

Serbia: The legal regulation of state owned enterprises

Currently, there is an ongoing process in the Republic of Serbia regarding change of the legal regulation of companies owned by the Republic of Serbia - state owned enterprises (SOE).

In this regard, the text of the Statement of Program was adopted by the Government's conclusion from 2 June 2022. The Statement accepts revised objectives of the economic policy measures for the duration of the program supported by the Policy Coordination Instrument agreed with the International Monetary Fund, where the Republic of Serbia is obliged to adopt a new law on ownership coordination in state owned enterprises.

The public debate on the Draft Law on the Management of Enterprises owned by the Republic of Serbia (the "Law") was conducted in the period from December 1 to December 20, 2022.

Key novelties

In the scope of the Law there are only state-owned companies, while public enterprises are outside this scope because the Law envisages the change of legal form of public enterprises to limited liability companies or joint stock companies within one year from the commencement of the application of the Law. The same applies to state owned companies that perform activities of general interest within the meaning of the Law on Public Enterprises, which are obliged to harmonize their organization, as well as their general acts and founding agreements with the Law within one year from

Srbija: Pravno regulisanje državnih preduzeća

U Republici Srbiji trenutno je u toku proces menjanja načina pravnog regulisanja privrednih društava u vlasništvu Republike Srbije - državna preduzeća.

S tim u vezi, zaključkom Vlade od 2. juna 2022. godine usvojen je tekst Izjave o programu kojom se prihvataju revidirani ciljevi mere ekonomske politike tokom trajanja programa podržanog Instrumentom za koordinaciju politike dogovoreni sa Međunarodnim monetarnim fondom, gde se Republika Srbija obavezala da usvoji novi zakon o upravljanju vlasništvom u državnim preduzećima.

Javna rasprava o Nacrtu zakona o upravljanju privrednim društvima koja su u vlasništvu Republike Srbije („Zakon“) sprovedena je u periodu od 1. decembra do 20. decembra 2022. godine.

Najbitnije novine

U obuhvatu Zakona nalaze se samo društva kapitala u vlasništvu države, dok su javna preduzeća izvan ovog obuhvata iz razloga što Zakon predviđa promenu pravne forme javnih preduzeća u društva sa ograničenom odgovornošću ili akcionarska društva u roku od godinu dana od početka primene Zakona. Isto važi i za društva kapitala koja obavljaju delatnosti iz opšteg interesa u smislu Zakona o javnim preduzećima, koja su dužna da svoju organizaciju, kao i svoje opšte akte i osnivačke ugovore usklade sa Zakonom u roku od godinu dana od dana početka primene Zakona.

the date of the commencement of the Law's application.

When changing the legal form, the basic capital of a public enterprise is converted into stock, i.e. shares, depending on the form of the company.

During the implementation of the change of legal form, the legal subjectivity and business identity of the public enterprise is retained, without liquidation, without cessation of business and without interruption of legal continuity, keeping its identity in the legal and business sense.

State owned companies founded by the Republic of Serbia are defined in a similar manner as it has been done so far by the Law on Public Enterprises, i.e. they are founded for the purpose of making profit and achieving other interests determined by law, and can also perform activities of general interest. The relevant capital participation of the state in these companies is more than 50% of the basic capital of the company, but controlling ownership based on contractual rights is also noteworthy. The Law, however, exceptionally foresees state ownership of 50% or less in the basic capital, i.e. it also foresees a minority state-owned company.

The Law further exempts from its application those state-owned enterprises engaged in the production of weapons and military equipment, as well as banks, insurance companies and other financial organizations, and non-profit organizations, institutes and enterprises undergoing privatization or in bankruptcy. In addition, the Law also prescribes a different competence in the case of management of a company that performs the activity of production and supply of electricity, i.e. natural gas, namely these companies are not under the exclusive competence of the Ministry of Economy, but dominantly under the competence of the Ministry of Mining and Energy with certain exceptions prescribed by the Law.

