



ZAKON O IZMENAMA I DOPUNAMA ZAKONA O
PRIVREDNIM DRUŠTVIMA

AMENDMENTS AND SUPPLEMENTS TO THE
SERBIAN COMPANY LAW

JPM

JANKOVIĆ POPOVIĆ MITIĆ

Zakon o izmenama i dopunama Zakona o privrednim društvima/ Law on Amendments and Supplements to the Serbian Company Law

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Narodna Skupština Republike Srbije usvojila je Zakon o izmenama i dopunama Zakona o privrednim društvima koji je stupio na snagu 09.06.2018. godine (u daljem tekstu „Zakon“).

Početak primene Zakona planiran je u tri faze:

1. od 09.06.2018. godine za najmanji deo odredaba Zakona koje se odnose na vrednost nenovčanog udela, tržišnu vrednost akcija i prava manjinskih akcionara,
2. od 01.10.2018. godine sve ostale izmene, osim
3. odredaba koje se tiču uvođenja novih instituta i oblika organizovanja u cilju usklađivanja sa zakonodavstvom Evropske unije a koje se primenjuju od 01.01.2022. godine.

Cilj Zakona ogleda se u stvaranju povoljnijeg poslovnog okruženja za razvoj privrede Republike Srbije i poslovanje privrednih subjekata na teritoriji Republike Srbije, unapređenje položaja Republike Srbije na „Doing business“ listi Svetske banke, prevazilaženje problema u primeni određenih odredbi prethodne verzije Zakona, kao i usaglašavanje sa propisima Evropske unije.

Pored izmena i dopuna koje će niže u tekstu biti obrađene u okviru posebnih poglavlja, Zakon predviđa i veliki broj manjih izmena koje se, između ostalog, odnose na:

1. dužnost registracije adrese za prijem elektronske pošte, najkasnije do 01.10.2019. godine;
2. mogućnost sačinjavanja Osnivačkog akta u formi elektronskog dokumenta u kom slučaju će se overa potpisa od strane javnog beležnika zameniti kvalifikovanim elektronskim potpisom članova društva;
3. veći stepen zaštite lica koja imaju posebne dužnosti prema društvu u slučaju povrede dužnosti čuvanja poslovne tajne, kao i povrede pravila o zabrani konkurencije;
4. ograničenje roka za isplatu dividendi na najviše šest meseci od dana donošenja odluke o raspodeli dobiti;
5. postavljanje privremenog zastupnika društva na zahtev člana društva ili drugog zainteresovanog lica u vanparničnom postupku, ukoliko društvo ostane bez direktora i ne registruje novog u roku od 30 dana.

The National Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Serbian Company Law, which came into force on June 9. (“Law”).


The implementation of the Law is planned in three phases:

1. as of 9 June 2018 for the provisions of the Law relating to the value of the in-kind contribution, the market value of shares and the rights of minority shareholders,
2. from 1 October 2018 application of all other changes, except
3. provisions relating to the harmonisation with the EU legislation, which shall apply from 1 January 2022.

The aim of the Law is to create a more favorable business environment for overall economic development and better business environment for companies, in addition to improving the position of the Republic of Serbia on the World Bank’s Doing Business list. Its aims are also to overcome issues encountered in the application of certain provisions of the Law, and to ultimately achieve harmonization with the EU regulations.

In addition to the amendments that will be dealt with below in the text under specific chapters, the Law envisages a number of minor changes, which, inter alia, refer to:

1. the duty to register an e-mail address, no later than 1 October 2019;
2. the possibility of preparing the Incorporation Act in the form of an electronic document in which case the authentication of the signatures by the notary public shall be replaced by a qualified electronic signature of the company shareholders;
3. a greater degree of protection of persons owing special duties to the company in the event the duty of keeping business secrets is breached, as well as in the event of the breach of rules on prohibition of competition;
4. limitation of the time limit for dividend payment to a maximum of six months from the date of rendering the decision on distribution of profit;
5. the appointment of a temporary company representative at the request of a company shareholder or another interested person in non-contentious proceedings, in the event company remains without a director and does not register a new one within 30 days.



