Serbia

Karanovic & Partners

Adress Resavska 23 11000 Belgrade, Serbia
Phone (+381) 11 3094 200
Fax (+381) 11 3094 223
Email serbia@karanovicpartners.com
Web www.karanovicpartners.com

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Serbia
Corporate Law

Karanovic & Partners

Corporate Law in Serbia is generally regulated by the Company Law published on the 27th of May, 2011, in the "Official Gazette of the Republic of Serbia" no. 36/2011 which came into force on the 4th of June, 2011, and by the Law on Registration Procedure with the Business Registers Agency published on the 27th of December, 2011, in the "Official Gazette of the Republic of Serbia" no. 99/2011 which came into force on the 4th of January, 2012. The Company Law was amended on the 27th of December, 2011, the 5th of August, 2014, the 20th of January, 2015, the 9th of June 2018, the 8th of December 2018, the 24th of December 2019 and the 19th of November 2021 ("Official Gazette of the Republic of Serbia" nos. 99/2011, 83/2014, 5/2015, 44/2018, 95/2018, 91/2019 and 109/2021) and the Law on Registration Procedure with the Business Registers Agency was amended on the 5th of August, 2011, 29th of April 2019 and the 8th November 2021 ("Official Gazette of the Republic of Serbia" no. 83/2014, 31/2019 and 105/2021).

The Company Law regulates the legal status of companies, entrepreneurs and other forms of organization, their incorporation, governance, affiliation, changes of legal forms, status changes and the liquidation of companies. The Law on Registration Procedure with the Business Registers Agency regulates the conditions, subject, and the procedure of registration with the Business Registers Agency and the operating procedure of this Agency.

1. TYPES OF COMPANIES

Business in Serbia may be conducted by incorporation of the company in one of the following legal forms:

- general partnership
- limited partnership
- limited liability company
- joint stock company

Alternatively, business may be conducted either by the incorporation of a branch office on the territory of the Republic of Serbia (in Serbian: ogranak) or a representative office (in Serbian: predstavništvo) of the foreign company. Branch or representative offices are not considered separate legal entities and therefore the foreign company remains liable for all obligations assumed by a branch office or representative office. Under the Company Law, registration of branch offices within the Business Registers Agency is mandatory.

General and limited partnerships are not that common in Serbia due to the unlimited liability of shareholders for the debts of the company, whereas the minimum share capital of joint stock companies is rather high and it is in the amount of approx. EUR 25,000, which makes this legal form seldom used in practice as well.

The limited liability company (in Serbian: društvo sa ograničenom odgovornošću - d.o.o.) is by far the most commonly used legal form in practice. This is due to the rather straightforward incorporation procedure, minimum requirements in relation to the share capital of the company (approximately EUR 1), and the fact that the shareholders are not liable for the debts of the company (except in specific circumstances, e.g., if there are grounds for the piercing of the corporate veil). A shareholder may have only one share in the company, which is expressed as a percentage.

The capital contributions by shareholders may be made in money – Serbian dinars or "in kind", such as equipment, goods, know-how, etc. which do not have to be paid/contributed before registration, but within five years after the execution of the founding act. The value of contributions in kind can be assessed by the shareholders themselves.

The limited liability company can engage in all legally permitted activities, but its predominant business activity (taken from an exhaustive list of business activities provided by Serbian laws) must be defined in the Memorandum of Association and registered with the Business Registers Agency. There are certain activities (e.g. financial services and insurance services), that may only be performed by an entity incorporated in a certain legal form (e.g. joint stock company), and certain activities (e.g. trade in poisonous goods, medicines or weapons) that may be subject to licensing requirements.
Joint stock companies (in Serbian: akcionarsko društvo – a.d.) can be founded by one or more natural and/or legal persons, and the company's share capital is divided into shares.

Shareholders are not liable for the debts of the company (except in specific circumstances, e.g., if there are grounds for the piercing of the corporate veil). There are two types of joint stock companies, closed and open (public), depending on whether the shares are listed on the stock exchange market or not. Currently, most of the joint stock companies in Serbia are banks and insurance companies, as this is the statutory requirement of the specialised laws. As mentioned, the minimum amount of the initial share capital of the joint stock companies is significantly higher than the one prescribed for limited liability companies, and it amounts to approx. EUR 25,000.

Joint stock companies can issue ordinary and preference shares. Ordinary shares have the same nominal value or have no nominal value at all, in which case their accounting value is used as grounds for determining the amount of dividends or liquidation proceeds belonging to their holders. Preference shares include, in particular, priority rights in the payment of dividends, and priority in payments of the liquidation proceeds. However, holders of preference shares do not have voting rights except in a limited number of cases explicitly stated in the law. The company's Articles of Association can prescribe that the company can approve shares that are not issued. These shares can be issued for the purposes of increasing the share capital of the company by making new contributions.

2. Corporate bodies in limited liability companies and in joint stock companies

A. Limited liability companies

Corporate governance in a limited liability company can be organised as a one-tier or two-tier system.

In the one-tier system, besides the Shareholders Assembly, a company has one or more directors (not forming any separate corporate body, such as a Board of Directors), all of whom are presumed to act as executives, in charge of the day to day running of the business of the company.

In the two-tier system, besides the Shareholders Assembly, there is (i) a Supervisory Board which acts as a separate supervisory and controlling body; and (ii) one or more directors (executives). The Supervisory Board consists of at least three members, appointed by the Shareholders Assembly, none of whom can serve as (executive) directors. The Supervisory Board in turn appoints and controls the work of director(s) who are in charge of running the daily business of the company and are considered as executives.

The Shareholders Assembly operates through sessions which can be held in person or via a conference call. In case of a sole shareholder, the functions of the Shareholders Assembly are performed by the shareholder itself.

If not otherwise provided by the Company Law or the company's Memorandum of Association, the Shareholders Assembly:

I. adopts amendments to the Memorandum of Association;

II. adopts the financial statements, and auditor's statements if the financial statements were audited;

III. appoints and dismisses the directors of the company, and other legal representatives of the company;

IV. adopts reports of the directors and members of the supervisory board of the company;

V. supervises the work of directors, determines the compensation of directors i.e. guidelines for the determination of such compensation;

VI. decides on increases and decreases to the company's share capital and on any emission of securities;

VII. decides on the distribution of profit and the manner of covering losses, including the determination of the day of acquiring the right to participate in profit and the day of the payment of dividends to the shareholders of the company;

VIII. appoints the auditor and determines the compensation for his engagement;

IX. decides on the initiation of the liquidation procedure, as well as on the submission of a proposal for the initiation of company bankruptcy proceedings;

X. appoints the liquidation administrator and adopts the liquidation balance sheets and the reports of the liquidation administrator;

XI. decides on the acquisition of treasury shares;

XII. decides on additional payments to the shareholder of the company and on the return of such payments;

XIII. decides on the shareholder's request for the withdrawal from the company;

XIV. decides on the exclusion of a company shareholder due to a non-payment, i.e. failure to pay-in the subscribed share;

XV. decides on the initiation of the proceedings for the exclusion of a company shareholder;

XVI. decides on the initiation of company proceedings against a director, a procurator, a member of the supervisory board, or a shareholder, and issues a proxy for representation in such proceedings;

XVII. approves the assessment of a new shareholder, and issues a consent to a share the transfer agreement with a third party;

XVIII. decides on withdrawing and cancelling the shares;

XIX. decides on status changes and changes of legal form;

XX. approves the legal transactions involving personal interest; and,

XXI. approves acquiring, selling, leasing, pledging or otherwise disposing of the assets of significant value.

The annual Shareholders Assembly has to be held within six months from the end of the business year.

All the decisions of the Shareholders Assembly are enacted by a simple majority of votes of the present shareholders who have the right to vote on a certain issue, but only if shareholders that have majority of the total number of votes are present at the session on which these decisions are enacted. However, certain decisions of the Shareholders Assembly require a higher majority, unless the Memorandum of Association provides that these issues will be decided by another majority which may not be less than the majority of the total number of votes.

The Company Law recognizes the European Joint Stock Company (Societas Europea) as an additional type of Joint Stock Company. It has a minimum share capital requirement of EUR 120,000.00, and as a concept it relates to (i) merger and acquisition, (ii) creation of holding, or (iii) a controlled company, by more companies, one of which must be incorporated in Republic of Serbia, and the other in an EU member state. This legal form shall apply only when Republic of Serbia becomes a member state of the EU.

B. Joint stock companies

The corporate governance of joint stock companies can also be organised as a one-tier system or a two tier system.

In the one-tier system, besides the Shareholders Assembly, a company has one or more directors who form a Board of Directors in case there are three or more directors. They may be executive directors and non-executive directors. If there are less than three directors, all of them are considered executive directors, in charge of the day to day running of the company business. Non-executive directors oversee the work of executive directors, propose a company business strategy and oversee its implementation.

In the two-tier system, besides the Shareholders Assembly, there is (i) a Supervisory Board which acts as a separate supervisory and controlling body; and (ii) one or more executive directors who form an Executive Board in case there are three or more executive directors. The Supervisory Board may name one of executive directors as the director general in case there is no Executive Board, while in cases where there is an Executive Board, it has to name a director general. The role of a director general is to coordinate activities of the executive directors and to manage the business of the company.

