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**Prof. dr Mladenka M. Balaban<sup>1</sup>**  
**Dejan V. Hadžić, dipl. ek.<sup>2</sup>**  
**Rade S. Tojagić, dipl. pravnik<sup>3</sup>**

## **REGULISANJE DRUŠTVENOG KAPITALA U DRUŠTVIMA ZA OSIGURANJE U REPUBLICI SRBIJI**

PREGLEDNI RAD

### **Apstrakt**

Društveni kapital, kao specifičnost Socijalističke Federativne Republike Jugoslavije, opstao je u pojedinim društvima za osiguranje u Srbiji i u prvoj polovini dvadeset prvog veka. Posedovanje društvenog kapitala u strukturi ukupnog kapitala otežavalo je poslovanje društvima za osiguranje i ova društva praktično stavljalo u neravnopravan položaj u odnosu na direktne konkurente, ali i na ostale učesnike na finansijskom tržištu. Navedena situacija je uticala na to da Vlada predloži izmenu i dopune Zakona o osiguranju, koji na sistemski i trajan način regulišu pitanje društvenog kapitala u društvima za osiguranje.

***Ključne reči:*** društveni kapital, društva za osiguranje, privatizacija, akcije

### **I. Uvod**

Društveni kapital i samoupravljanje predstavljali su specifičnost i osnovu privrednog ambijenta i poslovanja u Socijalističkoj Federativnoj Republici Jugoslaviji.

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<sup>1</sup> Profesor, Beogradska bankarska akademija, Fakultet za bankarstvo, osiguranje i finansije, imejl: mladenka.balaban@bba.edu.rs

<sup>2</sup> Rukovodilac Grupe za osiguranje i nepokretnosti u Ministarstvu finansija, imejl: dejanh78@yahoo.com

<sup>3</sup> Samostalni savetnik u Grupi za osiguranje i nepokretnosti u Ministarstvu finansija, imejl: radetojagic@gmail.com

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Kolokvijalno, društveni kapital bio je predstavljen kao „svačiji i ničiji“, to jest kao kapital koji nema jasno određenog titulara, što je zasigurno imalo negativan uticaj na produktivnost, efikasnost i ekonomičnost, a samim tim i na konkurentnost u odnosu na privredna društva sa nekim drugim oblikom svojine. Prvi put je društvena svojina okarakterisana kao kapital 1988. godine u amandmanima na Ustav i time je počeo proces njene transformacije. U skladu sa društveno-ekonomskim promenama na globalnom nivou, već s kraja osamdesetih godina prošlog veka, započeta je svojinska transformacija društvenog kapitala u privatni, odnosno državni kapital, što je bio jedan od glavnih činilaca celokupne tranzicije iz jednog društveno-ekonomskog sistema u drugi. Organizovati poslovni ambijent za preduzeće faktički znači organizovati pojedinačne institucije, njihove odnose na tržišnim principima, sve te odnose urediti u konzistentan sistem. Uslov za to je organizovati i funkcije države na moderan način, u smislu podsticajnog, razvojno usmerenog faktora privrede.<sup>4</sup> Ta svojinska transformacija, to jest privatizacija vršena je primenom različitih zakona koji su se menjali tokom poslednjih tridesetak godina, sa više ili manje uspešnim konačnim rezultatom. Do 2021. godine društveni kapital je još uvek opstajao u pojedinim društvima za osiguranje<sup>5</sup> koja su činila značajan deo tržišta osiguranja u Srbiji.<sup>6</sup>

## II. Dosadašnji pravni okvir

Društvena svojina se u najvišem pravnom aktu, Ustavu, spominje samo u članu 86, kojim se, pod naslovom *Ravnopravnost svih oblika svojine*, jamče privatna, zadružna i javna svojina (koje obuhvataju državnu svojinu, svojinu autonomne pokrajine i svojinu jedinica lokalne samouprave) i kojim svi ti oblici svojine imaju jednaku pravnu zaštitu, dok se „postojeća društvena svojina pretvara u privatnu svojinu pod uslovima, na način i u rokovima predviđenim zakonom“ (navedeno u: propisi 1).

