
Serbia Takeover Guide

Contact

Marija Bojovic

Bojovic & Partners

marija.bojovic@bojovicpartners.com

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INTRODUCTION

The Serbian Law on Takeover of Joint Stock Companies (Takeover Law), which regulates the takeover bid (TOB) procedure aims to:

- regulate the TOB process thoroughly;
- protect minority shareholders of a target company;
- create a level playing field for participants in a TOB.

Takeover Law regulates TOBs of joint stock companies which have a registered seat in the territory of the Republic of Serbia, the shares of which are traded on the regulated capital market or multilateral trading facility in the Republic of Serbia or which have more than 100 shareholders on each last day of three consecutive months and share capital of over EUR 3,000,000. The Takeover Law regulates the conditions and the procedure of TOBs, rights and obligations of participants in the process and provides for supervision over the process by competent authorities, all in compliance with the European Union (EU) criteria standards.

The key principles of Takeover Law include the following:

- target entity's shareholders have an equal position to the bidding party;
- both minority and majority shareholders have rights in the TOB process;
- management of the target entity acts in the best interest of the shareholders;
- accurate, full and timely information must be submitted to the target entity's shareholders;
- TOB procedure must be performed as quickly as possible;
- the market disturbance which would result in a significant increase or decrease in the price of the target entity's shares is prohibited.

When do the TOB rules apply?

Takeover Law applies to any takeover of joint stock companies which have a registered seat in the territory of the Republic of Serbia, provided that shares issued by such a company are traded on the organised securities market or multilateral trading facility in the Republic of Serbia or which have more than 100 shareholders on each last day of three consecutive months and share capital of over EUR 3,000,000. Currently the only organised securities market in Serbia is Belgrade Stock Exchange (BSE).

Takeover procedure is performed through the TOB as a public bid addressed to all shareholders of the target entity for the purchase of all voting shares. It may also be addressed for the purchase of preferential shares.

TOB rules may apply as mandatory or voluntary. The former applies if a legal or natural person intends to acquire directly or indirectly, individually or jointly, shares in a target entity which together with the shares it already holds in the target entity (solely or with a partner acting in concert with it) exceeds 25% of the total number of shares with voting rights in that entity and in a few other cases, as explained below.

The Law stipulates that a shareholder who, before the Law came into force, already acquired more than 25% of the voting shares in a target entity, is exempted from the

obligation to launch a mandatory TOB. However, if such a shareholder expresses the intention to continue acquiring shares in a target company, it must act in accordance with provisions of Takeover Law regulating a mandatory TOB.

Additionally, based on the provisions of Takeover Law, the Security Exchange Commission (SEC) expressed an opinion that in a case in which a majority shareholder of a joint stock company decides to increase the share capital, the decision on capital increase is considered as an intention to acquire shares in the target company if it fulfils the above conditions for the applicability of Takeover Law. Therefore, following the successful increase of share capital, the majority shareholder is obliged to launch a TOB. The exception to the rule related to increase of capital is when capital is increased from the net assets, in which case a TOB is not required if approved by a qualified vote of the assembly.

A voluntary TOB may be launched by an entity which has acquired up to 25% of voting shares in the target company.

Applicable Laws and Regulations

Besides Takeover Law, which is the key piece of legislation governing a TOB, the other laws and regulations relevant for the TOB are the following:

- Law on Capital Markets;
- Company Law;
- Law on Investment Funds;
- Bylaws governing work of the Central Securities Depository and Brokerage House (CSD), SEC and BSE and bylaws and internal regulations passed by these three institutions within the scope of their competencies.

ACTING IN CONCERT

The concept of acting in concert is relevant in situations in which natural and/or legal persons act together in the process of acquiring shares in the target company.

The general definition for acting in concert is if persons are cooperating mutually or with a target company, based on an explicit or tacit, verbal or written agreement, the purpose of which is the acquisition of voting shares, varying the exercise of voting rights or preventing other people in the takeover bid process.

Acting in concert is deemed to exist in the following cases:

- natural and/or legal persons linked with circumstances related to acquiring shares such as:
 - time and period of acquiring shares;
 - place of acquiring;
 - manner of acquiring;
 - agreement provisions on acquiring;
 - value of acquired shares;

- other circumstances;
- members of the board of directors and supervisory board of the companies acting in concert;
- members of the board of directors and supervisory board acting in concert with companies in which they hold this capacity;
- persons proposing appointment or discharge of board of directors and supervisory board members or other decisions requiring qualified majority of present votes;
- natural and/or legal persons directly or indirectly controlling another legal person. A natural or legal person shall be considered controlling if one of the following circumstances apply:
 - it holds directly or indirectly 25% or more of the capital of another legal person;
 - it holds directly or indirectly 25% or more voting rights in another legal person;
 - it holds management rights in a legal person based on authority deriving from corporate acts of that legal person or based on a contract/agreement/other arrangement;
 - it has a direct or indirect prevailing influence on the management and decision-making process in the legal person.

