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In focus: Amendments to the Company Law adopted

On 17 November 2021, the National Assembly of the Republic of Serbia adopted the Law on Amendments to the Company Law ("Official Gazette of the RS", no. 109/2021 - hereinafter: the "**Law**"), which entered into force on 27 November 2021, with delayed application of certain provisions in order to adapt legal entities and competent state institutions to new legal solutions, i.e. with delayed application of certain provisions until the day of accession of the Republic of Serbia to the European Union.

Some of the main amendments include the following:

- 1. Mandatory registration of gender:** Starting from **1 June 2022**, the registration of data on gender of domestic and foreign natural persons for whom there is an obligation to register is mandatory (members of the company, entrepreneurs, members of supervisory boards, representatives, procurators, etc.).
- 2. Company's headquarters:** It is specified that the company's headquarters is the place and address in the territory of the Republic of Serbia from which the company's business is managed, and that the company's address includes the city, municipality, settlement, street or square, house number, floor and apartment number, in accordance with regulations of the territorial organization. Companies, entrepreneurs, branches, and

representative offices of foreign companies whose registered office address does not contain all the above data, are obliged to register the office address in accordance with the new provisions of the Law by **27 November 2022**.

The possibility is introduced that the interested person can file a lawsuit with the competent court to request the deletion of the registered address of the company's headquarters if the person with the right of ownership did not allow the use of the space where the company's headquarters are located. In this way, the existing problems in practice related to the existence of the so-called "phantom companies" that have registered their headquarters at false addresses (non-existent or existing), where they do not perform any activity and often have no legal basis for using the space itself.

The procedure according to the above-mentioned lawsuit is urgent, and the judgment ordering the deletion of the registered address of the company's headquarters shall be submitted by the court to the register of economic entities for registration. If the company does not register a new address within 30 days from the day the judgment becomes final, the register of economic entities ex officio initiates the procedure of compulsory liquidation of that company. The provision on compulsory liquidation starts to apply from **1 June 2022**. The above provisions

apply accordingly to entrepreneurs, except for provisions on the procedure of compulsory liquidation of the company.

3. Registration with the e-government service:

Stipulated is the obligation for companies and entrepreneurs to register as users of e-government services by **27 May 2023**. Delivery of an electronic document to a company or entrepreneur is done in accordance with the law governing electronic documents, electronic identification and services of trust in electronic business, or the law governing electronic government when delivery is made to the Unified electronic mailbox on the eUprava portal.

4. Legal representative:

The obligation that a company must have at least one legal representative who is a natural person is deleted, bearing in mind that a legal entity that is a legal representative performs this function through its legal representative who is a natural person or a natural person authorized by a special power of attorney issued in writing.

5. Registration of the share capital in the situation of sale of a bankruptcy debtor as a legal entity:

After the sale of a bankruptcy debtor as a legal entity in the bankruptcy procedure, the value of the share capital of that company is registered in the amount of the paid purchase price from the contract on the sale of the bankruptcy debtor, and the buyer's deposit as a non-cash contribution to the share capital. If the value of the share capital is less than the value of the minimum share capital, the value of the share capital is registered at the value of the minimum share capital prescribed for that company, and the buyer is obliged to pay the missing amount up to the minimum share capital within six

months from the date of suspension of the bankruptcy proceedings.

6. Business transactions and activities in which there is a personal interest of persons that have special duties towards the company:

Specified are provisions related to prescribing the content of the notification that the person who has special duties towards the company (persons from Article 61. of the Law), submits to the competent authority for reporting jobs and activities in which there is personal interest. Furthermore, in case the value of the subject of legal transaction or legal action in which there is a personal interest is 10% or more than 10% of the bookkeeping value of the total assets of the company, instead of estimating the market value, the fair value of items or rights subject to legal transaction or legal action is estimated, and which is determined in accordance with International Financial Reporting Standard 13 – Fair Value Assessment. Reports on the fair value of items or rights and the notice on the existence of a personal interest are an integral part of the decision approving the transaction. Also stipulated is the obligation of a limited liability company and a joint stock company to publicly publish on its website or on the website of the Register of Business Entities the intention to conclude a legal transaction, i.e. take legal action that requires approval, which contains a detailed description of the transaction or action, personal or business name of the related party, information on the nature of the relationship with the related party, date and value of the transaction, as well as data from the notification, immediately after the decision approving the legal transaction, i.e. legal action in which there is personal interest, no later than on the day of concluding such

legal transaction, i.e. undertaking such legal action.

