

## Serbia: Serbia business shape 2014

**Categories :** [News Serbia Energy](#)

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1. What, in general terms, are your government's policies and practices regarding oversight and review of foreign investment?

Serbia greatly welcomes foreign investment as is shown by the Law on Foreign Investments (Official Gazette SRJ Nos. 3/2002 and 5/2003 and Official Gazette SCG No. 1/2003 (Constitutional Bill)), which prescribes certain exemptions and freedom exclusively assigned to foreign investors. This law introduces a freedom for foreign investment, a national treatment principle, legal security, conversion and unrestricted payment, down to bookkeeping, rights to profit and assets transfer and even the application of more favourable treatment than that provided by this Law for a foreign investor or its investment if an international or bilateral agreement has been signed by the foreign investor's country and Serbia. Since the democratic revolution in 2000, investment has been one of the highest priorities of every Serbian government.

The Serbian Investment and Export Promotion Agency (SIEPA) is a government organisation dedicated to effective serving of foreign investors and buyers, while raising Serbia's profile in the minds of international business decision-makers. Since SIEPA's founding, which was performed in 2001 by the government of Serbia, its mission has been to support foreign companies in the course of business set-up in Serbia and also to support Serbian companies when doing business worldwide.

The investor may encounter various financial incentives as an investment package has been prepared for investors into Serbia. State grants are offered for greenfield and brownfield projects in all industries, except for primary agriculture, the hospitality industry, retail, the production of synthetic fibres and coal.

Tax incentives have also been introduced in Serbia and companies are exempt from corporate income tax for a period of 10 years, starting from the first year in which they report a taxable profit, if they invest in fixed assets to an amount exceeding a specific threshold and if they, throughout the investment period, employ at least 100 additional employees.

2. What are the main laws that directly or indirectly regulate acquisitions and investments by foreign nationals on the basis of the national interest?

The laws that directly or indirectly regulate acquisitions and investments by foreign nationals on the basis of the national interest are the following:

- the Law on Foreign Investments;
- the Law on Companies (Official Gazette RS, No. 36/11, 99/11);
- the Law on Foreign Exchange Operations (Official Gazette RS, Nos. 62/06, 31/11 and 119/12);

- the Corporate Tax Law (Official Gazette RS, Nos. 25/01, 80/02, 43/03, 84/04, 18/10, 101/11, 119/12 and 47/13);
- the Law on Privatisation (Official Gazette RS, Nos. 38/01, 18/03, 45/05, 123/07, 30/10, 93/12 and 119/12); and
- the Law on VAT (Official Gazette RS, Nos. 84/04, 86/04, 61/05, 61/07 and 93/12).

Mergers and acquisitions legislation are laid down in the Law on Protection of Competition (Official Gazette RS, No. 51/09 and 95/2013).

3. Outline the scope of application of these laws, including what kinds of investments or transactions are caught. Are minority interests caught? Are there specific sectors over which the authorities have a power to oversee and prevent foreign investment or sectors that are the subject of special scrutiny?

Concerning the provisions of the Law on Public Companies (Official Gazette RS, No. 119/2012) certain business activities shall be maintained by public companies, namely, the legal entities that are incorporated by Serbia or the autonomous province of Vojvodina or local government (municipality or city). Business activities that are considered as a field of strategic importance for Serbia are related to the generation, transmission and distribution of electricity, coal production and processing, research, production, processing, the transportation and distribution of oil and natural gas, the sale of oil and petroleum products, the railway, postal and air transport, telecommunications, the publishing of the Official Gazette of the Republic of Serbia, the media, school textbooks publishing, use, management, protection and promotion of goods of common interest (eg, water, roads, mineral resources, forests, navigable rivers, lakes, coasts, spa centres) and utilities.

However, the same Law provides an opportunity for other legal entities to conduct the above-mentioned business activities upon the approval by delegation issued by the authorised governing body. It is even possible for the public authority to enter into partnership by establishing a joint company with a private entity. Nevertheless, such procedure of the entrustment is not regulated.

