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LEGAL ASPECTS OF INVESTING INTO WATER ENERGY SECTOR IN SERBIA

Abstract

This work deals with legal aspects of investing into water energy sector in the Republic of Serbia. It discusses the importance of alternative energy resources like that of the water energy. Following this, it gives a general review of legal rules for foreign investors who wish to invest into this sector in Serbia. This is done through a short overview of legislation that is related generally to foreign investments, followed by the more detailed analysis of laws that have specific relevance to this energy sector, like the Law on the Protection of the Environment, the Law on Waters, the Law on Environmental Impact Assessment, the Law on Strategic Environmental Impact Assessment and the Law on Energetics.

Key words: *Serbia, legislation, water energy*

INTRODUCTION

One of the greatest challenge of the 21st century is the protection of the environment, that faces numerous problems. According to Professor Momčilo Vukičević, Serbian expert in this field, two key problems of our environment, that are very much interrelated, are pollution and energy issues (Vukičević 2000: 62). Using alternative energy resources can be a solution to these problems. This might be the reason that such resources are becoming ever more popular in Europe and that they are used on a wider scale. One of these alternative energy resources is the energy of the water (hydro-energy). This is one of the cleanest ways of producing energy. However, not every country has resources of water that can be used for production of energy. Serbia is one of those countries in Europe that has a relatively good potential for using the energy of water. According to some studies it has a potential for almost one thousand small water plants that could produce up to 10 MW power each (Mihaljlović 2006). Nevertheless, if we want to turn the energy of water to electric energy, besides

natural resources we also need infrastructural facilities. In a country under transition that lacks capital, in such projects the greatest help can come from foreign investors who are interested in the utilization of this kind of energy resource and who have the necessary experience. However, no serious investor wishes to enter a market, without first consulting the legal environment of the potential target country. This work gives a short overview of the legal environment, that is to say, of the most important legal rules that have to be consulted by a foreign investor who wishes to invest into the water energy sector in Serbia.

DISCUSSION

There are two sets of rules a foreign investor wishes to consult: those that relate generally to foreign investments, no matter what the field of investment is and specific rules that relate to the water energy as a specific investment type.

Hence, first we give an overview of legislation that is relevant for all types of foreign investments. This is done summarily due to limited space. The first and basic legal act that has to be consulted by any foreign investor is the Law on Foreign Investments (in Serbian: „Zakon o stranim ulaganjima"), published in the Official Gazette of the Republic of Serbia, no. 3/2002 (hereinafter the following form is used referring to laws: Law on Foreign Investments („Zakon o stranim ulaganjima", OG, no. 3/2002)). Under this Law, as a general rule, foreign investors, that is to say foreign legal or natural persons, are treated the same way as any domestic legal or natural person. The investment can be made in any form, be it foreign convertible currency, dinars or other goods or rights having monetary value. Besides full legal security, the law grants some tax and customs duty incentives to foreign investors. Considering all this, it is still suggested to foreign investors to establish a legal entity that is registered in Serbia for conducting a business. Taking into account the character of the investment and the legal regulation, it is recommended to do it either in the form of limited liability company or in the form of stock company. Both forms are regulated by the Company Law („Zakon o privrednim društvima", OG, no. 125/2004). After establishing a company for conducting business, another important issue is raised, the possibility of acquiring property. Legal entities of foreign investors that are registered in Serbia have the same treatment as companies in Serbian ownership. Thus, they can acquire property under the same terms. However, the problem is that currently no legal person can acquire ownership rights on public goods, and the majority of potential sites that are suitable for new water energy plants is such. Another practical problem is that the overwhelming majority of existing water energy facilities is the property of the Serbian Electro Industry Co. that has not been yet privatised. Thus, in practice it is legally impossible to gain ownership on such property. Therefore, the solution is to acquire right of use, that is to say, concession on the property needed for the investment. Due to aforesaid and the character of the investment, the Law on Concessions („Zakon o koncesijama", OG, no. 55/2003) has to be considered as well. Besides these laws of greater importance, it is also suggested to investors to consult other relevant regulations as well. Taxation issues are always of importance when doing business. Taxation is regulated in the Law on Corporate Profit Tax („Zakon o porezu na dobit preduzeća", OG, no. 25/2001, 80/2002,

