

## **Chapter 6: Company law**

The chapter includes harmonised rules in the field of company law, including financial reporting requirements, intended to facilitate the exercise of the right of establishment.

In the field of **company law**, the first company law directive includes safeguards providing for mandatory disclosure requirements, limiting the grounds for invalidity of the obligations entered into by companies, as well as limiting the grounds for nullity of public and private limited liability companies. The 11<sup>th</sup> Company Law Directive similarly provides for disclosure requirements in respect of branches. The 2nd Company Law Directive contains rules on the formation of public limited liability companies and the maintenance and alteration of their capital.

The 3rd and 6th Company Law Directives harmonise national rules for the protection of shareholders and of creditors in the context of domestic mergers and divisions of public limited liability companies. The so-called 10<sup>th</sup> Company Law Directive (directive on cross-border mergers of limited liability companies) provides for rules and procedures to facilitate cross-border mergers of public and private limited liability companies. The 13th Company Law Directive on takeover bids lays down harmonised rules to facilitate cross-border takeovers within the EU, as well as improving transparency and protecting minority shareholders in the context of such takeovers.

The *acquis* also provides for certain European legal forms, in particular the European Economic Interest Group (EEIG) and the European Company (*Societas Europaea* or SE), while leaving several aspects of their internal structure and operation to be regulated through the domestic law of Member States. The 12th Company Law Directive requires Member States to ensure that their domestic law recognises single-member limited liability companies.

Four Commission recommendations address corporate governance principles about the remuneration of directors and remuneration in financial institutions and about the independence of non-executive directors and board committees. The Shareholders' Rights Directive introduces minimum standards for the exercise of certain rights of shareholders in the listed companies.

In the field of **accounting and auditing**, the *acquis* includes valuation rules and layouts for balance sheets and profit & loss accounts for annual (4th Company Law Directive) and consolidated (7th Company Law Directive) accounts of public and private limited liability companies. These directives also set out audit requirements, as well as disclosure and publication obligations. In addition, a regulation requires EU companies with securities listed on a regulated market to draw-up their consolidated accounts in accordance with international accounting standards endorsed by the European Commission. Member States may extend the application of such international accounting standards to the annual accounts of listed companies and to the accounts of non-listed companies. Finally, the Statutory Audit Directive puts an end to the self-regulation of the audit profession and requires the establishment of independent public oversight systems for the audit profession. This Directive harmonises rules including *inter alia* the approval and registration of statutory auditors, external quality assurance, public oversight, auditor independence and the possible application of international standards of audit. Two Commission recommendations set out minimum standards for external quality assurance and auditor's liability.

## ***I COMPANY LAW***

### ***A. Legal framework***

**First Company Law Directive (2009/101/EC) on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent.**

#### **1. To what extent is your legislation aligned with the First Company Law Directive?**

The legislation governing the company law in the Republic of Serbia is aligned to a large extent with the First Company Law Directive (2009/101/EC) which was adopted on 16 September 2009 and replaced the First Directive (68/151/EEC) and directive 2003/58/EC of 15 July 2003, which are fully implemented into the Law on Companies ("Official Gazette of RS" No 125/04 of 22 November 2004) and the Law on the Registration of Business Entities ("Official Gazette of RS" No 55/04 of 21 May 2004 and 61/05 of 18 July 2005).

#### **2. Please indicate the transposing national legislation and provide the concordance table, if available.**

The provisions contained in the First Directive (2009/101/EC) are transposed into the Law on Companies and the Law on the Registration of Business Entities, whereas this directive took over provisions contained in prior applicable directives. Currently, there is an ongoing procedure of adopting the new Company Law which will replace the one in force, whilst fully aligned with the provisions contained in the First Directive (2009/101/EC) therein. When drawing up the new Company Law, which is expected to be adopted in the first half of 2011, the concordance table has been made and may be submitted subsequently.

#### **3. What are the major discrepancies, if any, between the First Company Law Directive and the national legislation transposing the Directive? What are the reasons for these discrepancies?**

There are no significant discrepancies, except in certain details, e.g. the Law on the Registration of Business Entities shall not provide for disclosure of particulars about companies, nor in national newspapers, for the following reasons: The Register of Business Entities is founded by law as a unique, central, public electronic database about business entities, established for the territory of the Republic of Serbia, in which any data about business entities, pursuant to the First Directive, is entered and disclosed on the website of the Agency for Business Registers ([www.apr.gov.rs](http://www.apr.gov.rs)) which shall administer the Register.

Any person concerned may have access to data entered and disclosed in the Register of Business Entities by a simple search on the website (with the exception of articles of incorporation and the statute, as well as consolidated versions thereof), while the website has about 50,000 visitors per day.

#### **4. If you have not aligned your legislation with the Directive, do you have plans to that extent?**

Upon adoption of the new Company Law, the procedure of adopting the Law on Amendments to the Law on the Registration of Business Entities shall be commenced in the course of 2011 for the purpose of its harmonisation with the Company Law, during which the issue of its full alignment with the First Directive (2009/101/EC) will be considered.

**5. Could you please detail the specific implementation of the following items:**

• **To which company forms do you apply the rules of the Directive? (Article 1)**

Article 1 of the Law on the Registration of Business Entities stipulates that the Law shall lay down conditions, subject matter and procedure for the registration in the Register of business entities, as well as the way of administering the Register of business entities. Article 4 of the Law stipulates the following entities be registered in the Register: an entrepreneur, a partnership, a limited partnership, a limited liability company, a joint stock company, a cooperative and cooperative union and other entity registered in the Register in accordance with the law.

Other entities entered in the Register of business entities are: public undertakings and social undertakings subject to privatisation procedures.

• **Please provide the list of documents and particulars that has to be disclosed under Article 2.**

Article 6 of the Law on the Registration of Business Entities prescribes which particulars about business entities shall be contained in the Register and/or which particulars are subject to registration.

The Register contains particulars about business entities as follows:

- 1) business name;
- 2) head office address;
- 3) date and time of foundation;
- 4) date and time of changes;
- 5) registration number assigned by the Institute for Statistics of the Republic of Serbia which is at the same time the number under which the business entity is registered in the Registry;
- 6) tax identification number;
- 7) legal form;
- 8) code and description of the principal activity;
- 9) bank account numbers;
- 10) business name, legal form, head office and registration number of the founder, if
- 11) the founder is a legal person, and/or name and personal identification number of the founder, if the founder is a natural person, for business entities referred to in Article 4, point 2)-7) to this law;
- 12) name and personal identification number of director and/or members of the Management Committee, depending on the legal form, for business entities referred to in Article 4, point 2) - 7) of the law;

- 13) name and personal identification number of its legal representative and his limit of powers, for business entities referred to in Article 4, point 2)-7) to the law;
- 14) subscribed, paid and registered capital of the business entity.

The register also contains the following particulars about the business entity, if applicable:

- 1) short business name;
- 2) business name in a foreign language;
- 3) short business name in a foreign language;
- 4) duration of the business entity if it is founded for a definite period of time;
- 5) name and personal identification number of a procurator;
- 6) name and personal identification number of other legal representatives and limits of their powers;
- 7) particulars about branch office of the business entity.

If particulars related to a foreign legal or natural person are entered in the Register, instead of the personal/registered number, the passport number and state of issuance for the natural person and registration number and name of the register for the legal person is entered in the Register.

The Register may also contain, upon request of the business entity, the following data:

- 1) telephone and fax number of the business entity;
- 2) E-mail address of the business entity;
- 3) website address.

The Register shall also contain:

- 1) data about liquidation and bankruptcy of business entities in accordance with the law;
- 2) notes of data significant for legal transactions of the business entity;
- 3) data about the reserved names in accordance with the law;
- 4) annual financial statements of the business entities, composed in accordance with
- 5) the law regulating accounting operations.

Changes of data contained in the Register are also registered therein.

The Register contains other data in accordance with the law.

• **Is there one or more electronic business register(s) in your country? Is it a central register? If not, are there any plans in this respect? (Article 2)**

Upon adoption of the Law on Agency for Business Registers ("Official Gazette of RS" No. 55/04 of 21 May 2004 and No. 111/09 of 29 December 2009) and the Law on the Registration of Business Entities, the reform in the field of registration of business began in 2004 and substituted a former judicial manner of keeping the business registers. The Law foresees setting up of the Agency for Business Registers as a central institution keeping the registers, according to the law, as a unique and centralised database of business entities. The

Agency commenced with its activities on 1 January 2005. It is founded as a public agency operating in accordance with the regulations on public agencies, while performing its activities, i.e. keeping the electronic registers, as conferred activities. Objectives for founding the Agency were achieving greater efficiency, availability of data and establishing a unique, centralised electronic database, which have been successfully accomplished. From the commencement with its activities, three registers are managed within the Agency:

- 1) Business Entities Register within which the following registers are managed: the Companies Register and the Register of Entrepreneurs; as of December 2005 representations of foreign legal persons have also been registered in the Companies Register,
- 2) Register of Pledges on Movable Property and Rights, and
- 3) Financial Leasing Register.

The Agency currently manages 11 registers, namely: Companies Register, Register of Entrepreneurs, Financial Leasing Register, Register of Pledges over Movable Property and Rights, Register of Associations, Register of Foreign Associations, Register of Regional Development Measures and Incentives, Register of Financial Statements and Data on Solvency, Register of Public Media, Register of Tourism and Register of Bankruptcy Estate. There is a plan to establish the Register of Injunctions and the Register of Endowments and Foundations in the course of 2011, and as of 2013 the Register of Chambers of Commerce as well.

• **Can companies file documents and particulars to the register by electronic means? (Article 2)**

The possibility of submitting a registration application to the Companies Register by electronic means is prescribed by Article 20 of the Law on the Registration of Business Entities. Paragraph 1 of the said Article prescribes that a registration application shall be submitted by electronic means in such a way that registration applicant enters particulars into the prescribed form published on the Agency's website, whilst the documents, enclosed to the registration application, are submitted by electronic means to the E-mail address of the Agency. Paragraph 2 specifies that the registration applicant shall, within 5 days following the date of submission of the registration application in electronic form, submit to the Agency the original documents referred to in Article 1(1). The date and time of submission of electronic application within the meaning of paragraph 3 shall be deemed to be the date and time of receiving the documentation referred to in paragraph 2 of this Article to the Agency. If the documents have not been submitted in a manner and within terms referred to in paragraph 2 of the Article, it shall be deemed that the registration application has not been submitted at all (Article 20(4)).

Electronic registration applications for the registration of entrepreneurs are being received at present, whilst the applicants are obliged to submit their registration application in written form as well. Full implementation of electronic registration has not started because it is associated with the full implementation of the Law on Electronic Document and the Law on Electronic Signature, whilst amendments to the Law on Registration, which will further implement provisions of Directive 2009/101/EC related to electronic registration, have also been planned.

• **Are documents filed in paper form converted to electronic form by the register in accordance with Article 3(3)?**

As of September 2008, the Agency has initiated the procedure of converting the documents filed in paper form to electronic form and setting up the electronic archive. The project has been successfully completed in its entirety, insomuch that the whole documentation from the commencement of Agency's activities in January 2005 to present has been converted to electronic form. Furthermore, documentation taken from the previous registration authorities (commercial courts, line ministries, etc.) has been converted to electronic form as well.

- **Is the content of the registers accessible by electronic means in accordance with Article 3(4)? Is everyone entitled to consult the register without having to prove a legitimate interest in the enquiry? Is there a fee for consultation?**

On the website of Agency for Business Registers, which is available to all interested parties, it is possible to consult all the registered data of business entities [www.apr.gov.rs](http://www.apr.gov.rs). As of July 2009, the Agency has been technically integrated into the network of the European Business Register as a provider of particulars and data contained in the Register of Business Entities.

Any interested person has a possibility to consult the data contained in the registries which are managed within the Agency by searching the data on the website (see answer to previous question). The Agency also provides legal assistance and answers to questions in written and electronic form. The Agency does not charge any fee for the mentioned assistance.

- **Are any fees charged for issuing certain documents (certificates, copies, transcripts, attestations, notifications) contained in the register? If yes, are these fees limited to cover the administrative costs incurred in issuing such documents or are they set in a different way? What is the procedure for issuing these documents? (Article 3(4))**

Managing the Register of Business Entities is financed from funds generated on the basis of fees for services rendered, as well as from other sources in accordance with the law.

Funds generated from the fees represent the income of the Agency and are used for current operations and further development of the Register.

Fees for registration of business entities in the Register of Business Entities (comprising of the Companies Register and the Register of Entrepreneurs) and in the Register of Public Media are prescribed by the Decision on fee rates for registration and other services rendered by the Agency for Business Registers in the process of administering the registers thereof ("Official Gazette of RS" No. 21/2010 of 6 April 2010) enacted on the basis of the Law on Serbian Business Registers Agency.

At the request of an interested person and not later than two days after the date of the receipt of such a request, the registrar shall issue:

- 1) an excerpt of registered particulars;
- 2) a copy of a document on the basis of which the registration is carried out;
- 3) a confirmation that the register does not contain the requested data which is, in accordance with the law, the subject of registration.

The request shall be submitted on a prescribed form through the Agency, by post or by electronic means and may be submitted by any interested person. A proof of payment of the fee for the requested service must be submitted along with the request.

For obtaining an excerpt with all the particulars and data of company entered into the Register a fee in the amount of RSD 1,500 (the equivalent of about EUR 15) must be paid, for issuance of an excerpt in electronic form a fee in the amount of RSD 1,000 is to be paid (the equivalent of about EUR 10), for issuance of a copy of the document based on which the

registration is carried out RSD 30 per page must be paid (the equivalent of about EUR 0.3), for issuance of a confirmation that a business entity is not registered in the Register or the Register does not contain the requested data which is, in accordance with the law, subject of the registration a fee in the amount of RSD 500 must be paid (the equivalent of about EUR 5), for issuance of a confirmation on legal succession a fee in the amount of RSD 1,000 per business entity must be paid (the equivalent of about EUR 10), for issuance of a confirmation on data contained in the documentation based on which the registration is carried out and a confirmation on chronologically registered data a fee in the amount of RSD 500 must be paid (the equivalent of about EUR 5), per data.

The Register of Financial Statements and Data on Solvency managed within the Agency for Business Registers and pursuant to Decree on fees for registration of financial statements, issuance of data from the Registry of Financial Statements and Data on Solvency of legal persons and entrepreneurs, as well as fees for other services rendered by the Agency for Business Registers in the process of administering the said Register (Official Gazette of RS”, No. 2/2010 of 15 January 2010) the following fees are charged for, among others, issuance of data from the Register in the form of prescribed parts of financial statements, namely:

- 1) for regular annual financial statements, i.e. consolidated financial statements, the fee is RSD 1,500 (about EUR 15);
- 2) for regular annual financial statements, i.e. consolidated financial statements with a scanned auditor’s report, the fee is RSD 2,000 (about EUR 20);
- 3) for Balance Sheet, Profit and Loss Account, Cash Flow Statement, Capital Changes Statement,

Notes on the Accounts, as well as Statistical Annex, the fee is RSD 600 (about EUR 6) per each section of financial statement.

The fees charged correspond to the administrative costs of the Agency for processing the requests.

• **How is the disclosure of documents and particulars carried out? Is there a national gazette? (Article 3(5))**

The obligation of disclosure of registered particulars on business entities in national newspapers is not prescribed by the Law on the Registration of Business Entities. Disclosure of registered particulars is carried out on the website of the Agency (see answer to question 3) on the day of issuance of a decision which grants the request from the registration application (Article 31(1)) of the Law on the Registration of Business Entities). Any change in respect of the registered particulars shall have legal effect towards third parties from the day following the day after registration of such a change is disclosed in a manner referred to in paragraph 1 of this Article (Article 31(2) of the Law on the Registration of Business Entities).

• **According to which rules can third parties rely on the disclosed information? (Article 3(6)-(7))**

Article 10 of the Law on Companies prescribes that third parties shall be deemed to have knowledge of the registered particulars on company after its disclosure or after disclosure of excerpts from the particulars or documents based on which the registration is carried out by making references to them. Third parties shall be deemed to have such knowledge or they may, according to the circumstances, have knowledge of particulars and documents referred to in paragraph 1 of this Article even before their disclosure and after their deposit in the Register, if a company proves that. If the disclosed particulars differ from the registered ones, the latter shall be deemed accurate, therefore, in a relationship with the third parties a

company cannot show the disclosed particulars if the third parties have relied on particulars from the Register.