The main type of collaboration between the government and investors is public/private partnership (PPP), which is partially regulated by several laws. Under such laws, an activity of public interest can be assigned to a private partner, entirely or partially, while the institutionalised PPP, which involves the establishment of a company held jointly by the public partner and the private partner, is also possible under Serbian legislation.

4. How is a foreign investor or foreign investment defined in the applicable law?

The Law on Foreign Investments, as the legal framework in this field, does not expressly especially define direct investments. However, it determines a basis on which it is achievable to deduce the question of direct foreign investments and possible restrictions in that manner.

First, a foreign investor is a legal entity whose registered office is abroad, or any foreign individual or Serbian citizen who has been residing abroad for more than a year. Foreign investment in Serbia is defined as investment in a Serbian enterprise on the basis of which a

foreign investor acquires an interest in or shares in the authorised capital of that enterprise and acquisition of any other proprietary rights by a foreign investor, by which means it pursues its business interests in the Republic of Serbia. Basic forms of foreign investment determine that a foreign investor may, either alone or together with other foreign or domestic investors, form an enterprise or buy shares or interests in an existing enterprise. The restriction on this is that the basic form of foreign investment must be regulated by formation of contracts or investment contracts, or both, made in writing. Consequently, the said law prescribes special forms of foreign investment as it declares that any foreign investor may be granted a permit (concession) for the use of a natural resource and goods in general use, or for conducting a business of general concern. Additionally, any foreign investor may be allowed to build, operate and transfer a building, installation or plant, as well as the infrastructure and communication facilities.

5. Are there special rules for investments made by foreign state-owned enterprises (SOEs) and sovereign wealth funds (SWFs)? How is an SOE or SWF defined?

Foreign investment is subject to the same regulations as domestic investments, notwithstanding whether the investment was made by SOEs or SWFs. Hence, there are no special rules for investments made by SOEs and SWFs.

6. Which officials or bodies are the competent authorities to review mergers or acquisitions on national interest grounds?

The main competent body for the reviewing of mergers and acquisitions is the Commission for Protection of Competition ([www.kzk.org.rs/en/](http://www.kzk.org.rs/en/)). The Commission works in compliance with the Law on Protection of Competition (Official Gazette RS, No. 51/09 and 95/2013). Mergers and acquisitions are permitted unless they significantly limit, infringe or prevent free competition on the market.

Concentration needs to be notified to the Commission for Protection of Competition in a situation where:

- the worldwide turnover of the undertakings participating in the concentration exceeds the equivalent of E100 million, therewith one of the undertakings participating in the concentration has a bigger turnover of E10 million on the Serbian market; and
- the worldwide turnover at least two undertakings participating in the concentration reached in Serbia is bigger than E30 million in the previous fiscal year, therewith at least two undertakings participating in the concentration has a turnover bigger than E1 million each in same period.

In the case of a merger or acquisition authorised on a national level interest (see question 3) the state body (a ministry or privatisation agency) is the relevant authority.

7. Notwithstanding the above-mentioned laws and policies, how much discretion do the authorities have to approve or reject transactions on national interest grounds?

Regarding mergers and acquisitions in general, the Commission for Protection of Competition

has the authority and obligation to decide whether the merger or acquisition complies with the relevant laws, especially in the domain of its effect on the market. A review of the Commission for Protection of Competition jurisdiction is stated in article 21 of the Law on Protection of Competition.

Transactions on a national interest need to be confirmed by a state authority (an authorised ministry or privatisation agency) but there is no specific legal act regarding whether the transaction is in compliance with the national interest or not.

## Procedure

8. What jurisdictional thresholds trigger a review or application of the law? Is filing mandatory?

Considering the Serbian legislature, jurisdictional thresholds on government actions that could trigger a review or application of the law are not determined. Consequently, filing, in that sense, is not mandatory.