43/2003, 84/2004) that prescribes a relatively low corporate tax rate (only 10 percent) and in the Law on Value Added Tax („Zakon o porezu na dodatnu vrednost", OG, no. 84/2004, 86/2004, 61/2005), that prescribes 18 percent V.A.T. on electric energy. Other relevant regulations are contained in the Labor Code („Zakon o radu", OG, no. 24/2005, 61/2005), in the Law on Bankruptcy Procedure („Zakon o stečajnom postupku", OG, no. 84/2004, 85/2005), in the Law on Financial Leasing („Zakon o finansijskom lizingu", OG, no. 55/2003, 61/2005), in the Law on the Stock Market („Zakon o tržištu hartija od vrednosti i drugih finansijskih instrumenata", OG, no. 47/2006), in the Law on Public Procurement („Zakon o javnim nabavkama", OG, no. 39/2002, 43/2003), in the Law on Privatisation („Zakon o privatizaciji", OG, no. 45/2005) and in the Law on Competition („Zakon o zaštiti konkurencije", OG, no. 79/2005). A potential investor might also wish to consult rules regarding potential conflicts that might arise in connection with the investment. These rules are contained in the Law on Conflict of Laws („Zakon o rešavanju sukoba zakona sa propisima drugih zemalja", OG, no. 46/2006) and in the Law on Arbitration („Zakon o arbitraži", OG, no. 46/2006). All these legal acts are relatively recent and in legal terms modern. However, the drawback of this is that many times there is no enough experience in their implementation in practice.

The second set of rules concerns legal acts that are related to environmental and water management and to energy sector. Investors have to take into consideration these laws already at the beginning of the planning their investment.

The Law on the Protection of the Environment („Zakon o zaštiti životne sredine", OG, no. 135/2004) gives the basic framework for the regulation of the integral system of environmental protection. The Law enumerates basic principles of environmental protection, that are integration, prevention, natural value preservation, sustainable development, polluter's and its successor's liability "polluter pays", "user pays", subsidiary liability, incentives, public information and participation and access to justice. Regarding water, the Law classifies it as natural value and public natural good. Water may be used in a way and up to the level which does not represent threat towards natural resources or quality and quantity of water renewal and which does not reduce the possibility of its multi-purpose usage. In performing their activities, users are obliged to provide: rational use of natural resources, calculation of environmental protection expenditures in their investment and running costs, implement regulations, moreover, take environmental protection measures in compliance with the Law. Polluter causing environmental pollution is responsible for the occurred damage under the principle of objective responsibility. Polluter causing environmental pollution by its acting or non-acting is obliged to, without any delay, undertake measures determined by rehabilitation and plan of protection from accident. If the damage made to the environment cannot be rehabilitated through adequate measures, the person that has caused it is responsible to pay charge equivalent to the value of the destroyed good. Polluter (jointly and severally with other polluters) is liable for the damage made to the environment and covers expenditures for the evaluation of damage and elimination thereof. Every person affected by damage has the right to reimbursement. The liability outdates in three years (subjective term), that is to say in 20 years (objective term). To the issues regarding liability for damage to the environment that has not been particularly regulated by the Law, general rules of the Law on Obligations are

applicable. For the entities that use renewable energy sources the Law gives the possibility for tax and other exemptions, however it has to be regulated in a special law that in our knowledge does not exist yet.

