

Srbija: Rezervisani sopstveni udeo – novi pravni institut Zakona o privrednim društvima

Najznačajnija novina koju donose najnovije izmene Zakona o privrednim društvima („ZPD“) je novi pravni institut – rezervisani sopstveni udeo. Šta ovaj institut zapravo znači i koja je njegova svrha?

Rezervisani sopstveni udeo je udeo koji društvo s ograničenom odgovornošću besteretno stiče od člana društva, radi dodele finansijskog instrumenta – pravo na sticanje udela.

Praktično, društva s ograničenom odgovornošću moći će da stimulišu svoje zaposlene ili druga lica sa kojima posluju omogućavajući im da, na osnovu izdatog finansijskog instrumenta, na dan dospelosti po povlašćenju ceni steknu udeo društva.

Procedura ovog koncepta stimulacije zaposlenih sastoji se iz sledećih koraka.

Korak 1. – Sticanje rezervisanog sopstvenog udela.

- Odluku o sticanju rezervisanog sopstvenog udela donosi skupština društva.
- Društvo može steći rezervisani sopstveni udeo samo od udela koji su u celosti uplaćeni, odnosno uneti i samo od udela članova koji su glasali za odluku o sticanju rezervisanog sopstvenog udela.
- Rezervisani sopstveni udeo se registruje kod Agencije za privredne registre („APR“).
- Rezervisani sopstveni udeo ne može se založiti, niti se rezervisanim sopstvenim udelom može raspolagati, osim na način propisan zakonom.
- Društvo može imati i više rezervisanih sopstvenih udela. Jednočlano društvo može steći rezervisani sopstveni udeo.
- Procenat učešća svih rezervisanih sopstvenih udela u osnovnom kapitalu društva ne može biti veći od 40%.
- Društvo po osnovu rezervisanih sopstvenih udela nema pravo glasa niti se ti udeli računaju u kvorum skupštine. Rezervisani sopstveni udeo ne daje pravo na učešće u dobiti.

Korak 2. – Izdavanje finansijskog instrumenta – pravo na sticanje udela.

- Odluku o emisiji finansijskog instrumenta – pravo na sticanje udela donosi skupština društva, osim ako osnivačkim aktom nije drugačije određeno.

Serbia: Reserved Own Share Introduced to Company Law

The most important novelty introduced by the latest amendments to the Company Law (“Law”) is a new legal institute – reserved own share. What does this institute actually mean and why is it significant?

Reserved own share is a share which limited liability company acquires without compensation from its shareholder, in order to issue financial instrument – the right to acquire a share.

Practically, limited liability companies will be able to incentivize their employees and other individuals connected with the business by giving them the option to acquire shares in the company on the due date at a preferential price.

The mere procedure of this employee incentive concept includes the following two steps.

Step 1. – Acquiring a reserved own share.

- The general meeting of the company issues a decision on the acquisition of a reserved own share.
- The company can acquire a reserved own share only from the fully paid shares of those shareholders that have voted for the decision on acquiring a reserved own share.
- A reserved own share is registered with the Business Registers Agency (“BRA”).
- A reserved own share cannot be pledged, or disposed with, except in the manner prescribed by the law.
- A company can have more reserved own shares. A single member company may, also, acquire a reserved own share.
- The percentage of all reserved own shares in the basic share capital of the company cannot be more than 40%.
- Reserved own shares do not give a company the right to vote nor are such shares calculated in the quorum of the general meeting. Also, a reserved own share does not give the right to participate in company’s profit.

Step 2. – Issuance of financial instrument – the right to acquire a share.

- Unless otherwise provided in the company’s memorandum of association, the general meeting issues a decision on issuance of the financial

Sadržina ove odluke propisana je odredbama ZPD-a.

- Društvo je dužno da odluku o emisiji finansijskog instrumenta dostavi Centralnom registru, depou i kliringu hartija od vrednosti („*CRHOV*“) radi upisa i registracije finansijskog instrumenta – pravo na sticanje udela na njihove zakonite imaoce.
- Izdavanje finansijskog instrumenta – pravo na sticanje udela ne smatra se javnom ponudom u smislu Zakona o tržištu kapitala.
- Finansijski instrument – pravo na sticanje udela ne može biti predmet zaloge, niti predmet nasleđivanja.
- Finansijski instrument – pravo na sticanje udela može se: 1) realizovati sticanjem udela ili 2) poništiti pod uslovima i na način određen ZPD-om.

Izmene ZPD-a regulišu i niz drugih pojedinosti u vezi sa rezervisanim sopstvenim udelima, uključujući posebne slučajeve dospelosti finansijskog instrumenta – pravo na sticanje udela i sudsku zaštitu u slučaju kada pravo na sticanje udela nije adekvatno registrovano.

Zaključna razmatranja.

Usvojene izmene ZPD-a počće da se primenjuju od 01. aprila 2020. godine. S obzirom na učešće APR-a i CRHOV-a u celokupnoj proceduri, *vacatio legis* od tri meseca u pogledu predmetnih izmena čini se neophodnim. Stoga bi ovi organi trebalo da do početka primene izmena ZPD-a donesu podzakonske akte koji će sadržati pravila za sprovođenje u praksi onih delova procedure u njihovoj nadležnosti.

Svakako, koncept stimulacije zaposlenih kroz izdavanje finansijskih instrumenata – pravo na sticanje udela deluje kao obećavajući dodatak zakonskoj regulativi privrednih društava u Srbiji. Ovaj koncept bi posebno mogao biti značajan za startup-ove u oblasti IT industrije koji raspolazu ograničenim sredstvima u početnoj fazi poslovanja. S druge strane, ova društva imaju veliki potencijal brzog rasta, pa njihovi članovi imaju mogućnost da ostvare prilično veliki profit u slučaju prodaje udela koji je stečen za relativno mali iznos u početnoj fazi poslovanja.

instrument – the right to acquire a share. The precise content of this decision is prescribed by the Law.

- A company is obligated to submit a decision on the issuance of a financial instrument to the Central securities, depository and clearing house (“*CSDCH*“) in order to register the financial instrument – the right to acquire a share and its owners.
- The issuance of the financial instrument – the right to acquire a share is not considered as a public offer in terms of the Law on Capital Markets.
- The financial instrument – the right to acquire a share cannot be pledged or inherited.
- The financial instrument – the right to acquire a share can be: 1) realized by acquiring a share or 2) annulled under the conditions and in the manner determined by the Law.

The amendments to the Law, also, regulate other details related to a reserved own share, including special cases of maturity the right to acquire a share and judicial protection in case the right to acquire a share is not properly registered.

Key takeaway.

The adopted amendments of the Law will start to apply on 1 April 2020. Considering the participation of the BRA and CSDCH in the entire procedure, the three months’ *vacatio legis* period seems to be necessary. All this since both BRA and CSDCH need to issue certain by-laws in order to give the final shape and form of the procedure in their competence.

In any event, this employee incentive concept i.e. the issuance of a financial instruments – the right to acquire a share, seems a promising addition to the Serbian company law framework. This concept may be of particular interest for start-ups in information technologies which have limited funds in the initial stage of its business. On the other hand, such companies have a great potential for rapid growth, thus their shareholders have the possibility to make high profit by selling its share acquired for much lower amount in the initial phase of the company’s business.

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