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Some Current Problems with the Regulation of Limited Liability Companies in Serbia[3]

ABSTRACT: *In Serbia, the legal status of limited liability companies (LLCs; društvo sa ograničenom odgovornošću, d.o.o.) is for the most part regulated by the Companies Act (Zakon o privrednim društvima). All four basic legal forms of company are regulated by this Act. Unlike in Austria and Germany, there are no special laws on LLCs and joint stock companies (JSCs). Regulating all legal forms of a company with the same act, including procedures for their liquidation, status changes (acquisition, merger, division, and spin-off), and changes of legal form, may be considered a conceptual shortcoming of the regulation relating to LLCs and of company law in Serbia in general. A specific law would enable legislators to tailor detailed rules pertaining only to LLCs, in which all peculiarities of this legal form of companies might be better addressed. Furthermore, there are relatively numerous legal norms applicable to JSCs, the appropriate application of which is can be legally extended to LLCs. However, most of them are not conceptually applicable due to the different nature of JSCs and LLCs. In addition, company law will have to undergo significant changes in upcoming years due to the process of accession of Serbia to the European Union and the fulfilment of the conditions contained in chapter 6 of the accession negotiations pertaining to company law.*

KEYWORDS: limited liability company, LLC regulation in Serbia, participation in LLC, share in LLC, liability of members, protection of minority members and company's creditors

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1. Introduction

The legal status of limited liability companies (LLCs; *društvo sa ograničenom odgovornošću,* d.o.o.) in Serbia is for the most part regulated by the Companies Act (*Zakon o privrednim društvima*). This Act was enacted in 2011 and has been amended several times since then (the latest amendments are in force as of 1 October 2018).

The Act contains both general and special rules. The general rules pertain to all four basic forms of company (general partnership, limited partnership, limited liability company -hereinafter: LLC, and joint stock company – hereinafter: JSC), while special rules set out legal regimes particular to each form of company, including LLCs.[4] Unlike in Austria and Germany, there are no special statutes pertaining only to LLCs and JSCs, however. Regulation of all legal forms of company is done under the same statutory Act, including procedures for their liquidation, status changes (acquisition, merger, division, and spin-off), and changes of legal form. This appears to be a conceptual shortcoming of company law in Serbia, in particular and simultaneously, of statutory regulation relating to LLCs.

According to the Companies Act, an LLC is a company in which one or more members own shares in the company's share capital without being personally liable for the company's debts except in cases provided in Article 18 of the Act.[5]

An LLC under Serbian law essentially bears the features of a capital company: a minimal mandatory share and minimal mandatory capital are prescribed;[6] the company must have specific bodies; members are not responsible for the obligations of the company except in the case of 'piercing the corporate veil'; it can be established as a unipersonal company;[7] etc. However, it bears certain characteristics of a partnership as well: although the shares are transferable in principle and subject to few restrictions, the membership structure rarely changes over time, the number of members is usually small, etc. According to the Companies Act, an LLC may have one or more members—there is no restriction concerning their number. The members own shares in the share capital of the company; each member may have only one share, expressed as a percentage of the share capital.[8] Consequently, in the case of acquisition of a share by another member, the acquired share is attributed to the member's existing share. A share represents a membership relationship in the company. The members have membership rights (proprietary and management rights), as a rule, in proportion to the percentage value of the shares they own, but also membership obligations correlating to the same percentage value.[9]

4 Special rules on limited liability companies are contained in Arts. 139-244.
5 Companies Act, Art. 139.
6 Companies Act, Art. 114.
7 Companies Act, Art. 139.
8 Companies Act, Art. 151, s. 2.
9 Companies Act, Art. 152, s. 2.

An LLC may, as a rule, conduct any economic activities. However, the performance of certain exceptional activities through an LLC may be excluded by special laws. Such is the case with financial activities—the activities of banks, insurance companies, certain types of investment funds, and certain other financial organizations can be conducted only through a JSC.

2. Mandatory and default rules in the regulation of LLCs

The special rules of the Companies Act pertaining to LLCs are predominantly *default norms*, as members may divert from them in the company's incorporation document. For example, the incorporation document may provide for special rules regarding the exercise of certain management and property rights. It is (e.g.) possible to derogate from the statutory rules setting out that members exercise their voting rights and the right to participate in the distribution of profits and liquidation of surplus in proportion to the percentage value of the shares they own. Instead, in the incorporation document, members may stipulate a different scaling of voting rights or ratio in the distribution of profits or liquidation surplus.[10] In this sense, it is clear that the incorporation document, in addition to the Companies Act, is an important source of company law rules.