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POSLOVNO IME

Zakon precizira ograničenje korišćenja nacionalnih ili službenih imena i znakova proširujući zabranu izbora poslovnog imena koje sadrži izvedenice reči „Srbija“, naziva teritorijalne jedinice ili autonomne pokrajine Republike Srbije, uključujući i sve oblike koji asociraju na te reči, kao i međunarodno priznatu oznaku „SRB“, bez prethodne saglasnosti nadležnog organa. Pored navedenog, Zakon precizira da skraćeno poslovno ime može sadržati akronime reči iz naziva i opisa predmeta poslovanja društva, naravno pod uslovom da akronim ne sme biti istovetan nazivu drugog društva niti izazivati zablude o identitetu sa drugim društvom.

LIČNI INTERES

Zakon uvodi novu obavezu u slučaju zaključenja pravnog posla ili izvršenja radnje u kojoj postoji lični interes članova ili direktora društva, u slučaju da vrednost posla odnosno radnje iznosi 10% ili više knjigovodstvene vrednosti ukupne imovine društva iskazane u poslednjem godišnjem bilansu stanja u kom slučaju se propisuje obaveza pribavljanja izveštaja o proceni tržišne vrednosti predmeta pravnog posla odnosno pravne radnje. Pored navedene obaveze društvo je dužno da u roku od 15 dana od dana zaključenja takvog pravnog posla odnosno pravne radnje objavi obaveštenje o predmetnom poslu na svojoj internet stranici ili na internet stranici Registra privrednih subjekata.

SMANJENJE KAPITALA

Izmenama odredaba o smanjenju osnovnog kapitala društva sa ograničenom odgovornošću dodatno su uređena pitanja razloga za smanjenje kapitala i zaštite poverilaca. Naime, odluka o smanjenju osnovnog kapitala može se doneti radi:

1. pokriva gubitaka;
2. stvaranja ili povećanja rezervi društva za pokriće budućih gubitaka ili za povećanje osnovnog kapitala iz neto imovine društva;
3. oslobođenje člana od obaveze uplate osnovnog kapitala;
4. povlačenja i poništavanja udela; i
5. raspolaganja sopstvenim udelima.

BUSINESS NAME

The Law specifies the restriction on the use of national or official names and signs by extending the prohibition of the business name selection containing derivatives of the word “Serbia”, the name of the territorial unit or the autonomous province of the Republic of Serbia, including all forms that associate these words and the internationally recognized sign “SRB”, without prior consent of the competent authority. In addition, the Law specifies that an abbreviated business name may contain an acronym of words from the title and description of a company’s business, of course, provided that the acronym is not identical to the name of another company or cause an identity misconception related to identity of another company.

PERSONAL INTEREST

The Law introduces a new obligation in the event of the conclusion of a legal transaction or the execution of an act where there is a personal interest of the shareholders or the director of the company, in case the value of the transaction or the act is 10% or more of the accounting value of the total assets of the company stated in the latest annual balance sheet, in which case the obligation to obtain a report on the assessment of the market value of the subject of a legal transaction or legal act is prescribed. In addition to this obligation, the company is obliged to publish a notice of the transaction or the act in question on its website or on the website of the Business Registers Agency within 15 days from the date of conclusion of such legal transaction or legal action.

REDUCTION OF CAPITAL

Amendments to the provisions on reduction of share capital of a limited liability company further regulates the issues related to reasons for reduction of capital and the protection of creditors. Namely, the decision on reducing the share capital may be rendered for:

1. coverage of losses;
2. the creation or increase of a company’s reserves to cover future losses or to increase share capital from the company’s net assets;
3. the release of a shareholder from the obligation to pay share capital;
4. withdrawals and cancellations of stakes; and
5. disposal of own stakes.

