

**JURIDICAL FORMS OF ENTERPRISES
AND FOREIGN INVESTMENTS
IN FEDERAL REPUBLIC OF YUGOSLAVIA**

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1. General Matters

The new Law on Enterprises has not been passed yet (the Constitutional term is «enterprise», not «economic society»). The Law passed by the former Socialist Federative Republic of Yugoslavia in 1988 has been in power since January 1, 1989. In this moment the new Bill on Enterprises is prepared and it is in procedure in the Parliament (it is expected to be passed soon). On the other hand, the new Law on Foreign Investments has been passed (Official Gazette of the Federal Republic of Yugoslavia, Number 79/94). In this contribution it will be made a brief reference to the new Law on Foreign Investments and the new Bill on Enterprises (the positive law has in base the passing character and contains very little norms which regulate new juridical forms of enterprises of the type of economic societies).

The new Bill on Enterprises regulates the following forms of economic subjects: entrepreneur (merchant), general partnership, limited partnership (ordinary), limited liability company, stock company, public enterprise and social enterprise.

2. Entrepreneur (Merchant)

The notion «entrepreneur (merchant)» in the Bill on Enterprises means a physical person engaged in a registered economic activity, except of small handicrafts, activities of free professions (in principle) and activities of individual farmers.

An entrepreneur can be engaged in any economic activity, in principle freely (which is registered). Exceptionally, he can carry out some economic activity under a license issued by the competent governmental agency.

An entrepreneur is responsible for his assumed obligations in legal transactions with his whole property, so that he can be the subject of civil bankruptcy, too.

3. General Partnership

General partnership (Public commercial society) is founded by two or more physical persons, under the common firm, in order to carry out some economic activity and get a profit. The start capital is not necessary for foundation of this

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society, although the society is a juridical subject and is registered in court register.

General partnership also can freely carry out any economic activity, except some activities which presuppose the license of the competent governmental agency. General partnership only has the founding legal document, but it need not have the statute.

Partners (members) in a general partnership are responsible, according to the Law, limitlessly unitedly for the obligations of the society.

4. Limited Partnership

Limited partnership is such a form of economic society which is founded by two persons at least. One of them, the physical person, has the status of a complementary (he is responsible limitlessly unitedly for obligations of the society), and the other one (physical or juridical person) has a status of a commanditaire (carries down the risk of managing affairs of the society up to the level of his investment). This society is also formed to carry out some economic activity under the firm of the complementaire.

Limited partnership is registered in court register and has the status of a juridical person. So, to found this society it is not demanded, according to the Law, to have the start capital. This society can also carry out freely any economic activity, except some activities which can be carried out under the license of the competent governmental agency.

The new Bill regulates only the form of the so called ordinary limited partnership. It doesn't know of the form of a stock limited partnership. The limited partnership has obligatory only the founding legal document (contract of foundation) and it need not have the statute.

5. Limited Liability Company

Limited liability company is such a form of economic society which is founded by one person (one person society), or more persons (physical or juridical), with prescribed minimum capital, to carry out some economic activity.

Limited liability company (LLC) is registered in court register and has the status of a juridical person. Minimum monetary part of basic capital, according to the Law, to found this society, is 5.000 US\$ (in value of dinars), and one half of that sum is paid before the registration of the company, and the other half within two years after the registration.

Limited liability company can freely carry out any economic activity, except some activities which can be carried out under the license of the competent governmental agency.

Obligated organ of this society is the director, and if the company has more

than one hundred employees, it must have the managing and supervisory board (in each of these organs there must be one representative of the employees - participation). The assembly of the company is formed if it is determined in the founding legal document.

Limited liability company which is founded by one founder, must have only the founding legal document (founding decision), but if the company is founded by more persons, it must also have a statute.

6. Stock Company

The Bill on Enterprises makes difference between the stock company without public admission to stocks (it can only be formed by one physical or juridical person) and the stock company with public admission to stocks (it can be a stock company whose stocks are in demand at the stock exchange - official or unofficial listing, and a stock company whose stocks are not in demand at the stock exchange), which can be founded by two or more persons (physical or juridical ones).

A stock company is founded to carry out some economic activity (in principle any activity freely, except for the activities which can be carried out under a license), and it is registered in court register and has the status of a juridical person.

To found a stock company with public admission to stocks, it is demanded the minimum part of basic capital to be 10.000 US\$ (in value of dinars), and to found a stock company with public admission to stocks it is demanded minimum monetary part of basic capital to be 20.000 US\$ (in value of dinars). One half of that sum is paid to the temporary account of the company before the registration, and the other half within two years after the registration.

The stock company obligatorily has the founding legal document (founding decision if the founder is one person, and the contract of founding if there are more persons) and the statute.