Management company, as defined in the Law on Investment Funds, manages investment or pension funds.

Consequences of acting in concert

In the case of acting in concert, if acquisition by any person involved creates the obligation to publish a TOB, such an obligation extends to each person acting in concert. The obligation to publish a TOB is deemed fulfilled if the TOB is published by any of the persons acting in concert.

Shares in the target company acquired by a person acting in concert are to be included in the number of shares already held by the other person acting in concert.

JOINT STOCK COMPANIES (JSC)

Introductory information

The new Company Law has abandoned the division of JSCs into closed and open. It now has unified rules for JSC and recognizes as public JSCs which have been successfully founded by a TOB or those where its shares are traded on the organized market or multilateral trading facility in the Republic of Serbia.

Any JSC may turn into a public joint stock company.

The minimum initial capital of a joint stock company is RSD 3,000,000 (cca EUR 25,000). There are no limitations as to the number of shareholders.

Shares issued by a JSC have to be inscribed in the CSD.

Applicability of TOB rules to JSCs

In addition to the definition of public JSCs in the Company Law, Takeover law included in its definition of a target company a JSC which has more than 100 shareholders on each day of three consecutive months and share capital of over EUR 3,000,000. Consequently all public JSC and all non- public JSCs fulfilling these two conditions are subject to the Takeover Law and a TOB for acquisition of its shares.

MANDATORY AND VOLUNTARY TOB

Mandatory TOB

Acquisition of shares in a JSC must be done through a TOB procedure (in the case of a mandatory TOB) if a legal or natural person (acquirer) directly or indirectly, individually or acting in concert, acquires voting shares in the target company so that:

- acquired shares, together with the shares in the target company, which the acquirer already holds, exceed 25% of the total number of voting shares in the target company (controlling threshold);
- after acquisition of less than 75% of voting shares acquired through a TOB, the acquirer continues with the acquisition of shares of the target company;
- after acquisition of more than 75% of voting shares acquired through a TOB, the acquirer acquires an additional 5% or more voting shares in the target company or 3% or more voting shares of the target company within 18 consecutive months.

A TOB has to be addressed to all existing shareholders of the target company on equal terms and conditions. Otherwise it is deemed discriminatory under the law, and as such is prohibited.

Voluntary TOB

The acquirer intending to acquire not more than 25% voting shares in the target company is not obliged, but is allowed, to launch a TOB (voluntary TOB). The rules governing a mandatory TOB accordingly apply to a voluntary TOB. Once the notice of intention for a voluntary TOB is published, it cannot be withdrawn.

In the case of a voluntary TOB, from the day the notice of intention for acquisition is published until the final report on the TOB is published, no shares in the target company held by the acquirer and persons acting in concert with the acquirer carry voting rights.

Conditional and Unconditional TOB

Only a voluntary TOB may be conditional. Mandatory TOBs must be unconditional. A TOB is conditional if the Bidder requests the acquisition of a predefined (by a TOB) minimum number of voting shares of the target company. In this way the bidder is bound by the TOB only if the offer for at least a minimum predefined number of voting shares is accepted before the expiry of the TOB. A TOB without a predefined minimum number of voting shares in the target company to be acquired is deemed unconditional.

TOB PROCESS

Notice of Intention and the SEC Approval

According to the SEC opinion, the relevant moment for constitution of the obligation to launch a mandatory TOB is the moment of registration of ownership of shares with the CSD.

The Bidder is obliged to publish a notice of intention to launch a TOB and, based on that notice, must request the SEC's approval to publish the TOB. Both publishing of the notice and requesting the SEC approval have to be done the next working day following the day of constitution of the obligation to launch the mandatory TOB.

After the request is submitted to the SEC for approval of the TOB, the Bidder is not allowed to change or withdraw the notice of intention.

Documents to be submitted along with the request to the SEC

- TOB;
- summary TOB;
- notice of intention;
- documents proving the status, available funds and other data of the Bidder, approvals of relevant authorities if needed, average price of the shares and other documents as defined by relevant regulations.

Change of a Launched TOB

A submitted TOB can be changed only in regards to:

- an increase of the offered price;
- a change of a conditional offer into an unconditional offer.

Approval by the SEC of any changes to the TOB proposed is mandatory. A TOB may be changed up to three days prior to its expiry.

