

Serbia

Chamber of commerce:

Belgrade Chamber of Commerce
Kneza Milosa 12
11 000 Belgrade
Serbia
Tel: +381 11 2641 355
Fax: +381 11 2642 029
Email: mmj@kombeg.org.yu
Web: www.kombeg.org.yu

Professional body:

Bar Association of Serbia
Mose Pijade (Decanska) 13
11 000 Belgrade
Serbia
Tel: +381 11 3239 805
Fax: +381 11 3237 082
Email: webmaster@advokatska-komora.co.yu
Web: www.advokatska-komora.co.yu

Investment funds: a novelty in Serbian law

Darko Spasic, Ana Godjevac and Vesna Milosavljevic
Spasic & Partners
Belgrade

Although the Serbian capital markets have most of the characteristics of transitional markets – such as low liquidity and efficiency – both the Serbian legislator and the business community expect it to keep growing and developing fast. The highest volume of trading to date was observed in April 2007 with a total turnover of more than Din4 billion (€49.8 million) for trading with shares and Din1.3 billion for trading with bonds. Financial specialists attributed the increase to the introduction and admittance of new shares, which increased market liquidity by about one-fifth compared with the preceding month.

In an effort to develop and support the capital markets, the Serbian legislator has introduced a Law on Investment Funds, an absolute novelty in Serbian law. Investment funds are widely expected to quickly become an important part of the market.

Types of investment fund

The law defines an investment fund as an institution for collective investing in different kinds of properties for the purpose of making profits and reducing investment risks. Its members may be domestic or foreign, physical or legal persons holding investment units.

The investment fund may be:

- (a) closed – a legal entity organized as an open joint stock company collecting funds by sale of shares through public offer;
- (b) open – not a legal entity established for raising funds by way of investment units where a member may not have more than 10% participation; or
- (c) private – a limited liability company.

Any of the above may be a property value increase fund, an income fund, a balance fund or property value maintenance fund. The Ministry of Finance considers an open investment fund exempt from corporate income tax since it is not a legal entity.

An investment fund in Serbia is managed by a Serbian management company. The Securities Commission must approve the establishment of any kind of investment fund and a company to manage it.

A management company may be founded by a domestic and/or a foreign legal person for the sole purpose of establishing and managing investment funds, and a person may have more than 10% participation in only one management company. The company may operate directly or indirectly on the basis of an agreement, in which case it stays fully liable for the management of funds. It may not have any participation in the fund itself or legal entities.

Aiming to minimize risk in a developing and fast-changing market, the law lists the permitted kinds of investments for funds, such as securities issued by the Republic of Serbia or the National Bank of Serbia, mortgage bonds, financial derivatives, immovable property and capital. No investment in movable assets is allowed. Investment funds may invest in domestic or foreign securities issued by financial institutions or legal persons with head offices in EU or OECD countries.

Obligations of funds

A fund is obliged to invest in accordance with its approved and publicized public prospectus, which is considered to be the basic document of an investment fund and should provide complete and clear information required for an informed investment decision. The law sets limits and ratios for permitted investments, by kind and by percentage.

The accounts of an investment fund are kept with a custody bank which cannot be associated with the management company. The fund's assets are kept separate from the

assets of the management company and of the custody bank, and may not be pledged or included in any liquidation or bankruptcy estate of, nor subject to any enforced collection against, the management company or custody bank. The Securities Commission registers and supervises the operations of investment funds. Foreign management companies and investment funds intending to raise assets in Serbia have to register locally.

The Law on Investment Funds and the operations of funds in Serbia will inevitably open a multitude of issues and call for the harmonization of a number of provisions regulating or influencing the capital markets, as well as for maturing the standards of procedures. The relevant regulating and supervising institutions are trying to tackle these issues and bridge the gaps.

The law is considered a *lex speciali* (special law) and prevails where it differs from other laws. An illustrative example is the provisions regarding corporate governance, which prevail over the Company Law.

Foreign investors in Serbia enjoy national treatment and a number of privileges set under the Law on Foreign Investments. However, legal practice has yet to provide an answer to whether and how such privileges are shared by foreign-owned management companies and investment funds.

Financial and corporate

Recommended firms	
Tier 1	Harrisons Solicitors Karanovic & Nikolic Prica & Partners
Tier 2	CMS Reich-Rohrwig Hasche Sigle Jankovic Popovic & Mitic Spasic & Partners Wolf Theiss
Tier 3	Drazic Beatovic & Partners Gide Loyrette Nouel Joksovic Stojanovic & Partners Zivkovic & Samardzic
Tier 4	IKRP Rokas & Partners Law Office Milosevic Ninkovic Schönherr Studio Legale Sutti

There has been a wave of privatizations in recent years, notably in banking four years ago, then in insurance in 2005 and 2006, and this year in telecoms – at the time of writing there remained just one more operator to be sold. The privatization of the mining industry continues; the media has also been released from state ownership and all the licences for the television stations have been issued; and the privatization this year of the national airline JAT Airways has also been announced.