- **Are companies in your country required to state in their letters and order forms the data prescribed in Article 5?**

Article 22 of the Law on Companies prescribes that business letters and other documents of a company, including those in electronic form, when addressed to third parties must contain the following particulars: business name and legal form of the company, head office, registry where the company is registered and registration number, business name and head office of a bank where it has a principal bank account, bank account number and tax identification number. Business letters and other documents of a limited liability company and an open joint stock company, along with particulars referred to in paragraph 1 of this Article, shall also contain figures on basic capital, stating the amount of paid-in and entered capital, and the amount of subscribed capital. Business letters and other documents of a single-member limited liability company and a joint stock company shall also state the fact that it is a single-member company.

- **Are there any penalties or fines imposed on companies if annual accounts are not deposited at the register? If so, what is the amount of such fines? (Article 7)**

The Register of Financial Statements and Data on Solvency of Legal Entities and Entrepreneurs commenced with its activities in the Agency for Business Registers as of 1 January 2010. The Law on Amendments to the Accounting and Auditing Law ("Official Gazette of RS" No. 46/06 of 2 June 2006 and 111/09 of 29 December 2009) harmonized the procedures of publication of annual accounts, therefore undertakings, as well as other obliged persons in terms of financial statements shall submit their statements to the Register of Financial Statements and Data on Solvency to the Agency for Business Registers only. Article 1 of the Law stipulates that the Law shall govern the manner of keeping books of account, recognition and evaluation of assets and liabilities, income and expenditure, preparing, presenting, submitting, disclosing and processing annual financial statements, as well as the requirements for and manner of auditing financial statements and internal audit. Article 30 of the Law stipulates an obligation of legal persons and entrepreneurs to submit their regular annual financial statements for the reporting year to the Agency, not later than the end of February of the next year, except if specific regulation stipulates otherwise. Article 68 prescribes a penalty payment for commercial violations of a legal person (in the range of RSD 100,000 (which is about EUR 1,000) to RSD 3,000,000 (about EUR 30,000) if it fails to comply with Article 30 of the law.

A penalty payment in the amount of RSD 5,000 to 150,000 (about EUR 50 to 1,500) shall be imposed on the responsible person of the legal entity.

A penalty payment in the amount of RSD 5,000 to 500,000 (about EUR 50 to 5,000) shall be imposed on the entrepreneur for a commercial violation if he fails to submit financial statements to the Agency for Business Registers in accordance with this law.

- **Are there preventive, administrative or judicial controls at the time of company formation? Do the instrument of constitution and other documents have to be drawn up in a specific form? (Article 11)**

There are no preventive, administrative or judicial controls, except in the process of registration to the Agency for Business Registers in such a way that when founding a company the founders shall draw up the act of incorporation containing, in accordance with Article 7 of the Law on Companies, the certified signatures of its founders. Certification of



signatures is possible to carry out either in front of the competent court or in front of the competent notary within the municipalities. It is also stipulated that any changes to Articles of Association shall be drawn up in the same form, with certified signatures of its members.

The law also stipulates that the form of the articles of association of a single-member company shall be the decision on the establishment, while a multi-member company shall draw up the contract on the establishment.

• **Can company formation be declared null and void? If so, under which conditions? (Articles 12-13)**

Article 11 of the Law on Companies stipulates the nullity of registration of founding. Paragraph 2 of the said article stipulates that the registration of founding and registration of other information shall be nullified if: the act of incorporation was not drawn up in the form as prescribed; the registered scope of activities is illegal or contrary to public interest; the Articles of Association does not contain information on the company's business name, or the amount and type of share of each founder or the amount of basic capital prescribed by the law or the business purpose of the company; the minimum capital contribution was not made in accordance with the law; there is no legal or business capacity by all founders; the number of founders is less than prescribed by the law. If the basis for requesting nullity of company's registration is remedied, the competent court shall determine, upon commencing a procedure, the period of up to 90 days for such remedying and shall suspend the procedure during that period. Nullity of a company's registration shall have no legal effect on legal affairs of the company with conscientious third parties. In case of nullity of a company's registration, members and shareholders shall be jointly liable for payment of company creditors' claims.

**Second Company Law Directive (77/91/EEC) - formation of public limited liability companies and the maintenance and alteration of their capital, and its subsequent amendments (92/101/EEC, 2006/68/EC and 2009/109/EC).**

**6. To what extent is your legislation aligned with the 2nd Company Law Directive (77/91/EEC) and its subsequent amendments (92/101/EEC, 2006/68/EC and 2009/109/EC)?**

Provisions of the Second Directive (77/91/EEC) and of its amendments (92/101/EEC) have been fully implemented into the Law on Companies in the chapter related to joint stock companies which prescribes incorporation of companies, basic capital, increase and reduction of basic capital, protection of creditors, acquisition of own shares, alienation of shares, subscription rights, equal treatment of shareholders of the same class. Directives (2006/68/EC and 2009/109/EC) adopted after entering into force of the Law on Companies (entered into force on 30 November 2004) have been implemented in the new Proposal for the Company Law.

**7. Please indicate the transposing national legislation and provide the concordance tables, if available.**

We do not have the concordance table of the existing Law on Companies and the Second Directive (77/91/EEC), but there is an ongoing procedure of adopting the new Company Law which will replace the existing one. The new Law is fully compliant with provisions contained in the Second Directive (77/91/EEC) and in each of its amendments (92/101/EEC, 2006/68/EC and 2009/109/EC). When drawing up the new Company Law, which is expected

to be adopted in the first half of 2011, the concordance table has been made and may be submitted subsequently.

**8. What are the major discrepancies, if any, between the 2nd Company Law Directive and its subsequent amendments and the national legislation transposing the Directive? What are the reasons for these discrepancies?**

Discrepancies exist in the part related to arrangements contained in directives (2006/68/EC and 2009/109/EC) which were adopted after the adoption of the existing Law on Companies, e.g. in the part related to exemptions to the obligation of drawing up the reports of independent experts on valuation of non-monetary contributions consisting of securities, property and rights, if the figures may be based on valuations made in the last 6 months or contained in the financial statements.

**9. If you have not aligned your legislation with the 2nd Company Law Directive, do you have plans to that extent?**

There is an ongoing procedure of adopting the new Company Law.

See answer to question 7.

**10. Could you please detail the specific implementation of the following items:**

**• Is there a minimum capital requirement for the companies? If so, what is it?**

The Law on Companies prescribes a mandatory minimum amount of monetary value of capital required to be paid for the incorporation of the companies of capital.

For the incorporation of a limited liability company, the minimum prescribed amount of cash contribution is EUR 500 in dinar countervalue, for the establishment of a closed joint stock company the minimum prescribed amount of cash contribution is EUR 10,000 in dinar countervalue, whilst for the incorporation of an open joint stock company a cash contribution of EUR 25,000 in dinar countervalue is prescribed. Specific legislation for incorporation of financial, insurance and other companies performing certain activities (e.g. organising games of chance) prescribe a higher amount of mandatory deposits in cash. For example, a joint stock company for life assurance is obliged to pay a minimum deposit in cash of EUR 2,000,000, for a voluntary pension insurance a minimum deposit in cash is EUR 3,000,000, for all types of life assurance a minimum deposit in cash is EUR 4,000,000 in dinar countervalue, for bank incorporation pursuant to the Law on Banks ("Official Gazette of RS", No 107/2005 of 2 December 2005) a minimum prescribed deposit in cash shall be EUR 10,000,000 in dinar countervalue.

**• What safeguards are there to protect the company's capital (e.g. rules on contributions in kind, on distribution to shareholders, on acquisition by a company of its own shares, on providing financial assistance to third parties for the acquisition of a company's shares)?**

- *Contributions in kind*

Article 14 of the Law on Companies stipulates that contributions in kind within the meaning of the law shall mean non-monetary contributions, including contributions which consist of property, rights, work or services and shares and contributions of another company.

Additionally, it is stipulated that the value of contributions in kind to a general partnership, a limited partnership, a limited liability company and a closed joint stock company shall be determined by agreement of the partners, members or shareholders in accordance with the Articles of Association. If the value is not determined in such a manner, partners, members or shareholders may entrust the valuation of a contribution to a certified appraiser or may request the court to appoint an appraiser in a non-contentious proceeding.

The valuation of contributions in kind to an open joint stock company shall be carried out by a certified appraiser appointed by the founders and/or the Management Committee from the list of certified appraisers or appointed by the competent court in a non-contentious proceeding at the request of founders or Management Committee of the company. The valuation of contributions in kind shall be carried out in accordance with any applicable provisions of the law governing the accounting and auditing. Furthermore, the law stipulates that contributions in kind which consist of work and services shall not be entered into open joint stock companies.

The provision of Article 236 of the Law on Companies stipulates an obligation of maintaining the value of basic capital of a joint stock company by constantly maintaining the net asset value at a level equal to or greater than the statutory minimum of contributions in cash. Should the basic capital of a joint stock company be reduced for any reason below the stipulated value, the company shall increase it to the required level within six months after the date of reduction, unless the company has changed its legal form within the same period. Sanctions for infringement of the above stated may be liquidation of a company.

#### *-distributions to shareholders*

Restrictions on payment of dividends and other payments are governed by Article 230 of the Law on Companies. The Law stipulates that a closed joint stock company may not make payments to its shareholders if, upon such payment, the net assets of a company would be less than its basic capital plus reserves that can be used for payment. An open joint stock company may not make a distribution to its shareholders in the case of a reduction of basic capital in a regular procedure, if, upon payment of the distribution, the net assets would be less than its basic capital plus reserves, as well as if the payment of dividends exceeds the company's profit in the previous financial year plus retained profit and reserves. In addition, payments to shareholders shall not be made if the company would become insolvent upon such payment or if due dividends for preferential shares would not be paid. The Law leaves a possibility of making these payments, but only if it may be affirmed, based on the figures from financial statements, that the payment is reasonable in the given circumstances. In addition, the law prescribes the obligation to shareholders to repay the illicit payment to the company, if they knew or, under the circumstances, must have known that such a payment is unlawful. Proprietary liability is prescribed for a director or the Management Committee members in the event of the illicit activities.

#### *- lending*

The law prescribes that a joint stock company may not grant loans, credits or provide other financial support or certain security for the acquisition of its own shares. This shall not apply to current legal affairs of financial organisations, nor to paying deposits, credits or providing security for acquisition of shares by employees in the company or in the linked companies

within the meaning of this law, subject to compliance with the provisions on restrictions of payment.

- *own shares*

In accordance with the Second Directive, the Law on Companies regulates the procedure of acquisition of own shares, their treatment and alienation procedure. Own shares within the meaning of this law are the shares acquired by a joint stock company from its shareholders. The law stipulates a limitation that a joint stock company may acquire own shares with a total nominal value not exceeding 10% of its basic capital. Exemptions to this rule shall apply in case: 1. a company owns reserves which may be used for this purpose, 2. acquisition of shares free of charge that are fully paid, 3. acquisition of shares in case of forced sale based on judicial decision on payment the debt to a joint stock company by the shareholders, 4. in the event of status change.

A company may acquire own shares only on the basis of an offer to all shareholders on equal terms and in accordance with the law. They are subject to special treatment: they may be excluded from the basic capital of a company, in which case reserves of a company shall increase, then, they shall not be entitled to vote, nor shall they be counted in the quorum at a shareholders' assembly, they will not be entitled to receive dividend or other distributions. Own shares acquired by a company up to the amount of 10% shall be alienated within a period of one year following the day of acquisition, whilst shares acquired, in accordance with this law, to the amount exceeding 10% shall be alienated within a period of three years. If the company fails to comply with this rule, the Management Committee is obliged to cancel these shares without a decision of the assembly thereon, in accordance with the provisions of law governing the procedure of reduction of basic capital in a regular procedure.

• **What kind of protection is provided for the shareholders in the context of capital maintenance and alteration (e.g. decision-making power on fundamental issues such as increase and reduction of capital, pre-emption rights, and equal treatment of shareholders in the same position)?**

- *Shareholders' rights*

Shareholders' rights are governed by the Law on Companies in the part related to joint stock companies. The Law makes a distinction between two types of joint stock companies:

1. Open joint stock companies which are founded by a public call for subscription and payment of shares. A public call may be carried out by public offering and prospectus in accordance with this law and law governing the securities market. Open joint stock companies may not limit the transfer of shares to third parties;

2. Closed joint stock companies whose shares are issued only to its founders or to a limited number of other persons in accordance with the law. A closed joint stock company may have a maximum of 100 shareholders. Such a company may impose restrictions on transfer of shares by its Articles of Association and the Statute. The Articles of Association may arrange the pre-emption right of shares by the company itself. If a company has not used the pre-emption right, the shares may be offered to other shareholders; if the offer is refused, a shareholder may offer the shares to third parties at a price and within terms that were valid for offering the same shares to the company and its shareholders, or at a higher price.

A joint stock company may issue: ordinary and preferential shares. Preferential shares are the shares which give their holders certain privileged rights.

Rights of holders of ordinary shares are: the right to access to legal and other documents and information of the company, the right to participate in the shareholders' assembly, the right to cast a vote at the shareholders' assembly (each share gives a right to one vote), the right to receive dividends after the payment of dividends on all issued preferential shares paid in full, the right to participate in a liquidating distribution upon liquidation of a company after the claims of creditors and holders of any preferential shares have been satisfied, preferential right to acquisition of newly issued shares and exchangeable bonds, the right of disposal of all type of shares in accordance with the law. The articles of association, the statute and the decision of the assembly may limit or nullify the subscription rights.

The rights of holders of preferential shares of the same class shall be equal and defined by the articles of association. These shall in particular include a privilege over the ordinary shares with respect to priority of payment of dividends and to priority of distribution on liquidation of the company. These rights may also include converting the preferential shares into ordinary shares or into preferential shares of another class, the right to cast a vote at any shareholders' assembly on any issue requiring group voting of holders of such class in accordance with the law, as well as the right to cast a vote at shareholders' assembly if such preferential shares are being converted into ordinary shares and if the dividends on such preferential shares which have accrued have not been paid. In addition, holders of preferential shares shall also have the right to access to documents of the company.

With regard to status changes, the law prescribes a qualified majority of votes at the assembly (which means 2/3 of shareholders who own the shares with voting rights about the issue in question) for the adoption of draft contract about the status change (merger, division and separation). If this decision modifies the rights of holders of preferential shares, their decision made with the same such majority shall be required. Whereas the provisions of the Third and the Sixth Company Law Directives have been implemented into this part, there is a prescribed possibility that shareholders, in addition to shares of the acquiring company obtained by exchange for shares of the company ceasing to exist by acquisition, have a possibility of surcharges in cash if such issued shares are not exceeding 10% of their nominal value or their accounting par value if the shares have no nominal value.

#### - *Increase of capital*

Assembly of a company may increase or reduce its capital by such a decision. Capital increase may be carried out by: new contributions, conversion of exchangeable bonds into shares and from the funds of the company. When increasing the capital of an open joint stock company, new shares shall be issued or nominal value of the existing shares shall be increased. Registration and announcement of a Decision on increase of capital of an open joint stock company shall be carried out in accordance with the Law on the Registration of Business Entities. Subscription of shares arising from this decision shall not be initiated prior to its registration and announcement. Decision on increase of capital by new contributions shall not be registered after the expiry of a period of 6 months following its adoption.

The Law provides certain limitation in the process of increase of basic capital, e.g. a decision on new issuance of shares may not be made if all the shares or 9/10 of subscribed shares from the previous issuance have not been paid, whilst this limitation shall not refer to increase of capital arising due to statutory changes or to contributions in kind consisting of property and

rights, as well as to increase of capital by issuing new shares to employees and linked companies.

