

# LAW ON BUSINESS COMPANIES

## CURRENT SITUATION

The Law on Companies ("Official Gazette of the Republic of Serbia", Nos 36/2011, 99/2011, 83/2014, 5/2015, 44/2018, 95/2018 and 91/2019) (hereinafter: the Company Law) came into force on 4 June 2011 and is applicable as of 1 February 2012.

By signing the Stabilization and Association Agreement with the European Union, the Republic of Serbia undertook the obligation to harmonize its domestic law with the EU acquis. Within the negotiations on the accession of the Republic of Serbia to the European Union, Chapter 6 – Company Law has a special role, which includes issues of establishment and operation of companies in EU member states, in accordance with which the Republic of Serbia would be provided with better business conditions on the European Union market, simplified procedures and the possibility of establishing new forms of economic entities. The Company Law is an indicator of progress in harmonizing the legislation of the Republic of Serbia with the EU acquis, which is important for the process of integration of the Republic of Serbia into the European Union.

The main characteristics of the Company Law are:

- application of standards harmonized with EU legislation;
- harmonization with the Law on the Capital Market;
- certain problems that were a characteristic of the previous Law have been resolved;
- precise determination of certain legal concepts;
- the distinction between joint-stock companies and other forms of business organization and
- single-tier and two-tier management systems.

By the latest amendments to the Company Law, which came into force in 2020, it was introduced the institute of reserved own share of a limited liability company, as well as term, emissions / issuance, registration, clearing of a financial instrument – the right to acquire a share of a Limited Liability Company that may be granted to employees. These amendments also allow the distribution of the remaining profit in the form of payments to the employees of the company by the decision of the General Meeting. These institutes provide an opportunity for the LLC to stimulate its employees to perform their jobs in the best way possible in a way not previously envisaged, by giving them the opportunity to become members of that company, following the example of joint stock companies and

economic systems of the European Union and the United States of America.

The draft law on amendments to the Company Law, which is under preparation, tends to prevent abuses of by members and director, through the institutes of approval of legal work in which there is a personal interest, and by increasing scope of activity of the General Meeting and control over the director through the availability of data on the amount and structure of the director's remuneration and incentives, as well as to ensure the resolution of such disputes amicably by prescribing that the company is obliged to try to mediate in resolving disputes between a member of the company and the company itself.

## COVID-19

The state of emergency in the Republic of Serbia, introduced by the Decision on the introduction of the state of emergency ("Official Gazette of the Republic of Serbia", No. 29/2020), significantly changed the operations of business entities.

The COVID-19 pandemic and the introduction of a state of emergency in the Republic of Serbia significantly affected the work of the Business Registers Agency (hereinafter: BRA) which suspended direct contacts with its customers. BRA has intensified the work of its info center and its customers can continue using the following BRA's e-services: e-Registration of incorporation of a single-member and multi-member limited liability company, e-Incorporation of Sole Proprietors, e-Construction permits, e-Submission of financial statements and e-filing with the Central Records of Beneficial Owners.

The Decree on deadlines in administrative proceedings during the state of emergency ("Official Gazette of the Republic of Serbia", Nos. 41/2020 and 43/2020) had a concrete impact on the conduct of proceedings of business entities. Decree prescribes that during the state of emergency in the Republic of Serbia the parties cannot bear the consequences of failing to comply with the time limits prescribed by law, so this provision should also be taken into account when assessing the timeliness of registrations, appeals and other remedies, as well as that all deadlines prescribed by the Company Law shall be interrupted and shall continue to run from the date of the termination of the state of emergency which also applies to the initiated procedures for forced liquidation of companies.

## POSITIVE DEVELOPMENTS

There are no improvements in terms of fulfilment of the recommendations published in last year's White Book, but there are some improvements as a result of the latest amendments to the Companies Law.

Amendments to the Company Law that are in force, contributed to the approaching economic systems that exist in comparative law countries with developed market economies through institutes financial instrument - the right to acquire shares, which is a non-transferable financial instrument issued by a limited liability company that gives the consenting holder the right to acquire a share on a particular day (maturity day) at a certain price and the manner of acquiring this financial instrument - the institute of reserved own shares. This way of stimulation has not existed in Serbia so far, and it has proven to be especially effective in the information technology industry, having in mind that these companies have limited funds in the initial phase of business and therefore are not able provide high salaries to quality staff.

Positive progress has also been made through the BRA's cooperation process with the National Bank of Serbia, the Tax Administration, the Anti-Money Laundering Administration and the market inspection in a manner which enables fast and efficient exchange of information on business entities.

Also, with the introduction of the possibility of founding a single-member and multi-member limited liability company electronically the establishment procedure has been significantly simplified.

## REMAINING ISSUES

One of the disadvantages of the Company Law is the absence of the concept of limited liability partners in a partnership. The existence of such a concept would be particularly relevant for partners in professional partnerships, since they should be allowed to enjoy limited liability pro-

tection, while third parties' risks could and should be covered by liability insurance.

The provisions of the Company Law restricting the powers of representatives to represent the company are still inconsistent with the relevant provisions of the Law on Contracts and Torts, which is *sedes materiae* for this area.

An issue that still remains unresolved is the situation when a shareholder leaves a company and the additional payments he made are not paid back to him, when this issue is not regulated in the share transfer agreement.

Other inconsistencies of the Company Law include the provision prohibiting a single-member LLC from acquiring own shares, which is contrary to the Company Law's provisions on status changes. Also, the FIC pointed out the need for changing the Company Law, Article 150 in particular, in order to avoid interpretation according to which the value of a share cannot be reduced, so an explicit prescription of this possibility would be a significant improvement.

One of the insufficiently clear institutes of the Company Law is "lifting the corporate veil". When stating the reasons for the application of the related provisions, legislators made a clumsy formulation creating a dilemma on whether those reasons are the only applicable ones or are given *exempli causa*.

Another issue to be underlined is the increase in a company's share capital through a debt-for-equity swap, provided by Article 146, paragraph 1, item 3 and Article 295. Specifically, the Company Law does not provide a precise explanation in terms of the procedures and conditions of such a swap, and this should certainly be regulated.

Article 295 prohibits debt-for-equity swaps in public joint-stock companies, which is contrary to Article 67, paragraph 4, item 3) of the Law on Tax Procedure and Tax Administration, for which reason it is necessary to harmonize these two laws. Furthermore, the SBRA's practice on this matter is not uniform.

## FIC RECOMMENDATIONS

- Limited liability partnerships (LLPs) should be prescribed by the Company Law. (1)

- The provisions in the Company Law that deal with limitations to the authority of a company's representatives should be harmonized with the provisions of the Law on Contracts and Torts. (1)
- Common practical issues should be resolved, such as regulating members' additional payments, the reduction of share capital of a single-member limited liability company, etc. (3)
- Clearly defining reasons for lifting the corporate veil. (1)
- Corrections of technical flaws in the Company Law should be made to eliminate inconsistencies and provide clear procedures and competencies, harmonizing provisions within the Law itself. (3)
- The increase in the share capital through debt-to-equity swap (conversion) should be clearly regulated. (2)