

JPM Newsletter August 2011**ACT ON SPORTS**

The new Sports Act, applicable as of April 12th, 2011, (hereinafter referred to as the Act) represents continuation of the tradition of governing the issue of sports in Serbia. The reasons for rendering the new Act, which replaced the 1996 Sports Act are numerous, including, *inter alia*, improvement of the sports, compliance with the regulations rendered since the enactment of the previous Act, as well as filling in the legal gaps in the currently applicable regulations, the most interesting of them being those relating to ownership transformations within the sport clubs. The act introduces a large number of novelties, which bring governing of the issue of sports closer to the EU legislation.

One of the interesting solutions of the Act is introduction of the category of sports facilities which are of the national importance – the status acquired under the resolution of the government, which, as such cannot be the subject of privatization, nor can their original purpose be changed.

In terms of title over the facilities currently used by the sports organizations, the Act introduces the legal assumption that such a facility shall be deemed state owned unless the sports organization has proved its title. Logically, the question has arisen in public as to the title over the stadiums and other immovable property of the clubs. Therefore, the idea of the legislator has been that other sports facilities should not be included in the process of privatization of the clubs, since these had been built by the state, on the land owned by the state. On the other hand, the clubs have been the ones who have, in majority of cases, invested in maintenance and reconstruction of the stadiums and other additional facilities, purchased the apartments and other immovable assets, and therefore, we are coming to the conclusion that such separation shall be subject to assessment. It is for that reason that the Act introduces also the category of making records of the sports organizations and their property. After the assessment has been made of the capital value and structure, it would be determined to what extent the clubs are actually the owners of the real estate they use.

The current situation with the title over the facilities and other real estate items differs from club to club. E.G. the Football Club “Crvena Zvezda” has been duly recorded as the holder of the title of the popular „Marakana“-stadium and the beneficiary of almost 17 ha of the land. Further, the sports association “Red Star” has been duly recorded as the holder of the title over several buildings and facilities. Please note that only on the territory of Belgrade there are almost 50 stadiums and other kind of sports areas, some of which have been duly recorded as the property of the City, such as the “Omladinski”-stadium of OFK Belgrade, while certain are recorded in the name of the local self-management units.

Privatization procedure is initiated by the club undergoing preparations for privatization, but it can also be initiated by the Ministry in charge of privatization activities, subject to the Government's consent. For the purpose of preventing of abuse, certain persons and entities are forbidden to participate in the privatization procedure, e.g. the persons or entities having shares in one of the sports organizations in the same branch of sports, owners of the sports betting facilities, persons or entities with whom/which the agreements on the sale of the capital have been terminated on account of their failure to settle their contractual commitments, natural persons convicted for certain criminal acts, etc. It is obvious that the legislator has endeavored to eliminate the major concern of the public, that being that the privatization would be carried out through conversion of the debts into the stakes or shares, especially the debts which, in the opinion of the public have in most case been created through fraudulent or fictive transactions.

The major portion of the Act refers to incorporation and business operations of the sports organizations. The Act provides that for the purpose of engagement in the sports activities organizations may be incorporated in the form of an association or a company. The sports organizations shall be registered with the Commercial registers Agency and the registration procedure is simplified. However, an objection may be made in terms that the majority of the provisions have been just copied from the Act on Associations and the Act on commercial companies registration, which has unjustifiably burdened the wording of the Act. The requirement to be settled in order that a sports company be allowed to engage in the sports activities is that the company shall have, either as members or the employees engaged under the agreement, the sportsmen, sports experts in the relevant field, appropriate premises, equipment, internal organization and financial funds, provided it participates in the sports competitions.

The interesting novelty is the obligation of a sports organization to reinvest minimum 70% of the acquired net profit in a year into the major activity of the company, with the purpose of preserving the sports activity of the company. This provision has been faced with negative responses since such solution may have non-stimulative effect on the sports companies in terms of making it more difficult to profit from the activity.

From the purely sports point of view, the significant obligation of the club is to ensure and allow a sportsman(woman) to play for the national team to which he/she has been invited. Violation of this obligation shall result in a fine for the club. The intention of the legislator is to prevent abuses and speculations of the clubs which have been present so far in case the sportsmen should play for the national team at the moment of the games important for the club.

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