Some of these rules are so-called *semi-imperative* norms. In these cases the Companies Act enables members to deviate from statutory rules in the incorporation document, but they can do so only by complying with certain restrictions. For instance, a decision at a members' meeting on share capital reduction, increase of share capital, and profit distribution to members, according to the Act, requires a qualified majority of 2/3 of the total votes of all members of the company,[11] but the Act also allows members to adopt a lesser majority required for a decision on such issues, although not less than a simple majority (50% + 1 vote) of the total votes of all members.[12]

Only a few norms are of a purely *imperative* character. These pertain to the following: members' obligation to pay a pecuniary contribution or to transfer a non-pecuniary contribution into company's assets; to the means of proving that the contribution has been refunded to a member or that he or she has been released from the obligation to pay or transfer the contribution (except in the case of share capital reduction);[13] to protection of creditors in the case of share capital reduction;[14] to the scope of competencies of the company's collective organs/bodies; and to a range of norms applicable to JSCs, the appropriate application of which is extended to LLCs. The purpose of these imperative rules is to strengthen the protection of the company's interests, the interests of company's creditors, and the interests of the minority members.

10 Companies Act, Art. 152, s. 2.
11 Companies Act, Art. 211, s. 2.
12 Companies Act, Art. 211, s. 3.
13 Companies Act, Art. 60, s. 1. and Art. 46, s 3.
14 Companies Act, Art. 147a.

3. Members' shares in LLC as collateral

Members' shares in the LLC may be used as collateral: a share may be an object of a non-possessory pledge according to the Companies Act[15] and the Law on Registered Pledge on Movables. The latter prescribes that the subject of the pledge may be shares and other property rights that their holder can dispose of freely.[16]

A member may, therefore, pledge his share or a part of it, unless it is stipulated otherwise by the incorporation document.[17] If the incorporation document prescribes that the transfer of shares to third parties is subject to the prior consent of the company, such consent is also required for pledging the share or a part of it, but not for a subsequent sale in the process of enforcing the claim from the value of the pledged share.[18]

There is only one restriction in this regard: it is prohibited to pledge a share in an LLC on behalf of the LLC itself.[19] The so-called own share (treasury share), that is, a share in the LLC that the LLC acquired from a member,[20] can also be used as collateral.

4. Transfer of a share between members and to third parties

Two types of transfer of a share are distinguished in the Companies Act: transfer between members and that to a third party. The transfer of a share between members is, in general, subject to no restrictions. Restrictions may be imposed by the incorporation document, but there are none envisaged by the Companies Act.

However, the Companies Act does establish a right of pre-emption on behalf of other members, applicable in the case when a member expresses intention to transfer his share to a third party.[21] The priority of members' pre-emptive rights is proportionate to the ratio between their share and the value of the total capital of the company. This pre-emptive right is judicially enforceable.[22] In exceptional situations when there is a clear interest of the company that a certain member, considering his personal traits and capabilities, remain a member of the company, it is possible to establish in the incorporation document that the transfer of that member's share to a third party is subject to the company's prior approval. The Companies Act contains detailed rules pertaining to this situation.[23]

15 Companies Act, Art. 177.
16 Law on Registered Pledge on Movables, Art. 10, s. 3.
17 Companies Act, Art. 177, s. 1.
18 Companies Act, Art. 177, s. 2.
19 Companies Act, Art. 156.
20 Companies Act, Art. 157.
21 Companies Act, Art. 161.
22 Companies Act, Art. 163.
23 Companies Act, Arts. 167-169.