The authorities of the Shareholders Assembly are very similar to the authorities of this body in limited liability companies. The regular session of the Shareholders Assembly has to be held once a year within six months from the end of the business year. Decisions of the Shareholders Assembly are enacted by a simple majority of votes of the present shareholders who have the right to vote on a certain issue, but only if shareholders that have a majority of the total number of votes in the respective class of shares with the right to vote on the issue in question are present at the session at which these decisions are enacted.

3. Incorporation of limited liability companies and joint stock companies

A. Limited liability companies

According to the Law on the Registration Procedure with the Business Registers Agency, the following documents are required in the incorporation procedure:

I. a certificate of incorporation of the shareholders or, if the shareholder is a natural person, a copy of his/her identity card (for Serbian citizens) or passport (for foreign citizens);

II. a decision on the appointment of company representatives, if it was not designated by the Memorandum of Association;

III. the Memorandum of Association with the founders' signatures notarised; and,

IV. proof of the contributed share capital, if the contribution was made before incorporation.

B. Joint stock companies

According to the Law on the Registration Procedure with the Business Registers Agency, the following documents are required in the incorporation procedure:

I. the Memorandum of Association, with the founders' signatures notarised;

II. the Articles of Association;

III. a certificate from a credit institution that the shares have been paid-in in cash, or an appraisal by a state licensed appraiser of the value of the in kind contributions, or a certificate issued by the competent authority of the appraisal of the value of the in kind contribution;

IV. a decision on the appointment of the director, and/or members and chairmen of the Board of Directors, if they werenot appointed by the Articles of Association;

V. a decision on the appointment of the members of the Supervisory Board in case of a company with a two-tier management system, if it was not designated by the Articles of Association;

VI. a decision on the appointment of the members of the Executive Board, in case of a company with a two-tier corporate governance system;

VII. a decision on the appointment of the company's authorised representatives, if it was not designated by the Articles of Association.

4. Competition/Antitrust Issues

The Competition/Antitrust matters in Serbia are regulated by the Competition Law (Law on the Protection of Competition, "Official Gazette of the RS", no. 51/09 and 95/13) which is in effect since the 1st of November, 2009. In short, the Competition Law regulates the merger control regime and lays down the EU-like antitrust rules. The previous law, from 2005, established the Competition Commission assigned with the main competencies needed for the implementation of the law.

A. Restrictive Agreements

The Competition Law prohibits agreements between undertakings which have as their object or effect the significant prevention, restriction or distortion of competition within the territory of the Republic of Serbia. Restrictive agreements can take the form of written contracts, explicit or implicit agreements, concerted practices, decisions by associations of undertakings, and the law in particular provides examples of such agreements as follows:

- ∴ agreements to, directly or indirectly, fix purchase or selling prices or any other trading conditions
- ∴ agreements to limit or control production, market, technical development or investments
- ∴ applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage
- ∴ agreements to share markets or supply sources
- ∴ making the agreement subject to acceptance of additional obligations, which by their nature or according to commercial usage, have no connection with the subject of such contracts

Restrictive agreements are null and void unless exempt through the application of either individual or block exemption in line with the Competition Law.

B. Abuse of a dominant market position

The Competition Law prescribes that an undertaking can be presumed to be in a dominant position when, due to its market power, it can act in the relevant market to a considerable extent independently of its actual or potential competitors, consumers, buyers or suppliers. Dominance is determined in relation to the relevant economic and others indicators, that include, but are not limited to: the structure of the market, actual or potential competitors, a market share above 40%, barriers to entry, a degree of vertical integration, financial and economic power etc. Similarly to restrictive agreements, examples of abuse of a dominant position provided under the Competition Law include the following: direct or indirect imposing of unjust purchase or sale prices, or of other unfair business conditions, limiting the production, market or technical development, applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage and conditioning the contract with the other party accepting additional obligations.

C. Merger Control

The Law prescribes mandatory notifications that are based on turnover thresholds – a notification is required for any concentration of undertakings (mergers, acquisitions, full functional joint ventures) where the combined turnovers of the parties exceed the prescribed thresholds. Any merger, acquisition, consolidation, full functional joint venture or acquisition is regarded as a concentration of undertakings which has to be notified if it meets the thresholds. However, concentrations that are implemented through public takeover of joint stock companies must be notified even though the filing thresholds have not been met.
The merger notification has to be filed prior to the implementation of concentration, but not later than 15 calendar days after:

- ∴ the conclusion of the agreement or contract
- ∴ an announcement of a public bid
- ∴ the acquisition of control

Alternatively, a merger can and should be notified at an earlier stage of the deal – upon the signing of a non-binding agreement (which does not trigger the filing deadline) – a letter of intent, a memorandum of understanding, an executive corporate decision which expresses a serious intent and is signed by both parties, etc.

The Competition Law prescribes an obligation to fully suspend the implementation of the concentration prior to the obtaining of the clearance issued by the Competition Commission or prior to the expiration of the statutory waiting period.

D. Sanctions

Parties to anti-competitive agreements, dominant companies engaging in anti-competitive practices and parties which carry out a merger without obtaining an approval, can be fined in the up to 10% of their annual revenues realised in the previous fiscal year in the Republic of Serbia. If the parties do not file in a timely manner, a fine (a, so called, procedural penalty) ranging between EUR 500 and EUR 5,000 for each day that the filing is delayed, may be imposed by the authority.

Serbia
Tax System

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Regulatory framework

The tax system in Serbia is established so that each main type of tax is regulated by a separate piece of legislation and a number of bylaws issued based on them, including:

- Law on Corporate Income Tax
- Law on Personal Income Tax
- Law on Value Added Tax
- Law on Property Taxes (governing property tax, property transfer tax and tax on gifts and heritage)

These laws primarily deal with substantive matters in their respective tax areas, provided that they also prescribe certain specific procedural rules on tax assessment.

The system of mandatory social contributions is also established by laws enacted by the Parliament. The system is governed in the first place by a Law on Mandatory Social Security Contributions, while specific rules in relation to each of the type of social security are prescribed by the separate laws, as follows:

- Law on Pension and Disability Insurance
- Law on Health Insurance
- Law on Employment and Insurance in Case of Unemployment

In addition to the above, there are a number of laws establishing numerous so-called para-fiscal charges, such as court and administrative fees and other fees.

General rules governing the tax procedure, including the assessment and collection of tax, rights and obligations in relation to the tax system are governed by the Law on Tax Procedure and Tax Administration. Procedural rules prescribed by this law are applicable in all tax areas, unless it is otherwise prescribed by a separate law governing the specific tax area. Rules prescribed by the Law on Tax Procedure and Tax Administration are also applicable in relation to social security contributions, para-fiscal charges and other types of public revenues, unless separate laws governing these public revenues provide otherwise. Finally, since the tax procedures are essentially administrative procedures, they are also governed by the Law on General Administrative Procedure, in the parts which are not covered by the Law on Tax Procedure and Tax Administration and separate tax laws.

International treaties are an important part of the Serbian legal system, including the area of tax and social security contributions. Ratified international treaties (bilateral and multilateral) have supremacy over national legislation.

Serbia has an extensive network of more than 50 treaties on the avoidance of double taxation treaties **(DTT)**, including DTTs with almost every EU country, Russia, all the regional countries and a number of Asian countries. DTTs applicable in Serbia are based on OECD Model Convention. In 2017, Serbia signed a Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting **(MLI)**. MLI is a result of the OECD/G20 Project to tackle Base Erosion and Profit Shifting **(BEPS)**. The MLI will be applied as a part of the double tax treaties that Serbia signed after reaching the agreement with the other contracting state. Serbia already started to apply the MLI in tax matters with Austria, Finland, France, Lithuania, Malta, Poland, Slovakia, Slovenia and United Kingdom.

Serbia also ratified social security conventions with more than 25 countries, governing the rights and obligations in relation to the social security of the citizens of these countries in Serbia and vice versa.

Finally, an important source of tax law in Serbia are also international treaties governing other issues – primarily the status of international organizations and financial institutions or the development and financing of important infrastructural projects, which provide for specific tax rules in the areas covered by the treaties. These rules are primarily related to various tax exemptions.

The main authority in charge of the enforcement of tax laws in Serbia is the Tax Authority - being the authority within the Ministry of Finance. The Tax Authority is in charge for: the registration of taxpayers, assessment of tax, tax control, collection of tax, investigations of tax criminal offences and so on.

The Compulsory Social Insurance Central Register was established in 2010 in order to maintain the registry of contribution payers, users of insurance and all changes regarding the information on these entities. Contribution payers are obliged to electronically register any relevant change with the Central Register. The Central Register further distributes information to individual social insurance funds, the Tax Authority and other bodies with an interest in the database maintained by the Central Register.

Personal income tax and social security contributions

Rules governing the taxation of personal income are prescribed by the Law on Personal Income Tax **(PIT Law)** and the accompanying secondary regulations with the PIT Law. As a general note, the Serbian system of personal income tax is based on the so-called cedular system of taxation: different types of income are taxed at different tax rates and different rules for the assessment of the tax base. At the end of the year, resident tax payers whose annual income generated throughout the year from all sources exceeds the threshold prescribed by the PIT Law are required to pay additional annual income tax.

Types of income subject to personal income tax

The main types of income for which the PIT Law prescribes specific rules of taxation include salaries, the income of entrepreneurs, income from immoveable property, income from capital (dividend, interest) capital gains, royalties, and “other income” which is a residual category including any income not included in one of the specified categories (including also income generated by natural persons under service agreements).

