

**November 2011**

**In focus: Harmonization of limited liability companies with the Company Law**

**1. Entering into force and application of the Company Law**

The new Company Law (“Official Gazette of the Republic of Serbia” no. 36/2011 dated May 27<sup>th</sup>, 2011) has entered into force on June 4<sup>th</sup>, 2011, and its application shall commence as of February 1<sup>st</sup>, 2012, except for several provisions which shall be applied as of January 1<sup>st</sup>, 2014.

**2. Obligation of harmonization with the Company Law**

Articles 589 and 591 of the Company Law (hereinafter referred to as: the “Law”) foresee the obligation of existing limited liability companies to harmonize their basic capital and company bodies with the provisions of the Law, until the date when the Law becomes applicable.

**2.1 Harmonization of the company’s capital**

The new Law prescribes that the basic capital of the company must be determined in RSD.

Within 30 days from the date of commencement of application of the Law, the registrar keeping the register of

business entities shall, by official duty, determine the basic capital of existing companies in RSD, according to the official middle exchange rate of the National Bank of Serbia applicable on the day of payment of each individual contribution.

**2.2 Harmonization of the company’s bodies**

The Law no longer foresees the Management Board as a body of a company.

On the other hand, it is prescribed that management of a company may be unicameral (the company, aside from the General Assembly, has one or more Directors, the number of whom is determined by the Articles of Incorporation or by Decision of the General Assembly), or bicameral (aside from the General Assembly and the Directors, the company also has a Supervisory Board which supervises the work of the Directors).

For the purpose of harmonization with the new Law, existing limited liability companies are obliged to register the changes made concerning the bodies of the company within three months from the date the Law becomes applicable.

The above stated practically means that existing companies are obliged to bring

forth decisions through which the basic capital and bodies of the company are harmonized with the provisions of the new Law, until the date when the Law shall be applied, i.e. until February 1<sup>st</sup>, 2012, whereas changes made regarding the bodies of the company must be registered within three months from the commencement of application of the Law, i.e. until May 1<sup>st</sup>, 2012.

### **3. Consequences of non-harmonization with the Law**

The registry shall initiate the procedure of compulsory liquidation of companies which did not harmonize their bodies in accordance with the provisions of the Law, until the date of commencement of application of the Law.

Additionally, failure to harmonize with the provisions of the Law, or within the prescribed deadlines, is sanctioned as a commercial offence, by fine in the amount between RSD 100,000 and 1,000,000 for the company, as well as by fine in the amount between RSD 20,000 and 200,000 for the responsible person in the company.

### **4. Amendments and addendums to the Articles of Incorporation**

In comparison with the previous Company Law, the new Law differently regulates many issues significant for the company's members, such as inheriting shares, transfer of shares, the right to expel a company member, etc, and it sets forth that provisions of the new Law shall be applied in all cases when a certain issue is not differently regulated in the Articles of Incorporation.

At the same time, through the provisions of the new Law, the legal nature of the Articles of Association is changed, in a way that they now have an obligatory effect, unlike the previous statutory effect, which practically means that it generates legal effects only between the members who concluded them.

Therefore, if the above stated matters are not regulated by the existing Articles of Incorporation (regardless of whether or not they are regulated by the Articles of Association), and the company members wish to regulate them in a manner different from the one foreseen by the Law, it is necessary that they make such amendments and addendums to the Articles of Incorporation that shall precisely regulate these matters.

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