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In focus: Law on Amendments and Supplements to the Company Law

On 8 June 2018, the National Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Company Law (“Official Gazette of the Republic of Serbia” no. 44/2018 from 08/06/2013, hereinafter: the “Law”). The Law entered into force the day following its publication, i.e. on 9 June 2018, with most provisions coming into force on 1 October 2018, while the provisions regulating the cross-border merger and absorption of companies, the European Society and European Economic Interest Grouping shall apply as of 1 January 2022.

The main reason for adopting the Law is to harmonize the legal system of the Republic of Serbia with the *acquis* of the EU in the field of corporate law, in accordance with the conclusion of the Government of the Republic of Serbia 05 number: 337-5373 / 17 from 19 June 2017.

The law has made numerous changes, of which the most important are:

1. Introduction of new forms of organization in accordance with EU regulations

In order to harmonize with the EU legislation, the Law introduces a new form of company – European Society (SE), which is established in the form of a joint stock company, with a minimum share capital of 120,000.00 euros in dinar counter value at

the middle exchange rate of the NBS on the payment date, as well as the European Economic Interest Grouping (EEIG), which is defined as a legal entity established by at least two companies, entrepreneurs or other legal or natural persons performing an agricultural or other activity in accordance with the law, of which at least one is registered on the territory of the Republic Serbia and the other in the territory of another member state.

2. Cross-border merger/absorption of companies

For the first time, the law regulates the issue of cross-border mergers and the absorption of a company. Implied under this are mergers/absorptions involving at least two companies, of which at least one is a capital company (a limited liability company or a joint-stock company) registered on the territory of the Republic of Serbia and at least one, a capital company registered on the territory of another member state of the EU or a state party to the Agreement on the European Economic Area.

3. Data on persons who are registered

Having in mind the provisions of the Law on Personal Data Protection, the Law has established a legal authority for data processing, prescribing the data on persons for which there is a requirement for registration.

4. Business name

The company's abbreviated business name can now contain acronym words from the title and description of the business subject, i.e. the description of the business subject consists of more than one word, but so that these acronyms must not be identical to the name of another company or cause a misconception about identity with another company.

5. Electronic registration of the company and obligation to have an e-mail address for receiving mail

The law enables electronic registration of the founding of the company by envisaging that the verification of signatures on the founding act, if it is an electronic document, is replaced by the qualified electronic signature of the company members, unless this is contrary to the regulations governing real estate trade. In the case of a digitized document, the verification of a signature on the founding act may be replaced with a qualified electronic signature, or qualified electronic stamp of the person authorized to verify signatures, manuscripts and transcripts. In order to encourage the electronic registration of companies, it has been announced that the fees for the same will be lower than the fees in the case of filing a paper application.

At the same time, the Law introduces the obligation of a company to have an e-mail address for receiving mail, which the company is obliged to register within one year from the day of the commencement of application of the Law, i.e. until 1 October 2019. According to the announcements from the competent ministry and the Agency for Business Registers, existing

companies will not pay a fee for registering their e-mail address for receiving mail.

6. Use of stamps

The obligation to use stamps in business letters and other company documents was already abolished by the Company Law from 2012, unless otherwise provided by a separate law. The novelty adopted by this Law is that a special regulation cannot impose the obligation to use stamps, and accordingly, on the date of entry into force of the Law, provisions of the regulations that established the mandatory use of stamps in the business of companies and entrepreneurs have been abolished.

7. Member Agreement

Unlike the previous solution, the Law does not regulate the essential elements of the agreement between company members, since the same is effective solely among the members of the company that have concluded it, thus members are now completely free to regulate the content of the agreement.

8. Legal affairs and actions in where there is a personal interest

The Law stipulates that there is no obligation to obtain approval for concluding a legal transaction or undertaking legal actions where there is a personal interest of persons with special duties towards the company (members/shareholders with significant share in the company's share capital, controlling members/shareholders of the company, members of the supervisory board, agents, etc.) in case the value of the subject of the transaction or legal action is less than 10% of the accounting value of the total assets of the

company stated in the last annual balance sheet.

On the other hand, in cases where the value of the subject of the transaction or legal actions in which there is a personal interest of 10% or more than 10% of the accounting value of the total assets of the company stated in the last annual balance sheet, the Law introduces an obligation for the company to, prior to approving a concluded transaction or undertaking a legal action, provide a report on the assessment of the market value of the subject or rights that are the subject of such a legal transaction or legal action.

It also prescribes the obligation of the company to, upon the approval of a legal transaction or legal action, publish on its website or on the website of the register of business entities a notice of the legal transaction concluded, i.e. undertaken legal action where there is a personal interest, with a detailed description of such transaction or action.

Failure to comply with the obligation to register and publish information on the concluded legal transaction or legal action in which there is a personal interest is considered an economic offense for which a fine is imposed in the amount of 100,000.00 to 1,000,000 dinars for a legal entity or with a fine from 20,000.00 to 200,000.00 dinars for the responsible person in the legal entity.

