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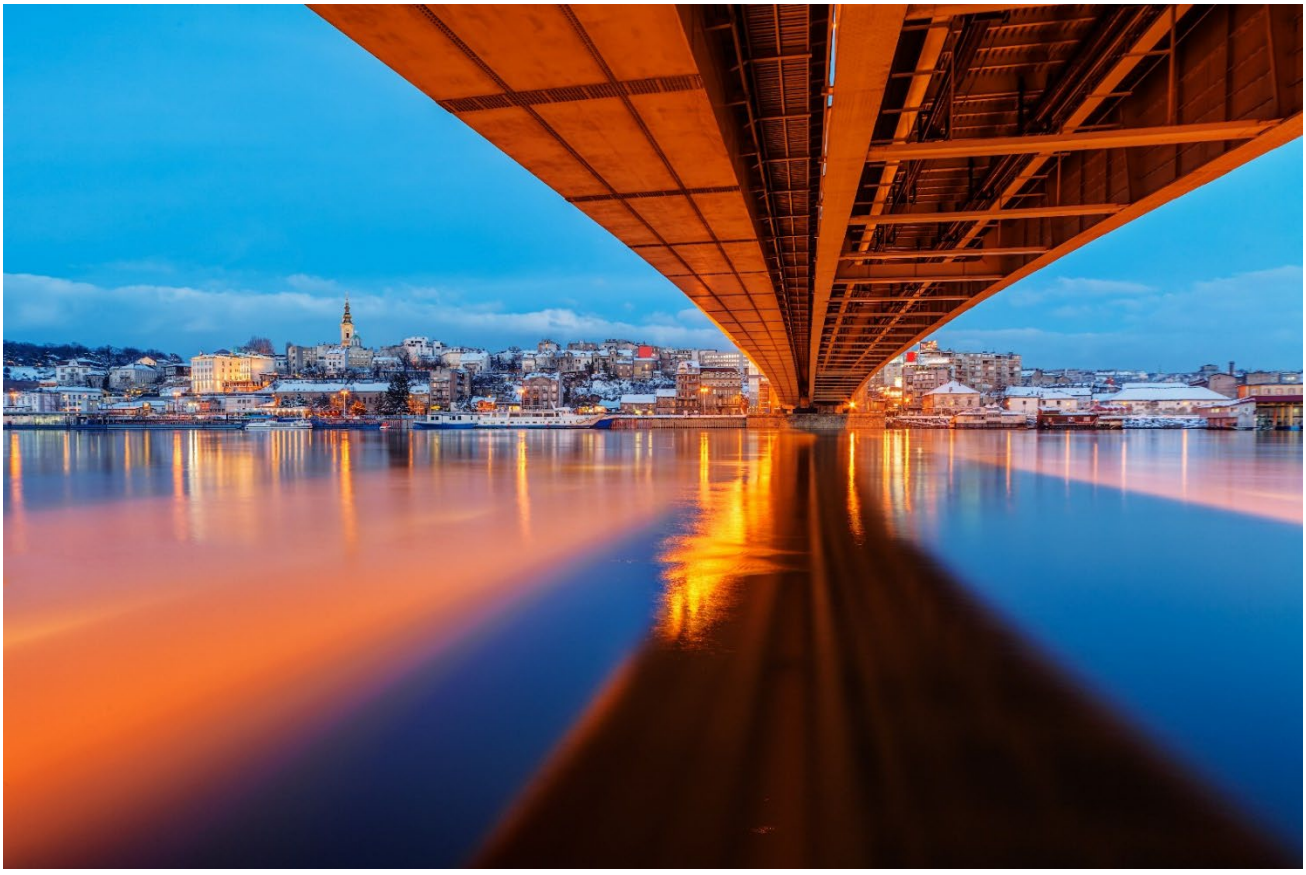
Doing business in Serbia

A comparative guide

July 2023

A guide to doing business in Serbia

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.



No.	Question

A. Legal system and landscape

1 **Is the system of law in your jurisdiction based on civil law, common law or something else?**

The Serbian legal system is based on civil law, with a hierarchy of sources of law. The top of this hierarchy contains the Constitution of the Republic of Serbia, ratified international treaties, and universally accepted rules of international law.

B. Entity establishment

2 **What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?**

There are four main types of legal forms:

- a partnership, where individuals share the profits, responsibility, debts and (personal) liability of the partnership as partners,
- a limited liability company ("**LLC**") which is most commonly formed as a private company limited by shares,
- a public company (joint-stock company) which is not that common and has more stringent requirements but through which the company can offer its shares to the public, and
- an entrepreneurship (sole trader) as a form in which a natural person registers to conduct business activity. It is very common for small businesses that are not regulated (e.g., in banking, insurance, and similar areas).

3 **Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?**

A foreign company may carry on business directly in Serbia. For some businesses, there is a requirement that they need to be conducted by local entities, e.g., banks, insurance companies, etc.

