

LAW ON THE CENTRAL REGISTER OF TEMPORARY RESTRICTION OF RIGHTS

CURRENT SITUATION

Law on the Central Register of Temporary Restriction of Rights of Entities Registered in the Business Registers Agency ("Official Gazette of the Republic of Serbia", No. 112/2015) (hereinafter: the Law) came into force on 4 January 2016 and is applicable as of 1 June 2016.

The Law envisages the establishment of a Central Register of Temporary Restriction of Rights of Entities Registered in the Business Registers Agency (hereinafter: Central Register), i.e. an electronic database, that will contain information on business entities, their owners, directors, representatives, and members of their bodies, whose business has been subject to criminal, misdemeanour, or administrative sanctions.

Temporary measures of injunctions, restrictions or precautionary measures with respect to carrying on registered business activities or operations, injunctions preventing the disposal of money, injunctions or restrictions with respect to the disposal of shares and other measures in accordance with the law may be imposed on founders, management, directors, legal representatives, and other bodies of a company.

A temporary restriction of rights is imposed on the basis of and is the legal consequence of acts of the state or other relevant authority containing legal facts or actions required by law in the form of a legally binding or enforceable judgment, decision, or other formal act submitted to the Serbian Business Registers Agency (SBRA) for filing in the Central Register.

The intention to introduce stricter discipline in the operations of business entities in the Republic of Serbia and to minimize the possibility of malpractices and damages to third parties, that is, the introduction of sanctions for those who abuse their position in business entities – is a highly positive goal and is fully supported by the FIC, which has been advocating that same goal ever since its establishment.

The coordination of various authorities (such as, for example, the National Bank of Serbia and the Ministry of Interior) takes place ex officio, in the sense of a timely exchange of data on business entities and their shareholders and bodies, resulting in an increase in the number of entities registered in the Central Register.

There were only several dozens of these entities when the Central Register was established, but in time this number grew to several tens of thousands.

We remind that, according to Article 20 of the Law, the data from the central records pertaining to individuals to whom bans and security measures in judicial proceedings have been imposed may not be made public and may be disclosed only in accordance with the rules governing criminal records. The SBRA website has a special procedure for access to certain data, requesting users to submit a qualified digital certificate.

Registered data provide a complete overview of the business reliability of an individual business entity, including details of any restrictions imposed on the business entity and its shareholders, members of its governing bodies and authorized representatives, which should eliminate the possibility of any business entity acting in violation of the restrictions imposed on them, while at the same time increasing business transparency and security of legal transactions.

In accordance with Article 29 of the aforesaid Law, the SBRA cannot approve and register any requests for strike off or corporate changes before the Tax Administration has sent notification on the completion of the tax control procedure or the return of the Tax Identification Number to a company that was registered in the Central Register on any of the aforementioned grounds.

Since January 2017, the Central Register also contains information on enforced collection provided by the NBS.

According to the SBRA's data, there are registered 530,127 active measures against entities registered with the SBRA.

COVID-19

State of emergency in the Republic of Serbia caused by the COVID-19 pandemic was introduced on March 15, 2020 by the Decision on the introduction of the state of emergency ("Official Gazette of the Republic of Serbia", No. 29/2020).

The Law prescribes that the relevant authority that contains legal data or documents on entities with a temporary restriction of rights submits that data to the SBRA in electronic form, via electronic services, for entry in the Central Register.

Due to the state of emergency in the Republic of Serbia caused by the COVID-19 pandemic, the work of the relevant authorities, which are obliged to submit data on entities

with temporary restrictions, was slowed down and difficult, therefore the greatest impact COVID-19 on this matter is reflected in the update of data in the Central Register.

POSITIVE DEVELOPMENTS

There was no improvement in the previous year, as there were no relevant normative changes in this period.

REMAINING ISSUES

Article 3 of the Law prescribes grounds for temporary restriction, listing specified measures. Consequently, no other grounds for temporary restriction, except those listed, may be the ground for a temporary restriction.

The aforesaid grounds are not always necessarily a consequence of abuse of rights by the party/person whose rights would be restricted. In fact, there are numerous cases of business entities having their accounts blocked, or undergoing bankruptcy proceedings, where such account blockade or bankruptcy are not the consequence of any fraudulent activity; i.e. both members and bodies of business entities have acted bona fide. As an example, we point out the case of business entities that are in such a situation because the state or local authorities have failed to pay their debt to these entities, as well as the case of a supplier chain (notably in the construction industry) where account blockade or bankruptcy over one of the entities in the chain triggered a domino effect for other members in the chain below.

Some provisions of the Law are too general and imprecise and, as such, can produce a variety of negative consequences in practice.

In addition, we are of the view that the scope of persons encompassed by the Law is too wide, and that only persons who undertook actions or supported actions that led to abuse should be made subject to the restrictions imposed by the Law (members/shareholders and members of bodies).

It is necessary to additionally define legal consequences of temporary restriction due to the fact that Article 5 only prescribes that they last during the validation period in the manner prescribed in Article 3 of the Law.

The Law should contain appropriate solutions regarding the liability for entering incorrect data, especially in a situation where there was no fraudulent intent. We emphasize this, keeping in mind the automated registration process, the public registry, and the weight of potential consequences resulting from the application of the provisions stipulated by the Law.

One of the issues, which existed during the drafting and adoption of the Law, is a situation where an over-indebted business entity opens a new company to which the business is transferred, without discharging obligations of the previous company. The idea was to submit those companies to the Central Register as well, but it was withdrawn, so the topic of these fraudulent situations still remains open.

FIC RECOMMENDATIONS

- Significant changes should be made and certain provisions should be more precise (as elaborated in the Remaining Issues above) in order to minimize, to the extent possible, the possibility that the Law is applied to business entities and their members/bodies acting bona fide. (2)
- It is necessary to regulate liability for entering incorrect data into the Central Register. (3)