9. Protection of the rights of minority shareholders/members

The Law pays special attention to improving the rights of minority shareholders/members. It now enables members of a limited liability company who own or represent 10% of the company's share (instead of the current 20%) to convene a session of the members of the company, and the right to place additional items on the agenda of the session of the assembly is now available to members who own or represent the least 5% (instead of the current 10%) share in equity.

The Law also makes an intervention in the issue of excluding a member by a court decision by, inter alia, prescribing that, if at the request of a member who owns a share that represents at least 5% of the company's share capital, the Assembly does not decide on the application for filing a complaint within two months from the date of filing the application or rejects the application, or the complaint is not filed within 30 days from the date of the decision to file a lawsuit, the member who filed the claim has the right to file a lawsuit with the court on behalf of the company within a further period of 30 days for the account of the company (so-called derivative lawsuit).

10. Deadline for dividend payment

Unlike previous solutions, the Law now prescribes a deadline for the payment of dividends, which cannot be longer than 6 (six) months from the date of the decision on dividend payment.

11. Determining the market value of shares

The Law introduces novelties also in terms of determining the market value of shares of a public joint stock company, prescribing as an additional criterion the obligation of trading for more than 1/3 trading days on a monthly basis in the period of six months preceding the date of the decision on determining the market value of shares.

12. Forced buyout of shares

Regarding the forced buyout (so-called “squeeze-out”), it is now envisaged that the decision on the forced buyout of all shares of the remaining shareholders can be made regardless of encumbrances, prohibition of disposal, restrictions and rights of third parties in those shares, as well as provisions regulating the procedure for exercising the right to buyout shares of non-conforming shareholders.

13. Appointment of directors in a special out-of-court procedure and termination of the director’s mandate

If the company is left without a director and the new director is not registered in the register of business entities within 30 days, a member of the company or other interested person may request that a court, in an out-of-court procedure, appoint a temporary representative of the company, which procedure is urgent and the court is obliged to make a decision on the request within eight days from the date of receipt of the request.

On the other hand, it is specified that the precondition for terminating the director’s mandate due to failure to submit financial statements is that a regular session of the

General Meeting was held where financial statements were not adopted.

14. Increase and decrease of the share capital

The Law more specifically defines the conditions and procedure for increasing and decreasing the share capital of a limited liability company.

It is stipulated that in case of a new member joining the company, the decision of the shareholders assembly on increasing the share capital can be made even before the full payment, i.e. entry of the contributions of existing members, provided that the member who is joining, simultaneously with the adjoining, pays or enters its contribution in full. In addition to the recapitalization, the entry of new members (with new capital) is possible, but only under the prescribed conditions.

On the other hand, the Law explicitly stipulates the reasons for decreasing the share capital, as well as the required majority for adopting the decision to decrease the share capital by the assembly. The Law envisages that the share capital of the company is considered as decreased on the registration date in the register of business entities.

In the event of a status change, the assembly shall at the same time issue a decision on the status change, decide on the increase or decrease in the share capital depending on the type of status change.

15. Additional payments of company members

The Law stipulates that the company is obliged to return additional payments to members of the company and members whose member status has ceased, upon their request, only if this is not necessary for covering the losses of the company or for settling the creditors of the company. The Law now allows members whose status has ceased and to whom no repayment of additional payments has been made, to exercise their right to repayment through the court.

In addition, a provision has been entered prescribing that, at the request of the company member who made the additional payment but who did not fully pay the registered contribution in the company, for the amount of the unpaid registered contribution, the company may decide that instead of returning the additional payment, the additional payment is considered as full or partial fulfillment of the obligation to pay the registered monetary deposit.

16. Authorized persons for signing decisions of the company's assembly

The Law specifies that the decisions of the company assembly of the company are signed by: in a one-member company – the only member of the company in the function of the assembly; in a two-member company with equal shares of members, i.e. equal voting rights of members – both members of the company, and in the case of a repeated session, both members of the company, if present, or the member who is present; in all other cases – the president of the assembly.

17. Acquisition and disposal of high value assets

The Law now explicitly defines that the acquisition, i.e. disposal of high value assets is not simultaneously considered the establishing of a pledge right, mortgage or other means of security provided by the company in order to secure its own obligation under a credit agreement, loan or other legal transaction, in which case the biggest value of an individual legal action or legal transaction is taken as the value at which assets of high value are determined.

Also specified is the provision on persons who are actively legitimized to file a lawsuit for annulling a legal transaction or legal action for which no approval for acquiring or disposing of high value assets has been obtained. Namely, besides the company, this is also the right of a shareholder who owns or represents at least 5% of the company's share capital, provided that he held the prescribed percentage of shares on the day of concluding said that legal transaction or legal action, and not the shareholder who acquired them later.

18. Mandatory registration of a branch of a domestic company

The Law envisages the obligation to register the local branch of a company, while domestic companies with established branches are obliged to register them within one year from the day of the commencement of application of the Law, i.e. until 1 October 2019.

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