LEGAL HIGHLIGHTS

IZMENE I DOPUNE ZAKONA O PRIVREDNIM DRUŠTVIMA

Skupština Republike Srbije je 8, juna 2018, godine usvojila najnovije izmene i dopune Zakona o privrednim društvima (u daljem tekstu: Zakon).

Zakon je objavljen u "Službenom g*lasniku RS" br. 44/2018 i* stupio je na snagu 09.06.2018. godine, s tim da je kod najvećeg broja izmenjenih odredbi primena odložena počev od 01.10.2018. godine, a odredbe koje se odnose na osnivanje i organizovanje evropskog društva I evropske grupacije ekonomskog interesa se primenjuju od 01.01.2022. godine.

Razlozi usvajanja Zakona ogledaju se u činjenici da su tokom primene prethodnog Zakona o privrednim društvima uočeni problemi u praksi što je uslovilo obavezu uređenja pojedinih pitanja na drugačiji način, ali i obavezi usaglašavanja postojećih propisa sa propisima Evropske unije što je upravo i dovelo do uvođenja različitih oblika organizovanje evropskog društva.

Svakako treba istaći da je ovim poslednjim izmenama i dopunama prethodni Zakon o privrednim društvima pretrpao značajne izmene I dopune, ali će ovim prikazom biti iznete samo one koje su po našem mišljenju najbitnije, odnosno one za koje su BDO klijenti pokazali interesovanje.

I Izmene osnovnih odredbi

Član 11. Zakona se odnosi na novine u vezi osnivačkog akta, statuta ili ugovora članova društva, koji ne moraju više da se overavaju kod javnog

AMENDMENTS AND SUPPLEMENTS TO THE LAW ON COMPANIES

On 8 June 2018, the National Assembly of the Republic of Serbia adopted the latest amendments and supplements to the Law on Companies (hereinafter: the Law).

The Law was published in the "RS Official Gazette" *no. 44/2018* and entered into force on 9 June 2018, while for the majority of the amended provisions the application was postponed starting from 1 October 2018, and the provisions relating to the establishement and organisation of an European company and European group of economic interest shall apply from 1 January 2022.

The reasons for the adoption of the Law are reflected in the fact that during the implementation of the former Law on Companies problems in practice had been observed which caused the obligation to regulate certain issues in a different manner, but also the obligaton to harmonise the existing regulations with the regulations of the European Union, which had led to the introduction of different forms of organising a European company.

It should be noted, however, that pursuant to these latest amendments and supplements the former Law has undegone significant amendments and supplements, but in these highlights only the most relevant, in our opinion, i.e., those in which BDO clients have shown interest will be presented.

I Amendments to General Provisions

Article 11 of the Law relates to the novelties regarding the instrument of incorporation, articles of association or agreements of company members,

beležnika, već postoji mogućnost da osnivački akt bude sačinjen u formi elektronskog dokumenta, odnosno da ga ovlašćeno lice osnivača potpiše kvalifikovanim elektronskim potpisom i u toj formi se podnosi Agenciji za privredne registre (u daljem tekstu: APR). Na ovaj način je postupak osnivanja pojednostavljen, iako je pretpostavka da će se, bar još neko vreme, potpisivanje, overa i podnošenje osnivačkog akta APR-u odvijati na isti način kao do sada. */primena od 01.10.2018.godine/*

which do not need to be certified with the notary public, but there is a possibility that the instrument of incorporation could be made in the form of an electronic document, i.e., that it could be signed by an authorised person of the founder by a qualified electronic signature and submitted to the Serbian Business Registers Agency (hereinafter: the SBRA) in that form. Consequently, the founding process is simplified, although it is assumed that at least for a while, the signing, certification and submission of the instrument of incorporation to the SBRA will be carried out as before. */applicable from 1 October 2018/*

Dosadašnji **član 15. Zakona** o privrednim društvima koji se odnosi na ugovor članova društva o regulisanju međusobnih odnosa je ovim Zakonom pretrpeo izmene prevashodno u davanju značaja ovom ugovoru. Prethodnim Zakonom o privrednim društvima je takođe zaključenje ugovora članova društva predstavljalo mogućnost za koju se sami članovi opredeljuju i koji isključivo proizvodi pravno dejstvo između članova, ali je sadašnjim izmenama svakako uočljivo da mu je dat još manji značaj u odnosu na prethodno rešenje i da je izbačena odredba koja je definisala obavezne elemente ovog ugovora. */primena od 01.10.2018.godine/*

Former **Article 15 of the Law on Companies,** which refers to the agreement of company members governing their mutual relations has undergone changes primarily relating to the attachment of importance to this agreement. In accordance with the former Law on Companies the conclusion of the agreement of company members was an option members themselves decided to choose and which exclusively produced the legal effect among the members, but, with the current changes it is certainly notable that it was given even less importance in relation to the previous solution and that the provision that defined the obligatory elements of this agreement was eliminated. */applicable from 1 October 2018/*

Članom 20. Zakona je dat veći značaj adresi za prijem pošte, koja je ranije bila definisana kao izuzetak. Novim Zakonom je definisano da se po pravilu dostavljanje vrši na adresu sedišta društva, s tim da društvo može da registruje pri APR-u i posebnu adresu za prijem pošte. Treba voditi računa da ukoliko je društvo registrovalo posebnu adresu za prijem pošte, onda se dostavljanje pošte vrši