The Law on Waters ("Zakon o vodama", OG, no. 46/1991, 53/1993, 67/1993, 48/1994, 54/96 and 101/2005) regulates the protection, usage, administration of all surface and underground waters and the rules of water management. As a basic principle, the usage of waters cannot endanger the nature, the natural qualities of waters and the life and health of humans. The Law defines what is to be considered a water management facility. Among others, they are facilities that secure the usage of water, like dams, catchment basins, channels and pump stations. According to the Law, Serbia is divided into three catchment areas, the Danube, the Sava and the Morava. The Government, on the proposal of the Ministry (the detailed plan is done by the local public water company), works out the water management plan for the maintanance and development of water systems on the whole territory of the Republic. The Government also works out the plan for the administration of the water system. However, it is more interesting for a potential investor that this Law stipulates different permits that are required by investors who want to work with waters: The first one is the so-called „water management conditions" (in Serbian: „vodoprivredni uslovi"). This is required when the investor wants to undertake works that affect the water system. The Law enumerates itemize facilities that require this kind of permit, among other dams, catchments, hydroelectric power plants. Depending on the nature of the permit (conditions), it might be issued by the Ministry, municipal organ responsible for the water management or the public water company. Another kind of permit is the so-called „water management approval" (in Serbian: „vodoprivredna saglasnost") that is required for building new buildings or renewing the old ones. And the last one is the so-called „water management permit" (in Serbian: „vodoprivredna dozvola"), that is required for the usage of waters that come from natural and artificial sources and for the giving off of waters. This permit regulates the conditions and manner of usage and giving off of waters. It is issued by the same organ as the water management approval. For these permits certain documentation is required that is specified by the Ministry. All these permits are issued in line with the water management plan. The Law places certain duties and restrictions on the users of waters. The elemental duty of the user is to use the waters economically and rationally. Besides this, the user has the duty to provide data and report pollution of waters. In case of high or low water the user might have the duty to open or close dams, or to fill or let out water from catchment basins if it is necessary to secure the supply of drinking water, to protect waters from pollution or to insure the quality of the waters. The user is also obliged to to let authorized persons to access water and water management fascilities and to participate in certain preventive and smaller reconstruction works. It is also the duty of the user to pay for the usage of water and water management facilities to the water management public company.

The Law on Environmental Impact Assessment („Zakon o proceni uticaja na životnu sredinu", OG, no. 135/2004) regulates the impact assessment procedure for projects that may have significant effects on the environment. Under the Law such projects are the execution of construction works, installation of facilities, plants and equipment, their reconstruction, removal or change in technology, work process technology, raw material, production material, energy or waste, or other interventions in

nature and in the environment. Actually, the environmental impact assessment is a preventive measure of environmental protection that is based on an environmental impact study, on public consultation and on the analyses of alternative measures. The Government has the duty to prescribe the list of projects for which an impact assessment is mandatory and another one for which it may be required. However, the Law itself states that all the projects that have a significant effect on the environment are subject to impact assessment. This also includes water management projects. The project implementation may not be commenced by the developer without having previously completed the impact asssessment procedure and obtained the approval for the environmental impact assessment study from the competent authority. The competent authority is the Ministry of Environmental Protection, or the Provincial authority responsible for environmental protection matters if the permit for the project is issued by the Provincial authority, or the municipality if the permit is issued by the local government. The environmental impact assessment procedure has three stages: (1) determining whether the assessment is needed, (2) defining the content and scope of an impact assessment, and (3) deciding on the approval of the environmental impact assessment study. Regarding the first stage, the project developer (investor) may submit an application for environmental impact assessment to the competent authority if such assessment is not mandatory, however, it might be required. The reason the developer will initiate it is that such assessment is a requirement for some permits during the development. Such application has to contain basic data like, the description of the project site, the outline of the project characteristics, the description of potential effects on the environment of the project and other related data and documentation. However, the detailed content of such application is regulated by the Minister of Environmental Protection. The authority in charge has to bring a decision in 35 days, taking into consideration the public opinion. It is possible to appeal against the decision. Having a positive decision or duty to prepare an environmental impact assessment (when it is mandatorily prescribed by the law), leads to the next step that is the application for a decision on the scope and content of the environmental impact assessment study by the project developer. The content of such application is prescribed by the Law (art. 12) and by the Minister of Environmental Protection. The authority in charge makes public the application and decides on it in 45 days. It is possible to appeal against the decision. Once there is a positive decision on the scope and the content of the study, the developer of the project has one year to submit the application for the environmental impact assessment study approval together with the study to the competent authority. The environmental impact assessment study contains data on the project developer, description of the planned project site, description of the project, outline of the main alternatives studied by the developer, outline of the environmental status at the site and its close vicinity, description of likely significant effects of the project on the environment, environmental impact assessment in cases of accidents, description of measures envisaged to prevent, reduce and, if possible, eliminate any significant adverse effects on the environment, program of monitoring of impact on the environment, short non-technical summary of the previous data and data on technical shortcomings, absence of the appropriate expertise and skills or, impossibility of obtaining the appropriate data. Besides these data prescribed by the Law, the developer has to present also other data prescribed by the Minister of Environmental Protection. The study can