Opening and closing of a TOB

A launched TOB must be open for at least 21 days and may be open for 45 days at most. The TOB is deemed open from the date of publication of the TOB in a daily newspaper. In case a launched TOB is changed, it remains open for an additional 7 days. In no event may a TOB be open for more than 60 days, except in the case of publication of competitive TOBs in which case it may last up to 70 days.

The Approval of the TOB

The SEC approves the TOB within seven business days from the day of submission of request and informs the CSD of the launch of the TOB. The SEC approves the TOB based on:

- completeness and accuracy of data contained in the TOB and accompanying documents;
- price in the TOB being determined in accordance with the Law;

- bidder has provided sufficient funds for payment for the shares subject to the TOB.

The SEC may request the Bidder to supplement or change the documents submitted.

The Funds

Before submission of the request to the SEC for approval to publish the TOB, the Bidder is required to secure funds for the payment of shares which are the subject of TOB, in one of the following ways:

- deposit funds into a bank account or deposit securities into a separate account held with the CSD;
- have a Loan Agreement concluded with a bank for the TOB purpose;
- have a first call bank guarantee which must be valid for at least five days following expiry of the TOB.

A Bidder is not allowed to dispose of secured funds while a TOB is open and is obliged to allow the SEC insight into the account balance.

Withdrawal of TOB

The Bidder may withdraw the TOB only in the following circumstances:

- publication of a competitive TOB at a higher price;
- bankruptcy of the target company.

Withdrawal shall be published in a daily newspaper.

Closing of the TOB

The offer made through a TOB is deemed accepted by the target company's shareholder by depositing shares on the account for TOB held with the CSD. The Bidder must pay for the deposited shares within three business days from the date of closing of the TOB. No payment for deposited shares can be made prior to closing of the TOB.

A shareholder may withdraw deposited shares at any time prior to the closing of the TOB. After closing, deposited shares may be withdrawn only if the Bidder fails to perform payment within the time period prescribed by the Takeover Law.

Final TOB Report

Upon closing of the TOB and expiration of the payment deadline for the shares, the Bidder is obliged to publish a Final TOB Report within one working day and to deliver the Final TOB Report to the BSE or the multilateral trading facility on which the shares are traded, to the SEC and to the target company.

Takeover Law regulates the content of the Final TOB Report, which, inter alia, must contain data on the total number of voting shares acquired through the TOB and data on the voting shares held by persons acting in concert with the Bidder.

Target company obligations during a TOB

The Board of Directors (BoD) of the target company is obliged to notify in writing all employees of the target company about the TOB launched.

During a TOB, the Bidder's rights are safeguarded by the following restrictions imposed by the Takeover Law on the BoD of the target:

- no new shares can be issued for the purpose of capital increase;
- no additional business or agreement which would have a material impact on the target company's assets and/or liabilities may be undertaken/concluded;
- no decision on acquisition/disposal of its own shares by the target company can be passed;
- a TOB aimed at the acquisition of another JSC cannot be launched by the target company.

From the opening until closing of a TOB, no additional restrictions regarding the number of votes derived from voting shares of a target company can be introduced by a target company's Foundation Act or Articles of Association.

PRICE IN A TOB

Minimum price

Minimum price is determined depending on whether the shares are considered as liquid shares under the Takeover Law.

For Liquid Shares

If the volume of traded shares of the target company in the period of six months before obligation to launch TOB was at least 0.5% of the total number of voting shares and if the volume of trade was at least 0.05% of the total number of voting shares in at least three months of that period, the target company shares shall be considered liquid shares.

If the shares of the target company are liquid shares, the bidder is obliged to offer at least the highest of the following prices:

- the average weighted price of shares of the target company for the three months prior to publication of the notice of intention, determined on the basis of the reports on trade on the regulated market, or multilateral trading facility;
- the latest market price of voting shares of the target company on the regulated market or multilateral trading facility on which the shares are traded on the day before publication of the notice of intention, with volume of trade equal to at least average daily trade for the last three months;
- the price at which the bidder or persons acting in concert with it acquired voting shares of the target company in the last 12 months prior to publication of the notice of intention;
- the average weighted price at which the bidder or the persons acting in concert with it acquired at least 10% of voting shares of the target company, in the last two years prior to publication of the notice of intention.

For Non-Liquid Shares

If the shares of the target company are non-liquid shares or not included in trade on regulated market or multilateral trading facility, the bidder is obliged to offer at least the highest of the following values:

- the highest price from the listed prices related to liquid shares;
- book value of voting shares;
- appraised value of voting shares in accordance with the Company Law.

Other relevant rules regarding price

If the bidder or the persons acting in concert with it, contrary to the provisions of the law, acquires or disposes of the voting shares of the target company at a price higher than stipulated in Takeover Law, the Bidder must offer the higher price in the TOB.