Pursuant to Article 20 of the Law the significance of the mail receipt address, which was previously defined as an exception, has been given greater importance. The new Law stipulates that, as a rule, the delivery is performed to the address of the company's registered office, while the company is also able to register with the SBRA a special address for receiving the mail. It should be noted that if the company has registered a separate address for

isključivo na tu adresu, umesto na adresu sedišta društva. */primena od 01.10.2018.godine/*

Za razliku od prethodne mogućnosti da društvo ima adresu za prijem elektronske pošte, novim **članom 21. Zakona** je uvedena obaveza da sva društva moraju da pred APR-om registruju adresu za prijem elektronske pošte. Ova odredba je u primeni počev od 01.10.2018. godine u odnosu na novoosnovana društva, a za postojeća društva je dat rok od jedne godine da registruju adresu za prijem elektronske posšte. */primena od 01.10.2018.godine/*

Usled očigledne nedoslednosti u tumačenju i primeni odredbi koje se odnose na upotrebu pečata u svim dokumentima društva i to ne samo u pogledu odredbe prethodnog Zakona o privrednim društvima, već i svim drugim propisima koji su regulisali ovo pitanje, **članom 25. Zakona** se na imperativan način definiše da se nijednim više propisom ne može uvesti obaveza upotrebe pečata. S tim u vezi član 160. Smostalnih članova Zakona predviđa da prestaje primena zakona i svih drugih propisa kojima je definisana obaveza upotreba pečata. Taksativno je navedeno 117 propisa koji su sadržali odrebe o upotrebi pečata, koje su sada prestale da važe. Na kraju, treba pravilno razumeti izmene u članu 25. Zakona da upotreba pečata nije zabranjena, suština je da se od privrednog društva ne može zahtevati da koriste pečat, a društvo ukoliko želi da koristi pečat, ima legitimno pravo na to. */primena od 01.10.2018.godine/*

Izvršena je dopuna **člana 144. Zakona** koji se odnosi na evidenciju podataka o članovima društva i

receiving mail, then the delivery of the mail is performed exclusively at this address, instead of the address of the company's registered office. */ applicable from 1 October 2018/*

Contrary to the former possibility for the company to have an electronic mail address, new **Article 21 of the Law** stipulates that all companies must register their e-mail address with the SBRA. This provision has been in force starting from 1 October 2018 for the newly established companies, and for the existing companies the deadline of one year to register an electronic mail address has been established. */ applicable from 1 October 2018/*

Due to the obvious inconsistency in the interpretation and application of the provisions relating to the use of seals in all documents of the company, and not only with regard to the provisions of the former Law on Companies, but also all other regulations that governed this issue, **Article 25 of the Law** is imperative when it defines that no obligation to use seals can be imposed by any regulation. In this regard, Article 160 of the Indendant articles of the Law provides that the application of the laws and all other regulations defining the obligation to use seals shall cease. There are 117 regulations that contain clauses on the use of seals, which have now ceased to apply. In the end, it is necessary to correctly understand the changes in Article 25 of the Law that the use of seals is not prohibited, the essence is that the company cannot be required to use the seal, and if the company wishes to use the seal, it has a legitimate right to do so. */ applicable from 1 October 2018/*

A supplement was made to Article 144 of the Law that refers to the records of data on members of the company and the submission of documents to

dostavljanja dokumenata članovima društva i to na način da se odstupilo od opšteg pravila u pravu u pogledu dostvljanja – *da se dostavljanje smatra urednim danom uručenja pošiljke određenom licu*. Navedenim članom 144. se dostavljanje članovima društva vrši na adresu iz evidencije podataka o članovima, a dostavljanje se smatra izvršenim danom slanja preporučene pošiljke na tu adresu. Ovo bi značilo da društvo više ne mora da istražuje i pribavlja adrese svojih članova, već su članovi dužni da dostave adresu društvu na koju je potrebno da im se dostavljaju pošiljke. */primena od 01.10.2018.godine/*

company members, in a manner that deviated from the general rule of law regarding delivery - that the delivery date is considered to be the regular date of delivery of the shipment to a particular person. Pursuant to the above mentioned Article 144, a delivery to company members is carried out at the address from the records of the members' data, and the delivery shall be deemed to have been executed on the date of sending the registered mail to that address. This would mean that a company no longer has to investigate and obtain the addresses of its members, but its members are obliged to provide the delivery address to the company. */ applicable from 1 October 2018/*

II Povećanje i smanjenje osnovnog kapitala

II Share capital increase and decrease

Izmene člana **146. Zakona** u pogledu povećanja osnovnog kapitala išle su u pravcu zaštite člana koji želi da obezbedi dodatna novčana ulaganja u društvo, bez obzira što registrovani članovi nisu prethodno izvršili svoje obaveze uplate uloga. Konkretno, dopunom ovog člana uvodi se mogućnost pristupanja novog člana društvu sa ograničenom odgovornošću i povećanja osnovnog kapitala po tom osnovu i u slučajevima kada ranije upisani osnovni kapital nije u potpunosti uplaćen/unet, pod uslovom da član koji pristupa uplati/unese svoj ulog u celosti u trenutku pristupanja. */primena od 01.10.2018.godine/*