4 **Are there are any capital requirements to consider when establishing different entity types?**

General rules define minimum capital requirements; For an LLC this is approximately EUR 1, for public companies (joint-stock company) this is approximately EUR 25,000.

Special requirements may be imposed for specific industries, e.g., for a bank there is a minimum capital requirement to the amount of EUR 10,000,000, while for an insurance company this amounts to EUR 3,200,000.

5 How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilize?

All the above mentioned under point 2 need to be registered in the local commercial registry (Serbian Business Registers Agency - SBRA). Depending on the specific form, there are other corporate registrations needed (for a public company, there is a Central Securities Register, Depository and Clearinghouse beside SBRA). The registration has a constitutive effect i.e., the capacity of an entity in legal traffic is recognized only after the registration.

An entrepreneur must use its personal name and the note that they are liable as an entrepreneur. In addition, other descriptions may be added to the business name. After registration with SBRA, an entrepreneur may apply for a business account with a bank and start to operate. An entrepreneur may use almost all tax options as a company (LLC or partnership) e.g., lamp sum taxation (depending on the registered business activity), regular income taxation, the VAT regime, etc.

A partnership must choose its name and seat, partners must conclude an incorporation act, enter into the partnership contributions of equal value (as a rule), and register with SBRA. After incorporation, the company applies at the bank for a bank account. The company needs to also register the Ultimate Beneficial Owner in a separate registry within SBRA. The partners may create their own partnership agreement to govern the partnership. Each partner is authorized to conduct usual business activity individually, and for other activities, the consent of other partners is necessary.

An LLC must have a name, prevailing business activity, a registered address, an incorporation act (for public companies a statute is also necessary), the share capital defined, and must register with SBRA. After incorporation, the company applies at a bank for a bank account. The company needs to also register the Ultimate Beneficial Owner in a separate registry within SBRA. An LLC is by far the most common type of vehicle established by investors.

6 How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

Generally speaking, a company may have a one- or two-tier management system. A one-tier management system means that a company has: 1) one or more directors, and 2) a general meeting. A two-tier management system means that a company has: 1) one or more directors, 2) a supervisory board, and 3) a general meeting.

LLCs and joint stock companies are managed by directors who make decisions individually or at board meetings depending on the management structure. Other limitations such as a co-signature may be imposed upon directors. However, certain decisions must be made by shareholders at a general meeting. Shareholder's decisions may be adopted by a simple majority (over 50% of the present shareholders) or by a qualified majority (over 75% of the present shareholders) depending on the type of decision. The majority for decision-making can be increased (not decreased). In a two-tier management system, some authorizations of a general meeting are transferred to a supervisory board.

7 Are there general requirements or restrictions relating to the appointment of (a) authorized representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

Entrepreneurs do not have the function of a director; the individuals or entrepreneurs are the one authorized for representation.

Each company needs to have at least one statutory representative (director) who is a natural person. Beside them, local legal entities may also be statutory representatives. Directors do not have to be local nationals or residents.

For LLCs, there are no specific general conditions or requirements for the appointment of a director, but it can be defined in an incorporation act of a company (conditions for a director).

For joint stock companies, it is prescribed that a director may not be a following person:

1) The director or a member of the supervisory board in more than five companies;
2) A person sentenced for a crime against the economy, during the period of the last five years, as of the day of finality of the ruling, where this period does not include the time spent serving a prison sentence;
3) A person imposed with a security injunction prohibiting him from conducting activity which constitutes the prevailing business activity of the company, for the duration of such a prohibition.

At least one shareholder needs to incorporate a company limited by shares (LLC, joint stock company). For a partnership at least two partners are necessary. There is no maximum number of shareholders a company can have. There is no statutory limit to the number of new members who can join a company after incorporation. You can add new members by transferring existing shares from a current shareholder, or by issuing new shares to a new shareholder of a joint stock company or increasing a share capital in an LLC by new members. There are no local residency or nationality requirements for shareholders

8 **Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?**

From a corporate law perspective, there are no restrictions in expanding business operations in Serbia through local establishments such as distributors or trade agents unless the specific business is regulated e.g., a bank or an insurance company. This is more in the field of contract law than in the field of corporate law. Depending on the business, it is possible to conduct business remotely i.e., online.

C. Entity operation

Please answer the following questions only for the most common entity / ies within your jurisdiction:

C1. Governance

9 **Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.**

There is a Corporate Governance Management Codex that was adopted by the Serbian Chambers of Commerce 10 years ago. The application of the codex is voluntary and is rarely seen in practice. It may be applied by all companies no matter the legal form, and even by state owned companies.

C2. Capital

10 **What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.**

A company may be financed through:

- a share capital increase,
- additional payments (quasi capital),
- loans (from shareholders or third parties).