Additionally introduced is the obligation to report on legal transactions and actions in which there is a personal interest in annual financial reports.

The reasons for filing a lawsuit for violating the rules on approving jobs in which there is a personal interest have been supplemented, so that the right to file a lawsuit for annulment of a legal transaction is prescribed in the case when approval is obtained for concluding a transaction in which there is a personal interest, but the transaction has not been concluded, i.e. the legal action has not been taken at a fair price. Also, it is specified that, in case the competent court in the proceedings renders a decision imposing a measure of temporary restriction of the right to perform the function of director, member of the supervisory board, representative or procurator, the registrar, according to the submitted court decision, in addition of entering the imposed measure in the Central Registry of temporary restrictions of legal entities, deletes that person from the competent register.

7. **Decrease of share capital:** It is stipulated that the share capital of a limited liability company may be reduced (but not below the minimum share capital) in the event of status changes, as well as that the decision to reduce share capital determines the reason for the reduction of share capital and the extent of such reduction, especially whether the reduction of the share capital is carried out with or without the application of the provisions on the protection of creditors.

8. **Own share:** It is specified that the own share cannot be the subject of the pledge and, having in mind its legal nature and the fact that the company is obliged to dispose of its own share within three years from the date of acquisition, i.e. to otherwise cancel it and carry out the procedure of reduction of share capital.

9. **Share transfer:** Provisions on transfer of shares are supplemented by a provision stipulating that in case a new member joins the company, the agreement on joining of a new member is concluded in writing with a certified signature of the person joining the company and the person authorized by the general meeting of the company.

A new provision is also added regulating the consequences of the court decision which determines the nullity of the share transfer agreement. In this regard, the judgment establishing the nullity of the share transfer agreement has effect on the company and the members of the company. If a change of members of the company has been registered on the basis of a share transfer agreement whose nullity has been determined by a court decision, the competent court shall submit such a judgment to the Register of Business Entities for registration, and litigants or their legal successors have the right to apply for registration of the change in data on members of the company that were registered on the basis of a void share transfer agreement. This provision overcomes controversial issues in practice regarding the enforcement of such a judgment in the Register of Business Entities, the matter of persons authorized to file applications for registration, as well as the issue of whether the register

establishes the status of company members before concluding a share transfer agreement that has been annulled, regardless of subsequently registered changes of members of the company.

10. Compulsory liquidation: Two new reasons for initiating compulsory liquidation proceedings were added: (1) if the buyer of the bankruptcy debtor as a legal entity does not pay the missing amount up to the minimum share capital within six months from the date of termination of bankruptcy proceedings, and (2) if the company within 30 days from the day the judgment by which the deletion of the registered address of the registered office becomes final does not register the new registered office address.

Also, the Law prescribes reasons for compulsory liquidation, which cannot be eliminated. Consequently, in these cases, companies are not given a period of 90 days to eliminate the reasons for liquidation, but the registrar publishes a notice on the website of the Register of Business Entities about the company when the reasons for compulsory liquidation have been reached and after 30 days from the day of publication of the notice ex officio, the registrar issues an act on initiating the liquidation procedure by which the company shall be given the status of "in compulsory liquidation". The application of the above-mentioned provisions on the procedure of compulsory liquidation has been postponed until **1 June 2022**.

In addition to the above, a legal gap has been eliminated in the situation when bankruptcy proceedings are opened against a company that is in the process of compulsory liquidation. Namely, if a previous bankruptcy proceeding is opened

during the compulsory liquidation - the compulsory liquidation is terminated, and if after that the proposal for initiating bankruptcy proceeding is rejected, i.e. is suspended due to withdrawal of the proposal for initiating bankruptcy procedure, the compulsory liquidation continues. If, on the other hand, bankruptcy proceedings are opened - the compulsory liquidation is suspended.

The Law also prescribes changes in terms of the consequences of deleting a company after the compulsory liquidation. Namely, the assets of the deleted company become the assets of the members in proportion to their shares in the company's capital, however there is no longer the possibility for members of the company to regulate their relations regarding the assets of the deleted company or to divide those assets in court proceedings.

11. Entrepreneur: It is envisaged that the business name of an entrepreneur may not contain the word "Serbia", derivatives of this word, including all forms associated with this word, as well as the internationally recognized three-letter designation of the Republic of Serbia "SRB".

