

INCORPORATION OF COMPANIES IN SERBIA - THE SCOPE OF PRESENCE OF ELECTRONIC AND TRADITIONAL PROCEDURES^a

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Abstract

Increasing the investment activity of the existing companies and stimulating the incorporation of new companies is one of the factors of economic development. Many factors determine the scope of economic activity in a country, one of them is the procedure for incorporating economic entities. If we start from the assumption that the investor, domestic or foreign, has assessed the possibility of profiting in a specific economic environment, the first step in the realization of their business idea is the incorporation of their company. The legislation in Serbia provides an opportunity for a significant part of the procedure for incorporating business entities to be conducted electronically. Using this opportunity implies the knowledge of several laws related to the procedure for incorporation registration, as well as mastering new e-methods of communicating and running business. In this paper, we point out the normative solutions related to the e-registration of companies in Serbia and the problems in the practice that the founders encounter. E-registration of business entities entails the understanding of numerous e-instruments such as: e-documents, qualified e-signature, e-address, user applications, qualified e-time stamp and others. Memorandum of Association and other acts can be made in written or e-form, so the question arises whether all documents when forming a company can be in e-form and how an e-document can be materialized without losing legal force. Another legal obligation in our country, for some companies, is the e-records of beneficial owners. We will deal with these and other practical issues that the founders of companies in Serbia face in this paper.

Key words: incorporation of companies, e-registration, Business Registers Agency, regulations, practical issues

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ОСНИВАЊЕ ПРИВРЕДНИХ ДРУШТАВА У СРБИЈИ – ЗАСТУПЉЕНОСТ ЕЛЕКТРОНСКЕ И ТРАДИЦИОНАЛНЕ ПРОЦЕДУРЕ

Апстракт

Повећање инвестиционе активности постојећих привредних друштава и стимулисање оснивања нових друштава јесте један од фактора привредног развоја. Много чинилаца детерминише обим привредне активности у једној држави, један од њих јесте и процедура оснивања привредних субјеката. Уколико пођемо од претпоставке да је инвеститор, домаћи или страни, проценио могућност профитирања у конкретном привредном амбијенту, први корак у реализацији његове пословне идеје јесте оснивање привредног друштва. Законодавство у Србији пружа могућност да се значајан део процедуре оснивања привредних субјеката спроводи електронским путем. Коришћење ове могућности подразумева познавање више закона који се односе на процедуру регистрације оснивања, као и савладавање нових електронских начина комуникације и пословања. У овом раду указујемо на нормативна решења везана за е-регистрацију привредних друштава у Србији и проблеме у пракси са којима се оснивачи сусрећу. Е-регистрација привредних субјеката повлачи разумевање бројних е-инструмената као што су: е-документи, квалификовани е-потпис, е-адреса, корисничке апликације, квалификовани е-временски жиг и други. Оснивачки и други акти могу се сачинити у папирној или електронској форми, па се поставља питање да ли сви документи приликом оснивања друштва могу бити у е-облику и како се е-документ може материјализовати не губећи правну снагу. Још једна од законских обавеза код нас, за нека привредна друштва, јесте и е-евиденција стварних власника. Овим и другим практичним питањима, са којима се сусрећу оснивачи привредних друштава у Србији, бавићемо се у овом раду.

Кључне речи: оснивање привредних друштава, е-регистрација, Агенција за привредне регистре, регулатива, практична питања.

INTRODUCTION

The significance of investments in national economies, as well as their determining factors will not be dealt with in this paper. We will only start from the ascertainment that the investment climate in Serbia is not favourable for a large number of investors, particularly the small ones.¹ Underlying all investment decisions is the tradeoff between risk and expected return (Jones & Jensen, 2019: 9). If the investors, based on the assessment of returns and risks, want to do business in Serbia, the implementation of their investment decision is initiated with the registration in the competent register. The World Bank observes that Serbia made the

¹ This is also confirmed by the EU Progress Report for Serbia 2020, stating that private sector is hampered in Serbia due to weaknesses in the rule of law, judicial inefficiency, corruption being an issue of concern, and unfair competition (<https://www.mei.gov.rs/srp/dokumenta/eu-dokumenta/godisnji-izvestaji-ek>).