be prepared only by licensed expert. Following the submission of the study, it is put on public debate in 20 days following its publication with the participation of the developer. In 15 days after finishing the public debate, the competent authority informs the project developer on the suggested amendments to the plan. Following this, the developer has 15 days to hand in the final version of the study. The competent authority forwards the study to a technical committee that scrutinizes the study in 30 days and if necessary, proposes further amendments to it. Following this, the competent authority approves or refuses to approve the study and informs about its decision the developer in 10 days. This decision is final, it can be altered only in an administrative legal action. The Law also prescribes that the developer has two years to begin the implementation of the project. There is a provision in the Law that furthers international cooperation in the field of environmental protection. It states that projects that might have significant impact on the environment of another state, or when the state in which the environment could be significantly threatened requests information, the Ministry of Environmental Protection has to submit to the state concerned information on the project and its effects. The state concerned has the right to take part in the process of environmental impact assessment.

The Law on Strategic Environmental Impact Assessment („Zakon o strateškoj proceni uticaja na životnu sredinu", OG, no. 135/2004) regulates the conditions, methods and procedure according to which the assessment of impact on the environment of certain plans and programs (*e.g.,* developments) prepared or adopted by the authorities (republican, provincial or local) has to be carried out in order to provide for the environmental protection and improvement of sustainable development through integration of basic principles of environmental protection into the procedure of preparation and adoption of plans and programs. One of the main aims of the strategic environmental impact assessment is to inform and involve the public concerned. The strategic assessment has to be carried out for planning among others in the field of energy and water management that sets the frameworks for granting the approval for future development projects defined by the environmental impact assessment related legislations. Thus, as opposed to environmental impact assessment, strategic assessment is done by the authorities and not by the developer. However, as it is a precondition for certain permits, the investor is also affected by its existence or non-existece.

The Law on Energetics („Zakon o energetici", OG, no. 84/2004) gives the basic regulation framework for the energy market and its participants. The investor who wishes to build a water plant that will produce more than 1MW energy first has to obtain an energetic permit. This permit is issued by the Minister of Mining and Energy in the form of a decision in 30 days following the request. It is valid for two years. The Law prescribes certain conditions that have to be fullfiled by the petitioner, like conditions for safe operation, for the protection of the environment, for the protection of health, technical and financial conditions related to the project and its efficiency level. However, detailed conditions are prescribed by the Minister. The Law itemises the data that has to be in the application: data on the location of the facility, on the building deadline, on the type, power and efficiency of the facility, on the used energy resources for the production of energy, on the method of energy production, on the environmental protection during the building and operation, on the conditions that are related to the closing down of the facility and data on the necessary financial means. Energetic permit

