

PRIVREDNO PRAVO: POČELA PRIMENA ZAKONA O INVESTICIONIM FONDOVIMA

Dana 11. decembra 2006. počeo je da se primenjuje Zakon o investicionim fondovima ("Službeni glasnik Republike Srbije", br. 46 od 2. juna 2006). Zakon definiše investicioni fond kao instituciju kolektivnog investiranja u okviru koje se prikupljaju i ulažu novčana sredstva u različite vrste imovine sa ciljem ostvarenja prihoda i smanjenja rizika ulaganja. Cilj zakonodavca bio je da se obezbedi zakonski okvir za osnivanje i poslovanje investicionih fondova, ali i da se kroz kontrolne mere obezbedi zaštita malih investitora, u skladu sa direktivama UCITS 1 i UCITS 2 Evropske unije i međunarodnom praksom u vršenju nadzora. U investicione fondove mogu ulagati domaća i strana fizička i pravna lica.

Investicioni fond osniva i njime upravlja društvo za upravljanje, koje je i odgovorno za rad fonda. Da bi privredno društvo moglo da se bavi poslovima društva za upravljanje mora da dobije dozvolu za rad, koju izdaje Komisija za hartije od vrednosti (u daljem tekstu: Komisija). Pre izdavanja dozvole, Komisija proverava da li društvo ispunjava uslove postavljene u Zakonu (između ostalog: kapital društva mora da iznosi najmanje 200.000 EUR i ne sme da padne ispod tog iznosa; portfolio menadžer, koji upravlja hartijama od vrednosti i drugim finansijskim instrumentima i interni revizor, moraju da imaju dozvole za rad; poreklo kapitala mora da bude jasno i nesumnjivo; struktura povezanih lica mora da bude takva da omogućava efikasno vršenje nadzora nad poslovanjem; lica koja poseduju više od 10% kapitala u društvu, odnosno direktor ili članovi uprave moraju da budu podobni i pouzdani).

Komisija izdaje dozvolu i za osnivanje, odnosno organizovanje investicionog fonda. Komisija izdaje dozvolu kada proceni da visina osnovnog kapitala društva za upravljanje omogućava održivo upravljanje investicionim fondom, da portfolio menadžeri koji će upravljati investicionim fondom poseduju dozvolu za rad izdatu u skladu sa zakonom i da će na adekvatan način biti zaštićeni interesi članova, odnosno akcionara investicionog fonda.

Imovina investicionog fonda se može ulagati u udele i hartije od vrednosti domaćih subjekata, određene strane

hartije od vrednosti, kao i nepokretnosti koje se nalaze na teritoriji Srbije, uz ograničenja, koja je zakonodavac predvideo da bi obezbedio sigurnost u poslovanju investicionih fondova.

Investicioni fond se može organizovati kao otvoreni ili osnovati kao zatvoreni ili privatni.

Otvoreni investicioni fond nema status pravnog lica i funkcioniše po principu prikupljanja novčanih sredstava putem izdavanja investicionih jedinica i otkupa investicionih jedinica na zahtev članova fonda. Minimalna novčana sredstva za otpočinjanje poslovanja otvorenog fonda ne mogu biti manja od 200.000 EUR. Investitor stiče investicione jedinice kupovinom. Vrednost investicionih jedinica se svakodnevno utvrđuje i predstavlja neto vrednost imovine fonda po jednoj investicionoj jedinici. Investiciona jedinica daje svom sticaocu, između ostalog, pravo na srazmerni deo prihoda, pravo na otkup i pravo na srazmerni deo imovine fonda u slučaju raspuštanja. Fond je dužan da na zahtev člana fonda otkupi investicione jedinice najkasnije u roku od pet dana od dana podnošenja zahteva. Otvoreni fond ostvaruje prihode od kamata, dividendi i ostvarenih kapitalnih dobitaka, a raspodela prihoda može se vršiti samo u gotovom novcu.

Zatvoreni investicioni fond se osniva u formi otvorenog akcionarskog društva, sa kapitalom ne manjim od 200.000 EUR. Fond prikuplja novčana sredstva prodajom akcija putem javne ponude. Akcije zatvorenog fonda su prenosive bez ograničenja. Društvo za upravljanje najmanje jedanput mesečno podnosi izveštaje nadzornom odboru zatvorenog fonda o kupljenim i prodatim hartijama od vrednosti i imovini, kao i o rezultatima poslovanja fonda. Po sastavljanju finansijskih izveštaja, dobijenom izveštaju eksterne revizije i odluci skupštine fonda, društvo za upravljanje raspodeljuje dobit akcionarima.

Privatni investicioni fond se osniva u formi društva sa ograničenom odgovornošću, a minimalni novčani ulog člana privatnog fonda ne može biti manji od 50.000 EUR. Privatni fondovi ne podležu opštim zakonskim odredbama o investicionim fondovima koje se tiču izdavanja dozvole za investicioni fond, ulaganja imovine fonda, ograničenja ulaganja imovine fonda, ograničenja raspolaganja imovinom fonda, utvrđivanja prinosa investicionog fonda, izdavanja prospekta, marketinga i



posrednika. Na privatne fondove ne primenjuju se ni zakonske odredbe kojima je regulisano obavljanje kastodi usluga i vođenje računa kod kastodi banke, kao i redovno izveštavanje Komisije i investitora (osim dostavljanja godišnjeg finansijskog izveštaja). Dok su otvoreni i zatvoreni fondovi namenjeni prevashodno tzv. malim investitorima, privatni fondovi počivaju na velikim i profesionalnim investitorima, a kapital ovih fondova se prikuplja od unapred određenih investitora bez javnog poziva.