This leaves oil and electricity as the only sectors that remain to be privatized and law firms have been gearing up in eager anticipation of this, although doubts remain about the government's willingness to let electricity go. Big-ticket privatization work is what has been keeping many firms going and when it all dries up there may be a significant shift in the balance of power, with three or four firms set to grab the remaining market.

In June 2006 the Union of Serbia and Montenegro was dissolved, and although Montenegro's economy is surging, the vast majority of transactions are still coming out of Serbia. No powerful domestic law firms have emerged in the newly independent state, while Harrisons Solicitors and Karanovic & Nikolic have opened up offices there.

In the run-up to the elections, the beginning of 2007 was fairly quiet. However on the M&A front consolidation by local companies continued and a number are expanding within the region. The Greek firms are increasingly moving into the banking and insurance sectors, but not on the same scale as has hap-

pened in nearby countries such as Bulgaria and Macedonia.

Fuelled partly by the new mortgage law, which allows citizens to lease-lend from the government, there has been growth in the real-estate market, especially in the Belgrade, Novi Sad and Nis localities, and this is an area where there is likely to be much activity in the future. A draft restitution law is also likely to have significant implications for the economy.

Harrisons Solicitors

Mark Harrison is a pioneer. After nine years at Linklaters, he decided to venture into essentially untested waters and set up shop in Serbia. He was the first foreign lawyer to make such a move and he has reaped the benefits of his daring as he had the opportunity to develop a very good relationship with the political establishment and work on the privatizations in a favourable climate with few serious competitors.

These days there are certainly significant rivals to contend with, but his team of 10 additional lawyers is more than a match for them. Aleksander Preradovic is described by competitors as "a very good lawyer who knows the law well and is oriented to finding a solution", while Goran Martinovic is also widely respected by the market.

The firm has also strengthened its capacity to handle international transactions over the last year. In November 2006 Harrisons became the first Serbia-based firm to open an office in London, and in March 2007 the firm also opened an office in Podgorica, Montenegro.

And the practice has had a busy year. It continues to prosper from its good relations with the government, advising on the €500 million privatization process of industrial metal producer RTB Bor. The firm has also been cashing in on a healthy M&A market, notably advising Hungary's OTP Bank on its €102 million purchase of Montenegro's largest bank, CKB, in January 2007. At the time of writing a team was advising Delta Group on the proposed merger of its retail business with Agrokor's related subsidiary.

The practice is experienced in handling large financings as well. In May 2007 the team provided counsel to Citigroup on a €750 million syndicated loan to Telekom Srbija for the purchase of Telekom Srpske.

Leading lawyers

Mark Harrison
Goran Martinovic
Aleksandar Preradovic

Karanovic & Nikolic

Karanovic & Nikolic has been extending its feelers into the region, simultaneously opening offices in Montenegro and the Serbian part of Bosnia. The firm, which is widely regarded as a market leader, has expanded rapidly to become Serbia's largest law firm with five partners and 26 lawyers. The new lawyers complement a team already bursting with talent, in particular name partner Dragan Karanovic is singled out by the market as a leader in the jurisdiction. One rival noted: "Mr Karanovic is a knowledgeable and pragmatic lawyer. It is a pleasure to work with him and the deals move forward." Dejan Nikolic and Milos Vuckovic frequently receive similar accolades.

The firm's solid banking practice counts the European Bank for Reconstruction and Development (EBRD) among its key clients. The team has been advising EBRD on a number of matters including a possible equity investment in Airport City, a commercial property development and an equity investment into Fresh & Co, a Serbian company engaged in food and beverage production. The firm also advised on a loan to commercial property company GTC.

One significant client is Epic Financial Advisors and the International Finance Corporation, which Karanovic & Nikolic is counselling in relation to the restructuring of the debt of the Dr Simo Milosevic Institute in Montenegro. The firm also acts for the Banking Rehabilitation Agency, which has sought the Karanovic & Nikolic's guidance with regard to the restructuring and privatization of Niska Banka.

The practice has overseen much of the country's privatization and is assisting Raiffeisen Investments and the Privatization Agency of Republika Srpska on the sale of a metal processing holding company with eight subsidiaries. In more general M&A work, the firm has notably acted on recent acquisitions for German insurance company Allianz, Czech energy company Cez, and BNP Paribas.

There is relatively little capital markets activity in Serbia. However, Karanovic & Nikolic is representing local construction company MPC Group with its listing on London's Alternative Investment Market (AIM). ComTrade and Delta are also said to be looking at following in MPC's footsteps. In other recent developments the firm has begun advising banks on derivatives and securitization, a new ploy designed to overcome high capital reserve requirements.

Leading lawyers

Dragan Karanovic
Dejan Nikolic

Prica & Partners

Prica & Partners is another potent actor in the Serbian legal market. The 15-lawyer regulars, added to four of-counsel, are valued by clients because many of them are “very experienced”. Radoje Prica has unfortunately passed away but is remembered by one key industry player and client as simply “the best lawyer in the country”. His son Mihajlo has assumed the reigns of power but it too early to tell in which direction he will take the firm. For the time being clients still report that they have enjoyed uninterrupted service from the firm.