Amendments to **Article 146** of the Law with regard to the increase in the share capital have gone towards the protection of a member who wishes to provide additional monetary investments to the company, regardless of the fact that the registered members have not previously performed their contribution obligations. In particular, the supplement to this article introduces the possibility of a new member accession to a limited liability company and increasing the share capital on that basis in cases where previously subscribed share capital has not been fully paid-in/contributed, provided that the member who joins should pay-in/contribute his/her entire contribution at the moment of accession. */ applicable from 1 October 2018/*

Smanjenje osnovnog kapitala za društva sa ograničenom odgovornošću je sada uređeno posebnim odredbama Zakona. Konkretno **članom 147. Zakona** se odstupilo od dosadašnje prakse

The decrease of share capital for limited liability companies is now governed by special provisions of the Law. Specifically, **Article 147** of the Law deviates from the previous practice of applying the provisions on the reduction of the share capital

primene odredbi o smanjenju osnovnog kapitala koje se odnose na akcionarska društva i taksativno su pobrojane situacije u kojima može da se vrši smanjenje osnovnog kapitala za društva sa ograničenom odgovornošću I to:

- radi pokrića gubitaka društva koji su iskazani u objavljenom godišnjem finansijskom izveštaju za godinu koja prethodi godini u kojoj se odluka donosi. Smanjenje osnovnog kapitala društva radi pokrića gubitaka može se vršiti samo u slučaju da društvo ne raspolaže neraspoređenom dobiti i rezervama koje se mogu koristiti za te namene. Ukoliko društvo raspolaže neraspoređenom dobiti ili retervama, dužno je da gubitke pokriva prvo iz ovih izvora, pa tek nakon toga preostali iznos gubitka može da se pokriva na račun osnovnog kapitala;
- radi stvaranja ili povećanja rezervi društva za pokrivanje budućih gubitaka ili za povećanje osnovnog kapitala iz neto imovine društva. Limit ukupnih rezervi koje mogu biti formirane na ovaj način je ostao nepromenjen I iznosi 10% vrednosti osnovnog kapitala;
- radi oslobađanja člana društva obaveze uplate/unosa upisanog uloga, kad se smanjuje vrednost upisanog osnovnog kapitala. Društvo može osloboditi članove od obaveze uplate/unosa uloga samo u postupku zaštite poverilaca, jer će se predmetnim smanjenjem umanjiti I vrednost imovine društva za iznos potraživanja koje je društvo imalo prema članu po osnovu upisanog uloga;

related to joint stock companies and lists the situations in which the decrease in the share capital for limited liability companies can be performed, as follows:

- to cover the losses of the company that are disclosed in the published annual financial report for the year preceding the year in which the decision is made. Reduction of the company's share capital to cover losses can only be made if the company does not have retained earnings and reserves that can be used for these purposes. If the company has retained earnings or reserves, it is obliged to cover the losses first out of these sources, and only after that the remaining amount of loss can be covered against the share capital account;
- to create or increase the company's reserves for future losses coverage or to increase the share capital from the company's net assets. The limit of total reserves that can be established in this manner has remained unchanged and amounts to 10% of the value of the share capital;
- for the release of a company member from the obligation to pay/enter the contribution, when the value of the subscribed capital is reduced. The Company can exempt members from the obligation to pay/enter contributions only in the procedure of protection of creditors, since the reduction will also reduce the value of the company's assets by the amount of receivables the company has had from the member on the basis of the subscribed contribution;

- radi povlačenja i poništaja udela člana kada nastupe razlozi propisani osnivačkim aktom. Ovo u slučajevima kada su članovi definisale posebne okolnosti koje za posledicu imaju prestanak svojstva člana, te time povlačenje i poništaj njegovog udela;

- radi poništaja sopstvenog udela koje je društvo steklo od svog člana. Društvo može raspolagati sopstvemnim udelom na način definisan članom 159. Zakona ili ga može poništiti u krajnjem roku od 3 godine, kada se sprovodi postupak smanjenja osnovnog kapiutala.

Kao zaključak se izvodi da društvo može smanjiti kapital samo iz navedenih razloga, čak i kada je u pitanju društvo koje ima samo jednog člana, ali ne ispod minimalnog osnovnog kapitala u iznosu od 100 dinara. */primena od 01.10.2018.godine/*

Novi član Zakona je **član 147a**, koji je u direktnoj vezi sa članom 147. Zakona, a odnosi se na zaštitu poverilaca u postupku smanjenja osnovnog kapitala. Drugim rečima Zakon eksplicitno uređuje ovaj postupak i definiše da se odluka o smanjenju osnovnog kapitala društva objavljuje u registru u neprekidnom trajanju od 3 meseca, počev od dana registracije pri APR-u. Pored registracije odluke, društvo je dužno da svim poveriocima koji su poznati društvu i čije pojedinačno potraživanje iznosi najmanje 2.000.000,00 dinara u protivrednosti bilo koje valute po srednjem kursu Narodne banke Srbije na dan registracije odluke o smanjenju osnovnog kapitala, uputi pisano obaveštenje o navedenoj

- for the withdrawal and annulment of the member's equity investment when the reasons prescribed by the instrument of incorporation occur. This is in cases where members have defined specific circumstances that result in the termination of a member's capacity, and thus the withdrawal and annulment of its equity investment;
- for the annulment of an own equity investment the company acquired from its member. The Company may dispose of its own equity investment in the manner defined in Article 159 of the Law or can annul it within a period of 3 years, in which case it shall implement the procedure of reducing the share capital.