procedure of company formation more complicated by requiring them to obtain an e-certificate and register their ultimate beneficial owners separately after the incorporation.² The *purpose of this paper* is to assess the simplicity of procedures for incorporating business entities in Serbia, the scope of presence of traditional and e-procedure registrations, e-registration significance, as well as the effects of legal regulations implementation in e-programmes. Digitalisation of all segments of life has also affected the procedure for business entities incorporation. Interpretation and application of legal regulations get a new dimension when implemented through e-programmes. In other words, digitalisation can facilitate traditional procedures and services, but it can also complicate the application of legal solutions (Mason & Seng, 2017). During the state of emergency, caused by Covid-19, the number of e-registrations for incorporating LTDs and sole traders increased by more than 30% compared to the preceding period³ indicating the significance of e-registrations in general, and particularly under the circumstances of impeded interpersonal communication. The recovery from the coronavirus pandemic provides a unique opportunity for transformation – the innovative retooling needed to thrive in the new, more digital world created by the pandemic (European Investment Bank, 2021). The Business Registers Agency of the RS (BRA) digitalised many of its services. Currently, sole traders and companies with limited liability (LTDs) may register electronically, therefore, a major part of this paper is dedicated to these business entities. Generally viewed, using e-services in Serbia has been proceeding at low pace. The lack of knowledge of digital technologies and ignorance about using e-services are some of the reasons citizens keep using old, lengthy, administrative procedures. Having been accustomed to documents in paper form, many persons avoid e-documents and doubt their legal force. The assessment of simplicity degree of the procedure for incorporating business entities in Serbia, being the basic aim of this paper, will be achieved through: a normative and comparative analysis of regulations in Serbia and the EU; we will go through the incorporation procedure in the BRA; we will point out the most common issues in practice encountered by founders; we will collect data from lawyers who provide such incorporation services; conclusions will be presented on the basis of empirical, normative and theoretical knowledge.

² <https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf>

³ <https://www.apr.gov.rs/infografike.4320.html?infoId=26>

LEGAL REGULATIONS

Decision and procedure linked to the incorporation of business entities requires knowledge of many regulations. At the BRA website, 37 laws and 47 by-laws are listed, which are related to its registers.⁴ The legal form of a business entity, business activities that the founders intend to engage with, proprietary structure, material or e-form for the delivery of data etc., determine the application of concrete regulations. The multitude of such legal acts (the so-called “inflation of regulations”) (Vasiljević, 2016: 14), dilemmas related to their interpretation, as well as the obligation that the registration of some data must be conducted electronically, explain the need for using *professional services* (lawyers and other persons) in order to meet all the legal obligations for registering in the BRA, which increases founders’ costs, but saves time. Following this line of reference, we list some of the national regulations. *Companies Law* (2019, CL), represents the legal ground for making decision on the legal form of a legal entity by its founders, which is most suitable to them.⁵ This law regulates the incorporation of legal entities, management, changes in them, and dissolution. Based on the assessment of advantages and risks, founders decide whether they will conduct business as a legal person in the form of: general partnership, limited partnership, limited liability company or joint stock company, or they will do business as a natural person (sole trader)⁶. The procedure for their incorporation depends on this decision. Currently, the number of registered sole traders is twice the number of business companies.⁷ The registration of data on shareholders is performed in compliance with the *Law on the Capital Market* (2020, LCM), while the registration of the members of other business entities in compliance with the Law on Registration. Incorporation, organisation and activities of the BRA are regulated by *Law on Business Registers Agency* (2011, LBRA); while *Law on the Procedure of Registration with the Business Registers Agency* (2019, LPR, orig. ZPR) regulates the registration procedure for data and documents, kept by the BRA. As this law also regulates the possibility of submitting e-applications and e-documents for registration, the *Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business* (2017, LED) is applied. *Law on Certification of Signatures, Manuscripts and Transcripts* (2018) is applied in relation to submitting a registration application and accompanying documents. To any issues not related to the registration procedure, and not specifically

⁴ <https://www.apr.gov.rs/propisi.2426.html>

⁵ See Vasiljević, 2013: 151-408 and Nikolić, Mojašević, 2016: 96-111.

⁶ On special forms of business entities, see Kraakman et al., 2009: 17-18.

