

# Serbia and Montenegro

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## Privatization and M&A regulations

**Milos Vuckovic and Rastko Petakovic  
Karanovic & Nikolic  
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The first wave of reforms in Serbia in 2000 (after the Milosevic era) was aimed both at improving corporate governance and privatization, and developing the legal system to commence harmonizing it with that of the EU. The latter process is important for investment opportunities in Serbia, as it focuses on creating a generally recognizable environment for potential foreign investors, in particular those that have already invested in the region. Recently enacted amendments to legislation relating to privatization seek to clarify legal loopholes, and will be of interest to larger companies entering the market by this mechanism.

### Privatization

The privatization process in Serbia is regulated by the Privatization Law, the Share Fund Law, the Securities Law and additional rules providing the legal framework necessary for completion of the privatization procedure of social and state-owned companies. Application of these laws has been difficult in the past, and the new amendments to these laws (adopted in May this year by the Serbian parliament) are expected to finally provide a stable legal framework for privatization and M&A transactions, and should also help to stabilize and develop the still fragile and rather undeveloped Serbian financial markets.

The amendments were introduced to deal with the problems that have been encountered in the privatization process since 2001. The main focus of the amendments relates to: (i) the automatic termination of unfulfilled sale and purchase agreements (agreements used by the Privatization Agency for the sale of state-owned capital); (ii) huge debts owed by the companies to the state (and its agencies and companies); and (iii) the position of the Share Fund (the state fund that holds those the shares that were not privatized in a former privatization process).

#### *Termination of the agreement*

The changes predict that serious breaches of the sale and purchase agreement by the buyer results in immediate and automatic termination of the agreement, whereby all shares held by the buyer are transferred to the Share Fund, which can dispose of them by public tender or on the financial markets. This amendment has been made due to the problems faced by the Privatization Agency in enforcing the terms of the agreement.

#### *Conditional release of debts toward the state*

Because it is almost impossible to privatize large state-owned com-

panies that are severely indebted to the state with no prospect of ever paying off those debts, the amendments to the privatization legislation provided that these debts should be conditionally released, whereby the state is granted the possibility of settlement out of the purchase price in the event of the successful completion of the privatization of such companies. Having provided these rules, the amendments clearly increase the number of companies that are potential targets for privatization, and provide an opportunity for the Serbian economy to recover more quickly.

#### *Position of the Share Fund*

The position of the Share Fund in the past was vague because the relevant legislation provided unclear solutions. Nevertheless, the amendments give the Share Fund a more active role in the management of the shares its portfolio (for example, it can vote on major decisions in companies), and in the sale of the shares in the financial markets, as well as at public tenders organized by the Share Fund to seek strategic partners for large and state-owned companies.

### New legislation

Along with the abovementioned changes in the area of privatization, the recently proposed Takeover Law is aimed at closing similar loopholes that led to several doubtful and non-transparent takeovers in recently (for example, the sale of the shares of one of the Serbia's biggest water companies).

To avoid inconsistency with other laws governing the issue, as previously seen in practice with takeovers, the legislator decided to incorporate all relevant matters into one document, as has happened in other countries in the region.

Another intention was to harmonize this process with the corresponding EU regulations, which explains the similarity with the EU Directive on Takeover Bids (Directive 2004/25/EC). The law is therefore harmonized with the EU Directive, which should provide a solid basis for future public takeovers in Serbia, stability in the financial markets, fair and equal treatment of foreign and domestic companies in the process, and fair treatment of shareholders.

The main provisions of the draft Takeover Law relate to the threshold levels for mandatory bids, matters of transparency, disclosure of and access to information, the protection of minority shareholders (which are set at the highest level), and the role of the Securities Commission, which is given more authority to supervise the takeover process in Serbia.

### A transition process

The new set of laws governing privatization and M&A issues in Serbia is still dominated by the fact that Serbia is undergoing tran-

sition. However, with this new set of amendments and new laws, Serbia faces issues seen in countries that have already been through the transition process. Although the official reasoning behind this legislation is inspired by the EU harmonization and accession processes that Serbia strives towards, it is important to stress that these amendments are also governed by the needs of the market, and especially those of foreign investors, in a continued effort to develop a new financial climate.

