been prepared (hereinafter: the Draft). The Draft brings numerous changes relating to the existing legislative framework. Moreover, an introduction of the new institutes and legal forms (European Joint-Stock Company and European Economic Interest Grouping) which have been unfamiliar to the present Law on companies, has been stipulated.

Public discussion in respect with the Draft has been initiated on 15 September 2017 and will last until 5 October 2017. During the public discussion, all persons concerned may point out their objections, proposals and suggestions aiming at the Draft enhancing.

This document strives to present a summary of the most important amendments suggested by the Draft with a critical review of some provisions. Furthermore, it stems to facilitate the participation in public discussion for all persons concerned and to acquaint the public with possible amendments to the Law, in advance.

Having in mind that the Draft is still a subject of the public discussion, it may undergo certain adjustments until the moment of voting before the National Assembly of Republic of Serbia.

The amendments provided for in the Draft shall apply as of 1 May 2018, as planned with the exemption of provisions relating to the cross-border merger and acquisition, European Joint-Stock Companies and European Economic Interest Grouping which shall start to apply as of the day of Serbia's accession to the European Union.

1. The Rights of minority shareholders/company members

The result of an endeavor to improve the position of the Republic of Serbia on the World Bank's "doing business" list are multiple and significant changes in this field, which would consequently lead to a larger flow of foreign investments.

There have been suggested certain changes in connection with the minimal participation threshold in company's share capital, i.e. the percentage of votes at the company's general meeting of which certain rights and duties depend, as follows:

The right to request the convocation of a general meeting of a limited liability company. The Draft prescribes that a general meeting session shall be convened when the convocation is requested, in writing, on behalf of the members who represent at least 10% of votes (instead of 20% required by the present Law).

The right to submit additional agenda items to the general meeting of a limited liability company. The Draft enables the members who have 5% of shares in the share capital to submit a written notice with additional items to the general meeting agenda (instead of 10% prescribed by the present Law).

The right of a compulsory redemption of shares (so called squeeze-out). According to the Draft, a compulsory redemption shall be conducted on the proposal of a shareholder who is has at least 95% of company's share capital and at least 95% of all shareholders' votes (instead of 90% prescribed by the present Law). Should this provision be adopted, it would start implementing in March 2018, so it may be expected that the shareholders who hold more than 90%, but less than 95% of the share capital and voting rights, shall use the postponed implementation and execute the squeeze-out by the start of implementation of the amendments proposed by the Draft.

The obligation of a share buyout. According to the Draft, a controlling shareholder who has 95% of shares is obliged to buy the shares of other shareholders, on their written request (instead of 90% prescribed by the present Law).

A significant amendment is envisaged in Article 199 of the present Law, by which there shall not exist a possibility to exclude a voting right of a company's member by the Founding act. According to the present Law, there is a possibility of excluding a member's right to participate in the general meeting of the limited liability company, regardless of the value of his/hers shares. The Draft eliminates such possibility.

When it comes to the conclusion of a legal transaction which involves personal interest and when the legal transaction value is higher than 10% of a book value of company assets, there is a new obligation stipulated by the Article 28 of the Draft. Namely, the Draft imposes an obligation to obtain the assessment report on the market value of the subject of a legal transaction. Aforementioned report would represent a component of the decision which authorizes subject legal transaction.

Furthermore, the company shall be obliged to publish a notice regarding the conclusion of such legal transaction on the company's website or on business register agency's website, within 15 days from the day when legal transaction has been concluded. Such provision could prolong and formally aggravate to a significant degree the process of conclusion of a legal transaction which involves personal interest, but it could also contribute to the protection of minority company's members and company's creditors which is the primary purpose of this provision.

Article 271 of the present Law is being changed with Article 80 of the Draft prescribing a dividend payment deadline which cannot be longer than six months counting from the day when the decision on dividend has been adopted.

2. Personal data registration

The Draft imposes a new Article (Article 9a) for the purpose of establishing a legal basis for the procession of certain data and for aligning the present Law on Companies with the Law on Data Protection and the Law on Foreigners. Article 9a specifies concrete data which is the subject of the registration depending on the person/entity involved. The present Law does not specify the data which is the subject of registration, however the current Rulebook on Business Register Agency's content and required documentation for the registration specifies this data in the same way as prescribed by the Draft. Therefore, it is not the matter of imposing a new solution regarding this question, but providing the present rules with a legal effect.

3. Alignment with E-administration concept

These changes are stipulated according to the concept promoted by the new Law on General Administrative Procedure whose main objective is to simplify the procedures, reduce administration expenses and to make more transparent and economic the communication between state authorities and economics in general.

Article 21 of the present Law on Companies is being changed with Article 14 of the Draft. Therefore, when signing a Founding act, in case it is an electronic document, the usage of qualified electronic signature has been enabled instead of an attestation before the authorized notary (this possibility has been, of course, restricted by the Draft and it is not enforceable if document refers to the real estate rights disposal). We consider this solution useful, having in mind it would significantly facilitate company incorporation process in future. In that regard, the introduction of a similar institute should be also considered for other documents being attested according to the Law, provided that such action is possible and in line with other relevant regulations (for example: Share Transfer Agreement, Status Change Agreement/Division Plan etc.).

In addition to the aforementioned, Article 21 of the present Law is being changed with Article 14 of the Draft which refers to the company's obligation of having the address for an e-mail reception.