If financing is supported by shareholders, special attention should be paid to the limitation of payment made by the company to its shareholders. A company may not make payments to shareholders if, according to the latest financial statements, the company's net assets are lower or would become lower due to such a payment, than the amount of paid-up share capital increased by the reserves that the company has to maintain pursuant to the law or incorporation act, if any such reserves are in existence, except in the case of a reduction of share capital. The total amount of the payments made to shareholders for a business year may not be higher than the profit at the end of that business year, increased by retained earnings from previous years and the amounts of reserves provided for distribution to shareholders, and decreased for the losses brought forward from previous periods and the amounts of reserves that the company has to maintain pursuant to the law or incorporation act, if any such reserves are in existence. The shareholders who received payments contrary to the previous rules will make a return of the same amount to the company in the event that they knew or must have known that the payment was made contrary to the said rules.

C3. Return of proceeds

11 **What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.**

The limitation of payment made by the company to its shareholders mentioned in the point 10 above applies here too.

The dividend is paid to the shareholders based on the decision of the general meeting in proportion to the shares held by each shareholder, as a rule, or in another way if defined in the incorporation act.

The return of the additional payments made by shareholders is done based on the procedure for decreasing the company's share capital. This means that the decision on the return must be adopted by the general meeting which needs to be published at the local commercial registry so that the creditors may object in case they see a threat to their receivables.

The return of loans requires nothing specific in the case of shareholders except for the payment limitation already mentioned. However, if the loan was provided by a foreign shareholder, the repayment may not be possible before the expiration of one year since the loan was used and if the loan was used in several installments, the one-year period is calculated for each installment. This is one of the local specific requirements derived from somewhat rigid foreign exchange rules.

Generally speaking, a decrease of share capital cannot be used for a return of proceeds.

C4. Shareholder rights

12 **Are specific voting requirements / percentages required for specific decisions?**

As a rule, a simple majority (more than 50%) of present shareholders with the right to vote is enough for a general meeting to adopt a decision unless the incorporation act defines greater majority.

For LLCs, a qualified majority (2/3) of all votes is required for:

1) An increase or reduction in share capital;
2) Status changes and changes to the legal form;
3) Passing a decision on the liquidation of the company or filing a motion for initiating bankruptcy;
4) Profit distribution and the manner in which losses are covered;
5) The acquisition of the company's own shares;
6) The acquisition of the company's reserved own shares.

For joint stock companies qualified majority is usually more than 3/4 (75%) of all votes.

13 **Are shareholders authorized to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?**

Management i.e., directors are obligated to manage the company in accordance with the law, incorporation act and decisions of the general meeting. In case the company has more than one director and there is a dispute among them in relation to the management of the company, a director may refer to the general meeting for instructions.

Shareholders may initiate convening the general meeting session if they have or represent 10% of the votes in the general meeting. However, regardless of the possibility for a session to be convened, a decision may be adopted only if a required majority is secured (previous point 12).

Other than mentioned, individual shareholders are not authorized to issue instructions to company management, but only in form of a decision of the general meeting

C5. Employment

14 **What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?**

Employees working in Serbia are subject to Serbian labor and employment legislation, with Labor Law being the most important source to consider. The information provided below presents the key aspects of the employment law landscape in Serbia and is relevant in most cases (while certain exceptions to these general rules do exist).

Right / Protection	Details
National Minimum Wage	In 2023 the statutory minimum hourly rate is RSD 230 (approx. EUR 2).

Holiday	Employees are entitled to the minimum of 20 working days' paid holiday each year. For the purpose of using the holiday, it is considered that one week has five working days.
Working Hours	Statutory maximum working hours per week are 40 hours. In exceptional cases determined by Labor Law, a total of eight hours of overtime work per week is allowed.
Rest Periods	Employees are entitled to the following rest periods: 12 hours' uninterrupted rest per day; 24 hours' uninterrupted rest per week (to which, as a rule, the daily rest is added); and a rest break of 15 minutes when working four to six hours per day, 30 minutes when working six to 10 hours per day, and 45 minutes when working more than 10 hours per day (the daily break is counted as working hours).
Pension rights	All employees have to be included in the state pension scheme (compulsory pension and disability insurance). Employers are required to pay the pension and disability contribution to the amount of 10% of salary on their own behalf, and 14% on behalf of an employee. In total, 24% of the salary[1] is the amount of the contribution to the compulsory pension and disability insurance.
Discrimination	Employees are protected against discrimination on the basis of the following protected characteristics: • sex; • birth; • language; • skin color; • age; • race; • pregnancy; • health condition, i.e., disability; • ethnic origin; • religion; • marital status; • family obligations; • sexual orientation; • political or other belief; • social background; • financial status; • membership in political organizations, trade unions; and

[1] There is the maximum amount of salary for the purpose of calculation of pension contribution. In 2023, it is approx. EUR 4,250. If a salary surpasses this amount, the contribution is calculated as if the salary is equal to such an amount.