We can conclude from the foregoing that the company may reduce its capital only due to the reasons listed above, even when a company that has only one member is concerned, but not below the minimum share capital amounting to RSD 100. */ applicable from 1 October 2018/*

Article 147a is a new article of the Law, which is directly related to Article 147 of the Law, which refers to the protecion of creditors in the process of reducing the share capital. In other words, the Law explicitly regulates this procedure and defines that the decision to reduce the company's share capital shall be published in the register for a continous period of 3 months, starting from the date of registration with the SBRA. In addition to the registration of the decision, the company is obliged to send a written notification to all creditors known to the company and whose individual receivable amounts to at least RSD 2,000,000.00 in the equivalent of any currency at the middle exchange

odluci u roku od 30 dana od dana njene registracije. Poverioci društva imaju pravo da traže obezbeđenje ispunjenja obaveze po osnovu potraživanja koje imaju. Zahtev za obezbeđenje potraživanja poverilac je dužan da uputi društvu do isteka roka koji je predviđen kao rok u kome je društvo dužno da zadrži objavu na internet stranici APR-a. Propuštanje roka znači i gubitak prava poverioca da zahteva obezbeđenje. */primena od 01.10.2018.godine/*

rate of the National Bank of Serbia on the day of registration of the decision on reduction of the share capital within 30 days from the date of its registration. The Company's creditors have the right to request securing the fulfillment of the obligation on the basis of the receivables they have. The creditor is obliged to send a request for securing the receivable to the company by the expiration of the deadline which is stipulated as a deadline in which the company is obliged to keep the announcement on the SBRA website. */applicable from 1 October 2018/*

Narednim novim **članom 147b Zakona** su definisani slučajevi u kojim ne postoji obaveza primene odredbe o zaštiti poverilaca, iako to jeste pravilo i ovi slučajevi predstavljaju izuzetak od pravila. Društvo inače za svoje obaveze poveriocima odgovara celokupnom svojom imovinom, tako da u situacijama kada ne dolazi do promene vrednosti imovine, nema ni interesa za zaštitu poverilaca, bez obzira što će vrednost osnovnog kapitala biti smanjena i to u sledećim slučajevima:

- kada društvo poništava sopstveni udeo koji je društvo besteretno steklo i za koje su ulozi u potpunosti uplaćeni/uneti;
- kada se poništava ili povlači udeo na teret rezervi koji je u potpunosti uplaćen/unet, jer je reč o vrednosti koja se već nalazi u imovini društva po osnovu uplaćenog/unetog uloga;
- kada društvo pokriva gubitke iz prethodne poslovne godine, jer je reč o vrednosti koja se već nalazi u imovini društva;
- kada društvo formira rezerve iz osnovnog kapitala za pokrivanje budućih gubitaka

The following new **Article 147b of the Law** defines cases in which there is no obligation to apply the provisions on the protection of creditors, although this is the rule and these cases are an exception to the rule. The company is otherwise liable to fulfill its obligations to creditors with all its assets, so that in situations where there is no change in the value of assets, there is no interest in protecting the creditors, regardless of the fact that the value of the share capital will be reduced in the following cases:

- when the company reverses its own equity interest it has acquired in an unencumbered legal transaction and for which the contributions are fully paid/entered;
- when an equity interest is canceled or withdrawn at the expense of the reserve which is fully paid/entered, because it is a value that already exists in the assets of the company based on the paid/entered contribution;
- when the company covers losses from the prior financial year, because it is a value which is already in the assets of the company;
- when the company establishes reserves from the share capital to cover future losses of the

društva ili za povećanje osnovnog kapitala iz neto imovine društva. */primena od 01.10.2018.godine/*

Na kraju u vezi novih odredbi Zakona u pogledu smanjenja osnovnog kapitala uveden je **član 147v Zakona** kojim je definisano da se tek danom upisa smanjenja osnovnog kapitala u registru pri APR-u smatra da je kapital smanjen, što znači da je upis konstitutivnog karaktera. */primena od 01.10.2018.godine/*

III Izmene sopstvenih udela kod društva sa ograničenom odgovornošću

Izmena **člana 159. Zakona** je išla u pravcu restriktivnijeg pristupa u pogledu raspolaganja sopstvenim udelom društva. Društvo je praktično dužno da u roku od 3 godine od dana sticanja udela preduzme odgovarajuće mere kojima udeo prestaje da bude u vlasništvu društva. U tom smislu društvo može da:

- izvrši raspodelu udela članovima društva srazmerno učešću njihovih udela u osnovnom kapitalu društva,
- udeo proda članu društva ili trećem licu,
- poništi udeo kada je obavezi da sprovede postupak smanjenja osnovnog kapitala. */primena od 09.06.2018.godine/*

company or to increase the share capital from the net assets of the company. */applicable from 1 October 2018/*