4. Share capital reduction

Article 50 and Article 51 of the Draft specify the share capital reduction rules which refer to the limited liability company by adding Article 147a, 147b and 147v whose main purpose is creditor's protection. On the other hand, the Draft suggests deletion of the article which indicates to the corresponding application of the provisions regarding the joint-stock companies. Therefore, the concept of corresponding application of provisions in relation to the joint-stock companies when reducing share capital of limited liability company, is being abandoned. In this way, there is a tendency of aligning the Law with already established practice by which the limited liability companies have not always been able to reduce the share capital under the same conditions and in the same way as joint-stock companies.
The only reasons for share capital reduction stipulated by the Draft are set as follows:

- Loss coverage;
- Formation and enlargement of the reserves for the purpose of covering the future losses or increasing the share capital from the company's net asset;
- Reduction for the purpose of releasing a company member from the duty of contribution payment;
- Reduction in order to withdraw and annul the company shares;
- Reduction in cases of own share disposal;

Nevertheless, Articles 147a, 147b and 147v introduced by the Draft, retain some solutions regarding the share capital reduction process which are also applicable to the joint-stock companies. For example, the obligation of publishing the decision on share capital reduction has been especially stipulated. Security of receivables which incurred within 30 days from the day of publication of share capital reduction decision, should be requested from the company on behalf of the creditors. Therefore, if the company does not act upon this request within 3 months, the creditors may attain their claims in court proceedings with an obligation to prove that settlement of their claims has been threatened by the relevant share capital reduction. Specified creditor protection amendments shall not apply only in the event of exhaustively listed exemptions provided by the Draft.
Although we support an effort to legally resolve problems that existed in practice, we consider that the expediency of provisions which restrict the reasons for share capital reduction should be additionally reviewed. Namely, within the scope of regular business activity performance, a share capital increase may occasionally occur without members' intention but due to the occurrence of certain circumstances (i.e., status change) making the share capital inappositely high. The abovementioned may potentially evoke problems with regard to the company's business activity (for example, restrictions on payments to company members) and, according to the Draft, companies would not be able to reduce share capital deliberately.

5. Cross-border merger and acquisition

The Provisions which regulate cross-border merger and acquisition have been set forth for the first time in Article 125 of the Draft adding Articles 514a-514m besides existing Article 514. Cross-border merger and acquisition implies the existence of one subject registered on the territory of the Republic of Serbia and the other one incorporated on the territory of the EU member or the country which is a signatory of the Agreement on European Economic Area.
In addition to the compulsory elements of a mutual agreement on the acquisition, the Draft stipulates the content of a notary document which precedes the process of acquisition, acquisition registration process, legal consequences of acquisition, simplified acquisition process as well as the other significant issues.

6. Compulsory liquidation

Provisions of Article 546 and Article 547 of the present Law on companies are being changed with Article 136, Article 137 and Article 138 of the Draft. The reasons for compulsory liquidation have been specified and elaborated by the aforementioned provisions.
An essential amendment refers to the publication of notice (on register's website) regarding the company which meets conditions for compulsory liquidation, with an invitation to eliminate any reason that may be eliminated within 30 days.
Furthermore, Article 547a regulates company's status during compulsory liquidation proceeding.

7. Branch registration

Provisions of the present Law which regulate the status of the branch are being changed with Article 140, Article 141, Article 142 and Article 143.
The main amendment has been prescribed by Article 140 of the Draft imposing the mandatory registration of the branch for both domestic legal entities' branches and branches of foreign legal entities. We consider this a good solution which contributes to a legal certainty.

8. New legal forms

Articles 577a-577š are being added by Article 146 of the Draft for the purpose of prescribing a possibility of establishing the European Joint-Stock Company, while Article 147 of the Draft adds Articles 580a-580č which regulate the establishment of the European Economic Interest Grouping.
European Joint-Stock company shall be established in accordance with the Council Regulation No. 2157/2001/EEZ of 8 October 2011, and the status of a legal entity is acquired by the registration at the business register. Moreover, it is stipulated that the European Joint-Stock Company's share capital shall amount to at least EUR 120.000,00.
The European Economic Interest Grouping may be founded by at least two companies (or by entrepreneurs, i.e. other legal entities or natural persons) of which at least one should be registered on the territory of the Republic of Serbia and the other one on the territory of the EU member or the country which is a signatory of the Agreement on European Economic Area. The aim of the subject grouping must not be the acquisition of their own profit, yet it has to be exclusively the achievement of its members' interests. Furthermore, the grouping will not have its own business activity and the transactions it conducts shall be considered as the additional business activity of its members.

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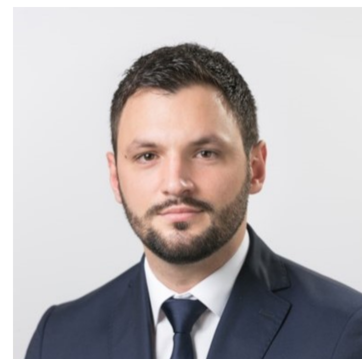

Dušan graduated from Faculty of Law, University of Belgrade, Judicial-Administrative Department, in 2012. Degree gives him an inside perspective on disputes and administrative proceedings. Dušan has 5 years of experience in legal consulting and provision of all legal services.

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Dušan has assisted a number of clients with the M&A as well as with range of other commercial and corporate issues. He performed different legal due diligence projects and other legal consultancy engagements for various both domestic and foreign investors.

His clients' portfolio includes, among others, pharmaceutical companies, retail and wholesale companies, technology and telecommunication companies, as well as energy and food and drink producers.

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Before joining Marjanovic Law office Vladimir gained his professional experience in some of the largest law offices in Belgrade. He is experienced in the area of corporate law, in representation of clients in civil and administrative proceedings. Most of his clients are in the area of real estate and energy sector. In Marjanovic Law office Vladimir is engaged in different projects for clients in Serbia and Montenegro, and provides legal advisory services for domestic and foreign investors.