Below we have presented the system for the taxation of salaries, as the most common type of personal income.

Taxation of income from labour

Salary tax is levied at a 10% tax rate applicable on the gross amount of salary decreased by the monthly non-taxable amount of RSD 21,712 (approx. EUR 180).

The taxable person is the employee, but the employer is responsible for calculating and paying personal income tax on behalf of his employees. The taxable base is the gross salary, which includes salary tax and social security contributions. Benefits in kind, such as the use of company vehicles or apartments, as well as income from employment share plans are subject to salary tax.

Specified types of income, up to a prescribed amount, are exempt. They include public transportation costs for home to office travel and daily allowances for business trips. Also, insurance premiums for private pension and health insurance paid by the employer for its employees are exempted from the prescribed threshold (approx. EUR 50 per month).
The employer who is employing individuals registered at the National Agency for Employment as unemployed, may ask for a refund of paid taxes and contributions in the range between 65% and 75% depending on the number of employed individuals.

The PIT Law also prescribes tax exemption for income under employee share plans.

Social security contributions

Salaries (and other similar types of income generated from work) are subject to an obligation to pay contributions for mandatory social security insurance (including social security contributions due by the employer and those due by the employee). The rates of social security contributions due on salaries are as follows:

	Pension and disability	Health	Unemployment
Employer’s portion	10%	5.15%	n/a
Employee’s portion	14%	5.15%	0.75%
Total	24%	10.3%	0.75%

The base for social security contributions paid on salaries is subject to limitation as to the maximum monthly base of app. EUR 4,200, while the maximum annual base related to annual income generated from all sources is estimated at app. EUR 50,400 for 2023.

Tax and social security contributions are payable by the employer on the withholding basis if the employer is a resident legal entity. In this case the employer is required to pay salary tax and social security contributions on each salary payment. The tax return for withholding tax has to be filed electronically before the payment of personal income.

Annual income tax

In addition to the tax on specific types of income paid during the year, tax residents and non-residents, whose total annual income exceeds three times the annual average salary in Serbia (for 2021 approx. EUR 27,700) are required to pay an annual income tax.

The tax base for annual income tax is equal to the sum of all income generated during the year (with certain exemptions, such as dividends and capital gains) reduced by a non-taxable amount (three times the average salary) and the standard deductions for taxpayers (40% of the average salary) and for the members of taxpayer's family (15% of the average salary for each family member).
Tax rates for annual income tax are progressive:

- 10% for tax base up to six times the average annual salary in Serbia (for 2021 approx. EUR 55,400)
- 15% for tax base exceeding six times the average annual salary

The tax returns should be filed by the 15th of May for income generated during the previous year. The tax returns must be filed electronically.

The position of foreign nationals within the Serbian tax system

The scope of tax liabilities of any natural person depends on whether such a person is a resident of Serbia or not. Residents of Serbia are liable to personal income tax on their worldwide income.

Non-residents are liable to pay tax only on income earned in Serbia. Under the PIT Law, Serbia is regarded as a source of income for non-residents, if the income relates to work on Serbian territory, or if it is generated from rights arisen in Serbia or from property located in Serbia.

The residency of a natural person is established on the basis of criteria prescribed by the PIT Law. Under these rules, an individual is considered a resident of Serbia if one of the following conditions is met:

- He/she resides in Serbia more than 183 days during a period of 12 months which begins or ends in the given fiscal year

- He/she has a domicile or centre of his/hers vital interests in the territory of Serbia

Residents of Serbia are required to pay tax on their world-wide income, irrespectively of the source of their income. Non-residents are required to pay a tax on income generated in Serbia.

In addition to salary tax, foreign staff may be required to pay social security contributions on their salaries, while working in Serbia. This obligation may be eliminated on the basis of a convention on social security insurance.

Corporate income tax

CIT is governed by the Law on Corporate Income Tax (CIT Law). In addition to general rules prescribed by the CIT Law, rules governing the taxation of corporate profit are also prescribed by the secondary regulations prescribed by the Ministry of Finance.

Persons subject to the tax

Companies incorporated in Serbia are Serbian tax residents and are therefore required to pay tax on their worldwide income. Serbian non-residents have to pay CIT only for the part of the income which is attributable to the activity of the permanent establishment constituted in Serbia and on certain types of income deemed to be generated in Serbia (see section Withholding tax below).

Tax rate

Corporate income tax is levied at a 15% flat rate.

Tax base

The tax base is assessed on the basis of the profit (revenues and expenses) declared by the taxpayer in his annual income statement (profit and loss account), prepared in accordance with the International Accounting Standards (IAS), and adjusted in accordance with the rules prescribed by the CIT Law.

Generally, an expense will be recognized for tax purposes if it is documented and incurred for business purposes.

Certain types of expenses specifically listed in the law are non-deductible, while the deductibility of certain expenses is limited, so as that the threshold for deductibility is set as a percentage of the taxpayer's annual revenues (for example, expenses for health, cultural, educational, scientific, humanitarian, purposes and similar) .

The deductibility of certain types of expenses is allowed only subject to the fulfilment of certain conditions. For example, the write-off of receivables will be recognized for tax purposes only if the taxpayer filed a lawsuit against the debtor of such receivable (or if the costs of court procedures exceed the value of the receivable which is written-off), while certain types of expenses are recognized only up to the paid amount (such as public charges which are not dependent on the business operation results).

Expenses on the basis of an impairment of assets are not deductible, but may be deducted in the year in which the asset was transferred, used, or in which such an asset was damaged due to force majeure.
The deductibility of other expenses is limited in accordance with the specific rules on tax depreciation, transfer pricing, rules governing thin capitalization, etc.

Tax depreciation

An asset may be depreciated for tax purposes if it is recognized as a fixed asset under the relevant accounting regulations (IAS) and subject to the condition that its useful life is longer than one year. Goodwill cannot be depreciated.

All assets are categorized in five depreciation groups with different rates and methods of depreciation for tax purposes. Tax depreciation rates range from 2.5% (for immoveable assets) to 30%. Immoveable assets are depreciated using a proportional method, and all other assets under the declining method.

Thin capitalization

The deductibility of interest generated from related party loans is subject to limitation on the ground of thin capitalization. Under the thin capitalization rules, debt to equity ratio for the deductibility of interest on related-party loans for companies is four times the taxpayer's capital (exceptionally, ten for banks and financial institutions). The coefficient of deductible interest is calculated by dividing the amount of four times the average amount of capital by the average daily amount of loans from related parties.

Transfer pricing rules

Transfer-pricing obligations of the Serbian taxpayers include, first, the obligation to disclose the value of expenses and revenues generated in transactions from related parties at agreed (transfer) prices and at arm's length prices, and to include the difference in the taxable profit. Note that transfer pricing obligations apply equally to both transactions between Serbian resident taxpayers and cross-border transactions between Serbian taxpayers and their foreign related parties.

The definition of related parties is set in a very broad manner: for the purposes of transfer pricing rules, a party related to the taxpayer shall be deemed to be any entity (foreign or Serbian) which holds, directly or indirectly, more than a 25% share in capital or voting rights in the taxpayer. Likewise, an entity shall be deemed to be related to a taxpayer if such an entity is controlled, directly or indirectly, by the same entities which exercise control over the taxpayer by means of the minimal 25% (direct or indirect) participation in their capital or voting rights.

The arm's length prices should be established in accordance with one of the transfer pricing methods allowed under the CIT Law. Latest amendments to the CIT Law allow all transfer pricing methods which are allowed under the OECD Transfer Pricing Guidelines, including the following:

- The comparable uncontrolled price method
- The cost-plus method
- The resale price method
- The transactional net margin method
- The profit split method

There is no hierarchy between the available transfer pricing methods, and the taxpayer is free to choose any method which it finds most appropriate for a given transaction or a group of transactions. Moreover, the taxpayer may use any other method for assessment of arm's length prices if the methods prescribed by the law are not suitable in a particular situation.

For transfer-pricing purposes, the amount of deductible interest from related party loans (deposits) may be established in two principal ways: on the basis of the market interest rates established by the NBS and published by the Serbian Ministry of Finance, or on the basis of some of the transfer-pricing methods allowed under the CIT Law.

The Ministry of Finance publishes the arm's length interest rate in the beginning of the year for the previous year. For 2022 the amount of arm's length interest for long-term loans in EUR was set at 2,73%, while the rate for long-term loans denominated in USD is 3,54%.

Tax-loss carry-forwards

Tax losses may be carried forward and offset against taxable profit in future tax periods, but for no more than 5 years.

Capital gains/losses

For tax purposes, capital gains may be generated from the disposal against a consideration of immoveable assets, shares, IP rights and investment units. Note that capital gains/losses generated in transactions with related parties are also subject to transfer pricing rules, so that the sale price of assets sold to a related party is the arm's length price (if the agreed price is lower than the market price).

Capital gains from transfer of IP rights registered in Serbia are exempted from 80% of the tax and therefore subject to tax at effective rate of 3%.

Capital gains may be offset only against capital losses incurred in the same year. Unused capital losses in the current tax year may be carried forward and offset against capital gains in the following five years.

Non-residents that generate capital gain in Serbia have to file the tax return through appointed tax representative and to pay the tax (if any) on the basis of tax resolution issued by the TA.

Tax incentives

The CIT Law provides tax credit for the investment in new fixed assets and the employment of new employees.