Različita zakonska rešenja (propisi navedeni u literaturi) i podzakonski akti su, u proteklih više od 30 godina, regulisali transformaciju, odnosno privatizaciju društvenog kapitala, to jest prodaju javne svojine. Imajući u vidu specifičnosti nekih delatnosti, određene odredbe koje se tiču privatizacije bile su deo sistemskih zakona koji uređuju konkretnu oblast, dok je donet i poseban zakon (navedeno u: propisi 10) koji uređuje raspodelu besplatnih akcija velikih državnih sistema.<sup>7</sup>

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<sup>4</sup> Cvijanović D, Mihailović B, Simonović, Z.(2008): „Tranzicija u Srbiji: efekti i ograničenja“, *Tranzicija*, Vol. 10, Publisher Ekonomski institut Tuzla, JCEA Zagreb, DAEB, IEP Beograda, feam Bukurest, str. 87–100.

<sup>5</sup> Kompanija „Dunav osiguranje“ a.d.o. Beograd, „Dunav Re“ a.d.o. Beograd i „Triglav osiguranje“ a.d.o. Beograd.

<sup>6</sup> Više od trećine tržišta, prema iznosu premije za 2020. godinu.

<sup>7</sup> Javnog preduzeća „Elektroprivreda Srbije“ Beograd, Preduzeća za telekomunikacije „Telekom“ a.d. Beograd i Javnog preduzeća Aerodrom „Nikola Tesla“, Beograd.

Svi navedeni propisi uređivali su način transformacije, to jest privatizacije društvenog kapitala, utvrđivali metode prodaje, podelu „besplatnih“ akcija, subjekte koji dobijaju „besplatne“ akcije, odnos raspodele „besplatnih“ akcija, instituciju nadležnu za sprovođenje postupka i sl. Liberalizacija tržišta i formiranje efikasnih institucija u finansijskom sektoru predstavljali su značajan izazov za zemlje u tranziciji, pogotovo zbog činjenice što je formiranje tržišno orijentisanih bankarskih sistema i tržišta kapitala otpočelo od nule.<sup>8</sup>

### **III. Društveni kapital u društvima za osiguranje**

Tri<sup>9</sup> društva za osiguranje u Srbiji su ušla u 2021. godinu sa većim ili manjim učešćem društvenog kapitala u strukturi ukupnog kapitala: Kompanija „Dunav osiguranje“ a.d.o. Beograd, „Dunav Re“ a.d.o. Beograd i „Triglav osiguranje“ a.d.o. Beograd. Učešće društvenog kapitala u tim društvima je različito – od 0,12% u „Triglav osiguranju“, preko 4,58% u „Dunavu Re“ do 51,86% u Kompaniji „Dunav osiguranje“. Takođe, tokom godina učešće društvenog kapitala se smanjivalo iz različitih razloga, npr. 2006. godine, kada je preuzeto „Kopaonik osiguranje“, učešće u (sadašnjem) „Triglav osiguranju“ je bilo 8,39%, da bi tokom godina kroz odluke o pokriću gubitka i dokapitalizacijama od strane većinskog akcionara to učešće došlo do 0,12%, dok je učešće društvenog kapitala u Kompaniji „Dunav osiguranje“ pre dokapitalizacije od strane države (u decembru 2014. godine) iznosilo čak 94,61%. Postojanje društvenog kapitala, kao neke vrste neregulisanog kapitala, to jest kapitala bez jasno određenog titulara, na tržištu osiguranja, jednom od najvažnijih segmenata ukupnog finansijskog tržišta, sigurno je bilo jedan od faktora koji su uticali na to da sektor osiguranja u proteklom vremenu ne ostvari svoj pun potencijal, naročito ako imamo u vidu to da je lider na tržištu osiguranja poslovao sa većinskim društvenim kapitalom. Imajući u vidu da društvena svojina nije prepoznata u Ustavu, da nema titulara, ona otežava poslovanje i vođenje poslovnih knjiga tih društava za osiguranje, što navedena društva stavlja u neravnopravan položaj u odnosu na ostale učesnike na tržištu. Kao primer, može da se navede činjenica da je otežana primena Zakona o privrednim društvima (odnos između vlasničke i upravljačke strukture), a stvaranja obaveza po osnovu neisplaćenih dividendi koje pripadaju društvenom kapitalu (pošto ne mogu biti isplaćene, jer nije poznat titular društvenog kapitala) otežava pripremu za buduće usklađivanje kapitalnih zahteva sa Direktivom Solventnost II.

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<sup>8</sup> Kovačević, R. (2002), „Tranzicija zemalja centralne i istočne Evrope u tržišnu privredu“, *Privredna izgradnja*, Beograd XLV: 3–4, str. 149–178.

<sup>9</sup> Napomena: Privatizacija društvenog kapitala u društvu za osiguranje DDOR a.d.o. Novi Sad izvršena je početkom 2008. godine.