The main reason for the introduction of corporate governance came from the intention to increase

Prilikom promene pravne forme osnovni kapital javnog preduzeća se konvertuje u akcije, odnosno udele u zavisnosti od forme privrednog društva.

Prilikom sprovođenja promene pravne forme zadržava se pravni subjektivitet i poslovni identitet javnog preduzeća, bez likvidacije, bez prestanka poslovanja i bez prekida pravnog kontinuiteta, zadržavajući svoj identitet u pravnom i poslovnom smislu.

Društva kapitala koje osniva Republika Srbija definisani su slično kako je to do sada činjeno Zakonom o javnim preduzećima, dakle osnivaju se radi sticanja dobiti i ostvarivanja drugog zakonom utvrđenog interesa, a mogu obavljati i delatnost od opšteg interesa. Relevantno kapital učesće države u ovim društvima kapitala je više od 50% osnovnog kapitala društva, ali je od značaja i kontrolno vlasništvo na osnovu ugovora. Zakon, međutim, izuzetno predviđa i vlasništvo države od 50% i manje u osnovnom kapitalu odnosno predviđa i manjinsko društvo kapitala.

Zakon dalje izuzima iz svoje primene ona državna preduzeća koja se bave proizvodnjom naoružanja i vojne opreme, kao i banke, osiguravajuća društva i druge finansijske organizacije, te nedobitne organizacije, institute i preduzeća u postupku privatizacije ili u stečaju. Pored toga, Zakon propisuje i drugačiju nadležnost u slučaju upravljanja društvom kapitala koje obavlja delatnost proizvodnje i snabdevanja električnom energijom, odnosno prirodnim gasom, i to tako što ova društva kapitala nisu u isključivoj nadležnosti Ministarstva privrede, već dominantno u nadležnosti Ministarstva rudarstva i energetike uz određene izuzetke propisane Zakonom.

Glavni razlog uvođenja korporativnog upravljanja proizašao je iz namere da se poveća nivo

the level of efficiency, effectiveness, and transparency of the work of the profit-making companies. It includes the following activities: development of the legal framework (through the amendment of existing and development of new laws and by-laws), the introduction of a system of additional training for representatives of the Republic of Serbia in the assembly and directors of the profit-making company, as well as members of the supervisory board of the profit-making company which is 100% owned by the Republic of Serbia, improving the process of reporting and establishing responsibility for the results of the company's operations.

The Law regulates the implementation of the state ownership policy and ownership management in state owned enterprises, as well as other issues of importance for the mentioned area.

In the existing legal framework, the possibility of the state to enable the unique strategic direction and goals of the (state owned) companies based on knowledge of their operations and results was very difficult. The goals of ownership management have not been clearly defined until now but were determined based on laws and strategic documents, which are often in conflict with each other.

The Law in determines in detail how the state performs a centralized management function.

The Government, based on the proposal of the Ministry, establishes a list of profit-making companies and minority profit-making companies, carrying out their classification, based on management goals.

Every year, no later than by the 1st September of the current year, the Ministry of Economy establishes a plan of annual goals and key performance indicators for the profit-making company, specifically by the areas to which they belong, i.e. the so-called Management Plan. Special commissions formed by the competent minister further determine the stated goals.

efikasnosti, efektivnosti i transparentnosti rada društva kapitala. Ono obuhvata sledeće aktivnosti: izradu pravnog okvira (kroz izmenu dosadašnjih i izradu novih zakonskih i podzakonskih akata), uvođenje sistema dodatnog usavršavanja predstavnika Republike Srbije u skupštini i direktora društva kapitala, kao i članova nadzornog odbora društva kapitala koje je 100% u vlasništvu Republike Srbije, unapređenje procesa izveštavanja i uspostavljanja odgovornosti za rezultate poslovanja privrednog društva.

Zakon uređuje sprovođenje politike državnog vlasništva i vlasničkog upravljanja u privrednim društvima koja su u vlasništvu Republike Srbije, kao i druga pitanja od značaja za navedenu oblast.