	any other personal characteristics.
Maternity Leave / Pay	Maternity leave consists of the following: Pregnancy and childbirth leave - An employed woman is entitled to commence this leave not before 45 and no later than 28 days prior to the time set for childbirth. This leave lasts until the end of three months from the day of childbirth. Childcare leave - After the expiry of the pregnancy and childbirth leave, an employed woman is entitled to childcare leave until the expiry of 365 days from the day of commencement of leave of pregnancy and childbirth leave[2]. In case of giving birth to a third and every subsequent child, the total duration of the maternity leave extends to two years. The right to use the first category of leave - pregnancy and childbirth leave – belongs also to a woman whose child is stillborn or dies before the end of the leave. An employed woman is entitled to salary compensation during maternity leave. The amount of compensation is determined using a formula that considers salaries earned, and social security contributions paid, during the 18-month period preceding the maternity leave. The compensation is paid from the public budget.
Paternity Leave	An employee is entitled to up to five business days of paid leave a year for childbirth by their spouse (at the cost of the employer).
Shared Parental Leave	A father can use the maternity leave instead of the mother under the following conditions: Pregnancy and childbirth leave can be used by the father only exceptionally, namely: if the mother abandons the child, dies, is unemployed, or is prevented to exercise that right due to other justified reasons (imprisonment, serious illness etc.). Childcare leave can be used by the father whenever he agrees to do so with the mother of the child.
Statutory sick pay	Employers have to pay employees who are absent up to 30 days from work due to an injury or illness: A minimum 65% of an average salary within 12 months preceding the month in which an employee left for sick leave (but such an average may not be lower than the statutory minimum salary), 100% of an average salary within 12 months preceding the month in which an employee left for a sick leave (while the average also may not

[2] There are announcements that this period will be extended to 15 months for first child and 18 months for second.

	be lower than the statutory minimum salary), in case the sick leave is caused by an injury at work or an occupational illness. In the first case, if the employee is unable to return to work after 30 days, compensation of salary is from that day on is covered by compulsory health insurance. In the latter case, the employer continues to bear the costs of the salary compensation.
Statutory Notice Periods	In case of termination by an employer, a notice period is required only in the following two cases: When the employment contract is terminated due to unsatisfactory work performance or due to a lack of necessary knowledge and skills. The notice period will be between eight and 30 days, depending on the duration of the previous employment of the employee; and In the case of dismissal during the probation period, in which case a notice period is a minimum of five working days. In the case of termination by an employee, the statutory notice period is between 15 and 30 days.
Unfair dismissal	Employees may be dismissed only in a limited number of cases prescribed by the Labour Law (which include underperformance, misconduct, redundancy etc.), after the prescribed formal procedure has been conducted. If these rules are not observed, an unfairly dismissed employee may request annulment of the dismissal through court proceedings, reinstatement to work, and compensation of the salary they would have earned. In some cases, the court may decide not to reinstate the unfairly dismissed employee, but only to obligate the employer to pay them certain compensation (ranging from six to 36 salaries, depending on certain specific circumstances).
Statutory Redundancy Payment	Employers have to pay a redundancy payment to employees with at least one full year of service with them, their affiliates, and/or legal predecessors. The amount of severance pay may not be lower than the sum of the third of the employee's salary (the average salary earned during the three months before the month of employment termination) per each full year of employment with the current employer (and their affiliates and/or legal predecessors). The employee loses the right to this payment if they refuse a measure alternative to the redundancy offered by the employer (e.g., the transfer to another suitable job).
Statement of particulars	An employment contract must be concluded in written form prior to establishing employment, and it must include the mandatory elements prescribed by the Labour Law.

	In case an employee starts to work without signing an employment contract it is deemed that they have established a permanent employment relationship. The failure to comply with this obligation can also result in misdemeanor liability involving a potential fine of up to approximately EUR 17,000 for a legal entity and up to approximately EUR 1,200 for a responsible officer.

15 **On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?**

Basis for dismissal

An employee can be dismissed only on the basis prescribed by Labour Law. These basis include:

- Underperformance by the employee;
- Criminal liability of the employee for a crime committed at or related to work;
- Failing to return to work after the expiry of certain types of absence;
- Breaches of work duties or work discipline, as specified by Labour Law, collective bargaining agreement, or internal employment rulebook, or by the employee's employment contract;
- Redundancy caused by technological, economic, or organizational changes;
- Refusal of the employee to agree to certain amendments to the employment contract.

Process of dismissal

Different dismissal processes are prescribed for different bases for dismissal. In general, an employee is dismissed by a written resolution, which has to include an explanation and information on the legal remedy. The resolution has to be delivered to the employee in accordance with the rules laid out under Labour Law.

In the case of an underperformance dismissal, an employee can be dismissed only if they have been previously provided with the details about their shortcomings, instructions on how to improve, and adequate time for improvement.

In the case of dismissal due to breach of work duties or discipline, the employee has to be warned in written form, and to be provided with at least eight days to respond.

In the case of a redundancy dismissal, certain decisions changing the organizational structure of an employer should be adopted prior to rendering the dismissal resolution.

Associated costs

In the case of a redundancy dismissal, an employee may be entitled to a severance redundancy payment (please see above).