- *Reduction of capital*

The law regulates two procedures to reduce a basic capital of the joint stock companies: regular and simplified procedure for reducing capital. Regular procedure for reducing capital shall be carried out through: cancellation of acquired own shares firstly, and then through withdrawal and cancellation of shares held by the shareholders, hence through reducing the nominal value of shares and finally through repayment of the amount paid by shareholders for partly paid shares and non issuance of such shares. For the purpose of reduction in this procedure, it is necessary to make notice to creditors for the protection of their interests. Simplified procedure for reducing basic capital shall be carried out if a company has losses. Provisions of the law pertinent to notice to creditors and protection of their rights shall not apply to reducing basic capital in this procedure. Registration and announcement of a Decision on reducing basic capital of an open joint stock company shall be carried out in accordance with the Law on the Registration of Business Entities.

In addition to these procedures, the law prescribes reduction of capital by conversion into reserves carried out by transfer of capital into reserves of a company not exceeding 10% of basic capital for the purpose of future losses of a company, whilst the provisions of law pertinent to notice to creditors and protection of their rights, as in reduction of capital in a regular procedure, shall not apply.

Equal treatment of shareholders in the same position is regulated by Article 208 (1)(for holders of ordinary shares) and Article 209(1) (for holders of preferential shares) of the Law on Companies.

• **What rules do you have for the protection of creditors?**

Protection of creditors is governed by the provisions of law relating to reduction of capital, liquidation of a company and status changes. The law prescribes the obligation of a company to carry out these procedures with respect to creditors' rights and protection of their interests.

The provisions of Articles 261-273 of the Law on Companies govern the procedure of reduction of basic capital in a joint stock company, whilst Article 114 of the Law refers to adequate implementation of the said provisions to a limited liability company as well. The provision of Article 264 (3) of the Law on Companies prescribes that withdrawal and cancellation of shares held by shareholders and reduction of capital in the regular procedure may only be carried out in accordance with the provisions of this Law protecting the rights of creditors in an open joint stock company. The provision of Article 268 of the same law stipulates that a Decision on reduction of basic capital of an open joint stock company in a regular procedure, upon registration, shall be announced two times in a span of 30 days with an invitation to creditors to file their claims. Creditors whose claims have not fallen due, but have arisen prior to the second notice of the registration of a decision on the reduction of basic capital of an open joint stock company, may request the security of claims (or payment of claims, although not due, if so specified in a decision in question) within 90 days from the date of the second notice of the registration of such decision. The security of claims cannot be requested by those creditors who are entitled to priority of satisfaction from the bankruptcy estate of the debtor or by other creditors with secured claims. In the event of reduction of basic capital of an open joint stock company in a regular procedure, shareholders' claims may be settled following a period of 90 days after the date of the second notice of registering such

a decision in the register and after providing security and settlement to creditors duly filed their claims.

The provision of Article 270 of the Law on Companies stipulates that the reduction of basic capital of an open joint stock company in a regular procedure shall be registered and announced in accordance with the law governing the registration of business entities. Reduction of basic capital of an open joint stock company in a regular procedure shall not be registered before fulfillment of debtors requests referred to in Article 268 of this law and before entry in the Central Securities Depository and Clearing House referred to in Article 269 of this law.

Provisions of Articles 347-365 of the Law on Companies regulate for the first time by a corporate law the liquidation proceedings carried out, in accordance with the law, by the company itself. Liquidation of the company shall be carried out on the basis of the decision of founders (partners, general partners and limited partners, members and shareholders) made in accordance with the law. The decision to initiate a liquidation proceeding and an appointment of the liquidation trustee shall be registered and announced in accordance with the law governing the registration of business entities.

The provision of Article 350 of the Law on Companies stipulates individual notice to creditors. Therefore, it is stipulated that a company shall deliver a written notice to its known creditors enclosing a copy of the entry into the Registry of its decision initiating the proceeding of termination of company by liquidation. The notice shall in particular contain:

- 1) a postal address where the creditor claims shall be sent to;
- 2) a deadline, not less than 120 days following the day of submitting a written notice, within which a company in liquidation must receive the claim;
- 3) a warning that the claim will be barred if the claim is not received within a particular period.

A claim against the company in liquidation shall be barred if not reported to the company in liquidation within 120 days or if a creditor whose claim was disputed by the company in liquidation does not initiate proceedings before the court within 30 days of receipt of the decision on denial of claims.

The claim referred to in paragraph 3 of this Article shall not include the claim arising after the decision on liquidation of a company comes into effect.

Notice on initiating the liquidation proceeding with an invitation to creditors shall be registered and announced in accordance with the Law on the Registration of Business Entities on the website of the Agency for Business Registers within the section for public notice.

As regards the status changes of merger, division and separation which are governed by the provisions of Articles 377-425 of the Law on Companies, a mandatory registration and notice of the draft contract of status changes in the open joint stock companies are also prescribed therein for the purpose of introducing it to the shareholders and all the creditors as well. The provision of Article 395 of the Law prescribes that all creditors whose claims originated before the announcement of the draft contract of merger shall have a right, within 30 days following the announcement thereof, to demand in written form the guaranties of payment or settling the valid outstanding claims, both due and undue, from the company participating in the process of merger by acquisition which is their debtor. Creditors who have not demanded guaranties or settling the claims within the terms referred to in paragraph 1 of this Article shall have a right, within six months following the date of announcement of the registration

of merger by acquisition, to demand in writing the guaranties of outstanding claims, if able to prove that merger by acquisition shall endanger their satisfaction.

The provision of Article 417 of the Law prescribes that all of the recipient companies in a division shall be jointly and severally liable for all the obligations and liabilities of the dividing company following the registration and effectiveness of the division, except as otherwise agreed by any particular creditor.

**Third Company Law Directive (78/855/EEC) concerning mergers of public limited liability companies, and its subsequent amendments (2007/63/EC and 2009/109/EC)**

**11. To what extent is your legislation aligned with the Third Company law Directive and its subsequent amendments?**

Status changes of merger, division and separation are regulated by provisions of the Articles 377-425 of the Law on Companies and are fully aligned with the Third and the Sixth Directive. Whereas directives 2007/63/EC and 2009/109/EC are adopted after the adoption of the Law on Companies, these have not been transposed into the law in force, but directives were taken into consideration when drawing up the new Company Law which is expected to be adopted in the beginning of 2011.

**12. Please indicate the transposing national legislation and provide the concordance table, if available.**

In addition to the Law on Companies, the Law on the Registration of Business Entities governs the issues related to registration of status changes as well. We do not have the concordance table of the existing Law on Companies and the Law on the Registration of Business Entities with the Third Directive (78/855/EEC), but there is an ongoing procedure of adopting the new Company Law which will replace the existing one. The new Law is fully aligned with provisions contained in the Third Directive (78/855/EEC) and in its amendments of the directive (2007/63/EEC). When drawing up the new Company Law, which is expected to be adopted in the first half of 2011, the concordance table has been made and may be submitted subsequently.

**13. What are the major discrepancies, if any, between the Third Company law Directive and the national legislation transposing the Directive? What are the reasons for these discrepancies?**

The Third Directive (78/855/EEC) has been fully implemented into the Law on Companies.

**14. If you have not aligned your legislation with the Directive, do you have plans to that extent?**

Alignment with the Directive (2007/63/EC) and Directive (2009/109/EC) is in the pipeline. The text of the new Company Law has been drafted and its adoption is expected in the first half of 2011.

**15. Could you please detail the specific implementation of the following items:**

- **To which company forms do you apply the rules of the Directive? (Article 1)**



Status changes apply to all companies regulated by Article 2, of the Law on Companies, such as: partnerships, limited partnerships, limited liability companies and joint stock companies (open and closed).

- **How does your national law define "merger by acquisition" and "merger by the formation of a new company"? (Articles 2-4 and 30-31)**

*merger by acquisition*

Merger by acquisition is a status change where a company ceases to exist without liquidation (company being acquired) transferring to the other existing company (acquiring company) all of its assets and liabilities in replacement for the shares or stakes issued by the acquiring company to the shareholders and members of the company being acquired and, if needed, with additional payment not exceeding 10% of the nominal value of the so issued shares, or their accounting value where shares have no nominal value (Article 381, paragraph 2, of the Law on Companies).

*merger by the formation of a new company*

Merger by formation is a status change where two or more companies cease to exist without liquidation (merged companies) transferring all of their assets and liabilities in replacement for the shares or stakes issued by the newly formed company (newly formed company) to the shareholders and members of the merged companies and, if needed, with additional payment not exceeding 10% of the nominal value of the so issued shares, or their accounting value where shares have no nominal value (Article 381, paragraph 2, of the Law on Companies).

- **Do you require the merging companies to draw up the draft terms of merger in writing? What is the content of the draft terms? (Article 5)**

Article 384 of the Company Law prescribes that Management Committee of the joint stock company shall prepare a written draft contract of merger by acquisition. Contract of merger by acquisition shall contain information on:

- 1) the form, business name, registered office and address of every company merged by acquisition as well as of the acquiring company;
- 2) the scale of replaced shares and any payments;
- 3) the exact description of how shares were allocated to shareholders of the merged company in the event of such replacement;
- 4) the date as of which the shareholders of the merged company shall become entitled to participate in the profit of the acquiring company based on replaced shares, and if required, also other special requirements for the exercising of that right;
- 5) the date as of which the activities of the merged company were undertaken for the account of the acquiring company (date of the merger accounting).
- 6) special rights conferred by the acquiring company to holders of the shares with special rights and to holders of other securities issued by the merged company, or the proposed respective measures;
- 7) the rights conferred to the director or Management Committee member of any company participating in the merger by acquisition;
- 8) other data contained in the memorandum of association, according to this law.

Also, integral part of the contract under paragraph 1, of this Article is the proposal of amendments to the memorandum of association and proposal of the statute of the acquiring company after merger by acquisition.

- **What are the rules applicable to the disclosure, evaluation and the adoption of the draft terms of merger? (Articles 6-10)**

Law on Companies prescribes obligation to register and publish the draft contract of status changes, adhering to the law governing registration of business entities for every company participating in the merger by acquisition, not later than 30 days as of the date set for the shareholders general meeting which shall be deciding about it, and where it shall be presented to the shareholders and the creditors.

Law on the Registration of Business Entities prescribes that for registration purposes the Register shall be submitted the draft agreement, if one of the participants in status change is a joint stock company.

Law on Companies also prescribes that the company shall be obliged to allow the shareholders not later than 30 days before the general meeting to view the documents in its premises (draft agreement, amendments to the memorandum of association, company's financial statements for the last three years, special accounting report on the statement for three months preceding the draft contract, Management Committee report on the merger, audit report on the merger by acquisition for all companies participating in that procedure, supervisory board report), as well as to provide free of charge counterparts or copies of all mentioned documents to every shareholder, upon request.

Article 390 of the Company Law prescribes adoption of the contract of merger by acquisition through a decision taken by the company's general meeting: the decision on adoption of the merger by acquisition agreement shall be taken in the shareholders general meeting of every company participating in the merger by acquisition, by a qualified majority, adhering to Article 293, paragraph 2, of this law. If companies participating in the merger by acquisition hold more share classes, the decision on the adoption of the contract of merger by acquisition shall also be taken by the shareholders of every share class whose rights were violated by the decision in the voting of that class group, adhering to Paragraph 1, of this Article. General meetings of all companies participating in the merger by acquisition shall adopt identical text of the draft contract of merger by acquisition, as shall be the case with all required amendments to the memorandum of association, and the statute of the acquiring company.

- **How does your national law protect the creditors of the merging companies? (Article 13)**

Creditor right to security and settlement is regulated by Article 395 of the Law on Companies prescribing that creditors with claims arising before the announcement of the draft contract of merger by acquisition shall have the right, within 30 days following the announcement thereof, to demand in writing the security or the settlement of the valid outstanding claims, both due and undue, from the company participating in the merger by acquisition, being their debtor. Creditors not demanding security or settlement of the claims within the term referred to in paragraph 1, of this Article shall have the right, within six months following the date of the announcement of registration of merger by acquisition, to demand in writing the guaranties for outstanding claims, if they present the merger by acquisition likely to jeopardise the respective settlement (paragraph 2, Article 395). Creditors with sufficiently secured claims, as well as the creditors who would in bankruptcy have the right of priority for the settlement, do not have the rights as under paragraphs 1 and 2, of this Article (paragraph 3 of the same Article). Announcements under paragraphs 1 and 2, of this Article inform the

creditors about the right to security or settlement they are entitled to due to merger by acquisition (paragraph 4 of the same Article). Security for creditor claims of merged companies and of acquiring company may be provided through different instruments of security (paragraph 5 of the same Article). Management Committee of the acquiring company is obliged to separately manage the property of every merged company, all until creditor claims as under paragraphs 1 and 2, of this Article are settled or sufficiently secured (paragraph 6, of the same Article). Creditors of every company participating in the merger by acquisition shall have priority for the settlement of the claims from the assets of the company being their original debtor as compared to the creditors of other companies merged by acquisition (paragraph 7 of the same Article).

Provision under Article 400 of the law prescribes effects of the merger by acquisition, coming into force by registration, such as:

- 1) property of the merged company, including the outstanding claims payable to third persons, shall be transferred to the acquiring company;
- 2) debts and other liabilities of the merged company to third persons shall be transferred to the acquiring company, being the new debtor;
- 3) mutual claims between the merged and the acquiring company not yet settled, shall be cleared due to the merger of the debtor and the creditor in one person;
- 4) shareholders of the merged company shall become shareholders of the acquiring company;
- 5) the company acquired by merger shall cease to exist without liquidation procedure;
- 6) shares issued by the merged company shall be withdrawn and annulled in replacement for the shares of the acquiring company as well as the monies, if so foreseen by the contract of merger by acquisition.
- 7) third persons rights, such as pledge, usufruct and other rights, restricting ownership over shares of the merged company shall be transferred to shares issued to the same shareholders by the acquiring company in replacement for the shares under encumbrance or to pecuniary benefit claims, as recognized, besides or instead of the replacement for shares, adhering to the contract of merger;
- 8) licences, concessions and other benefits or relieves given or admitted to the merged company shall be transferred to the acquiring company, unless otherwise prescribed by the regulations governing their allocation;
- 9) plenipotentiaries of the shareholders of the merged company, members of its Management Committee and supervisory board and auditor, shall be released from their respective duties in the general meeting of the acquiring company, whereas they may pursue them in that company only in compliance with the contract of merger by acquisition;
- 10) persons employed in the merged company shall continue to work in the acquiring company in compliance with the regulations on employment and merger by acquisition contract.

Law prescribes adequate application of the provisions relating to joint stock companies as well as to other forms of companies, thus respecting the specificities relevant for every legal form of the company participating in merger.

- **How is the legality of the merger controlled in your country? (Article 16)**

Creditors who deem that merger by acquisition shall jeopardise the settlement of their claims may bring action to deny the decision on merger by acquisition. If, for protection of creditors, the Management Committee of the acquiring company does not act adhering to paragraphs 1 to 7, of this Article, the court may annul the merger by acquisition relating to the action by the creditor, in case it finds that merger by acquisition shall significantly jeopardise the settlement of their claims. (Article 395, paragraphs 8 and 9, of the Law on Companies).

Also, provision of Article 69, of the Law on the Registration of Business Entities stipulates optional submission of the claim for annulling the registration, possibly requiring to determine the registration of the information on business entity as null, in case:

- 1) application for registration contains untrue information;
- 2) registration was based on a fraudulent document, a document issued in the course of illegally implemented procedure, or a document containing untrue data;
- 3) there are other lawful reasons.

Lawsuit as in paragraph 1, of this Article may be filed by the person legally interested to determine the nullity of the registration.

Lawsuit shall be filed within 30 days as of the date when the applicant of the lawsuit became aware of the reasons for nullity, but not after a three years period as of the date when registration was carried out.

Where registration was determined as null, the court shall be obliged to submit such judgement to the Agency, within 15 days as of the date of its validity. Based on that judgement, the Registrar shall erase the invalid registration from the Register.

#### **Sixth Company Law Directive (82/891/EEC) concerning the division of public limited liability companies, and its subsequent amendments (2007/63/EC and 2009/109/EC)**

#### **16. To what extent is your legislation aligned with the Sixth Company law Directive and its subsequent amendments?**

Status changes – divisions and separations are regulated by the Law on Companies, provisions under Articles 411-425, and are fully aligned with the Sixth Directive. Since directives 2007/63/EC and 2009/109/EC were adopted after the adoption of the Law on Companies, these were not integrated in the law in force, but were taken into account when drawing up the new Company Law which is expected for adoption by the beginning of 2011.