Finally, regarding the new provisions of the Law relating to the reduction of share capital, **Article 147v** of the Law was introduced, which stipulates that only on the day of the registration of the reduction in share capital in the register with the SBRA, the capital is deemed to have been reduced, which means that the registration is of the constitutive character. */ applicable from 1 October 2018/*

III Changes in own equity interests in a limited liability company

The amendment of **Article 159** of the Law has gone towards a more restrictive approach regarding the disposal of the company's own equity interest. The company is obliged to take the appropriate measures within 3 years from the date of acquisition of the equity investment, by which the equity investment ceases to be in the ownership of the company. In that sense, the company can:

- Distribute its own equity interest to company members in proportion to the share of their equity interests in the company's share capital,
- Transfer its own equity interest to a company member or a third party against consideration,
- Cancel its own equity interest, in which case it shall be required to reduce its share capital. */ applicable from 9 June 2018/*

IV Izmene u delu dodatnih uplata

Dosadašnji **član 178. Zakona** koji se odnosi na dodatne uplate društvu nije pretrpeo veće izmene, već je samo preciznije uređen. Ovim izmenama je definisano da odluka o dodatnim uplatama može da sadrži tačan iznos dodatnih uplata, kao i da se mogu odrediti rokovi za vraćanje dodatnih uplata. Treba naglasiti da obe izmene predstavljaju instrukciju za postupanje, što znači da ne postoji obaveza da odluka sadrži navedene podatke, već je namera bila da se samo predloži šta odluka treba da sadrži. */primena od 09.06.2018.godine/*

Novi **član 180. Zakona** detaljnije uređuje vraćanje dodatnih uplata u odnosu na prethodnu normu. Pre ovih izmena Zakona nije bilo određeno kada društvo ima obavezu da vrati dodatne uplate. Nakon sadašnjih izmena određeno je da je društvo dužno da ih vrati u roku koji je definisan osnivačkim aktom ili odlukom skupštine. Ukoliko rok nije određen društvo je u obavezi da vrati dodatne uplate onda kada član društva to zahteva,samo ako to nije neophodno za pokriće gubitaka ili za namirenje poverilaca društva. Ovde je takođe od značaja da se dodatne uplate ne mogu vratiti članu društva pre uplate/unosa celokupnog uloga u društvo. Izuzetak je ukoliko se dodatna uplata upravo vraća članu društva koji nije u potpunosti uplatio ulog u društvo i to za iznos neuplaćenog uloga. Pored upisanih članova društva pravo na povraćaj dodatnih uplata imaju i članovi kojima je to svojstvo prestalo, kao i prenosioci udela u slučaju prenosa udela. Na kraju vraćanje dodatnih uplata se vrši primenom odredbi o smanjenju osnovnog kapitala društva. */primena od 09.06.2018.godine/*

IV Amendments to additional pay-ins

Former **Article 178 of the Law** that relates to additional pay-ins to the company has not undergone major changes, it has only been more precisely regulated. These amendments define that the decision on additional pay-ins may contain the exact amount of additional pay-ins, and that the deadlines for the return of additional pay-ins may be set. It should be emphasized that both changes are instructive, which means that there is no obligation for the decision to contain the above mentioned information, but the intention was to only suggest what the decision should contain. */ applicable from 9 June 2018/*

New **Article 180 of the Law** regulates in detail the return of additional pay-ins in relation to the previous norm. Prior to these amendments to the Law, it was not specified when the company was obliged to return additional pay-ins. Before the current changes it was determined that the company is obliged to return them within the deadline defined by the instrument of incorporation or the decision of the assembly. If the deadline is not set, the company is obliged to return additional pay-ins when a member of the company so requests, unless this is necessary for covering the losses or for settling with the creditors of the company. It is also important here that additional pay-ins cannot be returned to a member of the company before his/her total subscribed contribution in the company is paid in and/or contributed. An exception is if the additional pay-in is returned to a member of a company that has not fully paid-in the equity interest to the company, for the amount of the unpaid contribution. In addition to the registered members of the company, the members who have this right are also the members that ceased to have the right to

reimbursement of additional pay-ins, as well as shareholders in the event of the share transfer. In the end, the return of additional pay-ins is made by applying the provisions on the reduction of the company's share capital. */ applicable from 9 June 2018/*

V Izmene kod istupanja članova d.o.o.

U ovom delu je zakonodavac ublažio pravo člana koji ne potražuje svoj udeo da istupi iz društva, te je **članom 187. Zakona** uredio uslove i način istupanja. Dakle, član društva koji nema neizmirene obaveze prema društvu po osnovu neuplaćenog/neunetog uloga može u svako doba da istupi iz društva dostavljanjem izjave o istupanju, bez navođenja razloga za istupanje, ali pod uslovom da ne potražuje naknadu za svoj udeo. Takođe, članu ne prestaju obaveze prema društvu do momenta istupanja, a njegov udeo postaje sopstveni udeo društva. */primena od 09.06.2018.godine/*