The taxpayer which invests or in whose new fixed assets another entity invests more than RSD 1 billion (app. EUR 8.3 mil.), and which employs at least 100 new employees during the period of investment, has the right to the reduction of tax proportionally to the participation of the new fixed assets in the existing fixed assets, for a period of ten years. The tax credit starts to apply in the year in which the taxpayer starts to generate taxable profit.

Investments into start-ups are also subject to beneficial tax treatment. Taxpayer investing into start-up enjoys tax credit in amount of 30% of investment. Also R&D expenses are deductible in double amount. Similarly as capital gains, royalties are exempted from 80% of the tax.

The administration and payment of CIT

Corporate income tax is paid on the basis of the annual tax balance and tax return in which the taxpayer should declare the amount of his taxable profit (tax balance) and the amount of tax due.

The tax period for which the tax is assessed and paid is a calendar year, provided that in certain cases the tax year may be different than the calendar year.

The deadline for the submission of tax balance and tax returns is 180 days starting from the end of the year for which the tax is assessed, i.e. until the end of June of the current year for the preceding year. Along with the CIT return, the taxpayer is required to file transfer pricing documentation. Newly incorporated companies are also required to file a provisional CIT return within 15 days after the registration.

CIT is paid in advance, in monthly (provisional) instalments, calculated on the basis of the amount of tax declared in the previous year. Monthly instalments have to be paid by the 15th of the current month for the previous month.

The amount of tax paid by the taxpayer throughout the year on the basis of the profit made in the previous year is adjusted at the end of the year in accordance with the actual profit made during that year. At the end of the year the taxpayer is required to pay the difference (or request a refund), depending on whether the total amount of monthly instalments paid during the year is higher or lower than the amount of tax due on the basis of profits in the current year.

Withholding tax

Withholding tax is payable on the following types of income paid by resident taxpayers to non-resident entities abroad:

- Dividend
- Interest
- Royalties
- Income from rent of moveable and immoveable property located in Serbia
- Business services fees

The tax base for withholding tax is a gross income which incorporates withholding tax.
The standard withholding tax rate is flat 20%. The higher 25% tax rate applies to interest, royalties, rental income and service income paid to an entity from the jurisdiction that has the status of a tax haven.

Withholding tax may be eliminated or reduced on the basis of a double tax treaty between Serbia and recipient's country of residence. Most tax treaties prescribe lower tax rates for dividends, interest, royalties, and rental income. Also, most treaties prescribes that the service income is subject to tax only in the service provider's country of residence.
Beneficial tax rates available under the double tax treaties apply subject to the condition that a non-resident recipient of income obtains the certificate of tax residency (confirming that the recipient of the income is a resident of a treaty country) and delivers it to the Serbian payer of income. In addition, a non-resident has to demonstrate that it is a beneficial owner of the income.
Withholding tax has to be paid at the same moment when the income is transferred to a non-resident entity.

Property taxes

Property transfer tax **(PTT)** is a one-off tax payable on the transfer against the consideration of a property under certain specific types of assets, including immoveable assets, IP rights, and used motor vehicles. The PTT applies only if the sale of assets is not subject to VAT. PTT is levied at the rate of 2.5% on the tax base which is equal to an agreed price or the market price of asset. The PTT is due by the seller of the asset, cannot be refunded and represents a pure cost for the taxpayer.

Gifts and inheritance by direct descendants and spouses are not taxed. Also, gifts below RSD 100,000 (app. EUR 800) in one year are non-taxable. The tax rate of 1.5% is applied for transfers from relatives in the second order of inheritance, while the rate of 2.5% for transfer of property by the relatives in the third order or any other person.

Owners of immoveable assets located in Serbia are required to pay an **annual property tax** on such immoveable assets to the municipality on whose territory the immoveable asset is located. The applicable tax rate varies depending on the municipality, provided that it cannot exceed 0.4% for corporate taxpayers. The tax base is the fair value of the immoveable asset for taxpayers that keep books using the "fair value method" or a market value established by the Tax Administration for other taxpayers. Tax due is assessed by the Tax Administration, on the basis of the tax return filed by the taxpayer and is payable quarterly.

2. Value added tax

The Serbian VAT system is modelled after the EU VAT Directive, and the majority of general VAT principles applicable throughout the EU apply also in Serbia. Serbian VAT is regulated by the Law on Value Added Tax (VAT Law), and a number of VAT regulations which prescribe detailed rules for the implementation of general rules of the VAT Law.

Taxable persons

A taxable person is an entity (legal and natural persons) who independently carries out the supply of goods and services, within its business activities.

Only registered VAT taxpayers are required to pay VAT on their supplies of goods and services, and have the right to deduct input VAT charged to them by their suppliers. Taxable persons whose turnover in a 12-month period exceeds, or will exceed, RSD 8,000,000 (app. EUR 67,000) are required to register for VAT. Entities whose turnover does not exceed this threshold may register for VAT, but are not required to. Foreign entities supplying only natural persons in Serbia are required to register irrespectively to the amount of their supplies.

Taxable transactions

Transactions subject to VAT include the following:

- The supply of goods and services. A supply of goods/services will be subject to VAT only if made on the territory of Serbia (as defined by the place of supply rules, depending on the specific type of supply) and if made for consideration (though, in certain cases, supplies made without consideration will also be subject to VAT)

- The import of goods

The VAT Law prescribes the list of exemptions from VAT, including two main principal groups of exemptions:

- Exemptions with the right to a deduction of input VAT (0% rates supplies), such as the export of goods, supplies made under international loan or donation agreements, international transport and similar.

- Exemptions without the right to a deduction of input VAT, including primarily public and financial services, but also a supply of land (agricultural, forest, or construction land).

Tax base and tax rates

The standard VAT rate is 20%. Certain goods and services (such as the supply of groceries, medicines, newspapers, utility services, etc.) are taxed at a reduced VAT rate of 10%.

The tax base for the assessment of VAT constitutes everything that the taxpayer received or will receive from the customer in consideration for the supply.

The deduction of input VAT

Registered VAT taxpayers are entitled to deduct their input VAT from the output VAT, subject to the following main conditions:

- input supplies are used for the purpose of taxable output turnover

- the taxpayer holds an invoice of the supplier drawn in accordance with the formal invoicing requirements prescribed by the VAT Law

The excess of input VAT in the given VAT period may be used as credit to offset the due in the following tax periods, or the taxpayer may request a refund of such VAT.

Administration and payment of VAT

For taxpayers whose turnover in a 12-months period exceeds RSD 50 million (app. EUR 420,000), the tax period is a calendar month. Taxpayers whose turnover does not exceed this threshold are required to account and pay VAT quarterly.

The deadline for the submission of VAT returns and the payment of VAT is the 15th of the month for the previous month.

Double taxation treaties

In the table below is a list of double tax treaties signed by Serbia:

Country	Dividends	Interest	Royalties
Albania	15/5	10	10
Armenia	8	8	8
Austria	5/5	0/10	5/10
Azerbaijan	10	0/10	10
Belgium	10/15	15	10
Belarus	5/15	8	10
Bosnia and Herzegovina	5/10	0/10	10
Bulgaria	15/5	10	10
Canada	5/15	10	10
China	5	0/10	10
Croatia	5/10	10	10
Cyprus	10	10	10
Czech Republic	10	0/10	5/10
Denmark	5/15	0/10	10
Egypt	5/15	15	0
Estonia	5/10	0/10	10
Finland	5/15	0	10
France	5/15	0	10
Georgia	5/15	0/10	10
Ghana*	5/15	10	10
Greece	5/15	10	10
Germany	15	0	10
Hungary	15/5	10	10
India	5/15	0/10	10
Indonesia	15	0/10	15
Iran*	10	0/10	15
Ireland	5/10	0/10	5/10
Italy	10	10	10
Kazakhstan	10/15	0/10	10
Kuwait	10/5	10	10

Country	Dividends	Interest	Royalties
Latvia	5/10	0/10	5/10
Libya	5/10	0/10	10
Lithuania	5/10	0/10	10
Luxembourg	5/10	0/10	5/10
Macedonia	15/5	10	10
Montenegro	10	0/10	5/10
Morocco*	10	0/10	10
Netherlands	5/15	0	10
Norway	0/5/15	0/10	5/ 10
North Korea	10	0/10	10
Poland	5/15	10	10
Pakistan	10	0/10	10
Palestine*	10	0/10	10
Qatar	5/10	0/10	10
Romania	10	0/10	10
Russia	5/15	10	10
San Marino	5/10	10	10
Slovak Republic	5/15	10	10
Slovenia	5/10	0/10	5/10
South Korea	5/10	0/10	5/10
Spain	5/10	0/10	5/10
Sri Lanka	12.5	10	10
Sweden	5/15	0	0
Switzerland	5/15	10	10
Tunisia	10	10	10
Turkey	5/15	0/10	10
Ukraine	5/10	0/10	10
United Arab Emirates	0/5/10	0/10	10
United Kingdom	5/15	10	10
Vietnam	10/15	10	10
Zimbabwe*	5/15	10	10

*The treaty has not been ratified by one of the parties.

Excise

Excise duties are levied on the producers and importers of the following goods:

I. Oil derivatives

II. Biofuel and bio fluids

III. Tobacco products, including tobacco products that are heated during use but do not burn

IV. Alcohol beverages

V. Coffee

VI. Fluids for the filling of electronic cigarettes

VII. Electricity for final consumption

Exported excisable goods are considered exempt. Oil derivatives, biofuel and bio fluids supplied by the producer or importer are also exempted excisable goods, if so is provided by an international agreement.