#### **17. Please indicate the transposing national legislation and provide the concordance table, if available.**

In addition to the Law on Companies, the Law on the Registration of Business Entities also regulates the issues related to registration of status changes-divisions. We do not have the table of concordance of the existing Law on Companies and the Law on the Registration of Business Entities with the Sixth Directive (82/891/EEC), but a procedure is underway for adoption of the new Company Law, replacing the existing one and including the decisions under the amendments of the Sixth Directive. In the process of preparation of the new Company Law, concordance table was drawn up, which we may enclose subsequently.

**18. What are the major discrepancies, if any, between the Sixth Company law Directive and the national legislation transposing the Directive? What are the reasons for these discrepancies?**

The Sixth Directive (82/891/EEC) is fully implemented in the Law on Companies, whereas discrepancies are limited only to issues regulated by the amendments of this Directive adopted after adoption of the Law on Companies.

**19. If you have not aligned your legislation with the Directive, do you have plans to that extent?**

Alignment with the Directive (2007/63/EC) and Directive (2009/109/EC) is underway. Proposal of the new Company Law has been defined and its adoption is expected in the first half of 2011.

**20. Could you please detail the specific implementation of the following items:**

- **Does your national law allow the division of companies? If so, for which company forms do you apply the provisions of the Directive? (Article 1)**

Law on Companies prescribes possible division as well as separation for all forms of companies, such as: partnerships, limited partnerships, limited liability companies and joint stock companies (open and closed).

- **How does your national law define "division by acquisition" and "division by the formation of new companies"? (Articles 2, 21 and 24)**

*division by acquisition*

Division by acquisition is a status change whereby company ceases to exist without liquidation (hereinafter as: company being divided) thus transferring to two or more existing companies, they merged with by acquisition (hereinafter as: acquiring companies), all of its property and liabilities in replacement for the shares or stakes issued by the acquiring company to shareholders and members of the company being divided and, if necessary, the payment not exceeding 10% of the nominal value of the so issued shares or their accounting value where shares have no nominal value.

*division by formation of a new company* Division by formation of a new company is a status change where company ceases to exist without liquidation (hereinafter as: the company being divided) thus transferring to two or more new companies thereby founded (hereinafter as: newly formed companies) or transferring to two or more companies being merged with then existing company into new companies, all of its property and liabilities in replacement for the shares or stakes issued by the newly formed companies to shareholders and members of the company being divided, and if necessary, the payment not exceeding 10% of the nominal value of the so issued shares or their accounting value where shares have no nominal value.

- **Do you require the companies involved in the division to draw up the draft terms of division in writing? What is the content of the draft terms? (Article 3)**

Law on Companies prescribes that provisions of this law on merger by acquisition shall adequately apply to the division by acquisition of joint stock companies, unless lawfully prescribed otherwise (Article 411 of the law).

Article 412 prescribes that Management Committee of the company being divided shall prepare a written contract of division by acquisition. Draft contract under paragraph 1, of this Article shall include information on:

- 1) the business name, form and registered office of each company participant in the division;
- 2) the scale of the replacement of shares and any payments;
- 3) the way acquiring company's shares were allocated;
- 4) the date as of which shareholders of the company being divided shall become entitled to participate in the acquiring company's profit based on replaced shares, as well as all special requirements, if any, for the exercising of that right;
- 5) the date as of which activities of the company being divided shall be considered as undertaken for the account of the acquiring company (date of accounting).
- 6) the special rights provided by the acquiring company to the holders of preferential shares and other favoured securities issued by the company being divided, or any measures proposed respectively;
- 7) the rights which the director or members of the Management Committee of the company participant in the division have, or shall get by division;
- 8) the property and obligations of the company being divided, which are transferred to every acquiring company;
- 9) the way acquiring company's shares were allocated to shareholders of the company being divided.

Integrated in the draft contract under paragraph 1, of this Article, is the proposal of amendments to memorandum of association and the statute of the acquiring companies (paragraph 3, of Article 412).

• **What are the rules applicable to the disclosure, evaluation and the adoption of the draft terms of division? (Articles 4-10)**

Contract of division by acquisition shall be adopted in general meeting of shareholders of companies participants in the division by acquisition, by qualified majority of 2/3 of shareholder votes with voting rights in the matter, adhering to Article 293, paragraph 2, of this law. If the company which ceased by division holds more share classes, the contract of division by acquisition shall be adopted by voting of the shareholders holding the share of the share class whose rights were violated by the division by acquisition, pursuant to paragraph 1, of this Article. Signatures included in the contract of authorised representatives of every company participant in the division by acquisition, shall be stamped.

Every company participant in the status change (company being divided and every acquiring company) shall file application for registration of the division by acquisition pursuant to the law governing registration of business entities.

In case action was initiated to deny the decision on division, the Register shall not interrupt registration procedure if it evaluates the interest for urgent resolution as prevailing and other requirements as met for the registration of the division. When deciding on the prevailing interest, the Register shall take into account the rights to be protected in the denial procedure,

the probability for prosecutor's successfulness, and the damage the companies participants in the division would suffer on the date of the postponement of the division registration.

Article 419 of the Law on Companies prescribes that registration and the announcement of registration shall comply with the law governing registration of business entities, while Article 60 of the Law on the Registration of Business Entities prescribes that for registration purposes the draft contract of division shall be submitted to the Register in case a participant in the status change is a joint stock company.

Article 420 of the law stipulates that registration of division shall entail the following legal consequences:

- 1) property of the company being divided, including outstanding claims and other rights and liabilities to third persons as under the contract of division, shall be transferred to the acquiring company;
- 2) shareholders in the company being divided shall become shareholders in one or more acquiring companies, as under the contract of division by acquisition;
- 3) persons employed in the company being divided shall continue to work in acquiring companies in compliance with the regulations on employment and the contract of division by acquisition;
- 4) Company being divided shall cease to exist.

• **How does your national law protect the creditors of companies involved in the division? (Article 12)**

Provision of Article 417 of the Law on Companies prescribes that every acquiring company shall jointly and severally be liable for liabilities of the company being divided, which existed before registration and announcement of the division, except if otherwise agreed with a particular creditor.

• **How is the legality of the division controlled in your country? (Article 14)**

Law on Companies prescribes that provisions of this law on division by acquisition shall adequately apply to the division by acquisition of joint stock companies (Article 411 of the law) whereby creditors of companies participants in the division shall have their rights regulated under Article 395, of the law (see answer number 15), unless provided otherwise by the law.

Also, provision of Article 69, of the Law on the Registration of Business Entities stipulates optional submission of the claim for annulling the registration, possibly requiring to determine the registration of information on business entity as null, in case:

- 1) application for registration contains untrue information;
- 2) registration was based on a fraudulent document, a document issued in the course of illegally implemented procedure, or a document containing untrue data;
- 3) there exist other lawful reasons.

The person legally interested to determine nullity of the registration may file lawsuit as in paragraph 1 of this Article.

Lawsuit shall be filed within 30 days as of the date when the applicant of the lawsuit became aware of the reasons for nullity, but not after a three years period as of the date when registration was carried out.

Where it is determined that registration was null, the court shall be obliged within 15 days as of the validity date to submit such judgement to the Agency. Based on that judgement, the Registrar shall erase the invalid registration from the Register.

**Cross-border mergers Directive (2005/56/EC) - on the cross-border mergers of limited-liability companies**

**21. Have you undertaken any measures with the view of implementing the Cross-border mergers Directive?**

Directive (2005/56/EC) - on the cross-border mergers of limited-liability companies was not integrated in the Law on Companies. When preparing the new Company Law, whose adoption is expected by the beginning of 2011, the directives on the cross-border merger were also considered, but it was determined that at this stage of integration of the Republic of Serbia in EU, it was premature to stipulate the provisions whose application in time could not be clearly determined.

**22. If you have not taken any measures, do you have plans to that extent?**

The same as in previous answer.

**Eleventh Company Law Directive (89/666/EEC) concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State**

**23. To what extent is your legislation aligned with the Eleventh Company law Directive?**

The Law on Companies and the Law on the Registration of Business Entities regulate the incorporation of foreign company branches and their registration, thus aligning for the most part with the Eleventh Company law Directive. Given that some issues were not precisely regulated, they have been further elaborated in the course of preparation of the new Company Law.

**24. Please indicate the transposing national legislation and provide the concordance table, if available.**

Provision of Article 3 of the Law on Companies stipulates that company, domestic or foreign, may form one or more branches.

Branch stands for organizational part of a company with no legal personality. Branch shall have its place of operations and representation, while carrying out transactions with third persons in the name and for the account of the company. Branch shall be registered under the law governing registration of business entities.

Although the concordance table was not drafted when the Law on Companies was adopted, in October 2004, it was prepared together with the new Company Law and we may submit it subsequently.

**25. What are the major discrepancies, if any, between the Eleventh Company law Directive and the national legislation transposing the Directive? What are the reasons for these discrepancies?**



There were no major discrepancies save in the part relating to the announcement of the data in financial statements of a foreign company establishing a branch (Articles 3 and 9, of the Directive) which was aligned in the text of the proposal for the new Company Law.

**26. If you have not aligned your legislation with the Directive, do you have plans to that extent?**

As mentioned above the new Company Law is underway and expected for adoption by the beginning of 2011. New law shall further integrate the provisions of the Eleventh Directive. The following information about branches of foreign companies are also foreseen for announcement: information on the founder's registered capital, if the jurisdiction where the founder was registered stipulates registration of such information, founder's prepared financial statements, audited and disclosed under the right of the state whereby the founder has such obligation.

**27. Could you please detail the specific implementation of the following items:**

- **Please provide the list of documents and particular that need to be disclosed when a branch of a foreign company is registered in your country (Articles 1-3).**

Provision of Article 43a, of the Law on the Registration of Business Entities, prescribes the documents for submission to the Register of Business Entities when registering branches of foreign business entities, as follows:

- 1) Act of incorporation of the branch;
- 2) Decision on appointment of representatives, if not appointed by the act of branch incorporation;
- 3) Stamped signatures of branch representatives;
- 4) Excerpt from the Register whereby the company was registered, translated by the certified by court interpreter;
- 5) Proof of account numbers through which company operates, if not mentioned in the documents under paragraph 1, of this Article;
- 6) Certified statement whereby company undertakes responsibility for all liabilities from operations of the branch, translated by the court interpreter.

The following information on the branch of the foreign company shall be subscribed in the Register of Business Entities: name, full business name of the branch, abbreviated business name of the branch, branch registered office, business activities, contacts, information about the founder (registration number, full business name, founder's registered office), branch representative (limitations in representation if any). Having registered the branch in the Register of Business Entities the branch of a foreign company shall be allocated: identification registration number issued by the Statistical Office of the Republic of Serbia, tax identification number (TIN) issued by the Tax Administration and contribution payer's number issued by the Republic Institute for Health Insurance.

- **Does your national law require translation of the company's instruments of constitution/memorandum/articles of association and of the accounting documents? If so, do you require the translation to be certified? (Article 4)**

Law on the Registration of Business Entities prescribes that documents which are to be submitted in a foreign language (an excerpt from the Register whereby the foreign company was registered) shall be submitted with translated copies certified by the court interpreter;

- **Does your national law require that branches of companies from outside the EU register their documents and particulars in accordance with Articles 7-9?**

Legislation does not distinguish between the branches established by the companies from the member states of the EU and those outside the EU, so that branches established by the companies from the member states of the EU shall be obliged to announce the same data.

- **Are branches of foreign companies in your country required to state in their letters and order forms the data prescribed in Articles 6 and 10?**

Law on Companies does not prescribe obligation to emphasise the data referring to the business name and other data from the branch documents, which however, shall be prescribed under the new Company Law, whose adoption is expected by the beginning of 2011.

### **Twelfth Company Law Directive (2009/102/EC) on single-member private limited liability companies**

#### **28. To what extent is your legislation aligned with the Twelfth Company Law Directive?**

Law on Companies is fully aligned with the Twelfth Directive foreseeing that single-member limited liability companies may be established. In addition, the Law on Companies prescribes possible establishment of joint stock companies by a single shareholder.

#### **29. Please indicate the transposing national legislation and provide the concordance table, if available.**

Provision of Article 104, paragraph 1, of the Law on Companies prescribes that limited liability company stands for a company established by one or more legal and/or natural persons acting as company members as to carry out activities under a common business name. When drawing up the Law on Companies, in 2004, the concordance table was not drafted.

#### **30. What are the major discrepancies, if any, between the 12th Company Law Directive and the national legislation transposing the Directive? What are the reasons for these discrepancies?**

There are no discrepancies.

#### **31. If you have not aligned your legislation with the Directive, do you have plans to that extent?**

Respective alignments have been carried out, whereas the text of the proposal for the new Company Law foresees inclusion of the so aligned text.

#### **32. In case national rules allow an individual entrepreneur to set up an undertaking with the liability limited to a sum dedicated to a stated activity - instead of allowing for**

**formation of single-member companies - are sufficient safeguards laid down in national rules, in line with Article 7?**

Given that our legislation allows incorporation of a single-member company with limited liability by one legal or natural person, not distinguishing between a single-member and multiple-members companies, Article 7, of the 12th Directive is not applicable.

**Thirteenth Company Law Directive (2004/25/EC) on takeover bids**

**33. To what extent is your legislation aligned with the Takeover Bids Directive (2004/25/EC)**

The Law on Takeover of Joint Stock Companies ("Official Gazette of RS" 46/2006 and 107/2009 – hereinafter the Takeover Law or only the Law) is aligned with the Takeover Directive both in terms of the basic objectives laid down in the Directive and in terms of the remaining binding provisions of the Directive.

**34. Please indicate the transposing national legislation and provide the concordance table, if available.**

The Takeover Law was adopted in 2006 and published in the "Official Gazette of RS" no. 46/2006. IT has been in use since 10 June 2006. The amendments were adopted in 2009 and published in the "Official Gazette of RS" no. 107/2009. The amendments have been in use since 24 December 2009.

The Rulebook on Content and Form of the Takeover Bid was published in the "Official Gazette of RS" no. 53/06, and has been in use since 1 July 2006. The first amendments were published in the "Official Gazette of RS" no. 100/06 (initial application date 11 November 2006), followed by the subsequent amendments published in the "Official Gazette of RS" no. 30/2008 (initial application date 2 April 2008); more subsequent amendments were published in the "Official Gazette of RS" no. 101/2009 (initial application date 12 December 2009); final amendments were published in the "Official Gazette of RS" no. 1/2010 (initial application date 20 January 2010).

The concordance table was neither made when the Takeover Law, adopted in 2006, was drafted, nor on occasion of compiling of the Rulebook containing the amendments.

**35. What are the major discrepancies, if any, between the Takeover Bids Directive and the national legislation transposing the Directive? What are the reasons for these discrepancies?**

There are no major discrepancies in regard to the above Directive in the national legislation that governs the matter of takeover of joint stock companies

There are discrepancies in terms of provisions under which the Directive allows for member states to govern the referred matter more strictly or in detail, such as in terms of pricing, provided that the basic objectives laid down in the Directive have been met.

**36. If you have not aligned your legislation with the Directive, do you have plans to that extent?**

Amendments have been passed several times since the initial application of the Law, considering that it turned out to be necessary during the application of the Law.

With the adoption of the new laws governing the areas of companies and capital markets, amendments to the Takeover Law are planned until the end of 2011.

**37. Could you please detail the specific implementation of the following items:**

- **How is control of a company, in relation to the obligation to launch a mandatory bid, defined? Are there other conditions which trigger the mandatory bid?**

Article 6 of the Law defines that any person who acquires shares of a Target Company and combined with the shares it already holds, obtains more than 25% of the total number of the votes attached to the voting shares of the Target Company, shall notify thereof the organizational form of the regulated market on which the shares of the Target Company are traded, the Commission, and the Target Company, and publish the Takeover Bid under the conditions and in the manner laid down herein.

Paragraph 3 of the same article defines that any person who based on a Takeover Bid, has acquired less than 75% of voting shares, shall publish the Takeover Bid, if the person acquires more shares of the same Target Company.