5. Enforcement of claims of members' personal creditors against shares in the LLC

The personal creditors of members are not also thereby the creditors of the LLC, and hence, the LLC is not liable for any personal debt of the members. However, the members' shares in the LLC may be an object of enforcement of the claims of the members' creditors. In the case of sale of a share in such an enforcement procedure or in a procedure of a court/out-of-court settlement pursuant to the law governing registered pledges on movable assets, (a) members having a pre-emptive right retain it in the enforcement procedure and (b) if the incorporation document requires the consent of the company for any transfer of shares, the company's consent is legally not required, but the company is entitled to designate the purchaser of the share pursuant to Article 168 of the Companies Act.[24]

6. Rules and practice of management responsibility (claims for damages caused to members)

The managing directors of the LLC, members of the supervisory board (in the case of two-tier management systems), appointed agents of the company, authorised signatory/procurator (Ger. *Prokurist*), members with significant (at least 25%) share in the capital, any member in controlling position, and persons linked to the above-mentioned ones, have special duties towards the company—the duty to act with due diligence, avoid conflict of interest, report legal transactions and actions involving personal interest, observe the prohibition of competition, and keep business secrets.[25] Generally, directors and members of the board of directors are obliged to act in accordance with the Act, incorporation document, and decisions taken at members' meetings,

In case of infringement of any of the said duties, the infringing persons may be held liable for damages caused to other members or to the company itself, if the relevant causation between the breach of duties and the occurrence of damage is proved. In such a case, there are two actions at other members' disposal: the so-called *individual or direct action* and the so-called *derivative action*. In addition, breach of special duties in individual cases may be a justifiable reason for the exclusion of a member by a court decision[26] or a ground for termination of the employment contract if the person owing special duties is also employed by the company.

In the case of individual (direct) action, the person entitled to sue (Ger. *Aktivlegitimation*) in the litigation (the plaintiff) may be a member to whom persons owing

24 Companies Act, Art. 171.
25 Companies Act, Arts. 61-76.
26 Companies Act, Art. 196, s. 1.

special duties towards the company have caused damage by their active action or by omission, that is, failing to act. The person capable of being sued (Ger. *Passivlegitimation*), that is, the defendant, is the person in breach of these duties.[27] However, according to the general tort law rules, set out by the Law on Obligations, the defendant may also be the company itself because it bears responsibility for the acts and omissions of its employees, managing directors, or members of company bodies.[28] In case law, individual lawsuits are usually filed on grounds of non-payment or evasion of payment of profits, inaccurate presentation of results of business operations, violation of the pre-emptive right to enter a new contribution in the case of increase of share capital, preventing exercise of voting rights, etc.[29] There are no collective lawsuits in Serbian procedural law; however, in cases when members are directly or indirectly harmed by actions or omissions of persons owing special duties, it is possible to merge proceedings initiated on the basis of multiple individual lawsuits.

If a member cannot prove that he or she has personally suffered damage as a result of acts or omissions of persons owing special duties towards the company, and if the damage is instead caused to the company per se, any member or members owning at least 5% of the total share capital may file a derivative action.[30] Such an action (Lat. *actio pro socio*) is filed in the plaintiff's own name but on behalf of the company. All economic benefits of the action (compensation for damages), if the plaintiff succeeds in his or her claim, are to be transferred/paid directly to the company and not to the plaintiff; this way, the member protects his or her own economic interests, too, although indirectly. On the other hand, a significant limitation is that if a dispute is unsuccessful, that is, the claim is not granted, the costs of the proceedings will be borne by the claimant him- or herself and not by the company, as he or she filed the action in his or her own name.[31]

This legal transplant from the common law legal tradition is contrary to the general rules of Serbian civil procedure. The basic rule of litigation is that the right to sue belongs to the person asserting a claim against the defendant (here, the tortfeasor). The company has been directly damaged by the breach of special duties, while the members have only indirectly suffered damage, in the form of a decrease in the value of their shares due to the damage to the company itself. Considering that the derivative claim, as a legal transplant, is not fully in line with the principles of Serbian civil procedural law, it is not surprising that these types of lawsuits are especially rare in case law. Thus, although derivative claims are a seemingly important instrument against directors or controlling members acting in bad faith, their use by minority members in Serbia has not been widely accepted.[32]

27 Companies Act, Art. 78.
28 Law on Obligations, Art. 172.
29 Arsić and Marjanski, 2018, p. 76.
30 Companies Act, Arts. 79-80.
31 Arsić and Marjanski, 2018, p. 77.
32 Radović, 2019, p. 39.