## **IV. „Privatizacija“ društvenog kapitala u društvima za osiguranje – pravni okvir**

Pravni okvir za eventualnu privatizaciju društvenog kapitala u društvima za osiguranje predstavljao je pravu zbrku, koju bi bilo teško ili skoro nemoguće sprovesti u praksi. Naime, novi zakon o osiguranju iz 2014. godine odredbama člana 280 stav 2 napravio je vezu sa prethodnim zakonom o osiguranju (koji je donošenjem novog zakona prestao da važi) tako što je utvrdio da će se „odredbe čl. od 243 do 243v. i čl. od 243d. do 243ž. Zakona o osiguranju (*Službeni glasnik RS*, br. 55/2004, 70/2004 – ispravka, 61/2005, 61/2005 – dr. zakon, 85/2005 – dr. zakon, 101/2007, 63/2009 – odluka US, 107/2009, 99/2011, 119/2012 i 116/2013) primenjivati na društva za osiguranje do okončanja postupka privatizacije tih društava“.

A šta je predviđao taj stari zakon o osiguranju? Njime je utvrđeno da je predmet privatizacije društveni, odnosno državni kapital u društvima za osiguranje, da postupak privatizacije rešenjem pokreće Ministarstvo finansija (koje i vrši nadzor nad sprovođenjem postupka), dok Agencija za osiguranje depozita organizuje i sprovodi postupak kapitalizacije. U postupku privatizacije se prodaje 70% društvenog kapitala, a prodaja se sprovodi metodom javnog tendera u skladu sa uredbom Vlade (videti u propisima pod 16). Određeno je i kako se raspoređuju sredstava od prodaje.<sup>10</sup> Takođe, utvrđeno je da se na postupak privatizacije kapitala u društvima za osiguranje, ako predmetnim zakonom nije drugačije uređeno, primenjuju odredbe zakona kojim se uređuje privatizacija društvenog i državnog kapitala u preduzećima i drugim pravnim licima. Rešenja u pomenutoj uredbi bila su usklađena sa rešenjima o privatizaciji ostalih pravnih lica, a koja se sprovodi metodom javnog tendera (pošto je za ostala pravna lica postojala i mogućnost privatizacije putem aukcije). Taj zakon je, takođe, bio usklađen sa sada već starim zakonom o privatizaciji (videti u propisima pod 5), koji je predviđao da se prenos kapitala bez naknade obavlja posle sprovedene prodaje kapitala (prenosom akcija zaposlenima i prenosom akcija građanima), a da kapital za sticanje akcija bez naknade u subjektu privatizacije primenom metoda javnog tendera iznosi najviše 15% kapitala koji se privatizuje.

Početak 2021. godine situacija je bila sledeća: pored već pomenutog novog zakona o osiguranju (iz 2014. godine), imamo i novi zakon o privatizaciji, koji na potpuno drugi način reguliše pitanje privatizacije<sup>11</sup> i koji doprinosi dodatnoj konfuziji kada je u pitanju privatizacija društvenog kapitala u društvima za osiguranje. Naime, propisana je odredba da se, ako je tim zakonom uređeno pitanje koje

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<sup>10</sup> Sredstva ostvarena prodajom, nakon izmirenja troškova (troškovi prodaje, provizija) i izdvajanja iznosa od 10% od ostvarene kupoprodajne cene za potrebe Garantnog fonda osiguranja, Agencija za osiguranje depozita uplaćuje na račun budžeta Republike Srbije.

<sup>11</sup> Potpuno drugačiji koncept u odnosu na prethodni zakon o privatizaciji sa kojim je bio usklađen Zakon o osiguranju – usmeren je na, do sada, neprivatizovana preduzeća iz privrede (uglavnom u restrukturiranju).