⁷ <https://www.apr.gov.rs/infografike.4320.html?infoId=8>

regulated by the LPR (LPR, 2019, art. 4), *General Administrative Procedure Law* (2018) will be applied. Following the incorporation, for the majority of companies, there is an obligation to record their beneficial owners (*Law on the Central Records of Beneficial Owners*, 2019, LBO). The BRA's work is also regulated with the *Law on Public Agencies* (2018). The *Law on Accounting* defines the thresholds for the classification of business entities according to size (micro, small, medium, and large) (Law on Accounting, 2019, art. 6), on which their obligation to prepare and publish financial and other reports depends. In the EC Progress Report on Serbia 2020⁸, the amendments to this Law are positively assessed, in the part where the threshold for defining smaller companies is redefined, decreasing their costs due to exempting them from the obligation of creating specific reports. This report also states the amendments to *Law on Auditing* (2019), which precisely defines the requirements for performing audits. Out of the legal regulations significant for registration in the BRA, we will also mention the *Rulebook on the content of the Business Entities register and documentation required for registration* (2016, hereinafter: Rulebook), as well as the *Decision on fees for registration and other services provided by BRA* (2021, hereinafter: Decision on Fees). After the Decision on Incorporation has been issued, the registered entity opens a commercial account with a bank and has the possibility to use this decision in e-format that is closely regulated with the *Decision on detailed conditions and manner of opening, maintaining and closing current accounts* (2018). Retrieving data in e-format from the BRA is closely regulated with the *Decision on the method, conditions and fees for data retrieval in electronic format on the status and other changes of legal and natural persons registered with the Business Registers Agency* (2011, hereinafter: Decision on e-data retrieval). The EU has common rules in relation to incorporation and registration of business entities, as well as the conditions for publishing any information thereof. Considering Serbia's commitments to the EU, we will recall the EU Directive (Directive EU, 2017)⁹ referring to the registration of business entities.

SERBIAN BUSINESS REGISTERS AGENCIES

The BRA was founded in 2004 (LBRA, 2011, art. 1), with the goal to: have all the registers of business entities kept in one institution; simplify previous incorporation procedures; increase the efficiency of the public administration, not burdening the Budget¹⁰ of the Republic of Serbia, by financing the BRA through the fees for rendered services. The

⁸ https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/serbia_report_2020_SR.pdf

⁹ <https://eur-lex.europa.eu/eli/dir/2017/1132/oj>

¹⁰ Any lack of assets in the BRA is provided from the RS Budget (LBRA, 2011, art. 6).

BRA was founded on the basis of the EU recommendations ordering that an agency of this type deals with administrative work, i.e. the registration of business entities and not with any actual control thereof, especially not in the incorporation phase. The control of business operations of registered entities is performed by other institutions dealing with: inspection surveillance, ensuring the observance of agreements, judicial authorities, etc.¹¹ The BRA *keeps different registers* such as unique, centralised, public, electronic databases, as the registers of: *business entities, pledges, financial leasing, associations, financial statements, bankruptcy estate*, etc.¹² The centralised database of registered entities facilitates business decision making, and also facilitates work of the state authorities and institutions. The size and method of paying fees for service users are determined by the BRA Management Board, with the consent of the Government. The fee for the registration of business entity incorporation currently amounts to RSD 4,900 (for the sole trader - RSD 1,500; and for e-registration RSD 1,000), for the registration of status change RSD 5,500 as per the legal entity participating in such a change, for registration data on bankruptcy over a legal entity RSD 10,000 (over a micro legal entity RSD 5,000) (Decision on Fees, 2021, art. 2, 4, 4a, and 7). Reading the Decision on fees for the BRA's services, we observe that there is no sufficiently elaborated difference in fees according to the economic power of business entities. We stated the difference in fees in case of bankruptcy between micro legal entities (they pay half the fee in comparison to larger entities) and larger legal entities (the Rulebook does not specify whether this refers to small, medium or large legal entities), but the other registration fees also lack such solutions.¹³ A register is run by the registrar, a natural person, having significant powers, but also responsible for the legality and security of register keeping. The registrar specifies the manner of keeping the register, adopts a decision on the entry of data and prescribes registration application forms (LBRA, 2011, art. 10a and 10b). The registered data and documents in the BRA are public and available to all people, via the BRA's website. The accuracy of data in the registers is presumed and represents the ground for exercising the right in legal transactions (LPR, 2019, art. 3 items 1 and 2). In practice, registration of data and documents in the BRA is not simplified enough, which will be discussed further.

¹¹ <https://www.apr.gov.rs/o-agenciji.1902.html>

¹² <https://www.apr.gov.rs/o-agenciji/svi-registri-na-jednom-mestu.1905.html>

¹³ *Registration* is the act of entering, changing or deleting data and documents in the registers kept by the BRA (LPR, 2019, art. 2 item 3).