V Amendments to the exit of company members in limited liability companies

In this part, the legislator has mitigated the right of a member who does not claim compensation for his/her equity interest to leave the company, and it stipulated in **Article 187 of the Law** the conditions and manner of its exit. Therefore, a company member that does not have outstanding liabilities to the company arising from outstanding contributions or additional pay-ins can at any time exit the company by submitting a statement of exit, without specifying the reason for the exit, provided that it does not claim compensation for its equity interest. Furthermore, members' obligations towards the company do not cease until the moment of their exit, and their equity interests become own equity interests of the company. */ applicable from 9 June 2018/*

VI Rad Skupštine i potpisivanje odluka

Član 211. Zakona je zadržao isto uređenje u pogledu potrebnog broja glasova za donošenje odluka o pojedinim pitanjima, ali je dopunjen u pogledu potpisivanja odluka skupštine društva sa ograničenom odgovornošću. U jednočlanom društvu odluke potpisuje jedini član društva u funkciji skupštine. U dvočlanom društvu oba člana ukoliko imaju jednake udele, a u slučaju ponovljene sednice oba člana ako su prisutna, odnosno član koji je

VI General Meeting procedure and signing of decisions

Article 211 of the Law retained the same regulation regarding the necessary number of votes for decision-making on certain issues, but was amended in view of signing decisions of the general meeting of a limited liability company. In a one-member company, the decision is signed by the only member of the company in the function of the general meeting. In a two-member company, it is signed by both members if they have equal shares, and in the

prisutan. U svim ostalim slučajevima odluke potpisuje predsednik skupštine. Važno je napomenuti da se ove odredbe primenjuju i na vođenje i potpisivanje zapisnika. */primena od 09.06.2018.godine/*

case of a repeated session both members, if present, or a member present. In all other cases, the decision shall be signed by the chairperson of the general meeting. It is important to note that these provisions apply to the conduct and signing of the minutes. */ applicable from 9 June 2018/*

VII Zastupanje

Prethodnim **članom 221. Zakona** je bila predviđena mogućnost da ukoliko društvo ostane bez ijednog direktora sud imenuje zakonskog zastupnika društva ali samo za akcionarska društva, ale ne i za društva sa ograničenom odgovornošću. Novim izmenama Zakona to je prošireno i na društva sa ograničenom odgovornošću. Takođe, ovaj član je dopunjen i na način da u situaciji kada društvo ostane bez direktora i novi direktor ne bude registrovan u roku od 30 dana, svaki član društva ili bilo koje drugo lice koje ima pravni interes može tražiti da sud u vanparničnom postupku postavi privremenog zastupnika društva i to u roku od 8 dana od dana prijema zahteva. Ovlašćenja postavljenog privremenog zastupnika traju do imenovanja direktora društva i on nema ograničenja u zastupanju. */primena od 09.06.2018.godine/*

VII Representation

Former **Article 221 of the Law** provided for the possibility that if a company was left without any director, a court should appoint a legal representative of the company, but only for joint-stock companies, not for limited liability companies. Pursuant to the new amendments to the Law, this was extended to limited liability companies. Furthermore, this Article has been supplemented in such a way that in a situation where the company is left without a director and the new director is not registered within 30 days, each member of the company or any other person having a legitimate interest may request that the court appoints a temporary company representative within 8 days from the date of receipt of the request in an out-of-court procedure. The powers of the appointed temporary representative last until the appointment of the director of the company and he/she has no restrictions in representation. */ applicable from 9 June 2018/*

VIII Pravo na dividendu/dobit

Novi **član 271. Zakona** je uveo obavezu da odluka o isplati dobiti mora da sadrži rok za isplatu, koji ne može biti duži od 6 meseci od dana njenog donošenja. Ukoliko rok nije određen ili je duži od 6 meseci, ima se smatrati da je on 6 meseci. Odluka se donosi na redovnoj sednici skupštine kada se odlučuje i o rezultatima poslovanja. Međutim, ne

VIII Entitlement to dividend/profit

New **Article 271 of the Law** introduced the obligation that the decision on the payment of profit must contain a deadline for payment, which cannot be longer than 6 months from the date of its adoption. If the deadline is not specified or is longer than 6 months, it will be considered that it is 6 months. The decision is made at the regular session

postoje sankcije ukoliko se odluka ne donese, što znači da društvo ne mora da je donese, ali ukoliko je društvo odluku donelo, odluka mora da sadrži rok za isplatu. Nakon isteka roka akcionar može da zahteva i preko suda isplatu dividendi, ali ne pre isteka roka od 6 meseci. */primena od 09.06.2018.godine/*

of the general meeting when it is decided on the results of operations. However, there are no sanctions if the decision is not made, which means that the company does not have to adopt it, but if the company has made a decision, the decision must contain a deadline for payment. After the expiration of the deadline, a shareholder may also request payment of a dividend through court, but not before the expiration of 6 months. */ applicable from 9 June 2018/*

IX Sticanje i raspolaganje imovinom velike vrednosti

IX Acquisition and disposal of major assets

Član 470. Zakona koji se odnosi na institut sticanja i raspolaganja imovinom velike vrednosti je prerpeo dopune u delu pojma povezanog sticanja, dok druge izmene ovog člana nisu nastupile. To znači da je ostala neizmenjena definicija imovine velike vrednosti koja predstavlja imovinu čija nabavna i/ili prodajna vrednost u momentu donošenja odluke o tome čini 30% ili više knjigovodstvene vrednosti ukupne imovine društva iskazane u poslednjem godišnjem bilansu stanja. */primena od 09.06.2018.godine/*