Navedena odluka mora biti objavljena na internet stranici Agencije za privredne registre u neprekidnom trajanju od tri meseca počev od dana registracije, s tim da Zakon sada propisuje da poverioci čija su potraživanja, nezavisna od datuma dospeća, nastala pre isteka roka od 30 dana od dana objave predmetne odluke, mogu od društva pisanim putem tražiti obezbeđenje potraživanja, sve do isteka perioda objave odluke o smanjenju osnovnog kapitala.

PRAVA MANJINSKIH ČLANOVA DRUŠTVA SA OGRANIČENOM ODGOVORNOŠĆU

Novi minimalni pragovi učešća u osnovnom kapitalu društva predviđeni su za vršenje određenih prava i obaveza, pa se sada sednica skupštine može sazvati ukoliko to zahtevaju članovi društva koji imaju najmanje 10% glasova (umesto dosadašnjih 20%), a pravo na stavljanje dodatnih tačaka na dnevni red skupštine društva s ograničenom odgovornošću sada ima svaki član koji poseduje 5% udela u kapitalu (umesto dosadašnjih 10%).

Dodatno, značajnu izmenu predstavlja i eliminisanje mogućnosti isključenja prava na učestvovanje u skupštini društva s ograničenom odgovornošću, bez obzira na visinu njegovog udela osnivačkim aktom, kao i eliminisanje mogućnosti isključenja prava glasa određenog člana društva s ograničenom odgovornošću.

UTVRĐIVANJE TRŽIŠNE VREDNOSTI AKCIJA

U pogledu akcionarskih društva, Zakon je uveo novi kriterijum za utvrđivanje tržišne vrednosti akcija javnog akcionarskog društva u pogledu obaveze trgovanja više od 1/3 trgovačkih dana na mesečnom nivou u periodu od šest meseci koji prethodi danu donošenja odluke kojom se utvrđuje tržišna vrednost akcija.

OGRANCI PRAVNIH LICA

Još jedna od novina koju Zakon uvodi jeste i obavezna registracija ogranaka privrednih društava. Naime, Zakon više ne ostavlja mogućnost izbora pri registraciji već to postavlja kao imperativ.

The said decision must be published on the website of the Business Registers Agency for an uninterrupted period of three months from the date of registration, while the Law now prescribes that creditors whose claims, independent of the maturity date, have arisen before the expiration of 30 days from the publication date of relevant decision, may require the company to provide security in writing to the company, until the expiration of the period for announcing the decision to reduce the share capital.

RIGHTS OF MINORITY SHAREHOLDERS IN A LIMITED LIABILITY COMPANY

The new minimum thresholds for participation in the company's share capital are envisaged for the exercise of certain rights and obligations, and now the session of the General Meeting may be convened if required by shareholders of the company that have at least 10% of the votes (instead of the previous 20%), and the right to place additional points on agenda for the General Meeting of a limited liability company is now granted to every shareholder owning 5% of the company equity (instead of the previous 10%).

In addition, a significant change is the elimination of possibility to exclude the right to participate in the General Meeting of a limited liability company, irrespective of the amount of shareholder's share by the Incorporation act, as well as the elimination of the possibility to exclude the voting right of a limited liability company shareholder.

DETERMINING THE MARKET VALUE

With regard to joint stock companies, the Law introduced a new criterion for determining the market value of shares of a public joint stock company with respect to the trading obligation for more than 1/3 of trading days on a monthly basis for a period of six months preceding the date of rendering of the decision determining the market value.

BRANCHES OF LEGAL ENTITIES

Another novelty introduced by the Law is the mandatory registration of company branches. Namely, the Law no longer leaves the possibility of choosing to register, but it sets it as an imperative.

U skladu sa Zakonom, domaća privredna društva koja imaju obrazovane ogranke, dužna su da te ogranke registruju u roku od godinu dana od dana početka primene Zakona, odnosno najkasnije do 01.10.2019. godine.