Business Entities Register

The Business Entities Register (hereinafter: the Register) has been kept by the BRA since 2005. The following entities are registered therein: sole proprietors, companies, public enterprises, domestic and foreign company branch offices and foreign company representative offices, as well as other organisation forms in the RS (hereinafter: registered entities) (Rulebook, 2016, art. 2). Numerous data are entered in the Register, some mandatory, and some optional. The most significant data that are registered are: business name; registered seat; date of incorporation; tax identification number (TIN); legal form; predominant business activity; person authorized to represent; basic capital; share capital and shareholder's share and contribution, etc. (Rulebook, 2016, art. 3 and 4). The registration procedure is initiated by submitting a *registration application*; for the incorporation of a company, this is a form (*JRPPS/Integrated Registration Application for the Formation of Legal Entities and Other Entities and Registration in the Unified Register of Taxpayers*); while for the others, the applications can be filed in the form of a written submission.¹⁴ A registration application is filed by the founder, while applications for change or deletion are, by default, filed by the director, i.e. the company's legal representative. In all such cases, the application can also be filed by a proxy.¹⁵ After the incorporation, business entities are obliged to register any relevant changes. Business entities can also publish other data relevant for legal transactions in the Register (Rulebook, 2016, art. 24-53). The obligation to register the liquidation proceedings is of special significance (Rulebook, 2016, art. 57-61). At a party's request, along with a specified fee, the registrar issues excerpts, copies and certificates referring to data and documents from the Register (LPR, 2019, art. 38). Documents and data, which in compliance with Serbian regulations must be registered, are harmonised with those provided for in article 14 of EU Directive, 2017. Article 16 of the Directive prescribes that the member countries are obliged to make all the prescribed data and documents publicly available and that all registered companies have European Unique Identifier (EUID). E-copies of documents and data that the companies are obliged to register in the EU, are available to all the registers in the EU, via the system of interconnection of registers by electronic means (Directive EU, 2017, art. 18).

¹⁴ <https://www.apr.gov.rs/registri/privredna-dru%C5%A1tva/uputstva.2028.html>

¹⁵ <https://www.apr.gov.rs/registri/privredna-drustva/uputstva/opsta-uputstva.2029.html>

FORMATION PROCEDURE

Upon the receipt of an application, the registrar verifies that the registration requirements have been met and issues a decision adopting the application (can also be partly adopted) or rejects it (some shortcomings can be rectified subsequently, with a new application, paying a half of the fee). The registrar is obliged to decide on the application within a 5-business-day period from the date of receiving the application (LPR, 2019, art. 14-19.). The decisions of the registrar are promptly published, as well as the registered data and documents. The registration produces legal effect the date after the publication date. Against the registrar's decision, the applicant may appeal to the competent Minister, through the BRA, within a 30-day period from the date of the decision publication (LPR, 2019, art. 25, 28 and 29). The Minister decides on the appeal within a 30-day period from the day of the receipt thereof. The LPR (2019) did not regulate a Minister's "silence" situation. In this case, the provisions of the Law on Administrative Disputes referring to failure to issue an administrative act by the second instance administrative authority will be applied (Lepetić, 2010, p. 198), i.e. the appeal shall be considered rejected representing the ground for instigating an administrative dispute (Law on Administrative Disputes, 2009, art. 19). The decision of the Minister shall be final and an administrative dispute may be instigated against it. Against the final decision of the Administrative Court, the party and the competent Public Prosecutor may file an application to the Supreme Court of Cassation for reviewing the court decision (LPR, 2019, art. 32). One of the legal means usable in relation to the formation of a legal entity is also the complaint for determining the *validity of incorporation registration*. This complaint may be raised by a party having a legal interest, and believing that: false data are stated in the application, fraudulent documents or documents issued in an illegal procedure or documents containing false facts are used, and other legal reasons. Such lawsuit can be filed within a 30-day limit from the date the plaintiff learned of the reasons for invalidity, and within a year's period from the date of registration at the latest. The registrar is obliged to register the existence of such a dispute for establishing the invalidity of registration. If the invalidity of the registration of a business company has been determined by a legally binding court decision, the procedure for forced liquidation of such company will be instigated (LPR, 2019, art. 33 and 34). The invalidity of incorporation also entails the issue of legal security and trust in the existence of companies participating the legal trade (Jevremović Petrović, 2016: 82). In relation to registering data in the BRA, the criminal offence against any person who submits false data to the Register, or delivers a false or falsified document, is provided for. The subject would face a sentence of three months to five years in prison for such criminal offence (LPR, 2019, art. 45).

