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Mirko S. Vasiljević, *Company Law: Law of Commercial Companies of Serbia and the EU*,
Centre of the University of Belgrade Faculty of Law –
Službeni glasnik, Belgrade 2006, 607 pp., ISBN 86-7630-046-1.

The publication at hand deserves the attention of readers outside Serbia for various reasons. For many if not most of those readers, this will be their first contact with Serbian company law. Until not so long ago, Serbia was an integral part of the Socialist Federal Republic of Yugoslavia, together with five other republics. In 1988, during the final stage of the SFRY's existence, the famous Yugoslav Law on Enterprises was enacted, which for the first time in a long while reintroduced key elements of Western company law into the Yugoslav legal system and has been translated and commented on many times in Germany and elsewhere. After the independence of Slovenia, Croatia, Bosnia and Macedonia, only Serbia and Montenegro remained together, as the two republics that constituted the Federal Republic of Yugoslavia (FRY). During this period, a new Law on Enterprises[1] was adopted (*Službeni list SRJ* 1996 No. 29). However, due to Montenegro's struggle for independence, the FRY was temporarily replaced by the State Union of Serbia and Montenegro, which existed between 2003 and 2006. The year of 2003 simul-

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[1] English translations of this law can be found in *Commercial Laws of the World: Yugoslavia*, rev. ed., loose-leaf, Foreign Tax Law, Inc., Ormond Beach, Florida 1998, as well as in *Zakoni o preduzećima i stranim ulaganjima* [The Laws on Enterprises and Foreign Investment: Investing in Yugoslavia], 2nd ed., Jugoslovenski Pregled, Belgrade 1997. This very interesting law, which was elaborated during Serbia's isolation from the outside world, shows a surprisingly high quality considering the circumstances of its coming into being. It is clearly oriented towards the West. As noted by Mirko Vasiljević in his 'Basic Remarks on the Enterprise Law', in *Zakoni o preduzećima i stranim ulaganjima*: 'The provisions of the Enterprise Law are based on well-known institutions, though more on those of the Roman law than on those of the Anglo-Saxon one' (p. XII).

taneously marked the end of Yugoslavia. In 2002, Montenegro had already adopted its own Law on Commercial Companies, which is still in force today, although it has recently undergone substantial modifications (*Službeni list RCG* 2002 No. 6, as amended by *Službeni list RCG* 2007 No. 17). As a result of the referendum held in Montenegro in June 2006, Montenegro and Serbia each declared their independence. The state union was dissolved and replaced by two separate and independent states: the Republic of Serbia and the Republic of Montenegro.

In 2004, the Republic of Serbia promulgated a new Law on Commercial Companies (LCC) (*Službeni Glasnik* 2004 No. 125), which forms the subject of the book reviewed here. In fact, this book is an English translation of the Serbian original,[2] which was published in Belgrade a year earlier. Before going into details, it should be pointed out that an English translation of the Serbian LCC is available from *Jugoslovenski Pregled* (Yugoslav Survey)[3] in Belgrade (both online and on paper).

The present publication may be regarded as the English 'visiting card' of Serbian company law. It has been written by the leader of the team that was entrusted with the drafting of the law. At this point, it is worth mentioning that, in sharp contrast to other countries in the region (e.g., Bulgaria), Serbian business lawyers are extremely well-organised. This is thanks to Mirko Vasiljević, who is not only Professor of Commercial Law and Dean of the Faculty of Law of Belgrade University but also engages in many other activities. Thus, he is the founder and former president of the Serbian Association of Business Lawyers. In addition, he is the editor in chief of the leading legal periodical in the field of commercial law, *Pravo i Privreda* [Law and Economy]. Last but not least, he is also the founder and long-time president of the annual Serbian Business Lawyers' Conference, which has until now been held in Vrnjačka Banja, but will this year be held on Zlatibor mountain. In this annual conference, which is always attended by a great number of specialists from all legal professions, Serbia has a unique forum for the discussion of acute legal problems as well as national legal strategy in the area of business law.

The book provides a comprehensive and detailed picture of Serbian company law today. The author takes a comparative approach and discusses Serbian company law against the background of Anglo-Saxon, German, Swiss, Italian, Belgian and other laws. The book is divided into thirteen chapters dealing with the definition of company law; commercial (trading) and non-commercial (civil) entities; common concepts of commercial companies; unlimited risk companies (companies of persons); limited risk companies (companies of persons and capital); limited risk

[2] Mirko Vasiljević, *Kompanijsko pravo (Pravo privrednih društava Srbije i EU)*, Pravni fakultet Univerziteta u Beogradu – Centar za publikacije, Belgrade 2005, 575 pp.