7. Piercing the corporate veil

The general rule is that the members may not be held liable for the LLC's debts. The exception is envisaged by Art. 18 of the Companies Act, regulating the institution of piercing the corporate veil. Establishing members' liability for company's debts is possible only upon action of the creditor, filed at a competent court. The liability of the members must be declared by a court decision and owed to a named creditor. The Companies Act determines for what reasons a member's liability for the debts of the company may be established. The list of reasons is not exclusive, but liability may be established especially if the member (a) uses the company to achieve forbidden purposes; (b) uses the property of the company or disposes thereof, as if it were his or her own property; (c) uses the company or its property for a purpose detrimental to the company's creditors; (d) decreases the value of the company's property to acquire benefits for him-/herself or for third parties if he or she knows or should know that the company will not be able to meet its debts.[33]

The company's creditor files an action in the court of the place where the seat of the company is located, within six months from the day when the creditor gained information on the abuse of the corporate personality of the company and within five years from the day of the abuse, at the latest.[34] If the claim of the creditor is not yet due at the time when he or she gains knowledge of the abuse, the deadline of six months starts from the day when the claim becomes due.[35]

We may, therefore, conclude that the liability of a member, based on the principle of piercing the corporate veil, may be established only by the decision of a competent court. The rules of the Companies Act are then only some sort of guiding rules, naming the most important types of cases in which a member undoubtedly abuses the corporate personality of the company. However, this liability does not arise directly from the Act; instead, the court must determine the existence of abuse in the concrete case at hand, regardless of which form it manifests itself. Consequently, the case law has a profound importance in establishing whether the corporate personality of a company has been abused or not. In practice, the rules on piercing the corporate veil have most often been applied to unipersonal LLCs, where the abuses mentioned above are the most common.[36]

Given that companies with a single controlling member (shareholder) predominate in Serbia, due to the concentration of ownership in JSCs and numerous single-member and family LLCs, there is a particular interest in the development and implementation of the concept of breaking through a company's corporate personality. Although Serbian law has long regulated the legal institution of piercing of the

33 Companies Act, Art. 18, s. 2.
34 Companies Act, Art. 18, s. 3.
35 Companies Act, Art. 18, s. 4.
36 See in detail: Milenović 2009, pp. 116–128.; Arsić 2010, pp. 504–512.

corporate veil, it has rarely been applied in practice. In addition, the diversity of legal interpretations has contributed to an improper understanding of this mechanism for the protection of creditors, and hence, the courts often apply it incorrectly. That is, since the introduction of this institution, courts have demonstrated a wide scope of differing interpretation of cases of piercing the corporate veil, ranging from too wide[37] to too narrow. In the case law, courts have considered that there is a basis for piercing corporate personality even when a member gives a personal guarantee that the company will meet its contractual obligations. Conversely, courts today avoid breaking through the company's corporate personality even in situations when a member is clearly abusing the corporate personality, considering this sanction overly severe. Moreover, proving the fulfilment of the prescribed conditions for the existence of the abuse of corporate personality is generally difficult, as the burden of proof is on the claimant, who as a rule will not be able to prove all the relevant facts for establishing abuse. It seems, therefore, that simply transplanting a legal institution from the common law tradition cannot be sufficient without achieving an adequate level of development of legal thought to substantially understand the legal institution the courts are meant to apply.[38]

8. What is the responsibility of de facto administrator towards the company's creditors in the case of insolvency?

There are no specific rules in the Companies Act pertaining directly to the liability of a single or majority member acting as de facto administrator in insolvency. The only form of liability of a member towards the creditors of the company is in the case of piercing the corporate veil, already explained above.

Furthermore, the interests of creditors may enjoy protection by the institution of annulment of juridical acts and transactions concluded with the purpose of causing prejudice to creditors (Lat. *actio Pauliana*). Serbian law differentiates the annulment of legal acts in bankruptcy proceedings from the procedure of annulment outside bankruptcy. The annulment of a debtor's transaction hindering the creditor's possibility of collecting the debt is, as a general legal institution, regulated by the Law on Obligations. It enables creditors to request that the court declare a specific transaction of the debtor to be without legal effect towards the creditor. This is the out-of-bankruptcy annulment.[39] The in-bankruptcy annulment is regulated by the Bankruptcy Act.[40] The major difference between the two types of annulment is as follows. The out-of-bankruptcy annulment has legal effect only towards the one creditor who requested the annulment. However, the annulment in bankruptcy affects all creditors of the debtor company,

37 See for example the judgment of the Supreme Court, Prev. 133/99 of 6.7.1999.
38 Radović, 2019, p. 41–42.
39 Law on Obligations, Arts. 280-285.
40 Bankruptcy Act, Arts. 119-123.

regardless of whether they have been parties in the litigation initiated to have the transaction annulled. In the case of annulment in bankruptcy, the transaction whose annulment has been declared by a conclusive court decision has no legal effect against the bankruptcy estate.

