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Serbia: Law on Amendments of the Law on Privatization

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Restructuring

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The eighteen-article Law on Amendments of the Law on Privatization recently came into force. Besides the amendment and adjustment of existing articles of the Law, the Law on Amendments prescribes new solutions to problems that arose from the application of the previous version of the Law.

One of the novelties is the introduction of the term "large subject of privatization". The ratio legis of this specification is more precise regulation and establishment of a privileged position for especially large companies, since it is of special interest for the Privatization Agency, as a representative of the citizens of the Republic of Serbia, to successfully and efficiently privatize these failing giants. One of the most significant changes is that the Agreement on sale of capital of large subjects of privatization (companies that had an annual revenue of 50 billion dinars or more in the financial year prior to the initiation of the privatization procedure) will not be considered as an adhesion contract, which is the characteristic of all other privatization agreements. On one hand, the negotiation of terms and finalization of such an agreement will generally last longer, however, on the other, the potential buyer and the Privatization Agency will be able to agree certain provisions to the satisfaction of both parties, which makes it more probable that both the needs of the buyer and the privatization subject will be met.

Another essential amendment is the exemption from the finalization deadline of privatization proceedings set for 31st December 2015. For that purpose, the legislation now provides for a new privileged category of "companies of strategic importance", regulated by the Decision of Determination of Privatization Subjects of Strategic Importance (*"Official Gazette of the Republic of Serbia", no. 47/2015*), but also exempts the companies that are registered, conduct business, or have property on the territory of the Autonomous Province of Kosovo and Metohija, resulting in the exemption of these companies from the aforementioned deadline. The total number of companies that will take advantage of the prolongation of deadlines is 35, of which 18 are incorporated or conduct business on the territory of Kosovo and Metohija, whilst 17 have been declared as companies of strategic importance for the Republic of Serbia by the Decision of the Government.

In order to avoid potential suspicious conduct article 12(3) point 2 has been modified so as to forbid participation in the privatization process to entities that have realizable outstanding obligations towards the subject of the privatization process on the day of the submission of a participation registration form, and not on the day of the public announcement of the commencement of the privatization process, as was prescribed up to now. This modification was effectuated in order to avoid a theoretical scenario in which the potential buyer would create a debt, within this interval, towards the subject of the privatization, which it would not have to settle if proclaimed as the buyer of the privatization subject.

Upon review of these amendments it seems that another step in the right direction has been taken on the rigorous path of privatization of publicly-held companies. However, having reviewed the reports of the Anti-Corruption Committee, especially the Report about the unlawful execution of privatizations from 21st May 2015 we note that the legislator still did not abide to the fullest extent with the suggestions of the Committee, which has been working on the eradication of elements of corruption and abuse from 2001, assisted by experts from the OSCE as of 2004.