Komisija za hartije od vrednosti vodi registre društava za upravljanje i investicionih fondova i vrši nadzor nad njihovim poslovanjem.

Pravna lica koja su do stupanja na snagu Zakona o investicionim fondovima obavljala delatnost društva za upravljanje ili delatnost investicionog fonda ili su istupala u pravnom prometu koristeći naziv "investicioni fond", dužna su da u roku od šest meseci od dana početka primene ovog zakona od Komisije pribave dozvolu za rad društva za upravljanje, odnosno dozvolu za organizovanje otvorenog fonda ili osnivanje zatvorenog fonda, odnosno da se registruju kao privatni fond. Strana društva za upravljanje i investicioni fondovi koji nameravaju da u Srbiji prikupljaju sredstva za rad dužni su da se registruju i posluju u skladu sa ovim zakonom.

CORPORATE LAW: IMPLEMENTATION OF LAW ON INVESTMENT FUNDS COMMENCED

Implementation of the Law on Investment Funds (Official Herald of Republic of Serbia No. 46 from June 2, 2006) commenced on December 11, 2006. The law defines investment fund as an institution for collective investment, which aggregates and invest monetary funds in different types of assets aiming to make a profit and lower the risk of the investment. The goal of the legislator was to provide legal framework for establishing and operating of investment funds as well as to protect small investors according to the EU Directives UCITS 1 and UCITS 2 and international control practise. It is domestic and foreign natural persons and legal entities who may invest through investment funds.

An investment fund is established and run by management company. In order to conduct the activity of a management company, a company has to obtain the approval issued by the Securities Commission (hereinafter referred to as: Commission). Prior to passing the approval, the Commission checks if the company fulfils all legal requirements (inter alia: the capital of the company has to amount to minimum EUR 200,000 and cannot be decreased below that amount; the portfolio manager handling the securities and other financial instruments as well as the internal auditor have to obtain proper certificate; the origin of the capital has to be clear and doubtless; the structure of related persons has to make possible effective control of operations; the persons owning more than 10% of the capital as well as the members of the management have to be reliable).

The Commission issues the approval for establishing of an investment fund, too. The Commission passes the approval if the initial capital of the management company makes possible the sustainable operations of the company, if the portfolio manager managing the fund has obtained the proper certificate and the interests of the members and shareholders are adequately protected.

The funds of an investment fund may be invested in shares and securities of domestic entities, certain foreign securities and real estate located on the territory of Serbia, with limitations prescribed in order to provide security of the fund's operations.

An investment fund may be established as open-ended, close-ended or private.

An open-ended investment fund does not constitute legal entity and operates through aggregation of monetary funds by issuance of shares and buying back the shares upon the request of the fund's members. Minimum funds for the commencing of operations cannot be lower than EUR 200,000. An investor acquires the shares by purchasing. The value of the shares is determined daily and represents the net value of the assets of the fund per share. A share gives to its holder, inter alia, right to proportional part of the income, right to buy back and right to proportional part of the fund's assets in case of dissolution. Upon request of a member, the fund is obliged to buy back the shares



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within five days from the filing of the request. An open-ended fund receives the income from interests, dividends and capital gains. Distribution of the income is to be carried out only in money.

A closed-ended investment fund is established as a joint stock company with capital not lower than EUR 200,000. The fund aggregates the funds by selling the shares through public offering. The shares of a closed-ended fund are transferable without any restrictions. The management company reports to the supervisory board of the fund on purchased and sold securities and assets, as well as on the results of the fund's operations at least on monthly basis. Pursuant to the financial statements, the external auditor's report and the decision of the shareholders meeting of the fund, the management company distributes the profit to the shareholders.

A private investment fund is established as a limited liability company with minimum investment of a member amounted to EUR 50,000. Private funds are not subject to the general provisions of the Law regulating getting of the approval, investing of the fund's assets and related restrictions, restrictions related to the disposition of the fund's assets, determination of the income of the fund, issuance of the prospect, advertising and interposer. Neither the provisions of the Law regulating the custodian services, the account with the custodian bank, regular reporting to the Commission and the investors (with the exception referring to the annual financial statements) apply on private investment funds. While open-ended and close-ended funds are designed mainly for so called small investors, private funds relies on big and professional investors, while the capital of such funds are aggregated without public offering from the investors determined in advance.

The Securities Commission runs the registrars of management companies and investment funds and imposes control on their operations.

The legal entities, which had conducted the activity of management company or investment fund or operated using "investment fund" in their registered names before the Law on Investment Funds entered into force, are obliged to obtain the approval of the Commission or to register as a private fund within six months from the

beginning of implementation of the Law. Foreign management companies and investment funds intending to raise the funds in Serbia are to be registered and have to operate in accordance with the provisions of this Law.