FORMATION OF A SOLE TRADER

A sole trader can only be a legally capable natural person (CL, 2019, art. 83). For registration, the sole trader files a single application form for the registration of the incorporation of business entities and other entities and for the registration in the integrated taxpayers' register, supported by a document on identity (Rulebook, 2016, art. 7). After the incorporation, the sole trader is obliged to register all the relevant data linked for their business operations (Rulebook, 2016, art. 21, 22 and 23). Strike-off of a sole trader from the Register can be: at their request (deregistration), by operation of law or in the case of change of legal form. If the sole trader wants to continue business operations in the form of a business company, they concurrently submit an application for the registration of a company (Rulebook, 2016, art. 55 and 56).

E-registration of sole traders has existed in Serbia since 2018. The procedure of e-incorporation will be dealt with on the example of an LTD in more detail later; therefore, in this part, we point out to the dilemmas that sole traders have in the e-registration procedure. Technical conditions, access to databases and the entire e-procedure registration is almost identical for LTDs and sole traders, whereas in the case of the latter, founders are adult natural persons and the e-registration service fee are lower than for an LTD.¹⁶ An e-registration procedure for the incorporation of sole traders is initiated by filing an e-application through the BRA system; and this application may be filed by a future sole trader or their authorised representative (based on a PoA in the e-form bearing the e-signature of the future sole trader). When legal norms become the part of e-programme, the fulfilment of legal requirements gets a new form. Imperfections of the e-programme and non-compliance with the defined manner of data entering can make incorporation and business operations of business entities difficult, in the part linked to their registration in the BRA. The e-applicant must take care about the use of: letters (e.g. Đ or DJ), abbreviations, spelling mistakes, etc. Such a procedure of data entering in the BRA registers is strictly formal and requires identity in stating data in all documents, which are used during registration. In case of e-registering a sole trader, save for the application, all the supporting documents must be in e-format and bear the authorised person's e-signature. When completing an e-application, users have many dilemmas (defining the business name, activity, etc.); therefore, the BRA aiming to provide assistance, published the instructions on their website.¹⁷ After the decision on the incorporation through e-

¹⁶<https://www.apr.gov.rs/usluge/eusluge/registracija-osnivanja-preduzetnika.2406.html>

¹⁷ <https://www.apr.gov.rs/usluge/eusluge/registracija-osnivanja-preduzetnika.2406.html>

registration has been issued, the sole trader opens a commercial account in a bank. The decision on incorporation does not have to be on paper, it can be delivered in e-form, along with the other documentation, or the bank will obtain the data viewing them directly in the Register or will obtain such data sending a request to the BRA.¹⁸

FORMATION OF COMPANIES

A company is a legal entity acquiring such a capacity through registration in the Register of Business Entities (CL, 2019, art. 3). Members of companies, founders and entities that subsequently join it, may be natural and legal persons. Registration of data and documents of companies and sole traders, prescribed by Companies Law is carried out in accordance with Law on the Procedure of Registration in the BRA (LPR, 2019, art. 5). A registration procedure is initiated by *filing a registration application* in the BRA (it can be *ex officio*, if it is provided for by the Law or is in the public interest) (LPR, 2019, art. 7), electronically or in paper by delivering their written submissions (personally or by post) (LPR, 2019, art. 6), by the authorised person (LPR, 2019, art. 2 items 4, 6 and 12). The application may be filed by: the person authorized to represent the legal entity; the person authorized for the registration and the founder (LPR, 2019, art. 5a). *Data on persons* that must be registered in the BRA are, as follows: *For a national natural person* - personal name and unique identification number of citizens; *for a foreign national* - personal name, passport number and country of issue, i.e. foreigner's personal identification number, i.e. foreigner's identity card number and country of issuance; *for a national legal person* - business name, registered seat and registration number; *for a foreign legal person* - business name, registered seat, number in the foreign registry and the country where it is registered (CL, 2019, art. 9a). Seemingly a clear legal formulation creates dilemmas when applied. So foreign nationals, appearing as founders in the RS, at the very start of incorporation encounter administrative difficulties. Say, *when the founder is a foreign legal person*, establishing their identity can be a problem in practice. An e-extract, as a proof of identity of the founder - a foreign legal person, cannot be used in the registration procedure in the BRA for now. The extract must be on paper, an original or certified copy, and must contain a certification by the competent authority. If the *founder is a foreign natural person*, the dilemma is which identification data to register and if more data can be registered. The BRA's stand is that a foreigner, besides registering their own personal name, optionally can also