By the same token, if the request for annulment is granted in respect of juridical acts, transactions, or dispositions of the debtor in a litigation based on which a decree for an in enforcement procedure has been issued, the decree loses its legal effect in relation to the bankruptcy estate. The consequence of a successful annulment in bankruptcy is that the third party (with whom the debtor entered into the transaction) will be obliged to transfer all benefits acquired based on the transaction or juridical act that has been annulled. As all bankruptcy creditors are entitled to receive a share of the bankruptcy estate, under equal conditions and in proportion to the value of their claims respectively, the conclusion is clear that annulment in bankruptcy aims to increase the extent of the collection of claims of all bankruptcy creditors.

Another difference between the two types of annulment manifests in respect of the scope of restitution. In the case of out-of-bankruptcy annulment, the property and rights acquired based on the annulled transaction are subject to restitution only to the extent necessary to satisfy the claim of the one creditor who initiated the litigation. However, in the case of in-bankruptcy annulment, the restitution is complete. Furthermore, in the case of in-bankruptcy annulment, it is not required that the plaintiff creditor prove that the transaction hinders the collection of his or her claim. This is presumed based on the fact that the debtor is already in bankruptcy, while the creditors gain capacity to sue because their claims have been confirmed in the bankruptcy procedure. In the case of out-of-bankruptcy annulment, the deadlines are computed to the upcoming period, while in the case of in-bankruptcy annulment they are computed 'backwards'. The transaction is subject to annulment if it was entered into within a specific period before the debtor has been declared bankrupt.

Finally, the Criminal Code incriminates three criminal acts in relation to bankruptcy and hindering creditors from collecting their claims: causing bankruptcy,[41] causing false bankruptcy,[42] and causing damage to creditors.[43] Consequently, if the liability of the single or majority member is established for any of the aforementioned criminal acts, creditors who have sustained damage may request compensation according to the general tort law rules of the Law on Obligations.

9. Decisions in members' meetings

The exclusive competencies of LLC members' meeting are manifold. They can be divided into several categories according to their nature (content): 1. decisions on

41 Criminal Code, Art. 232.
42 Criminal Code, Art. 232a.
43 Criminal Code, Art. 233.

normative content: the most important are the decisions on amendment of the incorporation document and on approval of annual financial reports; 2. decisions relating to the *property* of the company: the most important are the decisions on the distribution of profits, capital reduction, and capital increase; 3. decisions relating to the *appointment of the officers and members of different bodies* of the company—the most important decisions in this category are those on the appointment of the managing director, members of the supervisory board in the case of two-tier management, and the liquidator/liquidation administrator; and 4. *status-related decisions*, of which the most important are the decision on a member's request for withdrawal, member's exclusion from the company, change of company status (acquisition, merger, division, spin-off), and change of legal form of the company (for example: from LLC to JSC).

The Companies Act does not provide solutions for the situation where the decision making process in the LLC is blocked. This may happen when there is a disagreement between members whose shares are equal or who have the same voting power at the members' meeting. Unlike in the regulation of JSCs, where in case of a blockade in decision-making the possibility is provided of filing a lawsuit for dissolution of the company at the discretion of the court, no such rules are provided for in LLC regulation. We find it prudent to foresee a similar application of these rules to LLCs, however.