If, within one year following the closing of the TOB, the bidder or the persons acting in concert with the bidder acquire the voting shares of the target company which were subject to TOB, the bidder must compensate the shareholders who have accepted the takeover bid for the price difference, within seven days following the acquisition date.

Payment for shares which are the subject of the TOB may be made in money, securities or bonds issued by the Republic of Serbia or National Bank of Serbia.

COMPETITIVE TAKEOVER BID

A competitive TOB is one which is launched during the course of an already launched TOB (initial TOB) related to the same JSC. The rules and requirements governing a TOB and a competitive TOB are identical, apart from those related only to a competitive TOB, which are summarised below.

Eligibility

Any legal or natural person is entitled to submit a competitive TOB (Competitor). The only exceptions are those who are acting in concert with the Bidder of the initial TOB and persons acting in the name of the Bidder of the initial TOB.

Approval of the SEC

The SEC is in charge of approving a competitive TOB. It is to decide on the day the request is submitted. Immediately upon obtaining the SEC's approval, the Competitor is obliged to publish the competitive TOB.

Intention for acquisition

Unlike in the case of an initial TOB, where the intention for acquisition has to precede the publication of the TOB, in the case of a competitive TOB, notice of intention shall not be expressed, but the competitive TOB launched immediately, that is, published immediately upon the SEC approval.

Other relevant rules

Where a competitive TOB follows a conditional TOB, it cannot aim at acquisition of a higher number of shares than that of the initial TOB.

Competitors are allowed to change their bids under the same rules and within the same period of time applicable to the changes of a TOB.

Publication of the competitive TOB at a higher price than that of the initial TOB entitles the initial Bidder to withdraw his bid.

Publication of the competitive TOB extends the initial TOB, so that both close on the same day. However, an initial TOB can in no event close later than 70 days from the date of opening.

SQUEEZE-OUT AFTER TAKEOVER BID

Takeover Law changes in 2011 abandoned a squeeze-out right for majority and minority shareholders after a successful TOB. The rules on squeeze-out are regulated by the Company law and may be triggered any time irrespective of a TOB, upon a request of a shareholder holding 90% of voting shares which also represent 90% of the share capital.

COMPETENT AUTHORITIES

Securities and Exchange Commission

The SEC is the authority in charge of supervising and administering the TOB process. Consequently, all entities involved in a TOB, that is, the target company, shareholders, Bidder, CSD and other legal and natural persons involved, shall at the request of the SEC, allow insight into relevant documents and provide all information necessary during the course of a TOB.

Competencies of the SEC in the TOB procedure

- Approving the request for publishing of a TOB and competitive TOB;
- approving the request for the change and withdrawal of a TOB and competitive TOB;
- ordering a Bidder or target company to publish additional information, that is, correction of errors with relation to an ongoing TOB;
- ordering a Bidder to remove irregularities during a TOB;
- suspending a TOB and withdrawing previously given approval where the above irregularities were not removed within required period of time.

Decisions of the SEC and Remedies

The decisions of the SEC are final in the administrative procedure. An available remedy against the SEC decisions is a legal suit in an administrative dispute.

Central Securities Depository and Brokerage House

CSD is the authority in charge of keeping the registry of issued securities and other financial instruments and of clearing of securities transactions.

LIMITATIONS IN APPLICATION OF THE LAW

The application of TOB rules as stipulated in Takeover Law is limited by a number of exceptions, the most significant being listed below:

- Acquisition of shares of a bankruptcy debtor in bankruptcy procedure;
- acquisition of the target company shares through a merger of companies if only one participant in the merger procedure already holds target company shares;
- acquisition of shares through the change of legal form of a company;
- acquisition of shares in a new company, founded through merger or division of an already existing company;
- acquisition of shares for the purpose of securing a creditor's receivables to the company, in which case the creditor is not allowed to exercise voting rights given by such shares;
- shareholder who acquired more than 25% of shares prior to the Takeover Law coming into force;
- trade with shares transferred to the Share Fund through privatisation and trade with shares offered as a package with the Share Fund's shares;
- trade with shares held by the Pension and Disability Fund;
- trade with shares held by the Development Fund of the Republic of Serbia;
- trade with shares held by the Republic of Serbia;
- trade with shares issued by commercial banks, whose legal and beneficial owner is the Agency for Deposit Insurance;
- trade with shares issued by commercial banks, whose legal and beneficial owner authorises the Agency for Deposit Insurance to sell shares on their behalf and for their account;
- trade with shares issued by insurance companies, whose legal and beneficial owner authorises the Agency for Deposit Insurance to sell shares on its behalf and for his account;
- in other cases stipulated by the Law.