RASPOLAGANJE IMOVINOM VELIKE VREDNOSTI

Zakon pravi paralelu između jednog sticanja i povezanog sticanja, odnosno raspolaganja imovinom velike vrednosti koje do sada nije bilo predviđeno kao takvo. U cilju otklanjanja nedoumice šta se smatra povezanim sticanjem odnosno raspolaganjem imovinom velike vrednosti u periodu od godinu dana, Zakon precizira da uspostavljanje založnog prava, hipoteke, ili drugog sredstva obezbeđenja koje privredno društvo daje radi obezbeđenja sopstvene obaveze po ugovoru o kreditu, zajmu ili drugom pravnom poslu, ne predstavlja jedno sticanje, odnosno raspolaganje imovinom velike vrednosti.

STATUSNE PROMENE

Zakon na drugačiji način formuliše rokove za objavu nacrtu ugovora o statusnoj promeni, odnosno nacrtu plana podele na svojoj internet stranici ukoliko je društvo ima, kao i na internet stranici registra privrednih subjekata, te za održavanje sednice skupštine na kojoj se donosi odluka o statusnoj promeni. Naime, u skladu sa najnovijim izmenama, društvo je u obavezi da objavi gore navedeni dokument najkasnije 60 dana pre dana održavanja sednice skupštine na kojoj se donosi odluka o statusnoj promeni, dok se registracija statusne promene ne može vršiti pre isplate nesaglasnih članova društva koje učestvuje u statusnoj promeni.

LIKVIDACIJA DRUŠTVA

Krajnji rokovi za sastavljanje početnog likvidacionog izveštaja i usvajanje godišnjeg likvidacionog izveštaja produženi su sa 120 na 150 dana, odnosno sa 3 meseca na 6 meseci po isteku poslovne godine.

Kao i kod redovne likvidacije, i kod prinudne likvidacije Zakonom je izmenjen rok za objavljivanje oglasa o prinudnoj likvidaciji na internet stranici Registra privrednih subjekata koji je skraćen sa šest meseci na 60 dana.

Pursuant to the Law, domestic companies with established branches are obliged to register these branches within one year from the day of commencement of the application of the Law, i.e. no later than 1 October 2019.

DISPOSAL OF HIGH VALUE ASSETS

The law draws a parallel between a single acquisition and a related acquisition, in terms of the disposal of high value assets, that have not been foreseen as such so far. In order to eliminate the dilemma of what is considered as a related acquisition i.e. disposal of high value assets over a period of one year, the Law specifies that the establishment of a pledge, mortgage or other security provided by the company to secure its own obligation under a credit agreement, loan or other legal transaction does not constitute a single acquisition, or disposal of high value assets.

STATUS CHANGES

The Law in different manner sets the deadlines for publication of draft contract on status change/the draft of division plan on its website, if the company has one, as well as on the website of the Business Registers Agency, and for holding the General Meeting session at which the decision on the status change is made. Namely, in accordance with the latest amendments, the company is obliged to publish the aforementioned document no later than 60 days prior to the day of the General Meeting session at which the decision on the status change is made, while the registration of the status change can not be made before the non-consenting shareholders of the company undergoing status change have been paid out.

COMPANY LIQUIDATION

The deadlines for preparing the initial liquidation report and the adoption of the annual liquidation report have been extended from 120 to 150 days, i.e. from 3 months to 6 months after the end of the business year.

As with regular liquidation, even in the case of a forced liquidation, the Law has changed the deadline for publishing the announcement of forced liquidation on the website of the Business Registers Agency, which was shortened from six months to 60 days.



Pored toga, Zakon uvodi i novinu koja se ogleda u prethodnom objavljivanju, na internet stranici Agencije za privredne registre, obaveštenja o privrednom društvu kod koga su se stekli razlozi za prinudnu likvidaciju sa pozivom tom privrednom društvu da u roku od 90 dana od dana objavljivanja tog obaveštenja otkloni nedostatke koji predstavljaju razlog za pokretanje prinudne likvidacije.