¹⁸ Decision on closer conditions and manner of opening, keeping and closing current accounts (2018, item 14, para. 3), as well as the Decision on the manner, conditions and fees for retrieving data in electronic form on any status and other changes of legal and natural persons registered in the Business Registers Agency (2011).

register the personal number for foreigners or optionally can also register the foreigner's personal number along with the number of their foreign ID number (if originating from an EU country). If the foreigner registers more data, an e-certificate is linked to one of them (not stating which one) and if any registered data is changed, possibly the applicant will not be able to sign the specific request¹⁹ electronically. At the occasion of company incorporation, the memorandum of association signed by the company members must be submitted. *Memorandum of Association and Articles of Association* can be drafted in paper or e-form, which determines the manner of their registration. A joint stock company besides the Memorandum of Association also has the Articles of Association (CL, 2019, art. 11). If the Memorandum of Association is submitted in paper form, the signatures are certified in compliance with the law regulating certification of signatures, and if it is an e-document, the certification of documents are replaced by e-signatures of the company members. Companies are obliged by the law to have a separate mailing address and e-address (CL, 2019, art. 20 and 21).

Registration of general partnership and limited partnership may only be performed by filing submissions to the BRA. On the occasion of incorporating these companies, the following is submitted: registration application, certified incorporation agreement, document on members' identities, decision on appointing a representative (if not appointed by the agreement on association), certificate on payment of cash contribution and the assessment of the value of non-cash contribution (Rulebook, 2016, art. 6, 8 and 9). The procedure of *incorporating Joint Stock Companies (JSC)* is more complex compared to other companies. For a JSC registration, besides the registration application, the following should be attached: the memorandum of association of the company with notarial certificate on the payment of cash shares and appraisal of the non-cash capital contribution; decision on the appointment of the company managers, unless appointed in the articles of association; decision on the appointment of the members of the supervisory and executive boards (where a two tier system), unless appointed in the articles of association; and the decision on the appointment of the company's authorized representative, unless appointed in the articles of association (Rulebook, 2016, art. 11). The payment of subscribed cash capital contribution to a JSC will be proved by an attached document (Bank Account Balance Statement²⁰) of the Central Securities Depository and Clearing House (hereinafter: CSDCH) on the subscription of shares. In case of non-cash contributions, in addition to the application and the appraisal of non-cash contributions, the CSDCH document on the subscription of shares will be attached (Rulebook, 2016, art. 46 para 2 and 4).

¹⁹ <https://www.apr.gov.rs/registri/privredna-drustva/pitanja-i-odgovori/pitanja-i-odgovori.4515.html>

²⁰ <http://www.crhov.rs/?Opcija=16>

Incorporation of a Limited Liability Company

The founders of an LTD have had the possibility to opt between the traditional and e-form of incorporation during the preceding three years. Data from practice show that founders are reserved with regard to e-incorporation, therefore, generally the traditional procedure is used, even when founders engage professional persons for registration affairs in the BRA. When founding an LTD company, in addition to the registration application, the following is attached: certified memorandum of association; document on the identity of the company shareholders; decision on the appointment of the authorized representative unless appointed in the memorandum of association; decision on the appointment of the authorized representative unless appointed in the memorandum of association (where a two tier system), unless these persons are appointed in the memorandum of association; bank certificate on the payment of cash contribution, appraisal of the value of the non-cash capital contributions if such a payment is made to the company prior to its incorporation (Rulebook, 2016, art. 10). The data registered for an LTD are the ones referring to an increase/decrease of the company's basic assets, for the purpose of protecting the creditors.

E-registration of an LTD Company. Since 2018, the incorporation of one tier LTD company has been possible electronically, and since 2019, there has also been such a possibility for a multi-member LTD. The applicant must have the below listed, if they want to use this possibility: a qualified e-signature, issued by a competent authority in the RS (Serbian Ministry of Interior, Serbian Chamber of Commerce, PC Post of Serbia, etc.); installed e-card reader and NEXU application²¹ for e-signing (with obligatory update); as well as an appropriate card for e-payment of the fee (Visa, MasterCard or Dina). E-registration for incorporation is performed in the system for centralised registering of the BRA users. The first step is to create an account in this system, for first-time users (this account is used for all the BRA e-services). Users can use the instructions provided on the BRA website as assistance when creating the account.²² Persons who already have a user account, can also use it for entering data pertaining to their e-address and password. *E-registration application*²³, filed by

²¹ NEXU application is designed by the BRA and is used by users to create all e-documents, invoices, etc. It can be downloaded from the BRA website free of charge.