Collective redundancy dismissals

There are specific rules applicable in case of collective redundancy dismissals that are triggered when an employer dismisses:

- 10 employees if the employer employs more than 20 employees and less than 100 permanent employees;
- 10% of employees if the employer employs between 100 and 300 permanent employees;

- 30 employees if the employer employs more than 300 permanent employees;
- at least 20 employees within a period of 90 days, regardless of the total number of employees.

If one of these thresholds is reached, an employer has to conduct the redundancy procedure specific to collective dismissal, which involves cooperation with the trade union and the National Employment Service.

16 **Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?**

Serbian labour legislation guarantees the freedom of employees to organize trade unions, which have rights to be informed and consulted in some situations that influence the status of the employees. Representative trade unions are those employing a certain specific number of employees at the employer, or in one branch, industry or on a specific territory. Representative trade unions have some additional rights, such as the right to negotiate a collective bargaining agreement with the employer (or with the appropriate union of employers, representative for specific branch, industry, or territory).

Generally, no entities are exempt from the relevant regulations (at least in the private sector).

C6. Anti-corruption / bribery / money laundering / supply chain

17 **Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?**

While there is anticorruption legislation in Serbia – the current Law on the Prevention of Corruption has been in force since 2019 – its scope is limited to public officials and corruption is assessed only from such a perspective. There is no extraterritorial reach of this Law.

However, the Serbian Criminal Code does contain criminal offences related to bribery.

Please see the response below.

18 **What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?**

The Criminal Code has a section whereunder criminal offences against the economy are listed.

Criminal offences stipulated under the Criminal Code that are related to title of this section C6. include:

- accepting a bribe;
- giving a bribe;
- money laundering.

Hence, all of the mentioned actions are illegal and can lead to punishment by imprisonment.

Also, there is a general obligation to report the preparation of any criminal offence which is punishable by imprisonment of five or more years. Accepting bribes and money laundering qualify as such. Hence, any person who knows such preparation is happening is obliged to report that to the authorities. Failure to do so is a criminal offence of its own.

19 **How is money laundering and terrorist financing regulated in your jurisdiction?**

The Law on the Prevention of Money Laundering and Terrorism Financing was rendered in 2017.

This governs obligations of a number of entities, including banks, leasing companies, payment institutions, public notaries, real estate agents etc., in different moments of conducting business with their clients.

The main purpose of this Law include: (i) the determination of the identity of the client and, if applicable, its Ultimate Beneficial Owner; (ii) the assessment of the (actual) purpose of the conducted business relation/transaction; (iii) the assessment of the origin of assets that are the subject of the business relation/transaction.

20 **Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?**

No, Serbia does not have any piece of legislation which would directly regulate the rights and duties with regard to a (responsible) supply chain.

C7. Compliance

21 **Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.**

The registry of financial statements is held by SBRA and is publicly available to all companies and entrepreneurs.

Due Date
Legal entities, and entrepreneurs, are obliged to submit to SBRA, for statistical purposes and for the purpose of public announcement, regular annual financial reports for the reporting year, which is no later than 31 March of the following year (as a rule).

Mandatory Audit of the Financial Reports
A statutory audit is mandatory for regular annual financial reports of large and medium-sized legal entities (later elaborated), public (listed) companies in accordance with the law governing the capital market regardless of their size, as well as all legal entities or entrepreneurs whose total income realized in the previous business year exceeds EUR 4,400,000 in RSD equivalent. A statutory audit of consolidated financial statements is mandatory for parent legal entities that prepare consolidated financial statements in accordance with the law governing accounting.

Classification of Legal Entities and Entrepreneurs
Legal entities and entrepreneurs, in terms of accounting law, are classified into micro, small, medium, and large legal entities, depending on the average number of employees and business income in the business year, and the value of total assets determined on the balance sheet date of the regular annual financial report.

Micro legal entities include those legal entities and entrepreneurs that do not exceed the threshold values of two of the following criteria at the balance sheet date:

1) the average number of employees is ten,
2) the business income is of EUR 700,000 in RSD equivalent,
3) the value of total assets on the balance sheet date is EUR 350,000 in RSD equivalent.

Small legal entities are those legal entities and entrepreneurs that, on the balance sheet date, exceed the limit values of the two criteria for micro legal entities, but do not exceed the limit values of two of the following criteria:

1) the average number of employees is 50,
2) the business income is of EUR 8,000,000 in RSD equivalent,
3) the value of total assets on the balance sheet date is EUR 4,000,000 in RSD equivalent.

Medium-sized legal entities are those legal entities and entrepreneurs that, on the balance sheet date, exceed the limit values of the two criteria referred to small legal entities, but do not exceed the limit values of two of the following criteria:

1) the average number of employees is 250;
2) the operating income is of EUR 40,000,000 in RSD equivalent;
3) the value of total assets on the balance sheet date is EUR 20,000,000 in RSD equivalent.

