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Serbia
Doing Business In

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This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Serbia.

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Serbia: Doing Business In

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

The system of law in Serbia is based on civil law, with the Constitution being the highest legal act.

Ratified international agreements and generally accepted rules of international law are part of the legal system of the Republic of Serbia and they must not contradict the Constitution.

Laws and bylaws must be in accordance with the Constitution and ratified international agreements and general rules of international law. Bylaws must be in accordance with the laws.

The judicial practise does not represent a formal source of law, even though courts tend to consider other courts decisions when rendering their own, in accordance with the principle of legal certainty.

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

There are four legal forms of companies in Serbia: limited liability company (**"DOO"**); joint stock company, which may be public or non-public (**"AD"**); general partnership (**"OD"**); and limited partnership (**"KD"**). Also, natural persons can register as entrepreneurs for conducting business activities.

Companies may also operate through branch or representative offices, which do not have the capacity of separate legal entities, with their founder being liable for all obligations arising from their business activities.

Branch office conducts commercial transactions in the name and on behalf of the company, whilst the activities a representative office may conduct are restricted to preliminary activities and preparations for the legal transactions of its founder, and it cannot carry out commercial transactions.

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

A non-domestic entity can conduct business activities in Serbia without incorporating an entity only by engaging distributers, resellers or agents, as explained below under paragraph 8.

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

The minimum share capital for DOO is RSD 100.00 (cca EUR 8), and for AD is RSD 3,000,000.00 (cca EUR 25,000). However, for some entities conducting specific business activities, the minimum share capital is higher (e.g. banks, insurance companies).

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

All commercial entities are considered incorporated once registered before the Business Registers Agency (BRA) by submitting necessary incorporation documents for a specific entity.

DOO is the most common legal form in Serbia used by investors, and it is incorporated by one or more shareholder(s).

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

DOO and AD can have a one-tier or two-tier management system.

In DOO one-tier management considers having General Meeting (comprising of all shareholders) and one or more directors. Two-tier management additionally includes a Supervisory Board.

In AD one-tier management considers having General Meeting and one or more directors, i.e., the Board of Directors. Two-tier management considers General

Meeting, Supervisory Board and one or more executive directors, i.e., the Executive Board.

General Meeting is the highest body of the company deciding on the most important matters, as prescribed by the applicable law and general acts.

Directors are legal representatives of the company who are responsible for managing the company, whilst the Supervisory Board is responsible for business strategy and for appointing, dismissing and supervising the work of company directors. In the one-tier system, the supervising powers are entrusted to the General Meeting directly.

Apart from directors, company may have registered other representatives and/or procurators. All representatives may have registered restrictions in representing the company by a co-signature of some other person(s).

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

The company is required to always have at least one director, who can be a domestic or a foreign natural person or legal entity, otherwise, compulsory liquidation is triggered.

In case of public AD's, there is the obligation to have at least three executive directors and to have non-executive directors, whose number must be greater than the number of executive directors, whereas one non-executive director must be independent from the company (independent director).

There are no restrictions regarding residency or nationality of directors/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?

It is possible for a non-resident entity to carry out business in Serbia, without establishing a subsidiary company or branch or representative office, by engaging distributers, resellers and/or agents in Serbia, who shall carry out custom procedures and other needed formalities. However, for certain business activities, for which prior permission or licence is required (e.g. financial, medical and accounting services), it is necessary to have an established entity in Serbia.

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.

All of the companies in Serbia can only be incorporated after rendering of an incorporation act specific for the entity form and registered before BRA. Each of the incorporation document will need to be verified before notary public. However, such document can exclude further verifications in case of amendments.

For example, in DOO shareholders must render an Incorporation act (in a form of Resolution on Incorporation, when founded by a sole shareholder, and in a form of Agreement on Incorporation, when founded by two or more shareholders). In AD the company is registered on the basis an Incorporation act and Articles of Association.