Article 470 of the Law relating to the legal concept of acquiring and disposing of major assets has undergone amendments in the part of the concept of related acquisition, while no other amendments to this article have taken place. This means that the definition of major assets representing assets whose purchase value and/or selling value at the time of making the decision thereon accounts for 30% or more of the book value of the total assets of the company reported in the most recent annual balance sheet has remained unchanged. */ applicable from 9 June 2018/*

Član 471. Zakona kojim je uređeno pitanje odlučivanja o sticanju, odnosno raspolaganju imovinom velike vrednosti nije pretrpeo izmene i dopune. Odlučivanje o ovom pitanju je ostalo u nadležnosti skupštine, koja odluku donosi tročetvrtinskom većinom glasova od prisutnih akcionara sa pravom glasa. */primena od 09.06.2018.godine/*

Article 471 of the Law which governs the issue of decision-making on acquiring or disposing of major assets has not undergone amendments and supplements. Deciding on this matter has remained within the competence of the general meeting, which passes a decision by a three-quarters majority of the voting power present. */ applicable from 9 June 2018/*

Narednim **članom 472. Zakona** koji je definisao posledice povrede odredaba o sticanju i raspolaganju imovinom velike vrednosti je dopunjen u delu bližeg

The following **Article 472 of the Law** which defined the consequences of the violation of the provisions on acquiring and disposing of major assets, was

određenja koja lica su legitimisana za podnošenje tužbe u slučaju da nije pribavljeno odobrenje skupštine. Tužbu radi poništaja pravnog posla, odnosno pravne radnje sticanja i raspolaganja imovinom velike vrednosti može da podnese društvo i akcionar koji poseduje ili predstavlja najmanje 5% osnovnog kapitala društva na dan zaključenja pravnog posla, odnosno pravne radnje. Prema novim izmenama navedena tužba se može podneti u roku od 6 meseci od dana održavanja sednice skupštine na kojoj je razmatran uzveštaj o poslovanju za poslovnu godinu u kojoj je izvršeno sticanje, odnosno raspolaganje imovinom velike vrednosti, a najkasnije u roku od 3 godine od dana sticanja, odnosno raspolaganja imovinom velike vrednosti. Ovde su u pitanju objektivni rokovi, koji su prekluzivni i istekom bilo kog roka gubi se pravo na tužbu. */primena od 09.06.2018.godine/*

supplemented in the part of the closer determination of which persons were authorised for filing a lawsuit in the event that the approval of the general meeting was not obtained. A lawsuit for the annulment of a legal transaction or the legal action for acquiring and disposing of major assets can be submitted by a company and a shareholder who owns or represents at least 5% of the company's share capital on the day of conclusion of the legal transaction or legal action. According to the new amendments, the above mentioned lawsuit can be filed within 6 months from the date of the session of the general meeting, where the business report for the business year in which the acquiring and / or disposal of major assets was deliberated, and at the latest within 3 years from the date of acquisition and/or disposal of major assets. These are objective time limits, which are binding and upon the expiry of any deadlines, the right to claim is lost. */ applicable from 9 June 2018/*

X Likvidacija

Dopuna **člana 543. Zakona** je išla u delu čuvanja poslovnih knjiga i dokumenata društva koje je brisano iz registra privrednih subjekata pri APR-u usled okončanja postupka likvidacije. Poslovne knjige i dokumenta društva se čuvaju na način da budu dostupna na teritoriji Republike Srbije u skladu sa propisima kojima se uređuje arhivska građa. Takođe, ime i prezime lica koje ima prebivalište, odnosno sedište na teritoriji Republike Srbije, kome su poslovne knjige i dokumenta društva povereni na čuvanje, se registruje u skladu sa Zakonom o registraciji. */primena od 09.06.2018.godine/*

X Liquidation

The supplement to **Article 543 of the Law** was in the part of keeping of books of account and documents of the company that was deleted from the register of companies with the SBRA due to the termination of the liquidation procedure. Books of account and documents of a company are kept in such a manner as to be available on the territory of the Republic of Serbia in accordance with the regulations governing archival material. In addition, the first and last name of the person who has a place of residence, or head office in the territory of the Republic of Serbia, to whom the company's books and documents are entrusted to the custody, shall be registered in accordance with the Registration Law. */ applicable from 9 June 2018/*

Član 546. Zakona izmenjen je na način da je izvršeno preciziranje postojećih razloga za pokretanje postupka prinudne likvidacije. Takođe, propisani su i novi razlozi (tačka 10 i 11) koji se odnose na obavezu dostavljanja finansijskih izveštaja nadležnom registru. Iako su Zakonom o računovodstvu definisane sankcije za društvo koje nije nadležnom organu dostavilo finansijske izveštaje, ovim dopunama člana 546. Zakona se postupak prinudne likvidacije pokreće protiv društva koje nadležnom registru ne dostavi finansijske izveštaje do kraja prethodne poslovne godine za 2 uzastopne poslovne godine koje prethode godini u kojoj se podnose izveštaji (tačka 10). Odredbom tačke 11) člana 546. Zakona je definisano da se pokreće postupak prinudne likvidacije protiv društva koje nadležnom registru ne dostavi početni likvidacioni bilans u skladu sa Zakonom o računovodstvu, odnosno ukoliko ga ne dostavi u roku od 60 dana od dana koji prethodi objavljivanju oglasa o likvidaciji, registrator će objaviti obaveštenje o nastupanju razloga za pokretanje postupka prinudne likvidacije. */primena od 09.06.2018.godine/*