Annual Financial Report Scope

The regular annual financial report of large legal entities, medium-sized legal entities, legal entities obliged to prepare consolidated annual financial statements (parent legal entities), public (listed) companies, i.e., companies preparing to become public (listed), in accordance with the law governing the capital market, regardless of the size, assume:

1) The balance sheet,
2) The income statement,
3) The report on other results,
4) The statement of changes in equity,
5) The cash flow statement, and
6) Notes to the financial statements.

Regular annual financial report of legal entities and entrepreneurs, except for legal entities previously mentioned, assume:

1) The balance sheet,
2) The income statement, and
3) Notes to the financial statements.

The regular annual financial report of entrepreneurs and other legal entities classified as micro legal entities assume:

1) The balance sheet, and
2) The income statement.

22 Please detail any corporate / company secretarial annual compliance requirements?

There are no corporate/company secretarial annual compliance requirements.

23 Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

General meeting sessions may be ordinary and extraordinary.

An ordinary session of the general meeting is held once a year, no later than within six months from the end of a business year (all others are extraordinary). Financial statements are usually adopted at regular sessions of the general meeting.

24 **Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners ("UBO") of entities? If yes, please briefly describe these requirements.**

Yes, there is a mandatory reporting on the UBO, 15 days from incorporation of a company or 15 days from a change of the UBO.

The UBO registry is held by SBRA. The registration may be done only electronically, and for that a local director need to have a local qualified electronic certificate for e-signing.

C8. Tax

25 **What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?**

Corporate income tax is the main tax imposed on entities operating in Serbia.

Serbian resident companies (companies incorporated or with a place of effective management and control in the territory of Serbia), including branches of foreign companies, are subject to a 15% corporate income tax on their worldwide income, while non-residents are taxed only on Serbian-sourced income.

Taxable income is assessed on the basis of accounting profit, further adjusted for tax purposes.

Capital gains derived by resident companies (from the sale of real-estate, shares, investment units, intellectual property rights, and digital assets) are included in taxable income. On the other side, capital gains derived by nonresidents (from the sale of Serbian assets - real estate, shares, and investment units) are taxed by means of an assessment and are subject to tax at a 20% rate, unless otherwise provided under the terms of the relevant tax treaty.

Dividends paid by a Serbian-resident company to another Serbian company are exempt from corporate income tax.

Tax losses generated from business activities may be carried forward for 5 years, and may be used to reduce taxable income determined in the tax balance in future tax periods, whereby operational tax losses cannot be used to offset capital gain and vice versa (i.e., capital gains may be offset solely against capital losses originated in the same year and with capital losses from the previous five years).

26 **Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)**

1. Special tax relief for large investments - A 10-year corporate income tax relief is available for large investors that invest over RSD 1 billion (approx. EUR 8 million) in fixed assets, which are used for registered business activities, and hire an additional 100 employees for an indefinite period of time during the period of investment.

2. R&D deduction - Expenses directly related to R&D activities performed in Serbia are tax deductible in the double amount (not applicable on research expenses arising with the aim of finding and developing oil, gas, or mineral resources in the extractive industries).

3. IP Box - Qualified income, realized by the owner of the IP, based on the compensation for the use of registered IP, except compensation for the transfer of all rights on the IP, may be excluded from the tax base to the amount of 80% of such realized income if the taxpayer opts for it.

4. Tax credit for investment in start-up companies – A taxpayer which is not a newly established company performing innovative business activities, and which invests in the share capital of a newly established company performing innovative business activities, has a right to a tax credit to the amount of 30% of such an investment.

5. Foreign tax credit - Dividends received by a Serbian resident company holding at least 10% of the shares in a non-resident company for at least one year are eligible for a credit for foreign tax paid on dividends (both corporate income tax and withholding tax paid), whereby the tax credit cannot exceed the amount of tax payable on the foreign income under domestic legislation. Furthermore, a Serbian resident company may claim a tax credit for foreign withholding tax paid on interest, royalties, lease/service fees, and dividends (that do not meet stated conditions regarding the percentage of shares and holding period), which cannot exceed the amount of tax that would be paid on 40% of the received gross income in Serbia (at 15% rate). Serbian resident company may also claim a tax credit for foreign tax paid on capital gains, which cannot exceed the amount of tax payable on capital gains under domestic legislation.

6. For taxpayers that have granted a concession to a private partner, income realized from the transfer of nonmonetary assets without consideration that was made by the private partner under the terms of the concession agreement may be excluded from the tax base in the tax period in which the income was recorded, provided that the estimated value of the concession amounts to at least EUR 50 million.

7. Capital gains realized on the sale of digital assets may be excluded from the tax base if proceeds generated from the sale of digital assets are invested in the same tax period in the share capital of a resident company or an investment fund whose center of business (i.e., investment activities) is in Serbia. Capital losses arising from the sale of digital assets may not be offset against capital gains if this incentive is claimed.

27 Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

Withholding tax at a rate of 20% is levied on income generated by a non-resident legal entity from a resident legal entity on the basis of dividends, royalties, interest, fee for lease and sublease of movable and immovable property located in the territory of Serbia and service fee for market research services, accounting and auditing services and other legal and business consulting services regardless of the place of rendering or using such services.