The Incorporation Act of DOO contains, data on shareholders; business name and seat; prevailing business activity; total amount of the company's share capital; amount of the pecuniary contribution, i.e. pecuniary value and description of the in-kind contribution of each shareholder; date of paying-in, or entering the contribution into the company's share capital; each shareholder's share in the total share capital expressed in percents; corporate bodies and their competences.

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

There are three options pursuant to the applicable laws: increase of share capital, additional payment of a shareholder (exclusively in DOO) and shareholders' loan.

Additional payments represent an obligation of the shareholders to inject a pecuniary amount to the company's bank account, without increasing of its share capital. There are imperative norms regulating the return of the additional payments, which are actually the same as for the process of decrease of the share capital.

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

Serbian applicable laws have various regulations applicable for returning of proceeds from the entities, depending on the manner of infusion of proceeds.

For dividend payment it is necessary to render a Decision on dividend payment and to settle corporate profit tax and other obligations on the basis of public revenues in Serbia.

In case of increase of share capital, the entered capital becomes property of the company. The applicable law prescribes the possibility of decrease of share capital, however only under the situations prescribed by the law (covering of losses, status changes, deletion of own shares, etc). Only in case of liquidation, after all liabilities have been settled, remaining assets are distributed to shareholders.

Regarding additional payments, the company is obliged to return them to shareholders in the period prescribed by General Meeting's decision or by Incorporation Act, and only under certain conditions prescribed by the applicable law being met.

As for the shareholders' loans, the National Bank of Serbia has to be informed on the execution of the loan and the repayment of the loan to the non-resident shareholder in a period of 10 days from the execution of the loan, i.e. repayment, on a specific prescribed form.

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

A simple majority of the total number of votes of the shareholders/stakeholders constitutes a quorum for the General Meetings session, and the quorum for holding a repeated session is 1/3, unless otherwise stipulated in Incorporation Act/Articles of Association.

General Meeting of the DOO/AD renders decisions on its sessions, with a majority of votes of present shareholders/stakeholders, however, for numerous specific decisions, the applicable law prescribes different majorities, unless otherwise prescribed by the Incorporation act. For example, certain decisions in DOO (such as increase or decrease of share capital, initiation of liquidation or bankruptcy, profit distribution) require a 2/3 majority of votes, and certain decisions in AD require a 3/4 majority of votes

In case of Board of Directors and Supervisory Board, decisions are made by the majority of votes of the present members. If the votes are equally divided, the chairman will have a casting vote.

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

Yes, General Meeting can issue binding instructions to directors and to Supervisory Board.

Namely, General Meeting appoints directors and members of Supervisory Board and can dismiss them at any time, without providing reasons. Therefore, if the management acts in a manner contrary to the preferences of the General Meeting, they can be subject to dismissal.

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

The core employment law protection rules guarantee all employees the rights to: respect for their dignity at work; safe and healthy working conditions; limited working hours; daily and weekly rest; paid annual leave; salary compensation for sick leave; fair compensation for work and guaranteed minimum wage; protection against unjustified termination of employment, discrimination based on any kind of personal characteristics and against abuse at work; to join trade unions or strike; etc.

The main mean for protecting of the aforementioned rights is a lawsuit in labour litigation.

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?

The employer in Serbia can unilaterally terminate the employment for the following reasons:

1. employee's inability to work and/or poor performance;
2. breach of work duty;
3. non-compliance with the work discipline;
4. redundancy of employees or refusal of annex by an employee.

The process for dismissal differs depending on each

reason for termination.

Collective dismissal differs due to a set of specific rules. E.g., in case of a collective dismissal of minimum 10 employees due to redundancy, employers are obliged to render a solution-finding program of employee redundancy. This program, *inter alia,* contains reasons for the cessation of the need for work; total number of employees; criteria for establishing redundancy.

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?

Employees in Serbia are entitled to associate, participate in negotiations for concluding collective agreements, settling of labour disputes, being consulted on important matters, etc. The employer can neither terminate the employment, nor in any other way put the employee in a disadvantageous position due to his status or activity as an employee representative, trade union member, or participation in trade union activities.