Excise duty is levied as a fixed amount (RSD) per unit quantity. The Excise Law prescribes special provisions for tobacco. There are two types of excise duty:

Fixed amount per pack

Meanwhile, Serbia introduced the same excises both for cigarettes imported to Serbia and cigarettes produced in Serbia. The fixed amount of the excise will be payable per pack of 20 cigarettes as follows:

I. For the period from 1 July until 31 December of 2022: 81.25 RSD/pack

II. For the period from 1 January until 30 June of 2023: 82.75 RSD/pack

III. For the period from 1 July until 31 December of 2023: 84.25 RSD/pack

IV. For the period from 1 January until 30 June of 2024: 85.75 RSD/pack

V. For the period from 1 July until 31 December of 2024: 87.25 RSD/pack

VI. For the period from 1 January until 30 June of 2025: 88.75 RSD/pack

VII. From 1 July of 2025: 90.25 RSD/pack

Proportional Excise Duty

The proportional excise duty will be introduced along with excises above in the amount of 33% of retail price, determined by either the producer or the importer of cigarettes.

Separate excise, calculated as 43% of retail price per kilogram, is payable on tobacco and other tobacco products.

Customs

Regulatory framework

The rules governing the system of foreign trade in goods in Serbia are established by several laws enacted by the Serbian Parliament, including, in particular, the following:

∴ The Law on Foreign Trade, establishing the fundamental foreign trade principles.

∴ Customs Law, prescribing the rules for the conduct of the customs procedure.

∴ The Law on Customs Tariff, establishing the customs tariffs used for the calculation of customs duties.

∴ The Law on Foreign Exchange Operations, governing the terms and conditions for the execution of payments between residents and non-residents.

The main principles governing foreign trade, established by the Law on Foreign Trade, include the following:

∴ Freedom of foreign trade

∴ Non-discrimination

∴ Most favoured nation treatment

∴ National treatment,

∴ The prohibition of quantitative import/export restrictions, save for those established by the law

∴ Publicity

∴ Confidentiality

Serbia has a wide range of free trade agreements which provide for the preferential customs treatment of goods originating from the signatory countries. The most important free trade agreements include the following:

- Interim Trade Agreement with the European Union **(ITA)**
- Free Trade Agreement with the Russian Federation **(FTAR)**
- Central Europe Free Trade Agreement **(CEFTA),** a multilateral treaty, applicable in Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova and Montenegro
- Free Trade Agreement with European Free Trade Association **(EFTA)**
- Free Trade Agreement with Turkey **(FTAT)**
- Free Trade Agreement with Kazakhstan **(FTAK)**
- Free Trade Agreement with the UK of Great Britain and Northern Ireland

Serbia does not, however, have free trade agreements with the USA and Japan in place.

The institutional framework

The main authority in charge of the enforcement of customs regulations in Serbia is the Customs Administration, being an authority within the Ministry of Finance. The Customs Administration is in charge of: customs clearance, customs supervision and other activities in relation to the control of foreign trade in goods and services.

Customs procedure

As a general rule, in order to be imported in Serbia, foreign goods have to go through a customs procedure prescribed by the Customs Law.

After the goods cross the Serbian border, the entity which brought the goods on the territory of Serbia is required to present them to the customs authorities and take them to the organizational unit of the Customs Administration or other place designated by the Customs Administration. Together with the delivery of goods, a summary declaration has to be submitted to the Customs Administration.

After the goods have been presented to the Customs Administration, they are kept in temporary storage until they are assigned to a customs approved treatment, or their use is approved. There are several types of customs approved treatment, including:

- the placing of goods under a customs procedure
- entry into a free trade zone or free storage
- re-export
- the destruction of the goods
- the handing over of goods in favour of the Republic of Serbia

The customs authorities have to decide about customs approved treatment or use within 20 days following the submission of the summary declaration.

As specified above, in order to be imported in Serbia, the goods have to be placed under a customs procedure.

The customs procedure is subject to the submission of the customs declaration to the customs authorities by the importer on record. The importer on record may only be a Serbian entity. Foreign entities participating in the customs procedure have to appoint their representatives in Serbia.
The customs declaration has to be prepared on the “JCI” form prescribed by the Serbian regulations.
All goods which are placed under the customs procedure have to be included in the customs declaration. The declaration should contain sufficient information (type of goods, quantity, value, etc.) for the calculation of customs duties. Information in the customs declaration has to be supported by appropriate documents, such as agreements, invoices, purchase orders, waybills, etc.

Customs duties

The customs duties are calculated by the application of the appropriate customs rate on the customs value of the goods. Customs rates are established by the Law on Customs Tariff and the bylaws issued on the basis of this law, and depend on the type and purpose of the goods.

Custom rates established by the national legislation may be lower or eliminated on the basis of free trade agreements concluded between Serbia and the country of origin of the goods which are being imported (the, so called, preferential origin). Terms and conditions for the recognition of preferential origin are prescribed by the respective free trade agreements. The free trade agreements also prescribe documentation which is used as evidence of the preferential treatment, such as "EUR1" form under ITA.

The customs value of goods is consideration paid (or to be paid) by the importer in return for the goods (transaction price), increased for the following costs:

- ∴ costs borne by the importer in relation to the goods which have not been included in the transaction price
- ∴ goods supplied by the importer in relation to the production of goods without or at lower consideration
- ∴ royalties paid in relation to the goods, if they are not included in the transaction price
- ∴ amounts obtained from further sale of imported goods which are paid to the exporter, if such amounts can be established
- ∴ costs of transport, services in relation to the transport, and insurance of goods until they crossed the Serbian border

In transactions between related parties, the Customs Administration will accept the transaction price as customs value only if the relationship between the importer and exporter did not have an impact on the establishment of the transaction price. Otherwise, the Customs Administration will not accept the transaction price as the customs value and will establish customs value itself, in line with the Customs Law. The customs duties become due at the moment that the Customs Administration accepts the customs declaration.

Modalities of import

Two main modalities of the import regime in Serbia are the permanent import and temporary import.

Permanently imported goods are granted the status of domestic goods and therefore may be placed in free circulation on the Serbian market. The importer on record is required to pay the full amount of customs duties and import VAT due on the import of goods under the general rules.

Temporary import is allowed for the goods which are brought in Serbia with the intention of being exported in an unchanged condition. Temporarily imported goods do not acquire the status of domestic goods.

The goods may be temporarily imported subject to the approval granted by the customs authorities. The approval will be granted only if the goods are readily identifiable. Otherwise, the goods may only be permanently imported.

The customs authorities decide about the duration of the temporary import, provided that it cannot exceed 24 months. As an exemption, this deadline may be extended if necessary in order to realize the purpose of import. If the goods are not exported within the time limit, the importer has to pay the customs duties and VAT that would have been payable if, when the goods were imported, the goods had not been treated as temporary imports.

The customs duties for temporary import are set at 3% of customs duties which would have been paid on the permanent import, for each month in which the goods were under the temporary import regime. Exceptionally, certain goods explicitly prescribed by the Government are exempt from customs duties in case of temporary import.

Serbia
Labour Law

Karanovic & Partners

The Labour Law ("Official Gazette of the Republic of Serbia", no. 24/2005, no 61/2005, no. 54/2009, no 32/2016, no 75/2017, no 13/2017- decision of the CC, 113/2017 and 95/2018) is the centerpiece of Serbian regulation in the field, and sets out the main rights and obligations of employers and employees. The provisions of the Law apply to the employees working on the territory of the Republic of Serbia for a domestic or foreign legal or natural person, as well to those employees that the employer has sent abroad and the foreigners working on the territory of Serbia, unless otherwise prescribed by the Law.

Labour issues in Serbia are also regulated by several other laws:

- Law on Pension and Disability Insurance
- Law on Health Insurance
- Law on Employment and Unemployment Insurance
- Law on Mandatory Social Contributions
- Law on Financial Aid to Families with Children
- Law on Social Protection
- Law on Labour Safety and Health Protection
- Law on Health Protection
- Law on Employment of Foreigners
- Law on Agency Employment
- Law on Gender Equality

Employment contracts

Pursuant to the Labour Law, all employment contracts must be concluded in writing, before the commencement of work. They have a certain minimal content and represent the basis of the individual labour relationship between the employer and the employee. They cannot be entered under terms which are less favourable to the employee than those set out under the applicable Collective Bargaining Agreements and the Labour Law.

Under the Serbian Labour Law there are two types of employment relations, a definite and an indefinite employment relation. Definite term employment may be concluded only in cases specified in the Labour Law, for a maximum duration of 24 months (there are some specific exceptions when duration may be longer, e.g. due to the replacement of an absent employee or work on a project).

The Labour Law provides that the director or other legal representative of the company can be engaged on the basis of an employment agreement or, alternatively, through a non-employment Management Agreement. If a director is engaged through an employment agreement, such an agreement may be concluded either for an indefinite or definite term – for the duration of his/her term of office, in line with the foundation enactments. If a director is engaged through an out-of-employment Management Agreement, limitations of the employment relation do not apply to such agreement. The parties are free to agree on the amount of remuneration and any other mutual rights and obligations that they deem adequate.