[3] See *http://www.yusurvey.co.yu*.

companies (companies of capital); specialised joint-stock companies; specialised organisations and commercial companies; enterprises and entities undergoing privatisation (public enterprises and state-owned companies); groups of commercial companies; commercial associations; the dissolution of commercial companies; and the incorporation of EU company law.

As the author accentuates, the 2004 Law on Commercial Companies combines elements of continental and Anglo-Saxon law, like its predecessor from 1996.[4] This time, however, it is not the continental law that prevails. Instead, Serbian company law now borrows heavily from Anglo-Saxon sources, 'having in mind the apparently irreversible trend of expansion of Anglo-Saxon company law into European continental law' (p. 41). Although Serbia is not a member of the European Union and has not yet concluded an Association and Stabilisation Agreement with the Union, Serbian company law nevertheless incorporates the relevant EU directives. The *acquis communautaire* in the field of company law is dealt with in some detail in the final chapter. Special attention is devoted to the issue of corporate governance, which has had a deep impact on Serbian company law. In this context, it is worth mentioning another recent publication by the same author, the preparation of which goes back to his stay at the Max Planck Institute in Hamburg in 2004, *Korporativno upravljanje. Pravni aspekti* [Corporate Governance: Legal Aspects] (Belgrade 2007).

A number of modern legal concepts have been regulated by the new Law on Commercial Companies for the first time or have only now been regulated in detail. In this area, the extensive comments in the book are especially helpful. A practical example is the issue of 'lifting the corporate veil', which is laid down as a rule in Article 15 LCC. Like many other developed legal orders, Germany does not have such a rule in its legislation but intentionally leaves the matter to legal practice and scholarship, which makes it possible to learn from actual cases and develop very flexible solutions. As the author's comments with respect to the situation in Serbia demonstrate, this approach would not work there because the judges are not prepared for such a task. For this very reason, many other countries in the region, such as Hungary, Slovenia, Croatia and recently Romania have also adopted explicit legal provisions on 'lifting the corporate veil'. As is to be expected in the case of a new legal concept, the part of the book providing examples of Serbian judicial practice is very short and mentions only one case in which Article 15 LCC has actually been applied. This leads the author to complain that: 'even after enacting the concept of „piercing the corporate veil" in our legislation, our court practice, for incomprehensible reasons, still hesitates in implement-

[4] See *supra* n. 1.

ing it' (p. 75). This may well be not the only area where Serbian judicial practice needs time for development, but the conscientious interpretation of the law and the many illustrations taken from foreign legal orders will provide the necessary guidance.

It is not possible in this review to go more deeply into the details of Serbian company law, but one of the most remarkable novelties of the new law concerns the introduction of the Anglo-Saxon board model. The traditional approach followed the German model of a mandatory two-tier system. The part of the book on the governance of joint stock companies is therefore among the most interesting (pp. 375-394). Generally speaking, a movement towards offering a choice between a one– or two-tier system, like in the case of the *Societas Europaea*, can be observed in the region. Thus, Slovenia and Hungary have recently introduced an alternative one-tier system into their national company laws. Romania introduced a developed one-tier system as well as an optional two-tier system in 2006, while Bulgaria has offered such a choice ever since 1991. In 2004, the Serbian legislator opted for the one-tier system (p. 377). Except for smaller companies, the management function is divided between the board of directors (Art. 308 et seq. LLC) and the executive board, whose member are elected by the board of directors (Art. 322 LCC et seq.). Serbian company law has also introduced a distinction between executive and non-executive members of the board of directors. In listed companies, the non-executive members must be in the majority and at least two of those members must be independent (for definition of independent members, see Art. 310(3) LCC). In the case of public joint stock companies, a supervisory board may be provided for in the articles of association, whereas listed companies must have a supervisory board. The existence of a supervisory board is obligatory in joint stock companies conducting business for which a supervisory board is required under special regulations (Art. 329 LCC). In such cases, the members of both the board of directors and the supervisory board shall be elected by the general meeting (Arts. 309 and 330 LCC and pp. 395-396).

The book has been edited with great care, and the translators deserve our respect for the excellent job that they have accomplished. If the reviewer had one wish, it would be for more precise quotations of the relevant articles of Serbian company law, in order to make it easier for the reader to check the provisions for more details. It is to be hoped that this book will find the many readers that it undoubtedly deserves!