

April 2020

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

On 23 December 2019, the National Assembly of the Republic of Serbia adopted the Law on amendments and supplements to the Company Law (“Official Gazette of RS” no. 91/2019, hereinafter: the “Law”).

The main novelties prescribed by the Law concern the introduction of two new financial instruments - **1) reserved own share** and **2) right to acquire a share** issued by a limited liability company. The provisions of the Law that regulate these two financial instruments shall be applicable **as of 1 April 2020**.

Reserved own share

The Law defines the reserved own share as the share that a company acquires without encumbrance, i.e. without fee from a member of the company, for the purpose of issuing a new financial instrument - the right to acquire a share, whereby a two-third majority of shareholders is mandatory for adopting the decision on acquiring the reserved own share. The reserved own share cannot be pledged nor disposed with. The company may acquire the reserved own share only from shares that have been fully paid or entered in the company and can only be acquired from a member of the company who voted in favor of the decision on acquiring the reserved own share.

The reserved own share may be acquired by both single-member and multi-member limited liability companies. In addition, the Law prescribes that the company may have several reserved own shares, whereby the total participation of reserved own shares cannot exceed 40% of the total registered share capital of the company.

The company is not entitled to participate in the profit, and has no voting right, on the basis of owning reserved own shares.

Right to acquire a share

In terms of the Law, the right to acquire a share represents a non-transferable financial instrument issued by a limited liability company, which gives its holder the right to acquire the share on a specific day (maturity day) for a specific price.

The decision on such issuance of the financial instrument is adopted by the company assembly, unless otherwise stipulated in the incorporation act. The maturity day must be specified in the decision on issuance and the right to acquire a share shall be conducted only upon payment of the price. Members of the company have no right preemption right to the share acquired on the basis of the financial instrument - the right to acquire a share.

The financial instrument (right to acquire a share) can be annulled in the case when the holder of the financial instrument failed to pay the price to the company within the term stipulated by the Law. In addition, the right to acquire a share can be annulled before the maturity date, under the conditions stipulated in the decision on emission.

Judicial protection

The Law introduces judicial protection in the case when the company fails to register in the legally prescribed term the acquisition of the share based on the financial instrument – the right to acquire a share. The acquirer may, provided that he paid the price for the acquisition of a share in a timely manner, submit a lawsuit for determining its shareholder status or a lawsuit for damage compensation which the company shall be obliged to pay the acquirer.

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