is not needed when the investment is related to the reconstrution of an already existing facility or when the facility is built based on concession. This permit is only for the building of the facility. The Law prescribes another permit that is needed to carry on energetic activity. This permit is issued by the Energetics Administration in 30 days following its request and it is valid for ten years. The conditions to get such a permit are: fulfillment of the neccessary registration, satisfiction of technical, efficiency, fire, explosion and environmental regulations by the facility, satisfiction of required staff, of financial means, the fulfillment of the condition that the same type of permit was not revoked during the last three years, and that the membes of the executive board of directors were not convicted of economic crime. It is also advised to the investor to request so-called privileged energy producer status. This can be requested on the base that the electric energy is produced from renewable energy source, in our case it is water. This has to be requested from the Minister. Producers with such status have priority on the energy market, and enjoy certain preferences regarding tax, customs and other treatment.

CONCLUSION

Alternative energy resources like the energy of the water offer a good chance to reprieve our environment and at the same time to satisfy our ever-growing demand for energy. Therefore, individuals, organizations and states should be encouraged to use it whenever it is possible without imparing the balance of the eco-system. Ensuring positive investment environment in countries that have the natural resources for water energy can definitively encourage investors. Important part of this investment environment is legislation related to these investments. In Serbia the most important legal acts exist, however, many times there are no detailed executive legal acts that would implement these laws. We have to take into account that lack of regulation can easily lead to legal uncertainity, that many times deters foreign investors. Besides, there is need for the improvement of practical application of existing legislation. Having new regulations, the executive branch has little experience in this specific field. Another problem is the lack of confidence towards foreign investors, and sometimes even their ill-treatment. The issue of corruption also cannot be avoided in certain administrative organs. The solution could be an overal governmental program that would give special guarantees and incentives to investors who wish to invest into the production of energy using alternative energy resources, and would help investors whenever they encounter difficulties, combined with easier and simpler procedure of acquiring different permits.

LITERATURE

1. 21 projects for the 21st century <www.srbija-info.yu/Razvoj>.
2. Agencija za privatizaciju [Privatization Agency] <www.priv.yu>.
3. Agencija za privredne registre [Business Registers Agency] <www.apr.sr.gov.yu >.
4. Agencija za strana ulaganja i promociju izvoza – SIEPA [Serbian Investment and Export Promotion Agency] <www.siepa.sr.gov.yu>.
5. Beogradska berza [Belgrade Stock Exchange] <www.belex.co.yu>.
6. Fond za razvoj Republike Srbije [Development Fund of the Republic of Serbia] <www.fondzarazvoj.sr.gov.yu>.
7. Ljutić B. Ž.: *Poreski propisi - "novi-stari" zakoni*, Pravni informator online journal, nr. 1/2005. <www.informator.co.yu>.
8. Messmann S., Tajti T.: *Investing in South Eastern Europe*, European University Press, Bochum, 2005.
9. Narodna skupština Republike Srbije [National Assembly of Republic of Serbia] <www.parlament.sr.gov.yu>.
10. Paragraf Net legal database <www.paragrafco.co.yu>.
11. Privredna komora Srbije [Serbian Chamber of Commerce] <www.pks.co.yu>.
12. Republička agencija za razvoj malih i srednjih preduzeća i preduzetništva [Republic Agency for the Development of Small and Medium-sized Enterprises and Enterpreneurship] <www.sme.sr.gov.yu>.
13. Stefanović Z., Hrle J.: *Statusno privredno pravo*, Fakultet za poslovno pravo, Beograd, 2005.
14. Vasiljević M.: *Zakon o privrednim društvima Republike Srbije*, Pravni informator online journal, Nr. 12/2004. <www.informator.co.yu>.
15. Vlada Republike Srbije [Government of the Republic of Serbia] with links to ministries <www.serbia.sr.gov.yu>.
16. Vukičević M.: *Ekonomija životne sredine*, Univerzitet u Novom Sadu, Novi Sad, 2000.

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