U postojećem pravnom okviru, mogućnost države da omogući jedinstveni strateški pravac i ciljeve društva kapitala na osnovu znanja o njihovom poslovanju i rezultatima bila je znatno otežana. Ciljevi vlasničkog upravljanja do sada nisu bili jasno definisani, već su bili određivani na osnovu zakona i strateških dokumenata koja su vrlo često u međusobnoj koliziji.

Zakonom je detaljno utvrđeno na koji način država obavlja centralizovanu upravljačku funkciju.

Vlada, na predlog Ministarstva, utvrđuje listu društava kapitala i manjinskih društva kapitala kojom će se izvršiti njihova klasifikacija, i to na osnovu ciljeva upravljanja.

Ministarstvo privrede svake godine, najkasnije do 1. septembra tekuće godine, utvrđuje plan godišnjih ciljeva i ključnih pokazatelja učinka za društvo kapitala, posebno po oblastima kojoj pripadaju, tzv. Plan upravljanja. Posebne komisije koje nadležni ministar obrazuje dalje utvrđuju navedene ciljeve.

These companies prepare and submit their business plans to the Ministry of Economy in accordance with the Law, that must be harmonized with the adopted Management Plan.

The Ministry of Economy monitors the operations of these companies through the preparation of annual reports, which are submitted to the National Assembly for information purposes.

Each such company, through the Ministry of Economy, obtains consent from the Government on all important corporate and business issues, including changes to the founding act, legal form or status changes, on the distribution of profits and coverage of losses, capital investments, disposal of high-value assets, as well as on the price list in connection with services/goods from the activities of the company.

The Law further foresees and more closely regulates the representative of the Republic of Serbia in the assembly of the profit-making company and prescribes that this representative represents the interests of the Republic of Serbia in a company and carries out her or his duties professionally and conscientiously, with the attention of a prudent businessperson. The representative of the Republic of Serbia is appointed for a four-year term and can be dismissed by an act of the competent Minister, after the prior approval of the Government.

The director of a company is appointed and dismissed by the Assembly of the company in the one-tier governance, or the supervisory board in the two-tier management structure, for a period of four years, on the basis of the conducted public contest and the consent of the Ministry of Economy (i.e. the previous consent of the Government).

The Law further foresees the possibility of the absence of a director in a company, in which case it leaves the possibility for the company's assembly to appoint a temporary director with the consent of the competent ministry, for a maximum period of one year, until the director is appointed in a public contest.

Društva kapitala izrađuju i dostavljaju Ministarstvu privrede svoje planove poslovanja u skladu sa Zakonom, koji moraju biti usklađeni sa donetim Planom upravljanja.

Ministarstvo privrede prati poslovanje društava kapitala kroz izradu godišnjeg izveštaja, koji se dostavljaju Narodnoj skupštini radi informisanja.

Svako društvo kapitala, preko Ministarstva privrede, pribavlja od Vlade saglasnost o svim bitnim korporativnim i poslovnim pitanjima uključujući promenu osnivačkog akta, pravne forme ili statusne promene, o raspodeli dobiti i pokriću gubitaka, ulaganjima kapitala, raspolaganju imovinom velike vrednosti kao i o cenovniku u vezi sa uslugama/dobrima iz delatnosti društva kapitala.

Zakon dalje predviđa i bliže reguliše predstavnika Republike Srbije u Skupštini društva kapitala i propisuje da ovaj predstavnik zastupa interese Republike Srbije u društvu kapitala i izvršava svoje poslove stručno i savesno, sa pažnjom dobrog privrednika. Predstavnik Republike Srbije imenuje se na četiri godine i razrešava aktom nadležnog ministra, nakon prethodne saglasnosti Vlade.

Direktora društva kapitala na period od četiri godine imenuje i razrešava skupština društva kapitala u jednodomnom sistemu upravljanja, odnosno nadzorni odbor u dvodomnom sistemu upravljanja, na osnovu sprovedenog javnog konkursa i saglasnosti Ministarstva privrede (odnosno prethodnu saglasnost Vlade).