Serbian jurisdiction recognizes three forms of employee representation – (i) Trade Union; (ii) Council of Employees (within employers having over 50 employees); (iii) *ad hoc* representatives elected for specific purposes.

There are no exemptions from the corresponding regulations.

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?

In Serbia, the system of prevention of bribery and corruption is established primarily on the Law on Prevention of Corruption, which applies only to Serbian public officials and therefore, has no extraterritorial reach.

On the other hand, in the case of criminal acts related to bribery and corruption, the extraterritorial principle can be applied, that is, to foreign entities in cases of criminal acts committed on the territory of Serbia and other cases prescribed by law.

Also, the relevant provisions related to anti-bribery and anti-corruption can be found in many other regulations, such as the Criminal Code, the Code of Criminal Procedure, the Law on the Protection of Whistleblowers and the Law on Public Procurement.

For the purpose of prevention of corruption, the following state bodies are established: the Agency for Prevention of Corruption and special departments for compressing of corruption within several higher courts, courts of appeal and public prosecutions.

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 prescribes a separate section of criminal acts addressing economic crimes. Furthermore, the Law on Liability of Legal Entities for Criminal Offenses regulates, *inter alia,* the conditions of liability of legal entities for criminal acts and the criminal sanctions that can be imposed on legal entities.

Failure to report any criminal act (not just economic) constitutes a criminal act itself, i.e., negligence of a responsible person within a company to report a criminal act discovered while performing their duties represents a criminal offense, for which can be punished by law with five years of imprisonment or a heavier penalty.

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

The Law on Money Laundering and Terrorism Financing prescribes measures aimed at detecting and preventing money laundering and terrorist financing, such as obligation of business banks, financial institutions, exchange offices to monitor activities of their clients and to obtain information and ownership documentation from them, up to the ultimate beneficial owner.

A special state body was appointed for control of implementation of the AML law – the Administration for the Prevention of Money Laundering.

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.

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

Entities are obliged to submit and publish regular annual financial statements for the previous year to BRA no later than March 31st of the current year. Additionally, parent companies in a group are obliged to submit and publish consolidated annual financial statements for the previous year to BRA until April 30th of the current year.

Entities that are classified as big or middle, public AD's and other entities whose total revenue exceeds EUR 4,400,000.00 are subject to auditing, and they have an obligation to submit and publish additional prescribed documentation to BRA, along with annual financial statements for the previous year, until June 30th of the current year, and along consolidated annual financial reports for the previous year, until July 31st of the current year.

Each entity is obliged to engage a licenced accountant agency or to employ an accountant.

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

The Law on Archival Material and Archival Activities obliges all entities to submit a copy of the archive book to the competent archive no later than April 30th of the current year, for documentary material created in the previous year.

The Law on Gender Equality obliges the employers who have more than 50 employees to submit to the competent ministry annual plans/work programs for achieving gender equality, and annual reports on achieved gender equality, no later than January 15th of the current year for the previous year.

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 must convene at least once a year on a regular session, whilst it can also convene an extraordinary session.

On the annual sessions General Meeting should consider profit distribution and loss coverage; adopt financial statements and auditor's reports; adopt the report of director(s) or supervisory board; etc.

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

Companies are obliged to register data on the UBO(s) in the Central Registry of Beneficial Owners, within 15 days from the incorporation/change of data.

Companies are also obliged to disclose their ownership structure up to the UBO to the Serbian business banks pursuant to AML procedure and to have and keep appropriate, accurate and updated data and ownership documents within the period of ten years.

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

- Corporate Profit Tax – Tax base: *legal entity's taxable profit;* General tax rate: *15% (special 20% tax rate*);
- Personal Income Tax – Tax base *(inter alia)*: sala*ries; dividends; real estate income; capital gains;* Tax rate: *varies from 10-15%*;
- Value Added Tax – Tax base: *Compensation realized from sale of goods and services and import of goods into Serbia by a VAT registered entity*; General tax rate: *20% (special 10% tax rate is applied only for prescribed goods and services).*

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?)