²² <https://www.youtube.com/watch?v=lmQz5zSeU4Q>

²³ E-application is filed by completing the e-form if: e-registration fee is paid; application signed with e-signature issued in the territory of the RS; data on a foreigner referred to in the e-signature of the applicant are identical to the data entered in the section, applicant (<https://www.apr.gov.rs/usluge/eusluge/eregistracija-osnivanja-jednoclanog-i-viseclanog-doo.2405.html>).

the future company member or their attorney²⁴, as well as all the documents accompanying it, are signed with e-signature, using NEXU application, which verifies the applicant's identity automatically. Entering the data into e-application demands caution (business name availability and observing the rules on name, harmonisation of data in the application and the Articles of Association²⁵, spelling and orthographic mistakes²⁶, etc.), incorrect data entry into the e-application can result in its rejection. The Memorandum of Association, attached to the e-application, must be in e-form, signed by the company member with e-signature, must be created in the PDF format and not exceeding 15 MB. All the other documents submitted during e-registration must be in e-form (power of attorney, consent, certificate, permit, etc.). For example, a certificate issued by the bank on paid founding contribution must bear e-signature of the authorised person of the bank issuing the certificate. Application used for e-registration of incorporation can also be used for filing the VAT application, as well as for submitting the application for the TIN assignment. In the event of e-incorporation of an LTD company, a *decision on incorporation in a form of e-document* is issued, signed by the authorised registrar with their e-signature. Such an e-decision is forwarded to the e-address referred to in the application and can also be retrieved from the BRA application. Although it is stated on the BRA website that no institution can require a paper form of the e-decision on incorporation, the possibility of filing an application to the BRA for issuing a transcript of the e-decision is indicated, along with the payment of a RSD 1,700 fee.²⁷ In Serbia, e-documents are not treated in the same manner as the ones in paper form.

The majority of registered business companies in Serbia have since 2018 been *obliged to register their beneficial owners* in the Central Records of Beneficial Owners kept by the BRA. A *Beneficial Owner* (LBO, 2019, art. 3.) is a natural person that ultimately owns or controls a registered legal entity, if it is not possible to identify the beneficial owner in any other way, a natural person who is registered as the representative, or registered as a member of a body of that entity will be considered the beneficial owner of a

²⁴ If the applicant of e-application is a future member, they sign the application with their own e-signature. If it is an authorised representative, they sign the application with their own e-signature, and the power of attorney must be attached in a form of e-document (signed by the future company member with their own signature) (<https://www.apr.gov.rs/usluge/eusluge/registracija-osnivanja-jednoclanog-i-viseclanog-doo.2405.html>).

²⁵ For example, Limited Liability Company is stated in the application and LTD in the act. Such discrepancy is the reason for rejecting the application.

²⁶ Application data are registered in the manner entered by the applicant.

²⁷ <https://www.apr.gov.rs/usluge/eusluge/registracija-osnivanja-jednoclanog-i-viseclanog-doo.2405.html>.

registered entity. The listed below entities have the obligation to record beneficial owners within a 15-day period: all business companies, companies in liquidation, branch offices of foreign companies, business associations, institutions, representative offices of foreign companies, etc. The listed below entities have no such obligation: sole traders, public JSCs, companies in bankruptcy, companies and institutions where the RS (a province or a local self-government unit) is the only member and others (LBO, 2019, art. 2 and 7). Recording beneficial owners is done exclusively by e-mail. The founders who had, but avoided, the possibility of incorporation electronically, are obliged to fulfil this obligation in e-form, meaning they must meet all the requirements requested for e-registration (opening an account in the BRA, e-signature, e-card reader, NEXU application). Numerous manuals and instructions available on the BRA website prove that performing this legal obligation is not simple. For searching the Records of Beneficial Owners, an account created in the BRA User System is necessary, and the search is conducted using the registration code.