Zakon dalje predviđa mogućnost nepostojanja direktora u društvu kapitala, u kom slučaju ostavlja mogućnost skupštini društva do imenovanja direktora na javnom konkursu da, uz saglasnost nadležnog ministarstva, imenuje privremenog direktora najduže na period od godinu dana.

Having in mind that the subject is the state-owned enterprises, the Law, with focus on transparency, prescribes the publication of the most important acts and information related to such company on the company's website, but leaves the possibility to the competent ministry to regulate other elements of the company's business operations that may be of importance to the public, and as such must be made publicly available.

The company adopts the Code of Ethics, and the Government, at the proposal of the Ministry of Economy, the Code of Corporate Governance of the company. This is the first time that the Code of Corporate Governance is adopted specifically for state-owned enterprises, given that the current Code of Corporate Governance, which was adopted by the Serbian Chamber of Commerce, only partially referred to state-owned enterprises, namely in its third part, which contains additional principles and recommendations for companies where the state is a shareholder.

Considering the scope of the provisions related to the professional training of members of the management bodies in the company, the Law clearly intends to entrust the management of state-owned enterprises in the future to highly qualified and professional persons who continuously improve in the field of corporate governance.

The Business Registers Agency, within the Register of Business Entities, forms a publicly available unique record of data for these companies.

Finally, the Law foresees the systematization of the real property of companies by prescribing the obligation to submit to the Ministry of Economy a list of real property over which the companies have the right of ownership and right of use within three years from the date of commencement of application of the Law.

Further, based on this list, the Government, at the proposal of the Ministry of Economy, decides

S obzirom da je reč o državnim preduzećima, Zakon, obraćajući pažnju na transparentnost, propisuje objavljivanje najvažnijih akata i informacija u vezi sa društvom kapitala na internet stranici društva, ali ostavlja mogućnost nadležnom ministarstvu da po potrebi uredi i druge elemente poslovanja društva kapitala koji mogu biti od značaja za javnost, te kao takvi obavezno učinjeni javno dostupnim.

Društvo kapitala donosi Etički kodeks, a Vlada na predlog Ministarstva privrede Kodeks korporativnog upravljanja društva kapitala. Ovo je prvi put da se kodeks korporativnog upravljanja donosi specijalno za državna preduzeća, s obzirom da se dosadašnji Kodeks korporativnog upravljanja, koji je donela Privredna komora Srbije, samo delimično odnosio na državna preduzeća, i to deo treći koji sadrži

dodatne principe i preporuke za društva kapitala u kojima je država član.

S obzirom na obim odredaba koje se odnose na stručno usavršavanje članova organa upravljanja u društvu kapitala, jasna je opredeljenost Zakona da u budućnosti upravljanje državnim preduzećima poveri visokokvalifikovanim i stručnim licima koja se kontinuirano usavršavaju u oblasti korporativnog upravljanja.

Agencija za privredne registre u okviru Registra privrednih subjekata formira javno dostupnu jedinstvenu evidenciju podataka za društva kapitala.

Konačno, Zakon predviđa i sistematizaciju nepokretne imovine društava kapitala i to tako što propisuje obavezu dostavljanja spiska nepokretne imovine Ministarstvu privrede na kojoj društva imaju pravo svojine i pravo korišćenja u roku od tri godine od dana početka primene Zakona.

Dalje, na osnovu ovog spiska Vlada, na predlog Ministarstva privrede, odlučuje o nepokretnoj

on the real property over which it has the right of use, and which will be transferred to the ownership of companies, after which the companies will register their ownership rights.

No later than one year from the completion of the previously described legal acts, the company is obliged to perform an assessment of the value of the capital and assets and submit it to the competent ministry.

imovini na kojoj ima pravo korišćenja, a koja će biti prenetu u vlasništvo društva kapitala, nakon čega će društva kapitala izvršiti upis prava svojine.

Najkasnije u roku od godinu dana od završetka prethodno opisanih pravnih poslova, društvo kapitala je dužno da izvrši procenu vrednosti kapitala i imovine i iste dostavi nadležnom ministarstvu.

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