Special rules apply to payments made to legal entities – the residents of countries that are deemed as tax havens under the Serbian tax legislation (jurisdictions with preferential tax systems). Namely, listed payments made to entities located in such jurisdictions are subject to a higher 25% withholding tax (except dividends that are taxed at regular 20% rate). Furthermore, all service fees paid to entities located in tax havens are subject to withholding tax, regardless of the nature of such services, and place of their rendering and using.

One other specific point in Serbian legislation is that a branch is not considered a legal entity (but a part of a foreign entity). Consequently, a branch does not have an obligation to withhold tax on payments to non-

resident entities (i.e., when transferring profit to its headquarters, paying service fees, royalties, and similar activities). However, if the branch office would be paying a fee for lease of movable or immovable property located on the territory of Serbia (e.g., equipment) to a non-resident entity, such a non-resident entity would be taxed based on the Tax Authority's assessment. It would need to appoint a tax representative in Serbia and acquire a non-resident tax ID number, in order to file the tax return and pay the tax for the rental income received.

The statutory rate may be reduced if there is an applicable Double taxation treaty in force between Serbia and the State of Residence of the income recipient, provided that prescribed conditions for its application are met (tax residency certificate for the income recipient should be obtained prior to payment and non-resident income recipient should be the beneficial owner of the income).

28 Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

A 2.5% tax applies on the transfer (sale) of real estate, intellectual property, used motor vehicles, vessels or aircraft, and building land use rights. The transfer of shares is exempt from transfer tax.

There is no stamp duty. However, fees are charged by the competent authorities and/or notary when certifying documents relating to property transfers.

C9. M&A

29 Are there any public takeover rules?

Yes. The framework governing public takeovers in Serbia comprises of the following:

- the Takeover Act applies to public joint stock companies listed on an organized market in Serbia as well as to private (i.e., non-listed) joint stock companies that have at least 100 shareholders and shareholder equity of EUR 3 million;
- the Capital Markets Act;
- the Companies' Act;
- the rules and regulations enacted by the Securities & Exchange Commission (www.sec.gov.rs);
- the rules and regulations enacted by the Central Securities Register, Depository and Clearing house (www. crhov.rs); and
- Serbian public takeover rules.

Any company or individual intending to acquire or dispose of a public company in Serbia should obtain professional advice.

30 Is there a merger control regime and is it mandatory / how does it broadly work?

The authority competent for merger control in Serbia is the Commission for Protection of Competition of the Republic of Serbia (Competition Commission), based in Belgrade. Merger control rules are set out in the Law on Protection of Competition.

In general, a transaction must be notified to the Competition Commission if either of the following thresholds are met:

- The combined global turnover of the parties in the year preceding the concentration exceeds EUR 100 million and at least one party's Serbian turnover exceeds EUR 10 million; OR
- The combined Serbian turnover of the parties in the year preceding the concentration exceeds EUR 20 million and at least two parties each have a Serbian turnover of more than EUR 1 million.

Whenever the merger filing thresholds are exceeded, the parties must refrain from implementing the transaction until it is cleared by the Competition Commission.

However, the Law on the Protection of Competition sets out special rules for acquisition of joint stock companies through a public bid. Namely, in case that the control over the Serbian joint stock company is acquired through a public bid the concentration must be notified and approved by the Competition Commission irrespective of the parties' turnover.

According to the Law on the Protection of Competition, the Competition Commission is required to decide on the notification of concentration within one month from the date of the receipt of complete notification. The Competition Commission can either approve a concentration (in Phase I), prohibit it, or decide to ex-officio investigate the concentration further (in which case it opens Phase II, and has additional four months to decide).

31 **Is there an obligation to negotiate in good faith?**

Under Serbian law, there is no express obligation on parties to conduct negotiations in good faith

32 **What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?**

There are no specific rules nor protection in case of share and asset deals.

Only in case of status changes (mergers, acquisitions, and spin-offs) the following applies:

- employees whose employment contracts are to be transferred to the new employer must be informed by the current employer in written on the transfer (whereas the employees who refuse to be transferred may be dismissed);
- the new employer is obligated to apply a collective bargaining agreement (CBA) or the internal employment rules (which can be adopted unilaterally by the employer if no CBA is in place), which were in effect at the moment of transfer, for one year after the transfer (unless before the expiry of this period the term of CBA expires, or a new CBA is concluded);
- the previous and new employer have to inform a representative trade union, or – if there is no such trade union – all employees directly, on the details (timeline, reasons etc.) of the contemplated transfer;
- the previous and new employer are obligated to, in cooperation with a representative trade union, implement measures for alleviating potential negative impacts on the employees' socio-economic status arising from the contemplated transfer (no specific measures are prescribed by law).

However, under the Takeover Act, the employees must be informed about the takeover bid, and they are entitled to provide their opinion on the bid.

C10. Foreign direct investment

33 **Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.**

None.