Among the firm’s key mandates in 2006, the team advised on the incorporation of Cisco Beograd and the transfer of its operation from Cisco Rep Office to Cisco. The practice also notably gave counsel to the National Bank of Greece regarding the acquisition of a controlling interest in a Serbian leasing company and guided Uniworld Holdings in a tender privatization of two Serbian tour operating companies.

In another standout involvement the firm assisted Germany’s E.On Power, Gas and Services with the incorporation of a local subsidiary and acted for the Energy Agency of Serbia for its application for an energy licence. In the banking market, the firm advised the International Finance Corporation of the World Bank Group on a subordinated loan facility and the acquisition of a minority interest in Banca Intesa of Belgrade.

In 2007, the firm’s most prominent mandate came from the Nokia-Siemens joint network venture, which saw the firm work on the registration of and approval by the Commission for Protection of Competition of their global venture. The firm has also been providing M&A advice to clients across Europe such as Etam of Greece, BDO Visura of Switzerland, EIX Daurada Invest of Spain, Ikea of Sweden, and Braunsberger of Austria.

Leading lawyers

Mihajlo Prica

CMS Reich-Rohrwig Hasche Sigle

CMS Reich-Rohrwig Hasche Sigle enters the second tier this year after a multitude of recommendations from the market. One first tier rival commented: “CMS are our leading foreign competitor without a shadow of doubt...they give good solid advice.” A number of departures have not held back the increasingly visible team which has taken on six new recruits in the last year. In particular, the arrival of Caslav Petrovic at partner level in August 2006 is seen by the market as a positive influence on the firm. He had been executive director of the Serbian Privatization

Agency and joins a competent team. Stojan Semiz is especially well received and is regarded as “one of the only people who can do real estate in town”.

The firm has been in the thick of the region’s M&A market. The firm’s highlight came in August 2006 when it represented Serbian pharmaceutical company Hemofarm on the €500 million sale of 98% of its shares to German pharmaceutical company Stada in the largest private deal in Serbia to date. In another standout engagement the team assisted the leading Austrian utility company EVN with its acquisition of state-owned Macedonian electricity power supplier ESM in May 2006. With a sale price of €325 million, the deal was the largest in Macedonia to date.

The practice then went on to counsel Slovenian retail chain Merkator on its €175 million acquisition of a leading retail chain in Serbia in October 2006. In a more recent activity, the firm advised Michelin on the June 2007 acquisition of the controlling shareholding in Serbian tyre producer Tigar THM.

Leading lawyers

Stojan Semiz

Spasic & Partners

Spasic & Partners is seen by some as a privatization and M&A boutique. “They are probably the most experienced law firm in privatizations,” was the rationale of one high-profile client for using the firm’s services.

By this he meant the widely acclaimed Darko Spasic, whom clients admire for “a clear and methodological approach”. “Besides his knowledge, which is undoubtedly extensive, he is very persistent,” added another client. The firm is relatively young; the demerger of Prica & Spasic is still in recent memory. Ana Godjevac is another lawyer appreciated by clients, and although younger she is said to be “very professional”. The firm has also been expanding its operations, welcoming on board two new associates, Rastko Malisic and Jasna Scekcic, in March 2007.

The practice advised on a number of prominent transactions over the last year. Its standout role was assisting the National Bank of Greece in its €375 million acquisition of Vojvodjanska Bank in December 2006, which was the largest bank privatization tender organized by the Deposit Insurance Agency. This was followed by a takeover bid for minority participations.

The team also advised Salford on the November 2006 purchase of two dairies in Bosnia & Herzegovina by way of privately negotiated deals, and further caught the market’s attention when it counselled Neochimiki

Lavrentiades on its acquisition of Belgrade Refinery of Oil in a privatization tender in May 2007. In another high-profile deal, the firm is providing advice to the country’s privatization agency on the sale of Belgrade Brewery.

Leading lawyers

Darko Spasic

Wolf Theiss

Wolf Theiss’s proficient Belgrade operation was boosted in the last year with five new recruits. Most significant is the recent arrival of Milan Parivodic, who was Minister of International Economic Relations for a number of years. This surprised many, as general opinion said he was headed back to his old firm Ninkovic. Added to the Austrian firm’s extensive international network, this new and considerable Serbian asset has further enhanced what the market is increasingly acknowledging is a force in the legal market.

The team demonstrated its tenacity advising Nordzucker in connection with its acquisition of a majority stake in the sugar business of sugar producer MK Commerce in a drawn-out process which closed in June 2006 after a two-year pre-closing restructuring process. The firm also displayed agility when counselling Stada Arzneimittel in connection with its €500 million acquisition of pharmaceutical company Hemofarm in August 2006. The deal was notable as the team had to move quickly to sidestep potential counter-bids.

Wolf Theiss was also mandated on an unsuccessful bid by a consortium consisting of Porr Solutions, Habau, Motaengil and Sanef for an €800 million public-private partnership to construct, operate and maintain the highway route from Horgos to Pozega.

At the time of writing Wolf Theiss was helping Swiss insurance company Basler Versicherungen on the €300 million acquisition of Serbian insurance company DDOR.

Leading lawyers

Bojana Bregovic
Milan Parivodic