Two new reasons are prescribed due to which the entrepreneur's activity is terminated by force of law: 1) in case the entrepreneur, within 30 days from the day the judgment ordering the deletion of the address of the seat becomes final (in case the entrepreneur uses the address of the seat without the owner's consent in which the seat is registered), does not register a new address of the seat, and 2) in case of revocation of license, permit, approval, consent, etc. which are prescribed by a special law as a condition for registering the activity performed by the entrepreneur,

and the entrepreneur within 30 days from the day the act by which the revocation of the license, permit, approval, consent, etc. was revoked fails to register the change of that activity or does not deregister the activity.

Also, in case of termination of the license, permit, approval, consent, etc. as well as in case of imposing a measure prohibiting the performance of a registered activity, the entrepreneur is given the opportunity to, within 30 days from the date of termination of the license, permit, approval, consent, etc., register the change of that activity, deregister the activity or extend the validity of the license, permit, approval, consent, etc., i.e. to, within 30 days from the day the act by which the measure prohibiting him from performing the registered activity was rendered, register the termination of the registered activity during the time for which the measure was imposed, or to register a change in that activity in order to perform another activity in order to further generate income and secure a livelihood, or to deregister the activity himself, because he cannot perform the prohibited activity.

In all the above cases, as well as in case the business account of the entrepreneur is blocked for more than two years continuously, based on the initiative to initiate the procedure of deleting the entrepreneur, submitted by the National Bank of Serbia or the Tax Administration, the Registrar of the Registry of Business Entities publishes a notification about the entrepreneur when reasons for deletion from the registry have been fulfilled, with an invitation to remove the reasons for deletion from the registry within 90 days from the day of publishing the notification,

i.e. to unblock the business account. If the entrepreneur does not eliminate the reasons for deletion within the specified period, i.e. does not unblock the business account, the registrar shall, within a further period of 30 days, ex officio, render the decision on deleting the entrepreneur from the registry. The beginning of application of the provisions related to the above-mentioned obligation of the Registrar of the Registry of Business Entities to publish a notification on the occurrence of reasons for deleting an entrepreneur from the register and ex officio delete him from the register if he does not remove the reasons for deletion. Has been postponed until **1 June 2022**.

Also, the deadline for reporting the continuation of activities in the event of death or loss of legal capacity of the entrepreneur has been extended from 30 to 60 days.

12. Remuneration of director: The Law prescribes the total remuneration of the director and the same includes the salary, i.e. remuneration for his work on the basis of the engagement agreement, and may include the right to incentives through the allocation of shares, i.e. warrants of the company or another company that is affiliated with the company. This provision shall accordingly apply to the remuneration of members of the supervisory board of a joint-stock company, as well as to the remuneration of directors and members of the supervisory board in limited liability companies.

In addition, a non-public joint stock company, as well as a limited liability company, now have the obligation to, at

the request of a shareholder or member who owns shares or stakes representing at least 5% of the company's share capital, no later than in the term of 3 days from receipt of the request, enable the same insight into the data on the amount and structure of the total remuneration for each director, i.e. executive director and member of the supervisory board.

For public joint-stock companies, the Law now prescribes the obligation to draw up a remuneration policy for directors and members of the supervisory board (if the management of the company is bicameral). In this regard, the Law, in addition to prescribing that the compensation policy must be clear and understandable, also prescribes what it must contain. In addition, the Law prescribes the obligation of the board of directors/supervisory board to prepare a report on remuneration once a year and submit it to the company's assembly for consideration. The company is obliged to publish the report on fees on its website after the assembly session at which the report was discussed. The report must be publicly available without a fee at least ten years from the date of publication.

13. Special rules regarding the encouragement of long-term engagement of shareholders in public joint stock companies:

Introduced is the concept of an institutional investor (companies performing life insurance, reinsurance, voluntary pension insurance), asset manager (e.g. investment funds) and voting advisor, as well as their obligations, the content of the policy of engaging institutional investors and asset managers, etc. Also, the procedure of informing shareholders and companies has been regulated, bearing in mind that shares of public joint stock companies are often held

through complex chains of intermediaries, which makes it difficult to exercise shareholders' rights and can act as an obstacle for hiring shareholders. Namely, companies often cannot identify their shareholders, which is a prerequisite for direct communication between shareholders and the company. Therefore, legal innovations should facilitate the exercise of shareholders' rights as well as their engagement. These novelties were introduced into the Law in order to comply with the provisions of Directive (EU) 2017/828 of the European Parliament and Council from 17 May 2017 on amending Directive 2007/36/EC, and they shall apply from the date of accession of the Republic of Serbia to the European Union.

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