9. What is the procedure for obtaining national interest clearance of transactions and other investments?

Regarding investments, a foreign investor can, him or herself, or together with other foreign or domestic investors:

- establish a new company; or
- buy shares or stocks in an existing company

Although it has been previously stated that some areas are reserved for domestic legal entities only, there are ways that provide opportunities for a foreign investor to invest in these areas (see question 3).

According to the Privatisation Law, a buyer of a state-owned company can be a domestic or foreign legal person or any other person according to law. Privatisation methods are public tender and public auction. Privatisation procedure initiates the state-authorised body (an authorised ministry) or an interested party. Authorised bodies for procedure implementation are:

- the Privatisation Agency; and
- the Securities Register.

Depending upon the privatisation methods that the interested parties applied for in the privatisation of a state-owned company, the government makes the decision on the course of action.

10. Which party is responsible for securing approval?

The Privatisation Law and the Foreign Investments Law prescribe that interested parties are responsible for applying for approval. The final decision on whether privatisation or investment is possible is up to government.

An interested party needs to provide the relevant documents in compliance to the 'public call' made by the state-authorized body.

11. How long does the review process take? What factors determine the timelines for clearance? Are there any exemptions, or any expedited or 'fast-track' options?

Every stage of transaction or investments approval is determined by state-authorized body and the timeline for clearance can be different in each case. The authorized body declares the deadlines for applying and submitting the documents. After submission of the application, the authorized state body begins the decision-making process.

12. Must the review be completed before the parties can close the transaction? What are the penalties or other consequences if the parties implement the transaction before clearance is obtained?

The review needs to be completed before transaction closure.

The only sanction is prescribed by the Law on Privatisation in article 64, which prescribes that a corporate offence occurs if parties start with a privatisation process before the initiation provided by the authorized state body. The penalties range from 200,000 to 3 million Serbian dinars.

13. Can formal or informal guidance from the authorities be obtained prior to a filing being made? Do the authorities expect pre-filing dialogue or meetings?

Pre-filing dialogue or meetings are not governed by the applicable law. Nevertheless, they would be a logical preliminary step in the merger or acquisition process.

14. When are government relations, public affairs, lobbying, or other specialists made use of to support the review of a transaction by the authorities? Are there any other lawful informal procedures to facilitate or expedite clearance?

There are no procedures prescribed by which it is feasible to support the review of a transaction by the authorities by using public affairs or lobbying specialists or any other specialist in that manner. Hence, there are no lawful informal procedures to facilitate or expedite clearance.

15. What post-closing or retroactive powers do the authorities have to review, challenge or unwind a transaction that was not otherwise subject to review?

Authorized bodies are called upon to review the implementation of signed transaction and privatisation agreements especially in national interest matters such as agreed investments, labour policy, environmental behaviour, etc. Additionally, in such affairs, authorized bodies are allowed to act retroactively, both ex officio and/or upon the proposal of the interested party.

Substantive assessment

16. What is the substantive test for clearance and on whom is the onus for showing the transaction does or does not satisfy the test?

There is no substantive test prescribed by the applicable law.

17. To what extent will the authorities consult or cooperate with officials in other countries during the substantive assessment?

Cooperation with officials in other countries during the substantive assessment depends on the specific features of the individual case.

18. What other parties may become involved in the review process? What rights and standing do complainants have?

Another party may participate in the review process, but only if the legal interest of such a party is proven.

19. What powers do the authorities have to prohibit or otherwise interfere with a transaction?

The powers of the relevant regulatory authorities to prohibit or annul a transaction that does not comply with any of the laws or regulations of their industry are very extensive as such bodies have a discretionary right to reject a transaction if it does not comply with the laws or regulations related to that particular business.

20. Is it possible to remedy or avoid the authorities' objections to a transaction, for example, by giving undertakings?

There is no legally acceptable action by which the authorities' objections might be avoided.