Article 546 of the Law was amended in such a way that the existing reasons for initiating the procedure of forced liquidation were specified. Furthermore, new reasons (items 10 and 11) were prescribed that relate to the obligation to submit financial statements to the competent register. Although the Law on Accounting defines the sanctions for the company that did not submit the financial statements to the competent body, with these supplements to Article 546 of the Law, the forced liquidation procedure is initiated against the company that does not submit the financial statements to the competent registry by the end of the previous business year for the 2 consecutive business years preceding the year in which the reports are submitted (item 10). The provision of item 11 of Article 546 of the Law defines the initiation of a forced liquidation procedure against the company that does not submit the opening liquidation report to the competent registry in accordance with the Law on Accounting, or if it does not submit it within 60 days from the day preceding the publication of the notice of forced liquidation, the registrar shall publish a notice on the occurrence of the reason for the initiation of the forced liquidation procedure. */ applicable from 9 June 2018/*

U vezi pokretanja postupka prinudne likvidacije uvedena je novina koja je definisana **članom 547. Zakona**. Naime, na internet stranici registra pri APR-u se objavljuje obaveštenje sa pozivom društvu da u roku od 90 dana od dana objavljivanja obaveštenja otkloni razloge za prinudnu likvidaciju ukoliko se mogu otkloniti i zatim da registruje promene podataka koji su uslovili objavljivanje obaveštenja. Po isteku roka od 90 dana, registrator po skužbenoj dužnosti donosi akt kojim društvo prevodi u status - *u likvidaciji* I istovremeno objavljuje oglas o

With respect to the initiation of the forced liquidation procedure a novelty was introduced which was defined in **Article 547 of the Law**. Specifically, on the webpage of the register with the SBRA a notice is published with an invitation to the company to eliminate the reasons for forced liqudiation, if possible, within 90 days from the date of publication of the notice and then register the changes in the data that caused the publication of the notice. At the expiration of 90 days, the registrar shall *ex officio* issue an act by which the company

prinudnoj likvidaciji na internet stranici registra u neprekidnom trajanju od 60 dana. */primena od 09.06.2018.godine/*

changes its status into - *in liquidation*, and at the same time shall publish a notice of forced liquidation on the registry's website for an uninterrupted duration of 60 days. */ applicable from 9 June 2018/*

Novododati **član 547a Zakona** se odnosi na status društava u postupku prinudne likvidacije. Navedeni član definiše da društvo u postupku prinudne likvidacije nastavlja sa radom, (uzima se u obzir dan početka objavljivanja oglasa o prinudnoj likvidaciji), ali da ne može preduzimati nove poslove, već samo završavati započete poslove, što se odnosi na izmirenje dospelih obaveza, kao i na plaćanja tekućih obaveza i obaveza prema zaposlenima. Važno je napomenuti da se od dana pokretanja postupka prinudne likvidacije svi sudski i upravni postupci prema društvu prekidaju, ne može se isplatiti dobit ili dividenda, imovina se ne može raspodeliti članovima pre brisanja društva iz registra i ne mogu se registrovati bilo kakve promene podataka u registru pri APR-u. */primena od 09.06.2018.godine/*

New **Article 547a of the Law** refers to the status of companies in the process of forced liquidation. The above mentioned Article defines that the company continues to operate in the process of forced liquidation (taking into account the day of the publication of the notice on forced liquidation), but that it cannot undertake new jobs, but only complete the commenced operations, which relates to the settlement of matured liabilities, such as payment of current liabilities and liabilities to employees. It is important to note that as of the day of the initiation of the compulsory liquidation procedure all court and administrative proceedings against the company are terminated, no profit or dividend can be paid, the assets cannot be distributed to members before the company is deleted from the register and no changes in the data in the register can be registered with the SBRA. */applicable from 9 June 2018/*

Izmene i dopune Zakona koje se odnose na preduzetnika I ortačko društvo ovim prikazom nisu obuhvaćene zbog procene da BDO klijenti do sada nisu pokazivali interesovanje za njih, dok u delu Zakona koji se odnosi na komanditno društvo Zakon nije pretrpeo nikakve promene.

Amendments and supplements to the Law relating to entrepreneurs and partnerships are not included in this presentation due to the assessment that BDO clients have so far not shown interest in them, while in the part of the Law relating to the limited partnership the Law did not undergo any changes.

Iz razloga kasnije, odnosno odložene primene odredaba Zakona koje se odnose na novouvedeno evropsko društvo ovim prikazom evropsko društvo nije obuhvaćeno, već će biti predmet kasnijih prikaza.

For the purposes of the postponed application of the provisions of the Law relating to the newly introduced European company, it is not covered by this presentation and will be subject to subsequent presentations.

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