Members may, however, devise by a separate contract—a so-called shareholders' agreement—any means for dissolving the situation when the members' meeting is unable to adopt a decision. In addition to the incorporation document, members of an LLC may, in accordance with Article 15 of the Companies Act, conclude a shareholders' agreement the purpose of which is to regulate their legal relations with the company. It must be concluded in writing. In such a shareholders' agreement, members can regulate their special obligations towards the company, their rights and obligations in connection with the transfer of shares, how they will vote at meetings on specific or all issues, the way of distribution of profits, the way of solving blockade in decision-making, and any other issues they consider relevant to their relationships. Stalemate in the decision-making process is in practice usually resolved by establishing a put or call option regarding the transfer of shares. In case of discrepancy between the incorporation document and the shareholders agreement, the provisions of the latter prevails; these contracts, however, produce a binding effect only between those members who have concluded them.[44]

10. Minimal capital requirements and capital protection rules

According to the Companies Act, the minimal share capital requirement in an LLC is only 100 RSD (less than one euro), unless a larger amount is prescribed by a special law for performing certain business activities (e.g. leasing companies, insurance

44 Arsić and Marjanski, 2018, p. 50.

intermediaries, factoring companies, etc.).[45] Therefore, it is evident that under Serbian law the notion of a minimal capital requirement has lost its function as a meaningful means of protection of creditors.

The Companies Act contains some rules that aim to protect the company's share capital: prohibition of registration of share capital in an amount smaller than the minimal share capital requirement, prohibition of restoring to a member the amount or contribution in kind that has been paid or transferred to the company as the member's capital share,[46] prohibition of releasing members from the obligation to pay or transfer their contribution except in the case of a decrease in share capital,[47] rules on the deadlines for payment or transfer of members' contribution,[48] rules on the legal consequences of members' failure to pay or transfer the contribution,[49] rules on joint and several liability of the seller and buyer of a capital share for the fulfilment of the obligation to pay or transfer the contribution to the capital,[50] rules on the appraisal of contribution in kind,[51] prohibition of the provision by the company loan, credit, or collateral for the member's obligation to acquire a share, restrictions on acquiring own shares by the company and related rules,[52] restriction of payments to members and related rules, etc.[53]

11. Protection of minority members

The Companies Act does not devote a special section to the protection of members who constitute the minority at the members' meeting but does have some special rules aimed at their protection: rules on the right of members who jointly have at least 20% of the capital to convene a members' meeting; rules on the right to suggest items for the agenda of the members' meeting;[54] right of the disagreeing members to have their share bought by the company at appraised or book value, depending which is higher, if they have voted against a change of legal form, change of legal status, disposition of property of greater value, or change to the incorporating document affecting their rights disadvantageously.[55]

The special rights of dissenting shareholders are stipulated in the part of the Companies Act relating to JSCs, but in accordance with section 477, they also apply to LLCs. These rights enjoy judicial protection. In addition to the rights of minority

45 Companies Act, Art. 145.
46 Companies Act, Art. 60, s. 1.
47 Companies Act, Art. 46, s. 3.
48 Companies Act, Art. 46, s. 2.
49 Companies Act, Art. 48.
50 Companies Act, Art. 175, s. 2.
51 Companies Act. Art. 50-58.
52 Companies Act, Art. 157.
53 Companies Act, Arts. 182-185 and 275.
54 Companies Act, Arts. 204-205.
55 Companies Act. Arts. 474-477.

members prescribed by law, it is possible to extend the special rights of minority members in the incorporation document or the shareholders' agreement.

12. Unipersonal LLCs as members of another unipersonal LLC

According to the Serbian Companies Act, members of an LLC may be natural and legal persons in all possible combinations.[56] This means that there are no restrictions on the right to form another unipersonal LLC whatsoever. A unipersonal LLC the member of which is a natural or legal person can form another unipersonal LLC, the sole member of which would be the already established LLC, as a legal entity.

13. Perspective reform in the legal regulation of LLCs?

A profound reform of company law in Serbia has been going on since the adoption of the previous Companies Act, in 2004. At present, as indicated earlier, the legal regime for LLCs is predominantly regulated by the Companies Act of 2011, which sustained amendments in 2015, 2018, and 2019. However, these amendments do not concern the key institutions of the legal regime for LLCs. It is clear that Serbian company law will have to undergo significant changes in upcoming years due to the process of harmonization of domestic law with the law of the European Union in light of the conditions contained in chapter 6 of the accession negotiations, related to company law.

14. Conclusions

In our view, one of the reasons for some of the shortcomings in the legal regulation of LLCs in Serbia is that there is no special statute pertaining only to LLCs; instead, the same statute regulates all four legal forms of companies, including their liquidation and status changes (acquisition, merger, division, spin-off). This contrasts the model that prevails in Austria and Germany, in which special statutes cover LLCs only, which we consider a proper legislative model. Regulation of all legal forms of companies in the same act is a basic conceptual flaw of Serbian company law. A law specific to LLCs would enable the legislator to tailor detailed rules pertaining only to LLCs, in which all peculiarities of this legal form of company might be addressed.