The company (employer) may also conclude certain out-of-employment contracts, such as a service agreement and the agreement on temporary and periodic work. Both should be concluded in writing.

An agreement on temporary and periodic work is an agreement concluded for a limited period of time (up to 120 days per calendar year) with a person who will perform the activities that fall within the scope of the activities of the company engaging such person. This contract can be concluded only with certain persons (unemployed persons, part-time employees or retired persons).

A service agreement is an agreement concluded for the performance of independent intellectual or physical work for the company, whereas such activity falls outside the scope of activities that the company performs. There is no time limit as to the length of such an agreement.

The Labour Law prescribes also a possibility for the employer to engage persons through other out-of-employment agreements such as: an agreement on professional training (this agreement can be concluded with trainees or other persons that wish to be further specialised in their profession; the employer may provide pecuniary remuneration for these persons, but this is not considered a salary), an agreement on additional work (an employee working full working hours may enter into an agreement on additional work with another employer, for up to 1/3 of full working hours). In addition, it is possible to engage the employee via Agency for temporary employment, in which case the employer and the Agency conclude the assignment contract. In this form of engagement, the Agency acts as a formal employer, while the employee effectively performs work at the employer.

Legal Grounds for Dismissal

The employer and the employee may terminate their employment relations in the manner prescribed by the Labour Law. In general, employment can be terminated in the following cases: upon the expiry of the agreed term; when the employee fulfils pension retirement conditions; by mutual consent of the employer and the employee; by dismissal (only in cases specified in the Law); upon the death of the employee; at the request of the parents or guardians of an under-aged employee and in other cases prescribed by the Labour Law (loss of working ability, official prohibition of further work activities, prison sentence, termination of employer's business activities).

Regarding unilateral dismissals, as one of the most frequently used reasons for the termination of employment, the employer may dismiss an employee only if there is a justified reason related to an employee's work abilities or his/her behaviour, as follows:

∴ if an employee underperformed or did not have the required knowledge or abilities for the performance of work for his/her work position ("professional inadequacy")

∴ if an employee has been finally sentenced for a criminal offence in relation to work

∴ if an employee did not return to work within 15 days as of the date of expiry of his/her unpaid leave or employment dormancy period

∴ if an employee had knowingly breached a work obligation determined by the law, general employment enactment or his/her employment contract

∴ if an employee disrespected work discipline prescribed by the law or employer's enactment, or if his behavior is such that it cannot be allowed that he/she continues to work for the employer

∴ if, due to economical, technological or organizational changes, the need for the performance of certain work is terminated, or if the work load decreases (redundancy)

∴ if the employee refuses to enter into an annex of the employment contract (related to a change of his/her salary, work position or place of work)

Procedural Considerations

In order to effect a valid termination of employment, the employer must observe a number of procedural issues that differently apply depending on the circumstances of the particular case:

- Prior warning
- Time-bar for dismissal
- Redundancy related procedural issues
- Trade Union opinion (non-binding)
- Termination notice requirements

Notice Period

When dismissed for professional inadequacy, the employee will be entitled to a notice period of between eight and thirty days (depending on the total amount of time for which the employee has been a member of the social security system). The employee and the employer may agree to shorten or cancel such notice period on the condition that the employee is fully compensated for the entire duration of the notice period.

The Labour Law also mandates that the employee, when terminating employment on his/her own, provides a notice period of a minimum of 15 and a maximum of 30 days. Apart from the situations noted above, no additional notice period is mandated by the Labour Law. However, if internal employment enactments or employment contract set a notice period, such notice period should be considered in a separate case.

Severance Payment

When dismissed due to technological, economical or organizational changes (redundancy) the employee is entitled to a severance payment in the amount determined in the employment agreement or the employer's general act. However, this payment cannot be less than 1/3 of the monthly salary per each year of work with the employer (and its affiliates); having in mind the average total monthly salary paid in the last 3 months (including bonuses and other mandatory payments considered as salary).

Furthermore, the employee is entitled to payment of severance in case of retirement in the amount of two average salaries in the Republic of Serbia according to the last published information by statistic authority.

Apart from severance in the case of redundancy and in case of retirement, no other severance pay is mandated by the Labour Law. However, if internal employment enactments or employment contract set for a severance pay in a particular case, such severance should be considered.

As the Serbian Labour Law is still slightly protective with respect to employees, and the Serbian courts tend to be favourable towards employees, it is of the utmost importance, in order to ensure that no valid employees' claims emerge with regard to the dismissal procedure, to strictly abide by the procedural requirements in each particular case. We would therefore advise that the assistance of legal counsel is required in every particular dismissal case.

Employees' representatives and union representation

Employees of an employer with more than 50 employees may form an employees' council, in accordance with the collective agreement. Freedom to organize in trade unions and trade union activity shall be guaranteed to employees. Trade unions are established to protect the rights and promote the professional and economic interests of their members. A trade union shall be established by the making of a relevant entry into the trade union register kept by the ministry in charge of labour affairs and shall require no approval. Trade unions shall be entered into the register in accordance with the law and other regulations.

Trade union representativeness, for the purpose of this Law, shall be determined by:

I. entry into the register, in accordance the law and other regulations
II. in respect to the number of members verified through membership application forms
III. if it is established and operates on the principles of the freedom of union representation
IV. if it is independent of state authorities and employers
V. if it is financed predominantly from membership fees and other own resources

A union having a minimum of 15% of the employees of an employer shall be deemed a representative trade union for concluding a collective agreement. A representative trade union for concluding a collective agreement at the republic level, and/or unit of territorial autonomy or local self-government, shall be considered a trade union having a minimum of 10% of employees in the branch or line of business for which the collective agreement is made, and/or of the total number of employees for concluding a collective agreement covering all the employees on the territory of a given territorial unit.

For the purpose of this Law, an association of employers with membership of a minimum of 10% of the employers in the branch or line of business for which the collective agreement is concluded, and/or of the total number of employers on the territory of a given territorial unit, shall be considered as a representative association of employers. In the case of concluding a General Collective Bargaining Agreement, the representative association of employers is an association encompassing 10% of the total number of employers on the territory of the Republic of Serbia provided its members employ at least 15% of the total number of employees on the territory of the Republic of Serbia.

If the conditions of representation in the terms of Articles 218-220 of this Law are not met by any of the trade unions, and/or by an association of employers specified in Articles 221 and 222 of this Law, the trade unions and/or employers may conclude an agreement on association in order to participate in concluding a collective agreement.

Collective bargaining agreements

The conclusion of collective agreement is voluntary. Collective agreements regulate rights, obligations and responsibilities in the field of labour relations. A collective agreement may be concluded as:

- **General**
  For the territory of the Republic of Serbia (currently there is no such General Collective Bargaining Agreement in place)

- **Special**
  For the territory under local government or a unit with territorial autonomy, or within a special industry branch

- **Individual**
  With the employer

A collective agreement may be concluded between an employer or a representative employers' association and a representative trade union. Parties to the collective agreement are required to bargain. A bargaining board shall be established if several representative trade unions and/or associations of employers, participate in concluding a collective agreement for the territory of the Republic or unit of territorial autonomy or local self-government. Representatives of trade unions and employers' associations participating in bargaining for concluding a collective agreement and who conclude the collective agreement have to be authorised by their respective bodies. Collective agreements shall be directly implemented and shall be binding for all employers who at the time of the conclusion of the collective agreement were members of the employers' association - party to the collective agreement. A collective agreement shall be binding also for employers who subsequently became members of the association of employers - party to the collective agreement, as of the time of joining the association of employers. The Government may, for justified reasons, decide that the collective agreement or some provisions thereof shall also apply to employers who did not participate in the concluding of the collective agreement or have not become party thereof subsequently, in order to implement economic and social policy in the Republic. An individual collective agreement shall also be binding to the employees of an employer who are not members of a trade union - signatory to the collective agreement.

The previous General Collective Bargaining Agreement ceased to be valid as of September 2005, and the new one has not been yet concluded. There are only a few special Collective Bargaining Agreements in place – e.g. Collective Bargaining Agreement for Road Industry and the Collective Bargaining Agreement for Engagement of Pop Music Artists and Performers in the Hospitality Industry. The Collective Bargaining Agreement for Road Industry applies also to employers who did not participate in the concluding of the same and who have not become party thereof subsequently, due to the Government's decision on extended application of this collective agreement to all employers who perform road construction.

The Labour Law grants a clear preference for the regulation of labour relationships by way of a Collective Bargaining Agreement. However, in certain instances, this is not possible: 1) if a trade union is not established at the employer, or no trade union meets the threshold for representation or no agreement of association of unions in conformity with the law is not concluded; 2) if no participant to the Collective Bargaining Agreement initiates the negotiations for entering into the same; 3) if the parties to negotiations fail to agree within a maximum of 60 days from the day that the negotiation began; and 4) if the employer invites the union to negotiations and the latter fails to respond within 15 days. In such situations the labour rulebook can regulate labour relationships. The labour rule book is adopted by the management of the company and is thus a unilateral act. As soon as the individual Collective Bargaining Agreement enters into force, the labour rulebook ceases to apply.

Wages and other types of compensation

Earnings

An employee shall be entitled to an appropriate salary determined in accordance with the law, or employment contract. An employee shall be entitled to equal salary for the same work or work of equal value performed with an employer. According to the Labour Law, it is not possible to determine a fixed amount of the salary, as the Labour Law provides for a rather complex mandatory structure of the salary and numerous mandatory payments. The salary includes the salary effected for work performed and time spent at work, bonus earnings, compensation of salary and other incomes. Elements for and the manner of determining the earnings are defined in a general act or employment contract.