Paragraph 4 of this article also defines that it is mandatory to declare the takeover bid, as follows:

A person who, based on the Takeover Bid, has acquired 75% or more voting shares, shall publish a Takeover Bid if:

- After the Takeover Bid, it acquires at least 5% additional voting shares of the Target Company;
- In the course of 18 successive months, acquires at least 3% of additional voting shares of the Target Company.

- **Which derogations to the Directive have been provided, in accordance with article 4 section 5 of the Directive, in the national law and which derogatory powers have been given to the supervisory authority?**

Exceptions to the obligation of declaring the takeover bid are laid down exclusively in the Law, in the Article 8 as follows:

An Acquirer shall not be under the obligation to make a Takeover Bid, if it:

- 1) Acquires shares of a Target Company by inheritance;
- 2) Acquires shares of a Target Company by division of joint marital property;
- 3) Acquires shares only temporarily, while engaging in the registered business activity of taking over (sponsoring) the issuing or reselling securities on the market, provided the Acquirer of the issue, i.e. the sponsor does not exercise the right to vote arising from the acquired shares;
- 4) Acquires shares of a Target Company as a bankruptcy debtor in the bankruptcy proceedings;
- 5) Acquires shares of a Target Company in the companies' merger procedure, but only if not more than one of the companies involved in the merger procedure holds shares of the Target Company;
- 6) Acquires shares owing to a change in the legal status of a company;

- 7) Acquires shares of a Target Company from another legal person whose members or shareholders are, directly or indirectly, the same persons; or when it acquires shares by means of a transfer with the purpose of restructuring the holding;
- 8) Acquires shares in a new company created by merger of the existing companies or division of the existing company, provided the rights of Dissenting Shareholders of remaining companies are protected;
- 9) The only goal of acquiring shares is to secure the claims of the Offeror towards the company, provided the creditor does not exercise the voting right attached to the acquired shares;
- 9a) The Republic acquires shares of a Target Company, and/or concerting parties of the Republic, that have the status of a professional investor in accordance with the law governing the market of securities;
- 10) Has acquired more than 25% of voting shares of the Target Company prior to entry into force of this Law.

This Law shall not apply to trading of equity of a particular issuer when sold in a public tender, on a regulated market, specifically:

- 1) Shares transferred to the Share Fund in accordance with the law, and the shares of individual shareholders that are offered on sale concurrently with shares of the Share Fund, in accordance with the Law on Share Fund (Official Gazette of RS, Nos. 38/01 and 45/05);
- 2) Shares whose legal holder is the Republic Fund for Pension and Disability Insurance of Employees;
- 3) Shares whose legal holder is the Republic Development Fund;
- 4) Shares whose legal holder is the Republic.

Unless otherwise provided by an act of the Government, provisions of this Law shall not apply to:

- 1) The transfer of the ownership without a consideration, over the shares issued by banks, from the state union Serbia and Montenegro to the Republic, based on the Law Regulating the Relationship between the Federal Republic of Yugoslavia and Legal Persons and Banks from the Federal Republic of Yugoslavia who are Original Debtors or Guarantors towards the Creditors of the Paris Club and the London Club (Official Gazette of FRY, Nos. 36/02 and 7/03);
- 2) Trading of shares issued by banks, when the legal holder of such shares is the Republic, based on the Law Regulating the Relationship between the Federal Republic of Yugoslavia and Legal Persons and Banks from the Federal Republic of Yugoslavia who are Original Debtors or Guarantors towards the Creditors of the Paris Club and the London Club (Official Gazette of FRY, Nos. 36/02 and 7/03), and the Law Regulating the Public Debt of Federal Republic of Yugoslavia based on the Foreign Currency Savings of its Citizens (Official Gazette of FRY, No. 36/02);
- 3) Trading of shares issued by banks, when legal holder of such shares is the Republic;

- 4) Trading of shares issued by banks, when, in accordance with Law, legal holder of such shares is the Agency for Insurance of Deposits;
- 5) Trading of shares issued by banks, when legal holders of such shares have, by a special agreement that must be made in writing, authorized the Agency for Insurance of Deposits to sell such shares to a third person, on their behalf and for their account;
- 6) Trading of shares issued by insurance companies, when legal holders of such shares have, by a special agreement that must be made in writing, authorized the Agency for Insurance of Deposits on their behalf and for their account to sell such shares to a third party, in accordance with Law that regulates insurance;
- 7) Trading of shares issued by banks, when the trade is implemented in the procedure of converting the assets to cash of the banks undergoing bankruptcy or liquidation, in which the role of the bankruptcy or liquidation, manager is served by the Agency for Insurance of Deposits;
- 8) Trading of shares of the Central Register, stock exchanges, and other financial persons, in the context of the laws governing business operations and organization of banks, when legal holder of such shares is the Republic;
- 9) Trading of shares of the Central Register, stock exchanges, and other financial persons, in the context of the laws regulating business operations and organization of banks, when legal holders of such shares have authorized the Agency for Insurance of Deposits by a special agreement that must be made in writing, to sell such shares to a third person, in their name and for their account.

Provisions of this Law addressing the obligation to publish the Takeover Bid and the takeover procedure shall apply accordingly to the Acquirer of the shares referred to in this Article, if it intends to continue acquiring the shares of the company.

• **Have you transposed articles 9 and 11 of the Directive? Do you apply the reciprocity rule of article 12 section 3 of the Directive?**

Articles 9 and 11 of the Directive have been implemented into our legislation in the following Articles:

Article 38 of the Law provides that as from the time the Notice of Takeover Intent is made public until the conclusion of the procedure of the Target Company takeover, the Board of Directors of the Target Company:

- 1) Shall not exercise the power vested in it by the Articles of Association to increase the initial capital of the Target Company by issuing new shares;
- 2) Shall not make decisions to undertake any extraordinary activities, or decide on executing any contracts that would essentially change the status of assets or liabilities of the Target Company, may only undertake regular activities that are related to the business of the Target Company;
- 3) Shall not decide that the company acquires or alienates its own shares;
- 4) Shall not make a bid to take over another joint stock company.

The management of the Target Company may undertake these activities, only upon prior consent of the shareholders' general meeting which shall decide on these issues by a simple majority.

Article 39 of the Law prescribes that from the time the Notice of Takeover Intent is made public until the conclusion of the procedure of the Target Company takeover, the constituting act or the Articles of Association may not envisage any restrictions regarding the number of votes attached to the voting shares, and, if such restrictions are already envisaged in the Constituting Act or the Articles of Association, they can be rendered null and void by the simple majority vote at the shareholders' general meeting.

After conclusion of the takeover procedure, the shareholders' general meeting may, by simple majority vote, repeal the provisions of the constituting act or the Articles of Association which envisage the restrictions regarding the mandate and appointment of the members of the Board of Directors and the Director.

In terms of the reciprocity rule from the Article 12 of the Directive, we have not had any case which would result in application of this rule in practice.

• **What are the thresholds for squeeze-out (article 15) and sell-out (article 16) following a takeover bid?**

Enforced sale (or squeeze-out) has been regulated by the Article 34 of the Law, which prescribes that when an Offeror buys at least 95% of the shares of a Target Company in the takeover procedure, the Offeror shall have the right to buy, under the conditions from the Takeover Bid, the shares of the shareholders who have not accepted the sale of shares pursuant to such bid.

Enforced purchase (or sell-out) has been regulated by the Article 35 of the Law, which prescribes that when an Offeror has purchased at least 95% of shares of the Target Company, the Offeror shall buy the shares of remaining shareholders at their request, under the conditions from the Takeover Bid.

**Shareholders' Rights Directive (2007/36/EC) - on the exercise of certain rights of shareholders in listed companies**

**38. To what extent is your legislation aligned with the Shareholders' Rights Directive (2007/36/EC)?**

Given that the Shareholders' Rights Directive (2007/36/EC) was adopted on 11 July 2007, the Law on Business Companies, which was adopted in 2004, could not be fully complied with the Directive referred to above; however, certain matters have been regulated in the similar manner by the Law. Full compliance with the Directive (2007/36/EC) has been implemented in the draft of the new Law on Business Companies, expected to be adopted in the first half of 2011.

**39. Please indicate the transposing national legislation and provide the concordance tables, if available.**

The concordance table has been drawn up upon preparation of the draft of the new Law on Business Companies, and we can subsequently forward it.

**40. What are the major discrepancies, if any, between the Shareholders' Rights Directive and the national legislation transposing the Directive? What are the reasons for these discrepancies?**

The Law on Business Companies contains individual similar provisions, also contained in the Shareholders' Rights Directive.

*See more detailed answers to the question No 42.*

**41. If you have not aligned your legislation with the Directive, do you have plans to that extent?**

Draft of the new Law on Business Companies complies with the Directive (2007/36/EC) in full, and its adoption is expected during the first half of 2011.

**42. Could you please detail the specific implementation of the following items:**

- **Minimum notice period of 21 days for most General Meetings (GMs), which can be reduced to 14 days where shareholders can vote by electronic means and the general meeting agrees to the shortened convocation period;**

Article 281, Paragraph 1 of the Law on Business Companies currently in force anticipates that a written notice to each shareholder of a general meeting shall be given not less than 30 nor more than 60 days before the date of a general meeting, and written notice to each shareholder of an extraordinary general meeting shall be given not less than 15 nor more than 30 days before the date of a general meeting. The notice shall be given by mail or email to each shareholder who is in title to vote at the general meeting and has agreed to be notified by electronic means.

- **Internet publication of the convocation and of the documents to be submitted to the GM at least 21 days before the GM;**

Article 281, Paragraph 4 of the Law prescribes: as an exception to Paragraph 1 of this Article, an open joint stock company may, if so provided by the Incorporation Instruments, instead of sending individual notice to each shareholder, publish an announcement continuously on the company's web-site during the applicable time period referred to in Paragraph 1 of this Article, and shall, in addition, publish it in at least one daily newspaper distributed throughout Serbia with a print run of at least 100,000 copies, not less than 30 nor more than 60 days before the date of the general meeting in case of an annual assembly, and not less than 15 nor more than 30 days before the date of the general meeting, in case of an extraordinary assembly.

Furthermore, it is prescribed that the notice of an annual assembly shall state the date, time and place of the meeting, the company's proposed agenda, the list of issues and proposals of decisions to be voted on at the meeting (particularly including the candidates for election to the management board and proposal for distribution of dividends), and shall include a statement that the company will provide, to each shareholder who requests them, at the company's registered office during regular business hours: the copy of the company's financial statements, together with related auditors reports, a report of the supervisory board if the company has one, a report of the management board on the company's operations, the text of any proposed amendments to the Incorporation Instruments, a description of any contracts or transactions proposed for approval, and any other matters which are required to



be in the notice in line with the Law, company's Incorporation Instruments, the law which regulates securities markets or any other law.

The notice on extraordinary general meeting shall contain the time and place of the meeting, description of reasons for convocation and the agenda proposed by the persons convoking the meeting or demanding the convocation of the meeting.

- **Abolition of share blocking and introduction of a record date in all Member States which may not be more than 30 days before the GM;**

*- trade in shares during the general meeting convocation period*

The Law does not provide for limitation in transfer of shares during the general meeting convocation period, but it does provide that, if a shareholder in title to vote at the general meeting transferred shares to a new shareholder prior to the date of general meeting, and after the date of record, the shareholder in question would keep the right to participate at the general meeting and the right to vote.

*- Record date*

Provision of the Article 286 of the Law on Business Companies provides that the company's Incorporation Instruments may specify or provide the method for setting the record date for determining the list of shareholders who are entitled to a written notice of a general meeting, to demand convening or an extraordinary assembly, to vote, to submit proposals in accordance with this Law and to take any other action (herein called: the record date)/ If the Incorporation Instruments of a joint stock company do not specify or provide the method of setting the record date, the management board may do so. If the management board fails to do so: 1) In case of a regular general meeting, the record date shall be the date on which the notice of the meeting is first given; 2) in case of an extraordinary general meeting, the record date shall be the date on which the first demand was signed and dated by a shareholder.

A record date may not, in any event, be more than 60 or less than 10 days before the general meeting in question. The list of shareholders for a general meeting shall be compiled as of the record date from the shareholder list in the Central Registry of Securities and shall be available at the company's registered office to all shareholders entitled to vote at the general meeting, for inspection and copying and the possibility to object to any irregularities in the list. Such a list of shareholders shall contain the name and address of each shareholder, i.e. the business name and address of each shareholder, and the number of voting shares held by each shareholder.

- **Abolition of obstacles on electronic participation to the GM, including electronic voting;**

The Law on Business Companies does not specify the possibility of electronic participation to the general meeting, it only prescribes the possibility of electronic convening of shareholders to the general meeting.

In addition, the Law prescribes that general meetings of a joint stock company with no more than ten shareholders may be held through conference link or by using another form of audio or visual communication equipment, if all participants can listen and talk to each other, so the persons participating in such an assembly are considered to be personally present at an assembly.

- **Right to ask questions and obligation on the part of the company to answer questions;**

The Law provides that every shareholder, personally or through his authorized representative, shall have the right to attend the shareholders assembly, vote if his shares carry the right to vote, make proposals, receive answers regarding matters included on the agenda, and the right to ask questions concerning the agenda in accordance with this Law.

The management board of the shareholders company shall be obliged to provide an up-to-date and detailed report to the shareholders about the situation and operations of the company at each annual general meeting, including in particular the report on financial statements of the company. A shareholder shall have the right to ask the competent court to order the fulfilment of his right to such information, not later than 15 days after the date of the general meeting at which the information in question was denied.

- **Abolition of existing constraints on the eligibility of people to act as proxy holder and of excessive formal requirements for the appointment of the proxy holder**

Article 287 of the Law on Business Companies provides that a shareholder may vote his shares in person or by an authorised representative, in accordance with the Law and company's Statute. A shareholder may give his power of attorney in writing to the person, by stating his full name and the information on the number, type and class of shares for which the proxy is given. The power of attorney may be given in electronic format, provided that its authenticity can be assured, and if so specified by the Incorporation Instruments or company's Statute. The power of attorney is given to the proxy and delivered to the company's registered office. A power of attorney shall be valid for only one general meeting, which for this purpose includes any reconvening of the general meeting that was adjourned for reasons of lack of quorum, time or any other reason. If the power of attorney contains instructions or orders on how to vote on a particular matter, the proxy must vote in accordance to those instructions, and if the power of attorney does not contain instructions on how to vote, the proxy shall exercise the right to vote in good faith and with the purpose of serving the shareholder's best interest.

A director or the management board members, executive board members and controlling shareholders may not act as a proxy for shareholders employed in the company or related persons within the meaning of this Law.

### **Council Regulation (EC) 2157/2001 on the Statute for a European company (SE) and Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees**

#### **43. Have you already taken any measures with the view of implementing the SE Regulation and Directive in your country?**

Rules on the European Company Statute (Council Regulation 2157/2001/EC on the Statute for European company), regulating the establishment of the European company and the rules on the European Economic Interest Grouping, (Council Regulation 2137/85/EEC on the European Economic Interest Grouping-EEIG), relating to the setting up of economic interest grouping, may be implemented in the later phase of Serbia's Integration in the EU, that is once Serbia is granted the Member State status. General rules on branches of foreign legal persons able to carry out activities in the Republic of Serbia, shall apply to registered branches of cross-border companies.

#### **44. Please indicate which options open in the SE Regulation you are planning to apply to an SE with its registered office in your territory.**

See answer to question 43.

**Council Regulation (EEC) 2137/85 on the European Economic Interest Grouping (EEIG)**

**45. Have you already taken any measures with the view of implementing the EEIG Regulation in your country?**

See answer to question 43.

**46. Please indicate which options open in the EEIG Regulation you are planning to apply to an EEIG registered at the registries in your country.**

See answer to question 43.

**Commission Recommendation C(2009) 3177 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies**

**Commission Recommendation C(2009) 3159 on remuneration policies in the financial sector**

**Commission Recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board**

**Commission Recommendation (2004/913/EC) fostering an appropriate regime for the remuneration of directors of listed companies**

**47. Have you taken or are you planning to take any steps to promote application of the four above-mentioned Commission Recommendations?**

Recommendations 2004/913/EC, 2005/162 EC and C(2009) 3177 (there are three recommendations given that the fourth relates to financial organizations) were taken into account when drafting the Proposal for the new Company Law regulating the issues as regards:

- Jurisdiction of the parliament when deciding on remunerations for members of executive bodies, as well as on other issues relating to remunerations of the members of the bodies of joint stock companies,
- Joint stock companies obligations to include a comprehensive listing of remunerations paid to members of company bodies in their financial reports,
- Executive bodies composition, competencies and working practices of executive bodies, including provisions on non-executive and independent members,
- Composition, competencies and working practices of executive bodies commissions in public joint stock companies – remuneration commission, appointment commission and audit commission;
- Reporting on corporate governance practices.

