




Obaveza osnivanja ogranka

Mandatory Branch Incorporation

JPM | PARTNERS



Obaveza osnivanja ogranka/ Mandatory Branch Incorporation
Publisher: JPM | Partners
Delta House, 8a Vladimira Popovića street
www.jpm.law
Authors: Katarina Milić, Senior Associate
Design and prepress: JPM | Partners
Copyright: © JPM | Partners 2023 All rights reserved.

Disclaimer:

The sole purpose of this publication is to provide information about specific topics. It makes no claims to completeness and does not constitute legal advice. The information it contains is no substitute for specific legal advice. If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact at JPM & Partners.

Iako naizgled jednostavno pitanje, obaveza osnivanja ogranka nema jednostavan odgovor. Osnivanje ogranka privrednih društava predviđeno je Zakonom o privrednim društvima (u daljem tekstu: „**Zakon o privrednim društvima**¹“).

Ogranak privrednog društva je izdvojeni organizacioni deo privrednog društva na teritoriji Republike Srbije preko koga društvo obavlja delatnost u skladu sa zakonom.

Ogranak nema svojstvo pravnog lica, a u pravnom prometu istupa u ime i za račun privrednog društva koje neograničeno odgovara za obaveze prema trećim licima koje nastanu u poslovanju njegovog ogranka.

Although a seemingly simple question, the obligation to incorporate a branch does not have a simple answer. Branch incorporation of business companies is foreseen by the **Company Law** (hereinafter: “Company Law”).

Company branch office is a separate organizational unit of a company in the territory of the Republic of Serbia through which the company performs activities in accordance with the law.

A branch does not have the capacity of a legal person and acts on behalf and for the account of the company in legal transactions, which is liable, without limits, for the obligations towards third parties resulting from the operations of its branch.

¹ („Sl. glasnik RS”, br. 36/2011, 99/2011, 83/2014 - dr. zakon, 5/2015, 44/2018, 95/2018, 91/2019 i 109/2021)

Izmenama Zakona o privrednim društvima iz 2018. godine, uvedena je obaveza registracije ogranka pri Agenciji za privredne registre: „Ogranak domaćeg i stranog privrednog društva registruje se u skladu sa zakonom o registraciji.“

Međutim, dva pravnik – tri mišljenja čini da naizgled jednoznačna rečenica ima dva značenja: da li postoji samo obaveza registracije osnovanog ogranka ili postoji i obaveza osnivanja ogranka? Da li se svako izdvojeno mesto u kome društvo obavlja delatnost mora tretirati kao ogranak i da li je društvo dužno da svako takvo izdvojeno mesto registruje kao ogranak?

U predlogu navedenih izmena zakona obrazloženo je da se uvodi obaveznost registracije ogranka radi lakšeg praćenja delatnosti ogranka, a što je od značaja sa stanovišta poreske politike i politike zapošljavanja, osiguranja, socijalnih pitanja, itd.

Amendments to the Company Law from 2018 introduced the obligation to register a branch with the Agency for Business Registers: “A branch of a domestic or foreign company is registered in accordance with the registration act.”

However, two lawyers - three opinions make a seemingly unequivocal sentence have two meanings: is there an obligation to only register an incorporated branch or is there an obligation to incorporate a branch? Does each separate place where the company carries out its activities must be treated as a branch and is the company obliged to register each such separate place as a branch?

In the proposed amendments to the law, it is explained that the mandatory registration of the branch is introduced in order to facilitate the monitoring of the activities of the branch, which is important from the point of view of tax policy and employment policy, insurance, social issues, etc.

Obrazovanje ogranka vrši se odlukom koju donosi skupština društva, ako nije drugačije određeno, a koja se registruje.

Stoga, privredna društva i dalje mogu da formiraju poslovne jedinice i to odlukom zakonskog zastupnika koja se ne registruje, za sve one potrebe, odnosno prostore, za koje nije zakonom propisana obaveza uspostavljanja ogranka.

Dodatno, treba uzeti u obzir i kriterijume koje postavlja definicija ogranka u Zakonu o privrednim društvima; naime, ukoliko izdvojeno mesto nije organizaciono samostalno, pri čemu se ta samostalnost svakako ne može meriti kao kod zasebnog privrednog društva već njegovog izdvojenog dela, ne može se ni posmatrati kao ogranak u smislu navedenog zakona, te se ne bi ni postavljalo pitanje njegovog obaveznog osnivanja i registracije.

A branch is formed by a decision passed by the general meeting, unless otherwise provided for, which is registered.

Therefore, companies can still form business units by the decision of the legal representative, which is not registered, for all those needs, i.e. premises, for which the obligation to incorporate a branch is not prescribed by law.

Additionally, the criteria set by the definition in the Company Law should also be taken into account; namely, if the separate place is not organizationally independent, whilst this independence certainly cannot be measured as in the case of a separate company but rather its separate part, it cannot even be viewed as a branch in the sense of the aforementioned law, and the question of its mandatory incorporation and registration would not even arise.