## Corporate and commercial

### Recommended firms

#### Tier 1

Harrisons Solicitors  
Jankovic Popovic & Mitic  
Karanovic & Nikolic  
Prca & Partners  
Spasic & Partners

#### Tier 2

Wolf Theiss

#### Tier 3

CMS Reich-Rohrwig Hasche Sigle  
Drazic Beatovic & Partners  
Gide Loyrette Nouel  
IKRP Rokas & Partners  
Law Office Milosevic  
Ninkovic  
Studio Legale Sutti

### Harrisons Solicitors

“Harrisons is something peculiar,” said one market observer, and indeed it is. Set up by an English lawyer in 1997, the practice is a success story for foreign enterprise, and now advises clients from across the world and Serbia itself, including the country’s own government.

R Polimeri instructed the firm on one of the jurisdiction’s few remaining privatization deals. Led by Goran Martinovic, the corporate and commercial team advised the Italian petrochemical group in relation to its purchase of a majority stake in Hipol, the state-owned polymer producer. The deal was worth €1.5 million.

Harrisons has also had a busy year for banking sector M&A. Since his surprise return to the fold last year, Aleksandar Preradovic has been leading teams representing the Agricultural Bank of Greece in its potential €35 million purchase of Zepter Bank and acting for PKO BP, a Polish bank, on its proposed acquisition of Panonska Bank.

Preradovic’s main responsibility is heading up the firm’s banking and capital markets group, which acts for a wealth of foreign financial clients including the European Bank for Reconstruction and Development, ING, the European Investment Bank (EIB) and the International Finance Corporation. In March 2006, Ines Matijevec advised Raiffeisen Leasing on its €10 million financing from the EIB. She encountered Raiffeisen again in April as she acted for DEG in a subordinated loan to the leasing group’s parent company, Raiffeisen Bank. “Everything I need, I receive on time – they have very good coordination,” said a client.

### Leading lawyers

Mark Harrison  
Goran Martinovic  
Aleksandar Preradovic

### Key contact partners

Mark Harrison  
Goran Martinovic  
Ines Matijevec  
Aleksandar Preradovic

### Jankovic Popovic & Mitic

Jankovic Popovic & Mitic has closed some high-value deals this year, including advising the Hypo Alpe-Adria Group on two credit facilities with HypoVereinsbank. The bank lending agreements had a combined value of €95 million.

The firm also has an active M&A department with an extensive international client list. Nikola Jankovic, one of the firm’s senior partners, teamed up with Julijana Jevtic to guide Banca Intesa through its €278 million takeover of Delta Banka. This was not the firm’s only deal with Banca Intesa, which chose Jankovic Popovic & Mitic to advise on a subordinated loan facility to London’s International Finance Corporation.

The insolvency and restructuring department, headed by Jankovic and comprising four lawyers, advised the Privatization Agency on its handling of bankruptcy proceedings in relation to the Brodotehnika shipyard.

Besides being an established favourite in Belgrade, the firm has a wide network of corresponding offices across the former Yugoslavia and beyond. It enjoys a partner relationship with Lansky Ganzger & Partner in Austria and Bosnia-Herzegovina, and with Niebaum Kohler Punge Söder Anwälte in Germany.

### Leading lawyers

Nikola Jankovic  
Julijana Jevtic

### Key contact partners

Nikola Jankovic  
Julijana Jevtic  
Nenad Popovic  
Zoran Teodosijevec

### Ninkovic

Ninkovic has nine commercial lawyers, five of whom are partners, ably led by name partner Djurdje Ninkovic. The firm’s practice is diverse, and includes various assignments for international clients. For example, it was recently appointed as counsel to a cross-border television network which set up operations in Serbia. Additionally, the firm advised a group on the potential acquisition of a local television channel, and acted for an international electronics company in setting up a Serbian outsourcing company.

The firm also has a presence in the field of infrastructure development, and this year represented a foreign construction company during the tender process for a road-building project. Another notable deal was the privatization of Serbian Telecom, in which Ninkovic advised a consortium of banks and other legal advisers.