Law on Personal Income Tax envisions a number of incentives for newly established legal entities, for employment of previously unemployed persons and/or disabled persons, etc. The incentives are prescribed in form of refund of part of paid tax on salary or exemption from payment of tax on salaries paid out to employees.

The Law on Corporate Profit Tax prescribes tax incentives in the form of: (i) tax exemptions for non-profit organizations and (ii) 10 years tax exemption for investments (when more than one billion dinars is invested into the fixed assets of a company and a specific number of new employees is employed).

There are also numerous other incentives in Serbia.

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.)?

Income of a non-resident from a resident entity from dividends, royalties, interest, rent from lease in Serbia and compensation for services provided in Serbia are subject to a withholding tax at the rate of 20%, unless a double taxation treaty stipulates otherwise.

In case of direct investments from non-residents into a Serbian legal entity, resident company is obliged to submit quarterly reports on direct investments to the National Bank of Serbia, within 10 days from the end of each quarter.

A foreign investor may transfer abroad all financial assets in connection with the investment (dividends, royalties, interest, etc.), assets remaining after dissolution of the company, proceeds from the sale of shares in a company etc., only after settling all tax and other obligations based on public revenues in Serbia.

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

Significant transfer taxes are:

- Tax on Capital Gains – Tax base: *difference between selling and purchase price of absolute rights on real estate, intellectual property, shares, etc.* Tax rate: *15%*;
- Tax on Transfer of Absolute Rights – Tax base: *purchase price or market value of absolute rights on real estate, Intellectual property, motor vehicles, etc.* General tax rate: *2,5%.*

Excise tax is paid on the following products: petroleum; biofuels; tobacco products; alcoholic beverages; coffee; electricity, etc. Excise payer is the producer or importer of excise goods. Tax rate is paid per unit of a product and differs depending on the product.

29. Are there any public takeover rules?

There are no public takeover rules in Serbia, except for public ADs, whereas an entity is obliged to publish a notice of takeover, and deliver it to the competent authorities within two working days, when it acquires, directly or indirectly, independently or jointly, a certain threshold of stocks with voting rights of the target AD, namely:

- above 25% (control threshold);
- another 10% after reaching control threshold (additional threshold);
- above 75% (final threshold).

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

Merger control regime is mandatory, whereas the concentration participants are obliged to submit a merger notification to a Competition authority if the prescribed income thresholds of concentration participants (in Serbia and worldwide) are met, within fifteen days from the signing of the agreement or even signing of letter of intention. Merger notification are also submitted in foreign-to-foreign mergers.

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

No. However, the party that entered negotiations without the intention to conclude the agreement is liable for the damages caused to the other party.

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?

Only the change of employer by a status change is considered a change of employer. Change of ownership of capital or assets is not relevant.

In case of change of employer, successor is obliged to take over all employment agreements and Collective Agreement/Work Rulebook from predecessor (and to apply it for at least a year), as well as to notify the employees about the transfer of their employment agreements. If employee refuses the transfer, predecessor may terminate the employment.

Predecessor and successor are obliged to notify a representative trade union, at least 15 days before, about the date of change; reasons and consequences of the change in respect to the status of employees, and measures for their attenuation (and to implement these measures). Should no representative trade union exist, the employees are directly notified.

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.

There are no general foreign direct investment restrictions or requirements/approvals. However, for a specific industries (such as military) some restrictions may be prescribed by a special law regulating that industry.

34. Does your jurisdiction have any exchange control requirements?

Transactions between residents and between residents and non-residents in Serbia can be effected only in dinars, however, in prescribed cases, they can be effected in foreign currency (e.g. loans for the purposes of payment of imports of goods and services, sale and lease of real estate, etc.).

A non-resident and a branch office of a foreign legal entity can make transfers from non-resident bank accounts to a foreign country only if all tax liabilities in Serbia have been settled.

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.

There are three possible ways to wind up an entity: bankruptcy, liquidation, and status changes.

Liquidation may be conducted when the company has sufficient assets to settle its liabilities and is conducted before BRA.

Bankruptcy is conducted when the company does not have sufficient assets to settle its liabilities and is conducted before the Commercial Court.

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