Salary for the work performed

Salary for the work performed and time spent at work consists out of: the basic salary (based on conditions of work set for the job in question), performance part of the salary (based on the quality and quantity of the work performed and employee's relation towards work) and increased salary.

Increased salary

An employee shall be entitled to an increased salary pursuant to a general act or employment contract, in the following cases:

- for overtime work: at least 26% of the basic salary
- work on public holidays: at least 110 % of the basic salary
- night work (if this work was not considered in establishing the basic salary)- at least 26% of the basic salary
- annual increases for the length of service with the employer and its affiliates (seniority increase): 0.4% of the basic salary for each year of employee's service with the specific employer (including employer's related companies)

A general act or employment contract may determine other cases in which an employee shall be entitled to increased earnings. Those earnings shall be paid out within the periods determined by a general act or employment contract.

Salary is paid at least once a month and shall be paid in money exclusively, unless otherwise prescribed by the Law.

Minimum Salary

An employee shall be entitled to a minimum salary for standard performance and full working hours. The minimum earnings are determined by the decision of the Social and Economic Council established for the territory of the Republic of Serbia. If the Social and Economic Council does not adopt a decision within 15 days from the start of negotiations, the Government shall decide on the amount of the minimum labor price within the next 15 days. In determining the minimum salary, the following will be especially considered: costs of living, subsistence and social needs of an employee and his/her family, rate of unemployment, employment trends in the labour market and the general level of economic development in the Republic. The minimum salary shall be determined per working hour and cannot be lower than the determined minimum earnings from the previous year, and are published in the "Official Herald of the Republic of Serbia". The minimum salary in 2023 shall amount to approx.. net Eur 1.96 (RSD 230) per hour.

Refund of Expenses

An employee shall be entitled to a refund of expenses for traveling to and from work and for a business trip in the country and abroad, in the amount determined by a general act or employment contract.

An employee is also entitled to a refund of expenses for: accommodation, nourishment and on-field operations, if the employer has not provided accommodation and nourishment; nourishment during work and compensation for the use of annual leave.

Salary Compensation

An employee is also entitled to a salary compensation during a justified absence from work for: a holiday which is a non-working day; annual vacation; paid leave; military drill; leave in case of a summons by governmental bodies; in case of sick leave; during interruption of work due to the Employer's fault etc.

Other Incomes

An employer is liable to pay, in accordance with the general act: a retirement gratuity in the amount of no less than 2 average salaries, a refund of expenses for the funeral of the employee or his/her immediate family member, damages for the workplace injury or professional or profession related disease.

The employer may provide Christmas gifts for employees' children, voluntary pension insurance or disability insurance, jubilee reward, solidarity aid and other payments if determined by the general act or the employment contract.

Social Security

The social security system in the Republic of Serbia is based on the mandatory public pension, health and unemployment insurance. The social security contributions are due by the income payer and income receiver in case of the payment of salaries, compensations to the management board members, persons performing temporary and periodical jobs and in other inapplicable cases. Social security contributions are due only by the income receiver in case of persons receiving agreed compensation (e.g. service providers under a service contract), shareholders of companies and in other inapplicable cases. The social security contributions are, in principle, always payable by the income payer. The only exceptions refer to situations where the income payer is not a legal entity or is a non-resident, not obliged to calculate and withhold social security contributions (international organisations, diplomatic missions etc.). In these cases, the income receiver is obliged to report the income and calculate and pay the social security contributions himself/herself, or pay based on an assessment of the Tax Authorities. On the basis of the employment contract or another contract on conducting activities concluded under the Labour law, the employer is obliged to file an application for mandatory social insurance at the latest prior to the moment the employee, or other persons engaged for work, start working.

Health and safety

The most important rights arising out of state health insurance are: (i) health protection (this right encompasses almost all medical services: general practice, diagnostics, all kinds of therapy, medication, special practice examinations, surgeries, etc. whereby the insured person has to participate in the expense of the service, the amounts of which are usually rather symbolic) and (ii) salary compensation during sick leave longer than 30 days. During sick leave, the employee is entitled to receive compensation in the amount of 65% of its salary in case of work unrelated sickness or injury, whereby such compensation is covered by the employer for the first 30 days of the sick leave and thereafter by the State Health Fund; i.e. 100% in the case of a work related injury or sickness, whereby such compensation is covered by the employer from the first day of the sick leave and for the entire duration of sick leave.

Occupational hazards and the protection of employees' health and safety are regulated by the Health and Safety at Work Law ("Official Gazette of the Republic of Serbia" no. 101/2005, 91/2015 and 113/2017 – other law). The employer is obliged to secure the conditions of work and the work environment in which all measures related to safety and health at work have been taken.

If the employer has more than 10 employees, it must assign the work related to labour safety and health to one or more of its employees – having passed a relevant professional exam, or to engage a legal entity or an entrepreneur with a special license. The employer has to issue a written deed determining the responsible person for labour safety and health. The Ministry for Labour is in charge of the relevant professional exams and licensing.

The employer must receive a certificate on the fulfilment of all the conditions related to safety and health at the workplace before the commencement of its operations, and the employer has to inform the labour inspection at least 8 days in advance of its commencement of work and of any change in technology which affects the work conditions.

A company must provide industrial safety training to employees during working hours.
Every employer also must provide a Workplace Risk Assessment Act, which should include an explanation of the working processes, along with the assessment of possible risks at the workplace, measures for reduction and elimination of risk, and medical terms for special working conditions. The mode and procedure of risk assessment is to be regulated by a special regulation issued by the Minister.

The employer is obliged to insure its employees for workplace injuries, professional and work-related diseases, in order to ensure the adequate compensation of damages. This type of insurance has not yet been regulated by a special law.

The employer is obliged to provide for the prevention and periodical check-ups of the equipment and the workplace by licensed entities. Work premises where toxic and hazardous substances are used in the industrial process must also be tested for chemical harmfulness (gases, vapours, etc.), physical harmfulness (noise, vibrations, etc.), lightness and biological harmfulness.

The employer is also obliged to provide for the prevention and periodical medical examinations of the employees.

Gender Equality

Law on Gender Equality ("Official Gazette of the Republic of Serbia" no. 52/2021) determines certain obligations for employers with the aim of creation of equal opportunities for participation and equal treatment of women and men in the field of work, employment and self-employment.

The employer has obligation to regularly inform its employees or their representatives on the gender equality status at the employer (for example, on the number of women and men employed or engaged by employer, review of women's and men's representation at various levels, information on their salaries and differences in their salaries expressed according to the gender of employees etc.).

Employers having more than 50 employees have obligations towards the Ministry of Human and Minority Rights and Social Dialogue (the "Ministry"), which include submission of the following documents to the Ministry:

I. **Records on Gender Equality**
   Employers should continuously keep records on listed data concerning gender equality on a special form prescribed by the Ministry
II. **Annual reports on gender equality**
   Reports are prepared on a special form prescribed by the Ministry

Further, employers have the obligation to include in their annual business plans/programs of work planned measures for realization and promotion of gender equality, which need to be publicly available or submitted to the Ministry. In addition, employers are obliged to prepare annual reports on implementation of business plans data on the implementation of gender equality and submit them to the Ministry in case those reports are not publicly available.

Serbia
Real Estate

Karanovic & Partners

I. Registries

Data on real properties is maintained in the publicly available Cadastral Registry. The Cadastral Registry contains both "technical" and "legal" data on immovable properties.

Ownership rights over land or buildings are generally obtained upon registering those rights at the relevant registry (the Cadastral Registry). Acquirers are deemed to be aware of all the registered matters. In practice, it is considered acceptable to acquire a title from an unregistered owner, and the registries will register such title, if there is sufficient evidence linking the acquirer with the currently registered owner as the previous transferor.

The ownership transfer documents must be in written form, with signatures authenticated before the notary public. The document must contain explicit consent of the transferor that the acquirer may be registered as the owner *(clausula intabulandi).*

Apart from real estate in the narrow sense – land and buildings, the Cadastral Registry also contains a cadastre of grids, which is supposed to contain data on waterworks, sewage and drainage, heating, electro-energy, telecom, oil and gas grids, respectively. The cadastre of grids is not yet fully operational, since not all of the relevant data on the existing grids has been registered in it.

The new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities entered into force in June 2018. It introduced significant innovations, primarily concerning the method of filing applications and documents with the Cadastral Registry, and the relation between the Cadastral Registry and other authorities, as well as the deadlines for rendering decisions. Various authorities, such as public notaries, courts, bailiffs can submit their documents to the Cadastral Registry electronically via e-Service, *ex officio,* within short deadlines. The submission of a request for registration in paper form remains an option only for submitting hard copies of appeals and other legal remedies, along with related evidence.

II. Buyer and seller liability

Commonly, the buyer has only one liability/obligation arising from real estate sale-purchase agreements – the payment of the purchase price and the payment of potential interests, if any. The seller is responsible for the material and legal defects of the property.

The seller is liable to the buyer in case there are any claims by third parties which may exclude, diminish or restrict the rights of the buyer acquired from the seller. If such claims arise, the seller is obliged to protect the buyer.