U cilju delotvornijeg sprovođenja prinudne likvidacije Zakon je u značajnoj meri izmenio i razloge za pokretanje iste.

USKLAĐIVANJE SA EU PROPISIMA

U cilju usklađivanja domaćeg zakonodavstva sa pravnim tekovinama Evropske unije, Zakon uvodi novi deo koji uređuje osnivanje Evropskog akcionarskog društva (Societas Europaea) u Republici Srbiji, u skladu sa Uredbom Saveta 2157/2001/EEZ od 08.10.2001. godine. Posebno se uređuje i pitanje prekograničnog spajanja i pripajanja koje podrazumeva postojanje jednog subjekta koji je registrovan na teritoriji Republike Srbije kao i jednog subjekta osnovanog na teritoriji države članice EU ili države potpisnice ugovora o evropskom ekonomskom prostoru. Osim obaveznih elemenata zajedničkog ugovora o pripajanju, Zakon reguliše i sadržinu javnobeležničke isprave koja prethodi pripajanju, postupak registracije pripajanja, pravne posledice osnivanja evropskog društva pripajanjem, učestvovanje zaposlenih u odlučivanju, kao i druga pitanja od značaja.

Najzad, odredbe čija primena počinje od 01.01.2022. godine obuhvataju i Evropsku ekonomsku interesnu grupaciju - pravno lice koje osnivaju najmanje dva privredna društva, preduzetnika, odnosno druga pravna ili fizička lica koja obavljaju poljoprivrednu ili drugu delatnost u skladu sa zakonom, od kojih je najmanje jedno registrovano na teritoriji Republike Srbije, a drugo na teritoriji druge države članice Evropske unije ili države potpisnice Ugovora o evropskom ekonomskom prostoru, u skladu sa Uredbom Saveta 2137/85/EEZ od 25.07.1985. godine.

Pomenute odredbe regulišu pitanja osnivanja, registracije i aktivnosti, sticanja svojstva pravnog lica, finansiranja i odgovornosti za obaveze, organe grupacije, prestanak grupacije i druga relevantna pitanja.

Additionally, the Law introduces a novelty that is reflected in a prior publication of a notice on the website of the Business Registers Agency, on a company in which the reasons for forced liquidation have been met, with an invitation to the company to eliminate the deficiencies that constitute the reasons for initiation of forced liquidation within 90 days from the publication date of that notice.


For the purpose of more effective enforcement of forced liquidation, the Law has significantly changed the reasons for initiating it.

COMPLIANCE WITH EU REGULATIONS

In order to harmonize domestic legislation with the *acquis communautaire*, the Law introduces a new part governing the establishment of the European Joint Stock Company (Societas Europaea) in the Republic of Serbia, in accordance with Council Regulation 2157/2001 / EEC of 8 October 2001. The issue of cross-border mergers and acquisitions is specially regulated and it implies the existence of an entity registered on the territory of the Republic of Serbia as well as an entity established on the territory of an EU Member State or a State party to the treaty on the European Economic Area. In addition to the mandatory elements of the joint merger agreement, the Law regulates the contents of the notary public's pre-merger document, the procedure for registering mergers, the legal consequences of the establishment of a European company by way of a merger, the participation of employees in decision-making, and other issues of importance.

Finally, the provisions for which the application starts from 1 January 2022 include the European Economic Interest Grouping - a legal entity founded 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 of Serbia, the territory of another Member State of the European Union or of a State party to the Treaty on the European Economic Area, in accordance with Council Regulation 2137/85 / EEC of 25 July 1985.

The mentioned provisions regulate the issues of establishment, registration and activities, the acquisition of legal personality, funding and liability responsibilities, group organs, termination of the group and other relevant issues.



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