Nadalje, **Zakon o poreskom postupku i poreskoj administraciji**² sadrži obavezu poreskog obveznika da podnese prijavu Poreskoj upravi za registraciju podataka koji se ne prijavljuju Agenciji za privredne registre, o svim poslovnim prostorima u kojima skladišti, odnosno smešta dobra ili obavlja delatnost. Dakle, regulativom ovog zakona dozvoljena je mogućnost da društvo obavlja delatnost u prostoru koji nije registrovan kao ogranak u Registru privrednih subjekata, ali je u obavezi da takav prostor prijavi Poreskoj upravi.

Poreski propisi razlikuju pojmove ogranka i stalne poslovne jedinice. Naime, **Zakon o porezu na dobit pravnih lica**³ definiše stalnu poslovnu jedinicu kao svako stalno mesto poslovanja preko kojeg nerezidentni obveznik obavlja delatnost (ogranak, pogon, predstavništvo, mesto proizvodnje, fabrika ili radionica, rudnik, kamenolom ili drugo mesto eksploatacije prirodnog bogatstva).

Furthermore, the **Law on Tax Procedure and Tax Administration** contains the obligation of the taxpayer to submit an application to the Tax Administration for the registration of data that is not reported to the Agency for Business Registers, on all business premises in which they stock or store goods or perform activities. Therefore, the regulation of this law allows the possibility for the company to carry out activities in a premise that is not registered as a branch in the Register of Business Entities, but obliges them to report such premises to the Tax Administration.

Tax regulations distinguish between the concepts of branch and permanent business unit. Namely, the **Law on Corporate Income Tax** defines a permanent business unit as any permanent place of business through which a non-resident taxpayer carries out activities (branch, plant, representative office, place of production, factory or workshop, mine, quarry or other place of exploitation of natural resources).

2 („Sl. glasnik RS”, br. 80/2002, 84/2002 - ispr., 23/2003 - ispr., 70/2003, 55/2004, 61/2005, 85/2005 - dr. zakon, 62/2006 - dr. zakon, 63/2006 - ispr. dr. zakona, 61/2007, 20/2009, 72/2009 - dr. zakon, 53/2010, 101/2011, 2/2012 - ispr., 93/2012, 47/2013, 108/2013, 68/2014, 105/2014, 91/2015 - autentično tumačenje, 112/2015, 15/2016, 108/2016, 30/2018,

3 („Sl. glasnik RS”, br. 25/2001, 80/2002, 80/2002 - dr. zakon, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014 - dr. zakon, 142/2014, 91/2015 - autentično tumačenje, 112/2015 i 113/2017, 95/2018, 86/2019, 153/2020 i 118/2021)

Na kraju, u određenim situacijama zakonodavac je predvideo obavezu osnivanja ogranka putem *lex specialis*, u odnosu na koje Zakon o privrednim društvima predstavlja *lex generalis*. Takvi slučajevi su retki, ali upravo ukazuju na posebne situacije u kojima postoji obaveza osnivanja ogranka, naspram kojih stoji opšte pravilo u Zakonu o privrednim društvima o mogućnosti istog.

Za početak, Zakon o turizmu⁴ predviđa obavezu turističke agencije koja obavlja turističku delatnost u sedištu, ali ne kao svoju pretežnu delatnost, da za nju registruje poseban ogranak. Dodatno, ukoliko obavlja turističku delatnost van svog sedišta, dužna je da registruje ogranak za svako mesto poslovanja. Izuzetak je predviđen samo za povremeno obavljanje turističke delatnosti na sajmovima i drugim javnim manifestacijama u zakonskom roku.

Istim zakonom regulisana je i usluga iznajmljivanja motornih vozila, odnosno rent-a-car. Kao i u prethodnom slučaju, kriterijum za obaveznost osnivanja ogranka je pružanje usluge u sedištu, ali ne kao pretežne delatnosti, ili pružanje usluge van sedišta društva.

Finally, in certain situations, the legislator provided for the obligation to incorporate a branch through a *lex specialis*, in relation to which the Company Law represents a *lex generalis*. Such cases are rare, but they highlight special situations in which the obligation to incorporate a branch exists, as opposed to the general rule of the Company Law on the possibility thereof.

To begin with, the Law on Tourism stipulates the obligation of a tourist agency that performs tourism activities in its registered seat, but not as its main activity, to register a separate branch for it. Additionally, if it performs tourism activities outside its registered seat, it is obliged to register a branch for each place of business. An exception is provided only for the occasional performance of tourist activities at fairs and other public manifestations within the legal term.

The same law regulates the service of renting motor vehicles, i.e., rent-a-car. As in the previous case, the criteria for the obligation to incorporate a branch is the provision of services at the registered seat, but not as a predominant activity, or the provision of services outside the registered company's seat.