This means any assistance which would result in the rejection of the claim or right of the third party. If seller does not comply with buyer's request for assistance, in case that buyer's right is excluded, the sale agreement is considered automatically terminated by law, and in case that buyer's right is restricted, the buyer is entitled to terminate the agreement or to demand a reasonable price reduction. Regardless, the buyer is entitled to a compensation of damages. The seller's liability may be contractually restricted or excluded, except in cases when the seller was aware of the defect.

The seller is liable for the material defects in case, for example, that the property is not fit for regular use, or the property is not fit for the special purpose for which the buyer is acquiring the property and of which purpose the seller was aware, or the property does not have the characteristics explicitly or implicitly agreed by the parties.

This seller's liability may result in the automatic termination of the agreement, in case the seller failed to remedy the existing imperfections in the additional term provided by the buyer. The buyer is also authorised to require a compensation for damages.

In addition, according to the Serbian Law on Contracts and Torts, when a certain pool of assets is being transferred, together with the assets, the buyer also becomes jointly and severally liable alongside the seller for all liabilities in relation to that pool of assets, up to the value of the assets transferred.

III. Rights of foreigners to acquire real estate

A foreign entity can purchase construction land and buildings in the Republic of Serbia necessary for its business operations, subject to reciprocity, or, as the case may be, in accordance with the terms set out in a treaty between Serbia and the country of the foreign entity. In general, foreigners are banned from acquiring ownership of agricultural land. As an exception, citizens of EU Member States under certain conditions can acquire agricultural land.

Agricultural land, as private property, can be acquired by EU citizens under the following conditions:

I. The acquirer must be a permanent resident of in the place where the subject land is located, at least for ten years

II. The acquirer must cultivate the subject land for, at least, three years

III. The acquirer must be the owner of the family agricultural farmstead that had an active status for ten years without discontinuance

IV. The acquirer must have agricultural machines and equipment for performing agricultural production

The subject of the acquisition can be a maximum 2 ha of agricultural land which is not:

I. Designated as construction land

II. Under special protection

III. On a border with military zones and facilities

IV. On a border with a secure zone

V. Agricultural land in a 10-kilometer zone next to the Republic of Serbia's borders

If a foreign entity establishes a subsidiary in the Republic of Serbia, such a subsidiary is treated equally to any other local entity acquiring land and buildings, regardless of the origin of the founder or its controlling share. This means that foreign persons and entities may indirectly own real estate in the Republic of Serbia through their Serbian subsidiaries without any distinguishing limitations.

It can be expected that the regime of foreign ownership of real estate in Serbia will be further liberalised in the coming period. The Stabilization and Association Agreement between Serbia and the EU (the "SAA"), which entered into force in September 2013, prescribes that, within four years from the entry into force of the SAA, Serbia shall progressively adjust its legislation concerning the acquisition of real estate on its territory by nationals of EU Member States, to ensure the same treatment in comparison to its own nationals.

IV. Construction permits

Urban planning

The issuance of building permits is conditional on the existence of a sufficiently detailed urban plan. Such plans are adopted by the relevant authorities for the state, regional or local level. In order to prevent the situation where the investor cannot obtain a building permit due to inaction of the state body which is supposed to adopt the required urban plan, it is under certain conditions possible to obtain the permit even without such urban plan, in accordance with the Planning Law.

The most notable recent developments in this area are that in 2016, when the City of Belgrade adopted a new General Urban Plan and the Plan of General Regulation, which was then amended in 2021. In addition, Belgrade also adopted detailed plans of regulation for certain parts of the city, with more such detailed plans on the way. The City of Belgrade presented the new General Urban Plan 2041 in the summer of 2022, but it has not been adopted yet.

Building permits

To commence construction works, the developer must obtain a construction permit from the relevant authorities.

In 2014, amendments to the Planning Law significantly changed the procedure of issuing building permits, simplifying it considerably. Now, most of the documents that an investor needs to obtain from the relevant authorities are issued in a uniform procedure, with the objective of enabling the investor a one-stop-shop in this process. Another important novelty is the introduction of an electronic system of application for the necessary building permits that are now being issued electronically.

The introduction of the new system has had very positive effects in practice – in the period between March and December 2015, when the new system started applying, the number of issued construction permits rose by a third, in comparison to the same period in 2014. Further, 2015 saw a rise in the construction industry output of around 20%, which is significantly higher than the increase of Serbia's total GDP for that year (which was around 0.8%).

In May 2021, 2,001 building permits were issued, representing an increase of 49% in comparison to May 2020. By types of constructions, 80.5% of the issued permits are related to buildings and 19.5% are related to other constructions in May 2021. The greatest construction activity is planned in the area of Central Banat District. This is a sign that the Serbian construction industry is in expansion, and that the state is resolved to further foster this growth by cutting the red tape surrounding the issuance of building permits.

In general, in order to obtain a construction permit, the developer must have a proper title to the land on which he intends to build - the right of lease or the right of ownership. After the 28th of July, 2016, the right of use is no longer considered the proper title for obtaining a construction permit – holders of such rights must first convert their rights of use to ownership – or enter a long-term lease, in order to obtain the necessary permits. For construction of certain type of facilities (e.g. electric power facilities, line infrastructure, substations, etc.), the Planning Law allows some other titles (in addition to the ownership and lease of publicly owned land), such as lease of privately owned land, easement right, or resolution on expropriation.

The competent authority needs to issue a construction permit within five working days from the date of application for such a permit. A construction permit ceases to be valid if, within three years as of its finality, the investor does not commence construction works. As a rule, a construction permit also ceases to be valid in cases where the investor does not complete the construction and does not obtain a usage permit for the new structure within five years from the day of finality of the permit. An additional two-year extension may be granted if it has been determined that the building has been completed construction-wise, based on the record of the competent construction inspector. If these deadlines are not observed, the investor is supposed to pay the property tax for the building in the entirety, as if the building was completed in accordance with the issued construction permit, until a new construction permit is issued for that location.

Once the building is completed, the competent technical commission is required to assess whether the building was completed in accordance with the technical designs, permits and consents. The technical commission is engaged by the investor. In case of a positive assessment by this commission, the investor can apply for a usage permit – which is necessary for the use of the constructed building. If the competent body does not decide on the request within five working days of the application, the constructed building can be used even without such a permit, provided that the assessment of the technical commission was positive.

Once the usage permit has been obtained, the authority which issued the permit ex officio registers the right of ownership in the Cadastral Registry.

V. Mortgages

There is a duality of legal regimes for mortgages in the Republic of Serbia. The law differentiates between court enforceable mortgages and, so called, out of court enforceable mortgages. An out-of-court mortgage was introduced in 2005 by the Mortgage Law, and provides for a more efficient enforcement procedure than is the case with mortgages created in court procedures – based on mortgages enforceable out of court, claimants are authorised, under certain conditions, to independently sell the mortgaged properties, while the enforcement of mortgages created in court procedures involves a number of formalities.

Under the Mortgage Law, it is also possible to establish a mortgage over buildings undergoing construction. Such mortgages can be established and registered after obtaining a construction permit. This kind of mortgage is a security which is regularly used by the banks in financing construction projects. Once the structure is fully constructed and registered in the real estate registry, the registration of the mortgage over such constructed structures is performed simultaneously – unless the secured obligations are settled in the meantime and the mortgage is deleted. Mortgages are registered on the basis of relevant documents (e.g. a mortgage agreement) which, among other things, have to contain a clear statement by the pledger allowing the establishment of a mortgage over a certain property.

VI. Expropriation

A property may be expropriated or ownership restricted if required in the public interest, in accordance with the Law on Expropriation. The public interest for expropriation may be determined by the Law or by a Government decree for specific development projects in the areas of education, health care, social welfare, culture, water distribution, sports, traffic, energy and utility infrastructure, state, provincial and municipal institutions, defence, environment and disaster protection, mineral resources exploitation as well as public housing projects. In case of expropriation, market price compensation is payable to the person whose property is the subject of expropriation.

VII. Restitution

In October 2011, the Republic of Serbia enacted the long-expected Law on the Returning of Seized Property and Indemnification (the **"Restitution Law"**). The Restitution Law regulates the conditions, manner and procedures for returning of and the compensation for property that was taken from individuals and certain legal entities after the 9th of March, 1945, in the territory of the Republic of Serbia and then transferred to the national, state, social or cooperative property on the basis of agrarian reform, nationalisation, sequestration and other regulations. The Restitution Law provisions apply to land, buildings and movable assets, as well as to companies that were seized in the past.

The in-kind restitution is set as the main principle. Where it is not possible, the state is to provide compensation through the issuance of government bonds. The maximum amount that one may receive as compensation is limited to EUR 500,000. Also, 10% of the compensation is payable in cash, once the decision on the returning of the property becomes final.

Nationalised property, which was in private ownership at the time of entry into force of the Restitution Law, is not subject to restitution in kind – only compensation from the state is available. This includes property acquired in the privatisation process.

The procedure for the return of a seized property and indemnification is conducted before the Restitution Agency, as the first instance body, and the Ministry of Finance, as the second instance body where decisions by the Restitution Agency are challenged. In February 2012, the Restitution Agency announced a public call for the submission of restitution requests. The submission of the restitution requests was possible during a 2-year period – which ended in March 2014.

The Restitution Agency received approx. 76,000.00 of requests, and until 1st of August 2022 issued approx. 64,000.00 decisions and conclusions.