Above regulations lay down legal framework and minimum application of the recommendations for all joint stock companies, which, compared to the recommendations themselves is a wider scope of application (implementation of recommendation is linked to joint stock companies which are present on the regulated market of securities, as recognized by the Directive 2004/39/EC-which would under these circumstances include only few companies admitted to stock exchange market).

It should also be considered that previous promotion of implementation of the EU recommendations was also largely implemented primarily through the content of the existing codes on corporate governance of the *Serbian Chamber of Commerce (SCC) and Belgrade Stock Exchange*, and admission requirements for Stock Exchange Market Listing, hence the obligations and the content of the reporting by the companies whose shares were traded therein. In this regard, increase of the legal minimum of obligatory implementation of certain good practices in corporative governance is a solid ground for further, more consistent and comprehensive application of the EU recommendations.

In view of the Fourth Recommendation EU C(2009) 3159 which elaborates issues on remuneration of directors in financial sector and relates to investment companies, banks, and insurance companies, this recommendation was not particularly elaborated under the Law on Companies, as it refers to legal persons being subject to special regime of supervision by authorised institutions – National Bank of Serbia, i.e. Securities Commission.

To that effect, the National Bank of Serbia having actively participated in the preparation of the amendments to the Law on Banks (“Official Gazette of RS” No. 107/2005 as of 02/12/2005 and 91/2010 as of 03/12/2010), incorporated one portion of the above recommendations, particularly through amendments to Article 73 of the law.

According to the amendments “*the policy on the salaries and other income of bank employees*” shall be adopted by the Board of directors, corresponding to Section II, paragraph 6.2 of the Recommendations putting forward that “Manager’s” salary, as well as the policy on salaries for all employees should be defined and adopted by this supervisory body itself.

Moreover, National Bank of Serbia shall take further steps as to promote application of the recommendations, given that adoption of the new by-law legislation aligned with Basel II standards, especially the decision on risk management shall prescribe:

- bank’s obligation to implement appropriate salary and other income policies for members of the Board of directors and Executive board, as well as for the key and other employees;
- that policy on salaries must be founded in the implementation of bank business policy and strategy, as well as the strategy and policy for risk management and that it must encourage reasonable and cautious risk takeover;
- that awarding, or bonus system for bank employees should be rooted in business goals accomplishment and symmetric, i.e. the total bonus and awards pool should be set up complying with the level of accomplished business goals, whereas significant reduction or elimination of the pool shall be possible in case business goals were not accomplished as planned.

**48. Do you have, or are you planning to introduce, a Corporate Governance code? What is it based on (e.g. OECD standards)? How binding is the compliance with the code (e.g. voluntary; comply or explain) and how is the compliance monitored?**

In Serbia, there are two codes for corporate governance for possible application by the companies on organized market – Corporative Governance Code of the SCC, adopted in 2006, and Corporative Governance Code of the Belgrade Stock Exchange, adopted in 2008. In addition, companies may also opt to adopt their own codes. Application of Belgrade Stock Exchange codes is voluntary, while the code of the SCC imposes its obligatory application to all Chamber members, whilst leaving the companies free to accept to apply other codes

instead, or their own codes or rules and corporate governance principles. The codes are rooted in OECD principles for corporate governance, while their recommendations incorporate European best practice experiences in corporate governance. Both codes foresee reporting on application of the codes while respecting the principle “*apply or explain*”. Obligation to accept application or adoption of the corporate governance code is foreseen as a requirement for the admittance to the stock exchange market.

Corporate Governance Code shall apply to all listed joint stock companies, members of the Serbian Chamber of Commerce, whilst membership in the Chamber shall indicate acceptance of the code with no need for additional statement thereof. Listed joint stock companies are open joint stock companies whose shares are traded on the stock exchange, regardless of the market type inside the stock exchange. Given that many rules contained in the code also apply to unlisted joint stock companies and limited liability companies, the Code explicitly foresees to recommend its acceptance by other corporations, to the extent applicable.

The Code is mandatory act of the Serbian Chamber of Commerce, to an extent also containing good business customs and business ethic rules. Code violation shall at the same time mean violation of good business customs, business ethics and of the mandatory act of the Serbian Chamber of Commerce. In view of the three mentioned reasons, Law on the Chambers of Commerce, statutes of the chambers of commerce and rulebooks on courts of honour at the chambers of commerce shall prescribe the competencies of their courts of honour.

Court of Honour at the Serbian Chamber of Commerce monitors implementation of the Code and whether good business customs and business ethics in corporate governance are respected.

In case of violation of the rules of the Code, the persons authorised by the Rulebook on the Court of Honour of the Serbian Chamber of Commerce ("Official Gazette of RS" No 39/2006), may initiate the procedure before the Court of Honour. Following the procedure, the Court of Honour may impose on the accused companies (members of the SCC and foreign entities operating in the territory of the Republic of Serbia) social discipline measures as follows: 1) warning; 2) public warning announced before the Chamber's Management Committee and 3) public warning announced in one or more printed and electronic media.

In addition to these measures, The Court of Honour may also impose protective measures on the accused joint stock company: 1) prohibition to participate in the work of the Chamber's bodies; 2) prohibition to participate in fairs and exhibitions and 3) erasing the timetable, or departures of the transporters providing public transportation services.

Besides the Court of Honour, as a special body independent and autonomous in its decision making, ensuring the respect of codes (Corporate Governance Code and Business Ethics Code) and liability for their application shall be under jurisdiction of the Supervisory and Management Committee of the CCS. In addition, Management Committee of the CCS shall be deciding on objections to the first instance decisions taken by the Court of Honour.

Discrepancies exist in the practice when applying the corporate governance codes, especially as regards drafting and adoption of corporate governance reports. To that effect provisions of the proposal for the new Company Law introducing for all joint stock companies legal obligation to draft reports on applied practices in corporate governance, shall significantly contribute to overcome them, whilst encouraging further development of good practices in corporate governance, beyond the prescribed minimum. Surely, this shall be supported by other legal provisions, which in different segments introduce certain good practices in corporate governance as legal obligations for joint stock companies.

## **B. Administrative Capacity**

### **49. Which ministry (or ministries) is responsible for Company law in Serbia? What is the size of the department(s) dealing with this issue?**

Under Article 9, paragraph 1, of the Law on the Ministries ("Official Gazette of RS" no. 65/08, 36/09-state law and 73/10-state law), the Ministry of Economy and Regional Development shall perform duties of state administration relating to the position of the companies and other business forms.

Under the *Rulebook on internal organization and job classification in the Ministry of Economy and Regional Development*, approved by Government Conclusion 05 Number: 110-8817/2009-01 as of 28<sup>th</sup> January 2010, two departments in the Ministry shall be charged with this field, as follows:

*I – Within the Department of Privatization and Restructuring Management*, Group for improving the legislation on corporate governance and European integration in the field of economy, with 3 employees and

*II - Within the Department of Business Registers Administration and Supervision*, Section of Administration and Supervision in the field of registration of business entities with 5 employees, of who 2 employees in the second instance administrative proceedings and administrative supervision as regards companies, and 2 employees in the second instance administrative proceedings and administrative supervision as regards entrepreneurs, headed by the Chief of Section.

### **50. What types of companies are recognised by your law? What is the total number of enterprises in each category?**

Article 2, of the Law on Companies defines types of companies, as follows: partnership, limited partnership, limited liability company and joint stock company (open and closed). In addition to the above forms of companies, special law may also define other legal forms of companies, i.e. undertakings.

Other forms of business entities, regulated by the positive legislation are: *cooperatives* (Law on Cooperatives ("Official Journal of FRY" no. 41/96, 12/98 and "Official Gazette of RS, no. 34/06), *public enterprises* (Law on Public Companies and Public Interest Activities "Official Gazette of RS" no. 25/2000,...., 123/2007), as well as *state-owned enterprises* under privatisation procedures.

Companies classified by categories:

<b>Forms of active business entities</b>	
<b>Number of business entities</b>	<b>Forms of business entities</b>
341	State-owned enterprise
99436	Limited liability company
701	Public enterprise
469	Limited partnership
2990	Partnership

Forms of active business entities	
Number of business entities	Forms of business entities
1962	Open joint stock company
2512	Cooperative
344	Closed joint stock company

Register of Business Entities shall also register branches of foreign legal persons, as well as representations of all foreign legal persons governed by the Decree on registration of representations of foreign legal persons in the Register of Business Entities maintained by the Agency for Business Registers (“Official Gazette of RS”, no.114/04 of 23/12/05). In the course of the transfer of business entities from the Court Register to the Register of Business Entities certain business entities were subscribed by the latter, which were regulated by the previously valid Law on Enterprises, and not by the Law on Companies, and are expected to be aligned with the existing forms of business entities by adoption of the new Company Law, which is expected in 2011.

Forms of other active business entities	
Number of business entities	Form of business entity
1391	Representation of foreign legal person
192	Branch of foreign legal person
112	Business association
217	Other

**51. What is the average time-scale between application for registration and effective registration of a company? What is the number of companies registered at this moment and in the last two years? What is the current staff of the register? Are there any plans to increase staff? When is this expected?**

Registration procedure for companies is regulated by the Law on the Registration of Business Entities and is uniform for all companies. In most cases the following documents shall be submitted for registration of business entity: registration application, act of incorporation, proof of founder’s identity, proof of paid financial contribution, decision on selected representatives, stamped signatures of representatives and proof of paid registration fee.

In most cases mandatory procedures or steps to be taken by companies for the purpose of incorporation and registration of the company shall be:

- I. adoption of the decision on incorporation or contract of incorporation in the founding general meeting;
- II. certification of founder signatures in articles of association before the competent authority (court or municipality); certification of representatives signatures;
- III. opening of an interim bank account and payment of financial stake on that account (for companies with prescribed mandatory financial stake);
- IV. submission of registration application to the Agency for Business Registers;

V. provision of a stamp;

VI. opening of an account with the bank of the newly incorporated company.

Time limit for the Registrar to decide on registration applications is prescribed by the Law on the Registration of Business Entities and it is 5 days, which was in practice shortened to 2 days for registration of the incorporation and 2 to 3 days for registration applications relating to the amendments of the data in the Register.

Incorporation registration procedure was successfully reformed introducing the “one stop shop” service as of May 2009, thus allowing business entities, instead of several registration applications which used to be the case, to submit one (to the Agency for Business Registers, Tax Administration, Republic Fund for Pension and Disability Insurance, and to the Health Insurance Fund) thus completing registration of the business entity. Decision adopted by the Business Register on registration now includes the unique registration number of the business entity issued by the Republic Statistical Office, tax identification number (TIN) issued by the Tax Administration and insurance registration by the health, and pension and disability insurance funds. With the above mentioned the whole procedure has been reduced to one procedure and to time limit of 2 days. Nonetheless, registration shall take effect to third persons as of the next day after announcing registration of the amendment.

According to the data published on the website of the Agency for Business Registers, [www.apr.gov.rs](http://www.apr.gov.rs) and the counter showing presently active business entities, on 03/12/2010 there were 110.635 business entities and 224.306 entrepreneurs registered in the Register of Business Entities. Besides the mentioned data on active business entities, those business entities under bankruptcy, liquidation, and registration procedure are also included in the Register, and are still present as such:

Number of business entities	
Number of business entities	Status of business entity
1385	under bankruptcy
4546	under liquidation
1746	under registration procedure

Data for two preceding years are as follows:

Number of business entities on 31/12/2008	
Number of business entities	Status of business entities
104.662	Active business entities
2891	Business entities under liquidation
500	Business entities under bankruptcy
2377	Business entities under registration procedure
216.780	Active entrepreneurs



### Number of business entities on 31/12/2009

Number of business entities	Status of business entities
110.281	Active business entities
3754	Business entities under liquidation
693	Business entities under bankruptcy
2277	Business entities under registration procedure
222.676	Active entrepreneurs

It should be noted that in 2008 number of companies newly registered in the Register of the Agency for Business Registers was 11.248. In 2009 number of newly registered companies was 10.013, while according to the data published on the website of the Agency for Business Registers, in the period from 01/01/2010 inclusive of 06/12/2010 number of newly registered companies was 8.962.

Presently, number of employed and persons engaged by the Agency in Belgrade and its 13 local offices is 372, instead of about 1500 employees who used to carry out those duties in trade courts, local self-government, and organizational units of the Ministry of Interior. In 2011 Agency for Business Registers plans to expand its field of work introducing new registers, such as the register of endowments and foundations, register of sport organizations, register of court prohibitions, while extended number of employees shall be lawfully reconsidered.

#### **52. Please identify the administrative or judicial authority responsible for the incorporation of companies.**

Provision of Article 8, of the Law on Companies stipulates that a company shall become a legal person once the data on that company are entered in the Register maintained as prescribed by the law governing the registration of business entities.

The Law on the Registration of Business Entities prescribes activities of the Register for business entities after receiving the registration application of incorporation. In the course of incorporation, founders of the company shall draft the act of incorporation adhering to Article 7, of the Law on Companies (see answer to question number 5), and having enclosed other documents necessitated by the Law on the Registration of Business Entities, shall submit registration application on incorporation to the Register for Business Entities. Following registration application, the Register shall decide thereof within 5 days (in practice the term is 2 days), investigating the regularity of the submission of the registration application as under paragraph 22, of the law.

Article 22 of the Law on the Registration of Business Entities stipulates that:

Having received registration application, the Register shall examine if:

- 1) it is competent to take steps as regards the registration application;
- 2) the applicant of the registration application is the named authorised person;
- 3) registration application includes all the data as adhering to this law;

- 4) all lawfully prescribed documents are submitted with registration application;
- 5) the proof of paid registration fee was enclosed with registration application;
- 6) the data included in registration application correspond to the data included in the documents enclosed with application;
- 7) another business entity was registered under the same name, or if that name was reserved adhering to this law, in case where registration application relates to registration of incorporation or change of the name;
- 8) the consent lawfully required for the requested registration was submitted with registration application;

The Registrar shall not examine the accuracy of the data and the authenticity of the documents enclosed with registration application.

**53. Is there a mechanism in place that allows coordination and cooperation with registers from Member States (e.g. in the context of a cross-border merger of companies)? Please explain.**

Register of Business Entities is the sole, central, public, electronic database on business entities, established for the territory of the Republic of Serbia. Positive legislative of the Republic of Serbia has not yet prescribed the possibility of cross-border connecting among business entities.

## **II. CORPORATE ACCOUNTING AND AUDIT**

### **A. Accounting**

**54. What legal instruments do you have in the accounting field? Are there any official instructions or recommendations by a standard-setting body?**

In the Republic of Serbia, corporate accounting is regulated by the Law on Accounting and Auditing ("Official Gazette of RS" no. 46/06 of 02/06/06 and 111/09 of 29/12/2009) and by-law acts adopted for its enforcement.

This law regulates keeping business books, preparation, submission, disclosure and processing of annual financial statements, as well as issues relating to financial statements audit, issuance and denial of the work permit to audit firms, Register of Audit Firms, monitoring audit firms performance, and performance of the Chamber of Authorised Auditors in the field of conferred duties.

The law recognizes International Federation of Accountants as the authority adopting accounting standards and their interpretations. International Accounting Standards have become integral part of the national legislation and their application is prescribed by the law.

Complete legislative activity shall be under the Ministry of Finance.

