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Serbia: Law on Privatization

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Restructuring

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The new Law on Privatization (*Zakon o privatizaciji, Official Gazette of the Republic of Serbia no. 83/2014*, hereinafter the "Law") entered into force on 13 August 2014 and has replaced the Law on Privatization (*Zakon o privatizaciji, Official Gazette of the Republic of Serbia no. 38/2001, 18/2003, 45/2005, 123/2007, 123/2007 - other Law, 30/2010 - other Law, 93/2012, 119/2012, 51/2014, and 52/2014*).

In practice it has become apparent that privatization proceedings in Republic of Serbia took so long that it was impossible to finalize the process within the originally envisaged deadlines. Enactment of this Law is an attempt to overcome the noted shortcomings and to resolve issues that the previous law failed to treat adequately, which prevented the completion of the privatization process, as well as to overcome the resulting complex situation in a fair, transparent, and efficient manner.

One of the main problems that has prevented the completion of the privatization process in the previous legal framework is the fact that the sale of the company capital was possible for a very small number of remaining subjects of privatization (majority of the companies are characterized by excessive indebtedness, insolvency, and illiquidity). Further, the sale of assets through the process of restructuring was hindered by many factors, and there was a general lack of systematic functioning of various government bodies in the privatization proceedings, all of which had a negative impact on the process of privatization in Serbia.

The Law stipulates that the privatization of remaining subjects of privatization is to be completed not later than by 31 December 2015.

The Law now provides a more flexible selection of models, methods, and measures of privatization which should enable the subjects of privatization to find potential partners, i.e. to return to economic life, and if this is not possible, to seek a solution through bankruptcy proceedings.

The models of privatization according to the Law are: sale of capital, sale of assets (new model), transfer of capital free of charge and strategic partnership (new model).

In addition to the sale of capital, which was prescribed by previous law and was subject to frequent obstacles when the capital had a negative value or no value, the Law provides for the possibility of sale of assets. The strategic partnership as a new model of sale is also prescribed, as well as the transfer of capital free of charge.

The sale of assets in privatization proceedings, as compared to sale of assets in bankruptcy proceedings, has positive effects in the wider commercial and social context, through potential keeping of employees, creation of new working positions, continuing the business and tax revenues generation, as well as the potential achievement of a more successful settlement of creditors' claims.

The strategic partnership as a model of privatization is carried out through the institutional relationship between domestic or foreign legal entities and subject of privatization, or the Republic of Serbia, for the purpose of securing financing, increasing productivity and employment, professionalizing of management, creating conditions for the production or provision of services to end-users, and other reasons that will enable the subject of privatization to continue with its business activity. Strategic partnership is implemented through a joint venture by establishment of a new company or recapitalization of the existing privatization subject.

The Law prescribes two methods of sale of capital and assets, by public tender (with or without public auction), and it is possible to apply a combination of available methods and models of privatization in privatization proceedings.

The Law also provides for measures for preparation and decrease of liabilities of privatization subjects, bearing in mind that most of these companies are deeply indebted and have no positive equity which could be offered for sale. Measures for relief of the obligations of privatization subjects include conditional debt write-off (*in Serbian: uslovni otpis duga*) and conversion of debt of subject of privatization into equity (*in Serbian: pretvaranje duga subjekta privatizacije u trajni ulog* [*konverzija*]), with the aim to achieve positive value of capital in order to attract investor interest.

Another novelty is that legal transactions concluded without the consent of the Privatization Agency and contrary to the provisions of the sale contract are considered null and void.

It is also noteworthy that the Law introduces mechanisms to eliminate or minimize the risks of corruption and money laundering. One such mechanism consists of the Privatization Agency acquiring from the relevant anti-money laundering authority, prior to the conclusion of the relevant contract, an opinion on the existence of obstacles with regards to the buyer/strategic investor for the conclusion of the contract,

which should significantly reduce the risk of money laundering.

The Law contains provisions which should contribute to the more efficient completion of the privatization process as compared to the previous legal environment, especially taking into consideration the optimistically short deadline for completion of the process. Due to the fact that over 500 companies from virtually all industries are on the list of the Privatization Agency, with the deadline for sending in letters of interest by 15 September 2015, the coming period will certainly be dynamic to say the least.