21. Can a negative decision be challenged?

Every decision of an administrative body can be challenged if appropriate conditions are fulfilled, in accordance with the Administrative Procedure Law (Official Gazette SRJ, Nos. 33/97, 31/2001 and RS, No. 30/2010) and the Administrative Proceedings Law (Official Gazette RS, No. 111/2009).

22. What safeguards are in place to protect confidential information from being disseminated and what are the consequences if confidentiality is breached?

It is mandatory to follow the provisions of the confidentiality contained in an agreement between parties, and when such a confidentiality undertaking is violated, the aggrieved party may undertake legal action in order to avoid further disclosure of the confidential information. Considering the merger, the information must be disclosed to all transaction participants to allow them to render an appropriate decision. Where confidentiality is demanded, the controlling bodies safeguard the received information only upon the mandatory limits prescribed by the relevant law in the sense of requiring disclosure.

## Recent cases

23 . Discuss in detail up to three recent cases that reflect how the foregoing laws and policies were applied and the outcome, including, where possible, examples of rejections.

Considering the fact that the number of such transactions has significantly decreased in the past few years and since such dealings are desirable at this particular time, there are no reported cases that are relevant examples of rejection.

## UPDATE & TRENDS

Are there any emerging trends or hot topics in foreign investment review regulation in your jurisdiction? Are there any current proposed changes in the law or policy that will have an impact on foreign investment and national interest review?

Emerging trends are implying mostly the development of the bilateral based relationships between Serbia and foreign investors from particular countries. It seems that there are strong tendencies in the political behavior of the Serbian politic elite which are oriented towards eastern sources of capital and the Arabian world. One of the first indicators of such cooperation is the alternation in the largest Serbian airline. Namely, on August 1, 2013, Jat Airways and Etihad Airways entered into an agreement of strategic partnership. Under the agreement, Etihad acquired a 49% stake in Jat Airways and management rights for a period of five years.

Regardless from that occurrence, various other types of business cooperation with the partners from that part of the world have been either executed or, at least, announced. The legislature naturally follows such tendencies and the appropriate law, by which the Agreement between Serbia and U.A.E. is ratified, has been rendered at the beginning of the year.

Other institutionalized modes of cooperation are also inaugurated through the legislature, out of which the bilateral agreement with Morocco and Italy deserve greater attention.

In regards to the other emerging trends in local legislation which could be of greater interest for potential investors, it could be stated that vast majority of them is not yet institutionalized in the form of legal act and that, apart from some alternations in Law on Foreign Exchange Operations, Law on Competition Protection and Law on Privatization, the past 12 months were not so turbulent in regards to the investors oriented legislature. However, it seems that this is only the calm before the storm.

Namely, the Law on Planning and Construction, which is in the process of public discussion, should prescribe very beneficial alternations which might significantly change whole investment environment. Namely, the procedures, especially related to the obtaining of the construction and other permits, should be substantially shortened e.g. the construction permit might be obtained in one month, if the law goes through. Figures are saying that in Serbia today, issuance of the construction permit require more than 100 different procedures and 279 days. According to the World Bank, Serbia is at 179 place, out of 185 countries by

the promptness in the construction permit issuance procedure.

Additionally, the Labor Law is also in the process of public discussion (which has been postponed for April) and the anticipated solutions in such act might introduce more flexible labor market, which could be attractive to the foreign investors. Some of the announced changes are related to extension of the period for which the labor agreement on limited time might be concluded, introducing of the simplified system of the salary calculation and even the prescribing of the solutions for the manpower renting and providing of the regulatory conception for agencies which would conduct such renting.

Finally, the draft of the Law on Investments has been announced by the Serbian governing political party and the public discussion on the draft should occur in next months. This law intends to prescribe the “One-stop shop” since the lack of it was one of the greatest obstacles in doing business and investment performing. Additionally it intends to stipulate the investment agreement between the government and the investor by which the government itself shall attract the best investors and allow significant incentives.

Source; JPM