CONCLUSION

Entering data in the BRA registers is strictly formal and requires identity in stating data in all the documents used during registration. In the national BRA, there is no clear distinction in using traditional registration procedures and e-procedures. Persons who would rather use e-services only cannot do it; on the other hand, persons inclined to traditional procedures must implement a part of obligations electronically. Say, a person registered electronically changes any later changes to registered data (members, shares, capital, etc.) exclusively by filing registration application which has to be mailed to the BRA or delivered personally. On the other hand, the registration of beneficial owners of business companies, and the later changes thereof, as well as registration of financial statements, are done electronically exclusively. Data from practice²⁸ show that the founders mainly engage lawyers for the purpose of incorporation (even then the traditional procedure is mainly used), due to numerous formalities following this process, starting from the content of the memorandum of association to completing registration applications (preparation of documents and the registration itself, taking approximately 15 days). The BRA may reject registration applications for the slightest error, though. Problems also occur after incorporation, when opening business accounts with banks, particularly if the founder is a foreign legal person (every bank has its own requirements). As far as the costs are concerned, the fee of the BRA amounts to RSD 4,900 for legal entities, plus

²⁸ Information from the BRA and a number of lawyers' offices.

RSD 1,000 for publishing the memorandum of association and the notarisation of signatures on the memorandum of association, equalling RSD 360 per signature. Additional costs can occur when the founder of a company in Serbia is a foreign person, then the extracts from the foreign register of business companies need to be translated into Serbian. Regarding the fees for legal services, the price of drafting a memorandum of association amounts approximately to RSD 30,000²⁹ or for some more complex acts, the service of registration itself amounts from EUR 100 to EUR 150. Because of the significance of contractual regulation of relationships among company members (Kraakman et al., 2009: 19), particularly when one of the members is a foreign person, the founders may bear significant costs for having such contract drafted by a lawyer. If an economic entity ceases to exist, the procedure for its deletion from the Register takes somewhat longer, given the commitments undertaken in legal transactions. Say, striking-off an LTD company from the Register in a liquidation procedure takes approximately 6 months. Based on all the aforementioned, we may conclude that a significant advancement is made in Serbia in stimulating e-incorporation of legal entities; however, in the future period, further efforts in the simplification of the incorporation procedure should be made (by using less formal and more operational e-programmes) and the e-registration of other data documents kept by the BRA should be enabled.

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²⁹ https://www.paragraf.rs/propisi_download/advokatska_tarifa_tabelarni_prikaz_nagrada_sa_zapocetim_satom.pdf

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ОСНИВАЊЕ ПРИВРЕДНИХ ДРУШТАВА У СРБИЈИ – ЗАСТУПЉЕНОСТ ЕЛЕКТРОНСКЕ И ТРАДИЦИОНАЛНЕ ПРОЦЕДУРЕ

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Резиме

Унос података у регистре АПР-а строго је формалан а домаћи оснивачи привредних друштава немају могућност да се одлуче искључиво за традиционалну или електронску процедуру регистрације. Лица која би радо користила само е-услуге АПР-а то нису у могућности, са друге стране лица која су наклоњена традиционалним процедурама део обавеза морају реализовати е-путем. Рецимо, лице регистровано е-путем касније промене регистрованих података (чланова, удела, капитала и сл.) мењају искључиво подношењем регистрационих пријава које се шаљу АПР-у поштом или предају лично. Са друге стране, регистрација стварних власника привредних субјеката, и њихове касније промене, као и регистрација финансијских извештаја, врше се искључиво е-путем. Подаци из праксе показују да оснивачи углавном ангажују адвокате за потребе оснивања, због бројних формалности које прате овај процес, почев од садржине оснивачког акта па до попуњавања регистрационих пријава. АПР одбацује регистрационе пријаве и због најмање грешке. Проблеми настају и након оснивања, приликом отварања пословних рачуна код банака, посебно ако је оснивач страном правно лице (свака банка има своје захтеве). Што се трошкова оснивања тиче, накнада АПР-у тренутно нису високе али додатни трошкови могу настати када је оснивач привредног друштва у Србији страном лице, тада је потребно легализовати и превести на српски језик изводе из страног регистра привредних субјеката. Оснивачи имају и трошкове у виду накнада за адвокатске услуге у вези са израдом оснивачког акта као и услуге регистрације. Због значаја уговорног регулисања односа између чланова друштва, посебно када је неко од чланова страном лице, оснивачи могу имати значајан издатак за са чињавање овог уговора код адвоката. Уколико дође до престанка постојања привредног субјекта, процедура брисања из Регистра траје нешто дуже, с обзиром на преузете обавезе у правном промету. На основу свега реченог, можемо закључити, да је у Србији учињен значајан помак у стимулисању е-оснивања привредних субјеката али да у будућем периоду ваља радити на поједностављивању процедуре оснивања (употребом мање формалних и оперативнијих е-програма) и омогућити е-регистрацију и других података и докумената који се у АПР-у воде.