⁴ („Sl. glasnik RS”, br. 17/2019)

Prethodno regulisana istim zakonom kao i oblast turizma, od 2019. godine oblast ugostiteljstva sadržana je u posebnom **Zakonu o ugostiteljstvu**⁵ koji na srodni način uspostavlja iste kriterijume za registraciju ogranka prilikom obavljanja ugostiteljske delatnosti, kao i izuzetke za istu, sa posebnim osvrtom na ugostiteljsku delatnost u objektima nautičkog i lovnog turizma.

Ono što je interesantno kod gorenavedenih posebnih zakona jeste da društva koja tek ulaze u profesije turizma i ugostiteljstva često nisu ni svesna da krše relevantne propise, dok ih inspeksijski organi ne oveste.

Nadalje, **Zakon o bezbednosti saobraćaja na putevima**⁶ utvrđuje obavezu osnivanja ogranka za lica koja se bave osposobljavanjem kandidata za vozače van teritorije jedinice policijske uprave na kojoj se nalazi njihovo sedište, kao i pribavljanja dozvole za obavljanje navedene delatnosti za svaki od ogranka.

Previously regulated by the same law as the field of tourism, since 2019 the field of hospitality is contained in a special Law on Hospitality, which similarly establishes the same criteria for branch registration when performing hospitality activities, as well as exceptions for the same, with special reference to catering activities in nautical and hunting tourism facilities.

What is interesting about the above-mentioned special laws is that companies which are entering tourism and hospitality professions are often not even aware that they are violating the relevant regulations, until the inspection authorities make them.

Furthermore, the **Law on Road Traffic Safety** establishes the obligation to incorporate a branch for training candidates for the driving exam outside the territory of the police administration unit where their registered seat is located, as well as obtaining a license to perform the above-mentioned activity for each of the branches.

⁵ („Sl. glasnik RS”, br. 17/2019)

⁶ („Sl. glasnik RS”, br. 41/2009, 53/2010, 101/2011, 32/2013 - odluka US, 55/2014, 96/2015 - dr. zakon, 9/2016 - odluka US, 24/2018, 41/2018, 41/2018 - dr. zakon, 87/2018, 23/2019, 128/2020 - dr. zakon i 76/2023)

Izuzeci su utvrđeni za sprovođenje praktičnog ispita van naseljenog mesta koje ne ispunjava uslove za sprovođenje praktičnog ispita, kao i za obavljanje praktične obuke na celoj teritoriji Republike Srbije.

Dodatno, istim propisom regulisano je obavljanje delatnosti tehničkog pregleda vozila kao delatnost od opšteg interesa koju može da obavlja privredno društvo u više objekata, pri čemu se za svaki objekat osniva poseban ogranak i za svaki se mora dobiti ovlašćenje.

Na kraju, novi **Zakon o elektronskim komunikacijama**⁷ ne sadrži obavezu registracije ogranka subjekata koji obavljaju druge delatnosti pored elektronskih komunikacija, koju je sadržao prethodni istoimeni zakon.

Nova odredba je da regulator, pod određenim uslovima, može kao izuzetnu meru odrediti vertikalno integrisanom privrednom subjektu obavezu razdvajanja delatnosti u posebnu poslovnu jedinicu, u vidu povezanog privrednog društva ili ogranka, ili društvo može dobrovoljno izvršiti takvo razdvajanje.

Exceptions are established for conducting a practical exam outside a populated place that does not meet the requirements for conducting a practical exam, as well as for conducting practical training throughout the territory of the Republic of Serbia.

In addition, the same regulation regulates the performance of vehicle technical inspection as an activity of general interest that can be performed by a company in several facilities, where a separate branch is incorporated for each facility and authorization must be obtained for each.

Finally, the new **Law on Electronic Communications** does not contain the obligation to register branches of companies that perform other activities in addition to electronic communications, which was contained in the previous law.

The new provision is that the regulator may, under certain conditions and as an exceptional measure, impose on a vertically integrated company the obligation to separate its activities into a separate business unit, in the form of a related business company or branch, or the company may voluntarily carry out such separation.

⁷ („Sl. glasnik RS”, br. 35/2023)



“
The obligation to incorporate a branch as a general rule does not exist, while the obligation to register an already incorporated branch certainly exists.
”

Imajući u vidu sve navedeno, a pogotovo činjenicu da odredbe jednog zakona ne možemo tumačiti nezavisno od pravnog sistema u kojem figurišu, obaveza osnivanja ogranaka kao generalno pravilo ne postoji, dok obaveza registracije već osnovanog ogranaka svakako postoji.

Stoga, zakon ne nameće svim subjektima da formiraju ogranke, već da ih kao takve registruju.

Having in mind all of the above, and especially the fact that the provisions of one law cannot be interpreted independently of the legal system in which they appear, the obligation to incorporate a branch as a general rule does not exist, while the obligation to register an already incorporated branch certainly exists.

Therefore, the law does not impose on all subjects to form branches, but to register them as such

Author



Katarina Milić

Senior Associate

E:katarina.milic@jpm.law

JPM | PARTNERS

8a Vladimira Popovića,

DELTA HOUSE, V Floor

11070 Belgrade, Serbia

T: + 381/11/207-6850

E: office@jpm.law

www.jpm.law