34 **Does your jurisdiction have any exchange control requirements?**

There are no exchange control requirements for foreign direct investments save for simple notification obligation of Serbian companies to quarterly submit a report to the National Bank of Serbia if they have a foreigner in the shareholder structure.

However, foreign exchange regulations in respect to the credit transactions are strict, as well as conservative, and before granting any loan or providing any guarantee to (or from) a Serbian entity, professional advice should be obtained.

D. Entity closure

35 **What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.**

The most common method to dissolve an entity is through voluntary liquidation. Besides voluntary liquidation, there is mandatory liquidation and insolvency proceedings.

Voluntary liquidation
The liquidation of a company may be conducted when the company has sufficient assets to settle all its liabilities. The liquidation is initiated by the shareholders' decision (for LLC majority of 2/3, and for joint stock company, a simple majority). A company appoints a liquidator at the decision on initiating the liquidation.

Upon the appointment of a liquidator, the representation rights of all representatives (e.g., directors) of the company terminate. If the company fails to appoint a liquidator as prescribed, all legal representatives of the company become liquidators. The liquidation lasts at least four to five months, but in practice it usually takes more than six months. During the liquidation, a company may terminate the liquidation and resume its operations. The decision to terminate the liquidation may be rendered only in case the company has fully satisfied all creditors, regardless of whether the claims of such creditors were contested or recognized, provided that it has neither cancelled the employment contract to any employee on the grounds of liquidation, nor commenced with payments to company members.

Mandatory Liquidation
Mandatory liquidation is initiated if:

1) The following measure has been imposed against a company by a final ruling:

(1) A prohibition of conducting business and the company fails to initiate liquidation within 30 days from the day of finality of such ruling,

(2) A prohibition of conducting registered business activity, and the company fails to register the deletion i.e., change of that activity or fails to initiate liquidation within 30 days from the day of finality of such ruling;

(3) A revocation of a permit, license, or approval for the performance of a registered business activity, and the company does not register the deletion i.e., change of that activity or does not start liquidation within 30 days from the day of finality of that ruling,

2) Within 30 days from the day of expiry of the period of duration for which the company is incorporated, the company fails to register an extension of the period of duration of the company, or fails to initiate liquidation within the same time limit,

3) Only one partner remains in a partnership in case of death of the partner, and none of the heirs of the deceased partner gets inscribed in the register as the member of the company within three months from the day of the final conclusion of the probate proceedings,

4) In case of the death of the general partner, the limited partnership remains without general partners, and none of the heirs of the deceased general partner get registered in the register as a member of the company within three months from the day of the final settlement of the probate proceedings,

5) If the buyer of the bankruptcy debtor as a legal entity, does not pay the missing amount up to the minimum share capital within six months from the date of termination of the insolvency proceedings,

6) A final judgment established the nullity of the registration of the company's incorporation in accordance with the registration act,

7) A final judgment instructed the dissolution of the company in accordance with Arts. 118, 138, 239, and 469 of the Companies Act, and the company fails to initiate the liquidation within 30 days from the date of finality of the judgment,

8) A company is left without legal or temporary representative, but fails to register a new one within three months from the day of deletion of the legal i.e., temporary representative from the business entities register,

9) The company does not register a new address of the seat within 30 days from the day of finality of the act of the competent authority rejecting the application for registration of a change of seat,

10) A company in liquidation is left without a liquidator, and fails to register a new one within three months from the day of deletion of the liquidator from the business entities register,

11) The adopted initial liquidation report is not submitted to the business entities register in accordance with law,

12) A company fails to submit to the competent register the annual financial statements up to the end of the previous business year for the two consecutive business years preceding the year in which the financial statements are submitted,

13) A company fails to submit to the competent register the initial liquidation balance sheets in accordance with the law governing accounting,

14) In other cases, prescribed by law.

Insolvency

Insolvency proceedings are initiated where the existence of at least one of the grounds provided for is established:

1) Permanent insolvency,
2) Pending insolvency,
3) Over indebtedness,
4) Failure to comply with the adopted reorganization plan or if the reorganization plan was put into effect in a fraudulent or unlawful manner.

Permanent insolvency is deemed to exist if the bankruptcy debtor:

1) Is unable to pay its debts within 45 days of the date they become due,
2) Has completely ceased all payments for a consecutive period of 30 days.

Pending insolvency is deemed to exist if the bankruptcy debtor makes it apparent that it will not be able to pay its debts as they become due.

Over indebtedness is deemed to exist if the liabilities of the bankruptcy debtor exceed its assets. Where the debtor is a partnership, over indebtedness is not to be deemed to exist if the partnership has at least one partner who is a natural person.

Failure to comply with the adopted reorganization plan will be deemed to exist if the bankruptcy debtor fails to act in accordance with or acts contrary to the reorganization plan in a manner that substantially jeopardizes the implementation of the reorganization plan.

The insolvency proceeding may end with bankruptcy, selling a debtor in this proceeding, and with reorganization of the debtor in which case the debtor actually continue existing if the reorganization plan is respected.

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