Furthermore, there are relatively numerous legal norms applicable to JSCs, the appropriate application of which has been extended to LLCs. However, most of them are not fully applicable due to the different nature of JSCs and LLCs.

56 Companies Act, Art. 9. s 3.

Most notably, difficulties arise regarding the application of the rules on capital increase, which are not fully developed in relation to LLC, which is why the legislator prescribed the appropriate application of JSC capital increase. Consequently, the content of the decision to increase the share capital was adjusted primarily to JSCs. This is not the best legal technique for regulating such an important procedure, which in practice requires the proper selection of provisions that can be applied to the increase of LLCs share capital as well.[57] In domestic practice, the Agency for Commercial Registries (*Agencija za privredne registre*, APR) plays an important role in the application of the rules of the Companies Act. In order to assist business entities, the Registry publishes templates which can be used by companies to draft and submit documents to register any change in the Registry. Analysing the template for drafting a decision on the increase of share capital, it seems that the Registry does not treat the decision merely as an initial, preparatory action before commencement of the procedure for increasing share capital. Rather, it treats it as an action based on which the change in data regarding the amount of share capital is fully implemented in the Registry.[58] This interpretation of the nature of members' decision to increase share capital is not only theoretically incorrect but may also have serious implications for the application of law. At the time of adoption of such a decision in the members' meeting, many things are yet uncertain. First, for example, it is uncertain whether and to what extent there will be an increase in share capital; the only thing certain at the time is that the increase cannot go beyond the total increase set out in the decision adopted at the members' meeting. Second, the value of the shares and their proportion after increase also remains uncertain. The decision adopted at the members' meeting solely represents the will of the company, and not the personal will of the members, and if the decision is taken as the sole document based on which the increase of capital is registered, it implies that an obligation is imposed on members who voted against the decision. That would be contrary to the principle of party autonomy, a fundamental principle of contract law, and to the spirit of the Companies Act as well.[59] This practice of the Registry is a consequence of the lack of regulation of contribution subscription statements and subscription agreements (Ger. *Zeichnungsvetrag*) in Serbian law. In comparative law, a subscription agreement between member and company is made on the basis of the member's subscription statement and the corresponding statement of the will of the company. The proper practice of the Registry would then be to register the share capital increase only when both the decision at the members' meeting and the subscription statement or agreement on the other, are submitted. However, a clear legal basis for that is missing in the Companies Act.

Similarly, in the amendments of the Companies Act from 2018 the rule prescribing the appropriate application of the section governing capital reduction from JSCs over to LLCs was repealed, and a new set of rules were introduced pertaining to the

57 Marjanski, 2017, p. 758.
58 Marjanski, 2017, p. 762.
59 Marjanski, 2017, pp. 763–764.

capital reduction of LLCs. However, the new regulations are less detailed than the ones pertaining to capital reduction of JSCs. This has led to numerous difficulties in relation to concrete requests for capital reduction filed by companies at the APR.[60]

Furthermore, the Serbian Companies Act does not devote a special section to the protection of members who constitute a minority at the members' meeting; instead, the special rights of dissenting shareholders are stipulated in the part of the law relating to JSCs, which in accordance with section 477 of the Companies Act applies to LLCs as well.

Finally, the protection of the interests of the creditors of the LLC essentially comes down to the application of the institution of piercing of the corporate veil only, and it is not applied in the case law appropriately, inter alia because of the slow pace of resolution of disputes by the courts.[61] Furthermore, Serbian courts have recently proved reluctant to apply the institution of piercing the corporate veil even in situations where a member is clearly abusing the corporate personality of the company, as the courts consider it to be an overly severe sanction and as proving the fulfilment of the prescribed conditions for the abuse of corporate personality in Serbian case law is connected with great difficulties, since the burden of proof of all conditions is on the plaintiff, and more often than not, he or she will not be able to prove all the relevant facts for establishing the abuse of corporate personality.

60 Marjanski, 2018, p. 1044.
61 See details at Marković, 2001, pp. 853–863.

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