The following by-law regulations have been adopted in the field of corporate accounting:

- Regulation on remunerations for financial statements registration, disclosure of information from the Register of Financial Statements and Data on Solvency of legal persons and entrepreneurs, and remunerations for other services rendered by the Agency for Business Registers while keeping the register (Official Gazette of RS" number 2/10),

- Rulebook on further requirements under the procedure for admission, control, registration, processing and announcement of financial statements, the way of maintenance and the content of the Register of Financial Statements and Data on Solvency of legal persons and entrepreneurs, and disclosure of information from the reports ('Official Gazette of RS', number 2/10),
- Rulebook on further requirements and the way of collection of the data submitted to the Agency for Business Registers by other competent authorities and disclosure of information and opinion on solvency of legal persons and entrepreneurs, as well as other services provided by the Agency for Business Registers keeping the Register of Financial Statements and Data on Solvency of legal persons and entrepreneurs (Official Gazette of RS" number 2/10),
- Rulebook on the layout of chart of accounts and the content of accounts included in the layout of chart of accounts for companies, cooperatives, other legal persons and entrepreneurs ("Official Gazette of RS" no. 114/06, 119/08, 9/09 и 4/10),
- Rulebook on the content and the type of financial statement forms for companies, cooperatives and other legal persons and entrepreneurs ("Official Gazette of RS" no. 114/06, 5/07, 119/08 and 2/10),
- Rulebook on the layout of chart of accounts and the content of accounts included in the layout of chart of accounts for stock exchanges and broker-dealer companies ("Official Gazette of RS" no. 117/06, 5/07 and 119/08),
- Rulebook on the content and type of financial statement forms for stock exchanges and broker-dealer companies ("Official Gazette of RS" no. 117/06, 119/08 and 13/09),
- Rulebook on the layout of chart of accounts and the content of accounts included in the layout of chart of accounts for investment funds management ("Official Gazette of RS" number 08/09),
- Rulebook on the content and type of financial statement forms for investment fund management companies ("Official Gazette of RS" number 08/09),
- Rulebook on the layout of chart of accounts and the content of accounts included in the layout of chart of accounts for investment funds ("Official Gazette of RS" number 08/09),
- Rulebook on the content and form of financial statements for investment funds ("Official Gazette of RS" number 08/09),
- Rulebook on the layout of chart of accounts and the content of accounts included in the layout of chart of accounts for National Bank of Serbia ("Official Gazette of RS" no. 117/06, 57/08 and 3/09),
- Rulebook on the content and type of financial statement forms for National Bank of Serbia ("Official Gazette of RS" no. 7/09 and 5/10),
- Rulebook on the layout of chart of accounts and the content of accounts included in the layout of chart of accounts for banks ("Official Gazette of RS" no. 98/07, 57/08 and 3/09),
- Rulebook on the forms and content under positions included in financial statement forms for banks ("Official Gazette of RS" no. 74/08, 3/09, 12/09 and 5/10),

- Rulebook on the forms and content under positions included in consolidated financial statement forms for banks ("Official Gazette of RS" no. 74/08, 3/09, 12/09, 26/09 and 5/10),
- Rulebook on the layout of chart of accounts and the content of accounts included in the layout of chart of accounts for insurance companies ("Official Gazette of RS" no. 15/07, 3/09 and 35/10),
- Rulebook on the content and type of financial statement forms for insurance companies ("Official Gazette of RS" no. 3/09, 7/09 and 5/10),
- Rulebook on the layout of chart of accounts and the content of accounts included in the layout of chart of accounts for voluntary pension fund management ("Official Gazette of RS" no. 15/07 and 3/09),
- Rulebook on the content and type of financial statement forms for voluntary pension fund management ("Official Gazette of RS" no. 15/07, 3/09 and 6/10),
- Rulebook on the layout of chart of accounts and the content of accounts included in the layout of chart of accounts for voluntary pension funds ("Official Gazette of RS" number 15/07),
- Rulebook on the content and type of financial statement forms for voluntary pension funds ("Official Gazette of RS" number 15/07),
- Rulebook on the manner and time limits for performance of inventory and alignment of book-keeping statement with actual state ("Official Gazette of RS" number 106/06),
- Rulebook on the manner of the recognition and assessment of the property, liabilities, income and expenditures of small legal persons and entrepreneurs ("Official Gazette of RS" no. 106/06 and 111/06),
- Rulebook on the Register of Audit Firms ("Official Gazette of RS" no 25/10),
- Rulebook on the manner of reporting and the content of the audit firm reports ("Official Gazette of RS" no 20/10),
- Rulebook on the form and system of issuance of identification documents for persons authorised for inspection of the enforcement of the Law on Accounting and Auditing ("Official Gazette of RS" number 52/07),
- Rulebook on the content of the report by external auditor ("Official Gazette of RS" number 08/09),
- Decision on the establishment of translations of core texts of International Accounting Standards, i.e. International Financial Reporting Standards ("Official Gazette of RS" number 77/10),

National Commission for Accounting is advisory authority formed by the Government of the Republic of Serbia according to the Law on Accounting and Audit. National Commission for Accounting was formed with a goal to: monitor the process of application of the EU directives in the field of accounting and audit also proposing related solutions to national legislative; to monitor the process of implementation of International Accounting Standards (IAS, i.e. International Financial Reporting Standards IFRS) also proposing to the Ministry of Finance related solutions to potential problems likely to emerge in the procedure of application of the standards; to monitor changes in international accounting and auditing legislative (IAS/IFRS, i.e. ISA) also reporting to the Ministry of Finance thereof; to propose

the strategy, guidelines and action plan for improved quality of financial reporting and initiation of adoption of new, or amendment of the existing regulations in the field of accounting; to cooperate with the Ministry of Finance, Chamber of Authorised Auditors, faculties with departments for accounting and audit, as well as with domestic and foreign professional organizations.

Chamber of Authorised Auditors is a professional body whose members are audit firms and authorized auditors. Chamber adopted related by-law regulations within its competencies, adhering to the Law on Accounting and Audit, which were approved by the Ministry of Finance. By-law regulations are published on the web page of the Chamber of Authorised Auditors.

**55. Which enterprises fall within the scope of the general regulations? Are there special regulations for limited liability companies? Are there exceptions for small and medium sized companies?**

Provisions of the Law on Accounting and Auditing apply to all companies, cooperatives, banks and other financial organizations, insurance companies, financial leasing, voluntary pension funds, voluntary pension fund management companies, investment funds and investment fund management companies, stock exchanges and broker – dealer companies and other legal entities (hereinafter as: legal entities), entrepreneurs with double-entry bookkeeping, legal persons and other forms of associations founded abroad by legal person, provided regulations of such states do not foresee obligatory business bookkeeping and financial reporting, as well to branches and other organizational parts of foreign legal persons with registered office abroad, performing their business operations in the Republic of Serbia, unless regulated otherwise by special regulations.

Provisions of the law do not relate to budgets and budget funds beneficiaries, churches and religious communities, as well as to organizations of mandatory social insurance, unless otherwise regulated by special regulations.

Limited liability companies are obliged to apply the Law on Accounting and Audit.

Obligatory application of International Accounting Standards and statutory revisions depends on the size of the enterprise, not its form.

Likewise, there are no special rules for medium sized enterprises and exemptions from law application (it fully applies to all and to big legal enterprises), while for small enterprises there are some derogations, or special treatments.

Special treatment for small entities in law application refers to the following:

- small enterprises and entrepreneurs are given option to decide if they shall keep books of account and prepare financial statements adhering to IAS and IFRS or adhering to the by-law act adopted for enterprises not obliged to apply the standards (Rulebook on the system for recognition and assessment of the property, liabilities, income and expenditures of small enterprises and entrepreneurs);
- small enterprises not obliged to apply IAS and IFRS i.e. those not issuing securities through a public bid, or whose securities are not traded on organized securities market, as well as entrepreneurs exempted from the obligation to prepare and submit a set of financial statements prescribed by the law, whereas their financial statements adhering to the law include: balance sheet, income statement and statistical annex;

- small enterprises are exempted from obligatory financial statements annual audit, except that obligatory audit shall exist for small enterprises issuing securities through public bid or whose securities are traded on organized securities market.

**56. Are consolidated accounts (the accounts of groups of companies) as well as the accounts of individual companies regulated? If so, are there exceptions for any groups of enterprises (e.g. size thresholds, legal forms) from the requirement to draw up consolidated accounts and do all consolidated accounts have to be prepared according to IFRS? Which IFRS standards are applied? Which accounting standards are applied for entities that do not apply IFRS?**

Law on Accounting and Auditing prescribes obligatory preparation of separate and consolidated financial statements.

Legal entities and entrepreneurs shall prepare and present financial reports for current financial year with statement of accounts as on 31<sup>st</sup> December of the current year (regular financial statements).

Legal persons exercising control (the controlling, i.e. parent legal person) over one or more legal persons (subordinate, i.e. dependant person), are obliged to prepare, present, submit and disclose consolidated financial statements, pursuant to the law and IAS/IFRS requirements. Consolidated financial statements are those of one economic entity, consisting of parent company and all dependant legal persons.

Articles of this law stipulate an exemption from the obligation for preparation, submission and disclosure of consolidated financial statements in situations where the value of assets and income of the parent and dependant legal persons, exclusive of internal placements and claims, i.e. income of the parent and dependant legal persons, all constitute a small enterprise.

All IAS and IFRS shall apply to preparation of consolidated financial statements whereas four accounting standards shall relate solely to financial statements of enterprise group: IAS 27-Consolidated and Separate Financial Statements, IAS 28-Investments in Associates, IAS 31-Interests in Joint Ventures and IFRS 3-Business Combinations.

All legal persons preparing consolidated financial statements are obliged to apply IFRS, in accordance with the law.

According to the law, audit of consolidated financial statements is mandatory for all parent companies preparing consolidated financial statements.

**57. What sanctions exist for not complying with financial reporting requirements?**

The following laws prescribe sanctions for not complying with financial reporting requirements:

- For economic offence as regards preparing, presenting, submitting and auditing financial statements, Law on Accounting and Auditing prescribes penalty payment from RSD 100,000 to 3,000,000 (from about EUR 1,000 to EUR 30,000) for legal persons, and for responsible persons in legal person from RSD 5,000 to RSD 150,000 (from about EUR 50 to EUR 1,500).
- For economic offence by entrepreneurs prescribed penalty payments are in the range from RSD 10,000 to RSD 100,000 (from about EUR 100 to EUR 1,000).

- Law on the Market of Securities and Other Financial Instruments (Official Gazette of RS", no. 47/06) for economic offences as regards submitting financial statements, and auditor reports prepared according to the law governing the accounting and auditing, prescribes penalty payments in the range from RSD 100,000 to 3,000,000 (from about EUR 1,000 to 30,000) for broker-dealer companies, i.e. authorized bank, and for responsible person in broker-dealer companies, i.e. authorized bank from RSD 50,000 to 200,000 (from about EUR 500 to 2,000).
- Economic offence may be additionally penalized imposing a protective measure prohibiting certain duties to the responsible person, lasting from one to five years and protective measure of public announcement of the judgement.
- Law on Investment Funds ("Official Gazette of RS", no. 46/06 and 51/09) for economic offence as regards bookkeeping and preparing, financial statements according to this law and the law governing the accounting and auditing, prescribed penalty payments are in the range from RSD 500,000 to 3,000,000 (from about EUR 5,000 to EUR 30,000) for management companies, and for responsible person in management company from RSD 50,000 to RSD 200,000 (from about EUR 500 to EUR 2,000).
- For economic offence as regards preparing, presenting, submitting and auditing annual financial statements and consolidated financial statements, prescribed penalty payments under the law on Banks are in the range from RSD 300,000 to 3,000,000 (from approximately EUR 3,000 to EUR 30,000) for banks, and for responsible person in the bank from RSD 50,000 to RSD 200,000 (from about EUR 500 to EUR 2,000).
- Economic offence may be additionally penalized by imposed protective measure prohibiting certain duties to responsible person, lasting from one to five years and protective measure of public announcement of the judgement.
- For economic offence as regards financial statements external auditing according to provisions of this law and for not presenting consolidated financial statements by the major parent company in a bank group, prescribed penalty payments are in the range from RSD 100,000 to 1,000,000 (from about EUR 1,000 to EUR 10,000) for the other legal person as in the sense of this law, and for responsible person in that person from RSD 50,000 to RSD 200,000 (from about EUR 500 to EUR 2,000).
- Law on Insurance ("Official Gazette of RS", no. 55/04, 70/04, 61/05, 85/05, 101/07, 63/09 and 107/09) prescribes that authorised actuary and authorized auditor shall, if contrary to the law they prepare a fraudulent opinion, i.e. report, be punished for criminal offence by imprisonment from one to three years.
- Pursuant to this law, offences as regards submitting annual financial statements and auditor reports prepared according to the law governing the accounting and auditing, and this law, prescribed penalty payments are in the range from RSD 100,000 to 1,000,000 (from about EUR 1,000 to 10,000) for legal persons (obliged to apply this law), and for responsible persons in legal person from RSD 10,000 to RSD 50,000 (from approximately EUR 100 to EUR 500).
- Criminal Code ("Official Gazette of RS", no. 85/05, 88/05, 107/05, 72/09 и 111/09) prescribes that according to this code any person preparing fraudulent statements intended for property gain by the legal person which is his employer, other legal person or business entity with the status of legal person or entrepreneur, shall be punished by imprisonment from three to five years. If the property so gained exceeds

five million RSD, the doer shall be punished by imprisonment from one to eight years, and in case the property so gained exceeds fifteen million RSD, the doer shall be punished by imprisonment from two to twelve years.

**58. Are any reforms of the legal instruments in the accounting area planned? If so, what is their content and when are they programmed for adoption?**

Adoption of a new Law on Accounting and Auditing (or two separate laws) is contemplated for further alignment with the EU directives and legislation, as well as for adoption of the Strategy and Action Plan for improved corporate financial reporting in the Republic of Serbia.

Strategy and Action Plan for enhancing corporate financial reporting in the Republic of Serbia shall be a set of measures for alignment with the EU legal framework and acquis, strengthening of institutions and development of auditor profession, all aimed at reaching quality financial reporting. Action Plan shall define the activities and time limits for realisation of the goals laid down by the Strategy.

The new Law should allow further alignment with the Fourth, Seventh and Eighth EU Directive.

In part of the law related to accounting, particular attention shall be paid to normative grounds for bookkeeping for small and medium-sized enterprises (it is under consideration to apply the recently approved international standards for financial reporting for small and medium-sized enterprises). Further alignment with the Fourth EU Directive is contemplated regarding the parameters for classification of legal persons (micro, small, medium and big).

In part of statutory audit, particular attention shall be paid to the formation of public oversight system and related authority for implementation of public oversight of the auditing, according to the Eighth EU Directive, as well as to further improvement and development of quality control system of performed audits.

Realisation of the above legislative activities is contemplated in 2011.

**59. Are the 4th (78/660) and/or the 7th Directives (83/349) taken into account in these reforms?**

Yes, all relevant EU directives (IV, VII, VIII) relating to accounting and audit are taken into account.

Possible financial reporting of legal persons through direct application of approved IAS did not dismiss the obligation legal persons have as to take steps in compliance with the national regulations aligned with the Fourth and Seventh Directive, as regards the issues beyond IAS (audit, announcement of separate and consolidated financial statements, additional announcements on affiliated parties, on the system of group management, preparation of business report, etc.).

**60. Are the Council Directives 86/635/EEC (bank accounts) and 91/674/EEC (insurance accounts) taken into account in these reforms?**

Council Directives 88/635 and 91/674 referred to above have not been fully implemented in the reform of the sub-legal instruments governing bank and insurance accounts. The reason



lies in the fact that the provisions of the Law on Accounting and Auditing currently in effect provide the application of IAS/IFRS in the financial reporting. In line with the Law referred to above, the Governor of the National Bank of Serbia prescribed the Rules on the Chart of Account and Content of Accounts within the Chart for Banks and other Financial Organisations (*Official Gazette of RS* No 98/2007, 57/2008 and 3/2009), the Rules on the Chart of Account and Content of Accounts within the Chart for the National Bank of Serbia (*Official Gazette of RS*, No 117/2007, 57/2008 и 3/2009), the Rules on the Chart of Account and Content of Accounts within the Chart for Insurance Companies (*Official Gazette of RS* No 15/2007, 3/2009 and 35/2010), the Rules on the Chart of Account and Content of Accounts within the Chart for Voluntary Pension Funds (*Official Gazette of RS* No 15/2007), the Rules on the Chart of Account and Content of Accounts within the Chart for Voluntary Pension Funds Management Companies (*Official Gazette of RS*, No 15/2007 and 3/2009), and the Rules on the Chart of Account and Content of Accounts within the Chart for Leasing Companies (*Official Gazette of RS* No 46/2010), prepared in line with the IAS/IFRS, except the last amendments to IAS/IFRS, which will be included in the regulations referred to above until the end of February 2011, and shall apply in 2011. The Governor also adopted the Rules on the Forms and Content of Items in Financial Statement Forms for the financial organisations referred to above, which were also prepared in accordance with IAS/IFRS, except the last amendments to IAS/IFRS, which will be included in the regulations in question until the end of February 2011, and shall apply as of 2001.