### Key contact partners

Ivan Krsikapa  
Djurdje Ninkovic

### Prca & Partners

After 25 years, the complementary union of Radoje Prca and Darko Spasic finally crumbled in February 2006 and the two partners went their separate ways. Prca, traditionally the more political and academic half of the duo, has established Prca & Partners, with his son incumbent as managing partner. Prca & Partners has taken the lion’s share of the firm’s lawyers, and now has four partners:

Mihajlo Prica, Danica Gligorijevic, Ana Calic and Dragana Radojevic, with Prica senior operating as of-counsel.

The firm's recent appointments include acting for M-Tel, a consortium of Austrian private investors, in its acquisition of a stake in Serbia's largest telecoms company. Prica & Partners' role included conducting due diligence on the target company, drafting the share purchase agreement and serving as general counsel throughout the transaction. Another deal with an Austrian focus was Agrolinz Melamine International's (AMI) privatization of Serbia's state-owned fertilizer company.

The group also advised BNP Paribas and the Serbian Privatization Agency in relation to the restructuring and privatization of three breweries, and acted for the European Bank of Reconstruction and Development (EBRD) on the restructuring of securities in relation to a loan granted to a Serbian coffee producer.

Prica & Partners' lawyers completed a number of regional deals in 2005, such as representing the Greek company Sidenor in relation to the lease of assets of a metal processing plant in the former Yugoslav Republic of Macedonia, and the establishment of a Macedonian subsidiary. The firm also served as counsel to the UK owners of a bank in Bosnia-Herzegovina on a sale of share capital, including advice on sale strategy, due diligence, and the preparation of the sale process.

"We have always had a good cooperation with them, and have never had any problems with them whatsoever," a market observer said of Prica & Spasic. With regards to the firm's new structure, many commentators are withholding judgment until the dust settles.

#### Leading lawyer

Radoje Prica

#### Key contact partners

Mihajlo Prica  
Dragana Radojevic

### Spasic & Partners

Formerly of Prica & Spasic, Darko Spasic has always been widely renowned as the commercially minded counterpart to Radoje Prica. Described as "very capable" and "a pure practitioner", he is likely to carry considerable weight in the market with his newly founded firm Spasic & Partners.

#### Leading lawyer

Darko Spasic

#### Key contact partner

Darko Spasic

### Wolf Theiss

Competitors singled out Wolf Theiss among last year's second-tier firms, and it is not hard to see why. Due in part to an aggressive marketing policy and a reputation for experience and quality, the practice has taken on four new associates in the past 12 months.

Bojana Bregovic has cemented her position among Serbia's legal elite, and was involved in almost all of the Austrian firm's high-profile deals. Her team has an outstanding portfolio of global banking clients such as Bank of America, Credit Suisse and National Bank of Japan. Ericsson Credit sought her counsel in a €100 million equipment financing arrangement with Mobtel Serbia and Srbija Telecom, and she also acted for Bank of America and Credit Suisse on syndicated loans to borrowers with collateral security in Serbia and for the National Bank of Japan in relation to certain debt restructuring issues in Serbia.

Bregovic is also involved in the M&A side of the practice, but plays second fiddle to Miroslav Stojanovic. The corporate group's mainstay is made up of Austrian heavyweights: at the time of writ-

ing it was advising Bank Austria Creditanstalt on its bid to acquire Vojvodjanska Bank, worth an estimated €600 million, and Nordzucker on the acquisition of a majority stake in MK Commerce, the largest sugar producer in Serbia.

Wolf Theiss's project finance group, meanwhile, is acting as lead counsel to an international consortium of developers in relation to a PPP concession to construct, operate and maintain a highway between Horgos and Pozega. The project has an estimated value of €800 million. The firm also has a busy regulatory practice, providing advice to major league institutions such as JP Morgan, Morgan Stanley, HVB Bank and Bank Austria Creditanstalt.

#### Leading lawyer

Bojana Bregovic

#### Key contact partners

David Ayres  
Bojana Bregovic  
Dieter Spranz  
Miroslav Stojanovic