Obligatory organs of a stock company without public admission to stocks are the assembly and the director, but if the company has more than one hundred employees the managing and supervisory board are also obligatory (in each of these organs there must be one representative of the employees - participation). Obligatory organs of the stock company with public admission to stocks are the assembly, managing board, supervisory board and director.

The stock company can issue all kinds of stocks (ordinary and priority ones, with or without the right to vote). Stockholders who have not the right to vote have the special assembly for protection of their interests (the rights of these stockholders cannot be changed by decision of the assembly of stockholders with the right to vote without agreement of the special assembly).

7. Public Enterprise

Enterprises which carry out the activities of public interest (post, railway, power, communal services etc.) can be organized as an economic society (general partnership, limited partnership, limited liability company, and stock company) or in form of a public enterprise. An entrepreneur can also carry out activities of public interest. Activities of public interest can be in principle carried out under the license of the competent governmental agency. Enterprises which carry out activities of public interest can be founded by juridical and physical persons. Special characteristic of these enterprises is double aim function: to make profit and to satisfy needs of users of services. To provide the second aim function, the state or a unit of local self-government has some competences concerning the system of carrying out their activities.

8. Social Enterprise

The peculiarity of the Law of the Federal Republic of Yugoslavia is also the social enterprise which is managed by the employees and whose capital is not shared to stocks or portions. This is the form of an enterprise which is not possible to be founded now and hence it is regulated only statically. This form of an enterprise is in the process of becoming private. The organs of this enterprise are: the assembly (consists of representatives of the employees), managing board, supervisory board and director.

9. Connecting of Enterprises

Enterprises (and entrepreneurs) can associate in various forms of contracts (consortium, franchising, managing contracts etc.) and by their capital, making different groupings of enterprises (enterprises with considerable participation of capital in another enterprise, enterprises with majority participation of capital in another enterprise, enterprises with reciprocal participation of capital). Groupings of enterprises can be called the groups of societies, concerns, controlling and dependent enterprise or holdings.

Finally, enterprises can unite (merger) and join (fusion by joining) and they can be divided (pure division and division-holding). Enterprises can change their juridical form: in the course of that it is only mandatory to satisfy all essential requirements for existence of the new form of enterprises.

10. Foreign Investments

Foreign persons (juridical and physical) can, under the conditions of reciprocity, alone or together with a domestic person: found an enterprise or invest resources in our enterprise. Investments of a foreign person can be in foreign currency, things, services, property rights, securities and dinars which, according to foreign currency regulations, can be transferred abroad.

A foreign person can invest also dinars which are acquired by ransom and conversion of claims in foreign credits, or convert its claims into investment. The foreign person can also buy our enterprise or its part, or buy the stocks of an enterprise. In principle, a foreign person can found an enterprise and invest resources in an enterprise as well as a domestic person (the principle of national treatment).

A foreign person cannot found its own enterprise in the Federal Republic of Yugoslavia in branches of production and traffic of objects of arms and military equipment, energetics, railway transportation, PTT services, forestry and public information, in communal services (water supply and heating). Although in these branches one can also found an enterprise together with a domestic person or invest resources in a domestic enterprise, but if in that case it is acquired the majority participation of the capital, then the license of the competent governmental agency is necessary.

A foreign person can get the concession to use certain natural resources or property in general usage, or to carry out an activity of public interest.

A foreign person can be approved to build or reconstruct, run and use, for a limited period of time, certain building, equipment or plant. A foreign person, as well as a domestic person, can, under the conditions of reciprocity, found a bank or another financial organization (savings and credit organizations, insurance company etc.).

A foreign person is guaranteed the acquired rights under the foundation contract or investment contract (later changes of regulations can be applied to the concluded contracts only in the case of more favourable solutions).

Special incentives for foreign investments are: import of new equipment as an investment of a foreign person (except passenger cars and amusement slot machines and luck games) is duty free and free from other import taxes; foreign currency investment or foreign currency earned through foreign business dealings of the founded enterprise can be held on foreign currency account with an authorized bank and can be freely disposed of; free transfer of resources to a foreign person in a foreign country (as a profit, return of investment, repatriation of a portion after completion of work or after selling); special tax incentives (especially in certain activities and during the first three to five years after foundation of an enterprise or investment into a domestic enterprise).

An enterprise which is founded with resources of a foreign person, can be registered in court register after getting the permission from the Federal Ministry for Commerce to be registered in the Ministry's register. This is valid also for the investment of a foreign person into a domestic enterprise.

Disputes arising out of investments of a foreign person are in competence of the Yugoslav court, except when in the investment contract or in the founding con-

tract it is stipulated that such disputes are in competence of the Foreign Trade Arbitration of Yugoslav Chamber of Commerce, or other domestic (ad hoc) or foreign arbitration.