**61. Is the IAS (International Accounting Standards) Regulation 1606/2002 taken into account in these reforms?**

Yes. Article 5 Regulation 1606/2002 on application of International Accounting Standards foresees option whereby state members may allow application of the approved IAS or else prescribe the same for financial statements of certain enterprises, both those appearing and the ones not appearing on financial markets. This option was accepted by the Law on Accounting and Auditing whereby application of IAS was prescribed for financial statements of certain enterprises falling in the category of big and medium-sized.

According to the law, International Accounting Standards (IAS/IFRS) issued by the Board for International Accounting Standards are mandatory for application by the following legal persons:

- medium-sized and big enterprises;
- Irrespective of the classification criteria, banks, insurance companies, broker-dealer companies, leasing companies, as well as pension and investment funds shall also fall under the category of big enterprises.
- legal persons obliged to prepare consolidated financial statements (parent legal person);
- legal persons issuing securities through public bids, or whose securities are traded on organized securities markets.
- Small enterprises and entrepreneurs formally may opt to apply the rulebook adopted by the Minister of Finance, instead of the IFRS.
- Translated texts of IAS/IFRS are available on the web page of the Ministry of Finance and the "Official Gazette of RS".

## ***Statutory auditors***

**62. What legal instruments do you have in the auditing field? Are annual or consolidated financial statements required to be audited? If yes, which audits of annual and consolidated accounts are considered as "statutory audits"?**

Statutory audit of the financial statements in the Republic of Serbia has been regulated by the Law on Accounting and Auditing ("Official Gazette of RS", No 46/06 and 111/09). Sub-legal instruments passed in order to properly implement the Law in the audit area are the following:

- Rulebook on the Auditing Firms Register (*Official Gazette of RS* No 25/10);
- Rulebook on the Manner of Reporting and Content of Auditing Firms' Reports (*Official Gazette of RS*, No 20/10)

Statutory audit of the regular annual financial statements and consolidated financial statements complies with the International Auditing Standards (IAS) and the Code of Ethics for Professional Accountants.

### **Legal persons subject to audit:**

- Large legal persons (including all financial institutions) and medium legal persons;
- Parent legal persons preparing consolidated financial statements;
- All legal persons issuing securities and other financial instruments traded with on an organized market.

### **Legal persons not subject to audit:**

- Newly founded legal persons in the year of foundation, unless
- otherwise regulated by a special law.
- Small legal persons which do not issue by public offer
- the securities traded with on an organized market.

Special agreed audit of the financial statements of legal persons and entrepreneurs are not considered the statutory audit within the meaning of the Law on Accounting and Auditing.

The Law established the Chamber of Certified Auditors, which organizes exams to acquire professional vocation of a statutory auditor, and prescribes the terms for issuing, extending and revoking of a licence for financial statements auditing. Rules of the Chamber are published on the internet presentation of the Chamber of Certified Auditors ([www.kor.rs](http://www.kor.rs)).

**63. Do statutory audits in your country comply with the principles and requirements set out in the 8th Company Law Directive and in the Commission Recommendations of 6 May 2008 (External quality assurance for statutory auditors and audit firms auditing**

**public interest entities OJ L 120 of 7.5.2008) and of 5 June 2008 (limitation of the civil liability of statutory auditors and audit firms, OJ L 162 of 21.7.2008)?**

Requirements from the 8<sup>th</sup> Company Law Directive referring to terms and manner of conducting the audit of financial statements, acquiring the licence for financial statements auditing, issuing and revoking the operating licence for the auditing firms, engagement of auditors and suspension of audit, auditors' independence and keeping the business secret, alteration of auditors, reporting to management about important issues arising during the audit, establishment and keeping of the Auditing Firms Register, have been to a large extent implemented in the in part of the Law referring to the field of audit

The Commission Recommendation of 5 June 2008 has been partially implemented in the Law, in such a way as to prescribe that the auditing firm shall be under obligation to insure against the risk related to the responsibility for the damage that may be caused by a wrongfully stated auditors opinion of a licensed statutory auditor, and by reason of non-implementation of the International Auditing Standards and the Code of Ethics for Professional Accountants. The manner of establishing insurance premium has not been regulated by the Law in detail

Requirement contained in the Commission Recommendation of 6 May 2008 has been partially implemented in the part of monitoring and supervision over the operation of the auditing firms, relating to the external quality control of the auditors and of the auditing firms' performance when conducting the audit of the public interest entities (OJ L 120 of 7 May 2008), providing that the monitoring referred to above shall be carried out by the Ministry of Finance by obliging the auditing firm to deliver the following information to the Ministry of Finance, at least once a year and by the end of March of the current year:

- 1) Holders of shares and stakes in an auditing firm, acquisition of shares or change of share, i.e. stakeholders;
- 2) Investments that were the basis for the auditing firm to acquire share in another legal person, either directly or indirectly;
- 3) Amendments to the Statute or Foundation Agreement;
- 4) Insurance premium calculation basis;
- 5) Employees;
- 6) List of all the agreements on the financial statements audit by audit types, which the auditing firm concluded with the legal persons subject to audit during the preceding account period, and list of all agreements on audit of the financial statements which were terminated upon the appropriate explanation, regardless of which side terminated the agreement;
- 7) Number of auditing reports signed by every licensed statutory auditor.

At the request of the Ministry, auditing firms are also under obligation to deliver information about the number of planned and achieved hours for each member of the auditing team, and for each individual audit of the financial statement.

The manner of reporting is prescribed by the Rulebook on the Manner of Reporting and Content of Auditing Firms' Reports (*Official Gazette of RS*, No 20/10).

**64. What requirements must be fulfilled to be approved as a statutory auditor (educational qualifications, professional competence, training, experience, ethical rules)? Are statutory auditors and audit firms entered in a public register? If yes, how many auditors and audit firms were registered until 2009 (or the most recent year for which reliable data is available; please specify which year)?**

The licence to provide services of the financial statement audit in accordance with the Law on Accounting and Auditing is issued by the Chamber of Certified Auditors , provided that the person in question:

- 1) Holds university education degree;
- 2) Has relevant experience in conducting external auditing of the financial statements in duration of three years, acquired by full-time employment in an auditing firm on a permanent or temporary basis, realized before or after acquisition of professional vocation of a statutory auditor.
- 3) Is full-time permanently or temporarily employed in an auditing firm as an auditor of the financial statements;
- 4) Is proficient in Serbian (relevant to foreign nationals);
- 5) Passed the professional examination required for the vocation of a statutory auditor according to the program established by the Chamber, or holding properly validated diploma or another certificate acquired abroad, proving his qualifications to conduct external audit of the financial statements in the professional vocation of a statutory auditor
- 6) Has not been convicted of criminal offences that make him unworthy to conduct the activities referred to above;
- 7) Is a member of the Chamber of Certified Auditors .

The licence is issued for the period of two years, and shall be extended on request of a statutory auditor.

The Chamber shall extend a licence to a statutory auditor complying with the following terms;

- 1) That a statutory auditor, who has been issued a licence, went through a continuing professional improvement of at least 45 hours in the period of two years, as of the day of entry into the Register of Licences issued to statutory auditors for conducting audits of the financial statements.
- 2) Is full-time permanently or temporarily employed with an auditing firm as an auditor of financial statements;
- 3) Has not been convicted of a criminal offence which would make him unworthy of conducting audits.

A licensed statutory auditor can entrust certain activities in the audit procedure to the other persons employed in the auditing firm, who do not possess a professional vocation in line with this Law, provided that their work has been planned and supervised by a licensed statutory auditor.

The Chamber shall keep the Register of Licenses issued to the statutory auditors to conduct audits, which up till now has had 159 entries of licensed statutory auditors.

The auditing firms are founded in line with the provisions regulating business companies, but must also fulfil the following particular conditions prescribed by the Law on Accounting and Auditing:

- 1) Statutory auditors or audit firms, as the founders of the auditing firm, shall have the controlling share in the company;
- 2) An auditing firm shall have the licence to conduct audits;
- 3) Statutory auditors, founders of the auditing firm and statutory auditors,
  - a) employed in the auditing firm, are not under the control
  - b) of any person or interest groups, in line with the Code of Ethics for Professional
  - c) Accountants;
- 4) A firm employs legally prescribed number of auditors who hold
- 5) the licence;
- 6) Auditing firm is a member of the Chamber.

A legal person which does not hold the licence to conduct audits in accordance with this Law, cannot use the word "audit" in legal circulation. The Ministry of Finance issues licenses to the auditing firms and keeps the Auditing Firms Register. So far, the Register has had 42 entries of the auditing firms .

The Auditing Firms Register contains:

- 1) Business name, address, Registry Number, Tax Identity Number and legal form;
- 2) Contact information and internet address;
- 3) Address of each office or related person in the country and abroad;
- 4) Name and registry number of all licensed statutory auditors employed in the auditing firm;
- 5) Information on the founders;
- 6) Information about the Chief Executive, i.e. members of the Management Board;
- 7) Information on network membership;
- 8) Measures of supervision.

**65. Is there a public oversight system for auditors? If yes, is this public oversight system independent from the audit profession and set up taking into account the provisions of the 8th Directive (2006/43/EC)? What are the competences of this public oversight system?**

The Law on Accounting and Auditing contains provisions on the supervision over the performance of the auditing firms, i.e. activities of the statutory auditors.

The Ministry of Finance is in charge of the supervision over the auditing firms, while the Chamber of Certified Auditors supervises the activities of the statutory auditors directly, and the Ministry does so indirectly (in the process of supervision of the auditing firms ).

Public oversight of auditors has not been organized in a manner required by the 8<sup>th</sup> Directive.

*Answer relating to the manner and time of complying with the provisions of the 8<sup>th</sup> Directive is given in the scope of the answer to question 58 of this Questionnaire.*

Supervision over the auditing firms' performance is free from any influence of the auditing profession, since this type of supervision falls within the competence of the Ministry of Finance.

Supervision over the auditing firms includes: Monitoring of whether the auditing firms fulfil the requisite condition for issuing of the licence to conduct audits of the financial statements and entry into the Registry, monitoring of whether the licensed statutory auditors fulfil requisite conditions for entry into appropriate registers of the Chamber, monitoring of the auditing firm and licensed statutory auditor's independence in relation to person ordering the audit, monitoring, collection and verification of the reports which the auditing firms and Chamber of Certified Auditors must deliver to the Ministry, monitoring of whether the auditing firms have the procedures to establish the systems of quality in accordance with the international auditing standards, and pronouncing measures of supervision in line with this Law.

Within the meaning of this Law, supervision may be carried out upon the substantiated request of the Chamber.

The Ministry of Finance shall also carry out supervision over the activities of the Chamber of Certified Auditors .

**66. Is there an external quality assurance system for auditors? If yes, is this external quality assurance system objective, independent from the audit profession and set up taking into account the provisions of the 8th Directive (2006/43/EC) as well the principles and requirements set out in the Commission Recommendation of 6 May 2008 (External quality assurance for statutory auditors and audit firms auditing public interest entities OJ L 120 of 7.5.2008)?**

Formal control over the auditing firms and auditors activities is carried out by the Ministry, pursuant to the Law, while the Chamber of Certified Auditors has the competence to prepare methodology for the control of quality of the conducted audits. Preparation of the methodology is underway, and up till now no control of quality of the auditors' activity has been carried out by the Chamber of Certified Auditors .

Referring to the external quality assurance of the auditors' activity, requirements of the 8th Directive and the Commission Recommendation of 6 May 2008 have been partially implemented with respect to the external quality assurance for statutory auditors and audit firms auditing public interest entities.

The law prescribes obligation of the auditing firm to report to the Ministry once a year, and to submit extraordinary reports every time the auditing firm in question changes the information about the company, which has been published in the Auditing Firms Register.

Regular annual reporting refers to the period from 31 December of the preceding to 31 December of the current year, and extraordinary – no later than eight days from the date of occurrence of the event that influenced change of data.

*Content of the reports which the auditing firms deliver to the Ministry of Finance is included in the answer to the question 63 of this Questionnaire.*

In addition, there is a list of auditing firms, published by the National Bank of Serbia, referring to the auditing firms accepted to conduct audits of the banks' financial reports pursuant to the Law on Banks and the prescribed criteria. Six auditing firms are included in the list referred to above.

**67. Is there a system of investigation and penalties to detect, correct and prevent inadequate execution of statutory audits? If yes, what kinds of sanctions are applied to auditor's misconduct?**

The measures imposed by the Ministry within the procedure of supervision over the audit companies' operations are classified into three groups depending on the severity of violations, and published in the Auditing Firm Register.

**First group of measures**

The first group of measures implies minor violations of the Law and result in warning. In this case, an authorised person of the Ministry issues an order to bring into compliance the irregularity, i.e. illegality if established that:

- 1) Auditing firm acted in contravention of the provisions of the law, which regulate independence of the auditor in relation to the person ordering the audit;
- 2) Auditing firm conducted audit of the legal entity to which it also provided accounting and other services at one and the same time, even though the Law provides that it may not provide such services at the same time when conducting the audit of financial statements.
- 3) Auditing firm failed to inform the Ministry about the changes of facts and circumstances that constituted the basis for its entry into the Auditing Firm Register, and failed to deliver the reports prescribed by the Law.
- 4) Auditing firm ceased to fulfil any of the requirements with regards to acquiring licence to conduct audits;
- 5) Audit firm failed to conduct audit in accordance with the provisions of this Law.

**Second group of measures**

If more severe violations of the Law are concerned, the Ministry can order additional measures (second group of measures), which the auditing firm must take so that its performance would be in line with the provisions of the Law, whereby failure to take ordered measures within the prescribe term would infallibly lead to the most severe of the supervision measures, i.e. revoking of licence (third group of measures).

An authorised person from the Ministry may issue an order involving additional measure, if he / she established:

- 1) That an auditing firm failed to act in compliance with the order to remove irregularity, i.e. illegality.
- 2) That a procedure was initiated for revoking the licence against a licensed statutory auditor who conducted the audit in the auditing firm in question;
- 3) That an auditing firm committed violation of its obligation to timely and regularly submit reports, i.e. information, or obstructed supervision over its performance in some other way, more than four times in two consecutive years.

Additional measure orders the auditing firm to implement the following:

- 1) Improvements of internal procedures providing auditing quality;
- 2) Change in internal organisation of the auditing firm;
- 3) Other measures required to correct the established irregularities.

**Third group of measures – revoking the licence to operate, in the following cases:**

- 1) The licence to conduct audits has been issued on the basis of false data on the founder;
- 2) Auditing firm fails to submit the application for entry in the Auditing Firms Register;
- 3) Number of licensed statutory auditors decreases below prescribed, and the auditing firm fails to increase the number of licensed statutory auditors up to the extent prescribed by the law at latest within three months from such occurrence, and fails to inform the Ministry thereof;
- 4) Auditing firm ceases to comply with one of the requisite special conditions stipulated by the Law, i.e. conducts audits in contravention of the provisions of this Law, and fails to correct irregularities thereof, i.e. fails to implement additional measures within the term established by the competent authority.
- 5) The case of voluntary liquidation of the auditing firm.

Supervision over the activities of statutory auditors, in the part of issuing and revoking licenses, is performed by the Chamber of Certified Auditors.

Disciplinary Commission has been established within the bodies of the Chamber.

In addition, the Law on Bank provides civil penalties for the auditor, if he fails to indicate that the annual financial statements of the bank present the financial position of the bank, its business results and cash flows for the fiscal year in question inaccurately and unfairly, i.e. fails to state his adverse opinion to the management and executive board of the bank, if he fails to state his opinion on the efficiency of functioning of the internal audit, risk management and internal control system to the National Bank of Serbia, i.e. fails to give additional information concerning the conducted audit upon the request of the National Bank of Serbia.