je drugim zakonom na drukčiji način regulisano, primenjuju odredbe tog zakona. Predviđene su mere u cilju pripreme i rasterećenja subjekata, pored ostalog otpis dugova nakon uspešne prodaje kapitala ili dokapitalizacije (MPRS). Zakonom je utvrđen rok za okončanje privatizacije društvenog kapitala do kraja 2015. godine, što nije sprovedeno.<sup>12</sup> Kao predmet privatizacije je određen, pored ostalog, društveni odnosno javni kapital ili imovina u preduzećima i drugim pravnim licima uključujući i javna preduzeća. Propisano je da je privatizacija obavezna za subjekte privatizacije sa društvenim kapitalom i da se društveni kapital subjekta privatizacije mora privatizovati najkasnije do 31. decembra 2015. godine! Sve postupke privatizacije sprovodi i kontroliše Ministarstvo privrede, određeni su modeli privatizacije (prodaja kapitala, prodaja imovine, prenos kapitala bez naknade i strateško partnerstvo), dok metod prodaje kapitala i imovine predstavlja javno prikupljanje ponuda sa javnim nadmetanjem. Kapital za sticanje akcija bez naknade u postupku prodaje kapitala ne može biti veći od 30% društvenog kapitala koji se privatizuje, a Ministarstvo privrede će podneti predlog za pokretanje postupka stečaja subjekta privatizacije u slučaju da privatizacija subjekta privatizacije sa većinskim društvenim kapitalom ne bude sprovedena do 31. decembra 2015. godine. Zakonom o Agenciji za osiguranje depozita utvrđeno je da će Agencija poslove koje obavlja u skladu sa prethodnim zakonom o Agenciji za osiguranje depozita (videti u propisima pod 6), a koje ne obavlja u skladu sa odredbama ovog zakona, nastaviti da obavlja do njihovog preuzimanja od strane Ministarstva finansija, odnosno drugog nadležnog organa, u skladu sa zakonom. Te poslove, pored ostalih, predstavlja i realizacija postupka prodaje društvenog kapitala u društvima za osiguranje u skladu sa zakonom kojim se reguliše osiguranje. Na kraju, jedna od nadležnosti Ministarstva finansija prema postojećem zakonu o ministarstvima jesu i poslovi državne uprave koji se odnose na učestvovanje u upravljanju bankama, društvima za osiguranje i drugim finansijskim institucijama čiji je akcionar Republika Srbija, kao i organizovanje i sprovođenje postupka prodaje akcija u njima, te privatizacija i sanacija banaka i drugih finansijskih organizacija.

## **V. Rešenje za regulisanje društvenog kapitala u društvima za osiguranje**

Uzimajući u obzir sve prethodno navedeno, jasno je bilo da je postojeći pravni okvir koji bi rešio pitanje društvenog kapitala u društvima za osiguranje neadekvatan i praktično nesprovodljiv. Naime, usled zakonskih propisa koji su promenjeni poslednjih godina došlo se do suprotstavljenih odredbi: nadležnost za organizovanje i sprovođenje privatizacije (Agencija za osiguranje depozita i Ministarstvo finansija

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<sup>12</sup> Milosavljević, J, Milošević, I, (2019), „Privatizacija u Republici Srbiji“, *Civitas* 9 (2), str. 101–113.

vs. Ministarstvo privrede), metoda prodaje (javni tender vs. više različitih modela i metoda privatizacije), različita raspodela sredstava, pokretanje stečaja od strane Ministarstva privrede za subjekte privatizacije koji ne okončaju privatizaciju do kraja 2015. godine (nemoguće za društva za osiguranje, jer nije u skladu sa mnogim gorepomenutim zakonima) i sl. Takođe, ako bismo zanemarili odredbe zakona o privatizaciji i posmatrali samo odredbe propisane zakonom o osiguranju, došli bismo do zaključka da je predviđeno rešenje prevaziđeno (ne odgovara postojećim tržišnim uslovima<sup>13</sup>), odnosno neracionalno i neefikasno.<sup>14</sup>

S obzirom na sve to, krajem aprila 2021. godine usvojen je Zakon o izmeni i dopunama Zakona o osiguranju.<sup>15</sup> Predmetni zakon je, rekli bismo, uspeo da pomiri različite odredbe dosadašnjih zakona koji se bave pitanjem društvenog kapitala u društvima za osiguranje, kao i dosadašnju praksu prodaje društvenog kapitala i raspodele besplatnih akcija zaposlenima, s jedne strane, sa interesima društava za osiguranje, države, zaposlenih i uslovima na tržištu, s druge strane. Naime, zakonom se predviđa promena vlasničkih prava na društvenom kapitalu<sup>16</sup> tako što se 70% društvenog kapitala prenosi na Republiku Srbiju, do 25% društvenog kapitala se prenosi zaposlenima, bez naknade (tzv. besplatne akcije), dok se najmanje 5% društvenog kapitala prenosi Akcionarskom fondu.

**Tabela 1. Kapital kompanije „Dunav osiguranje“ pre i posle sprovedene Odluke Vlade RS**

Struktura kapitala PRE sprovođenja Odluke Vlade			Struktura kapitala NAKON sprovedene Odluke Vlade		
Naziv	Broj akcija	Učešće	Naziv	Broj akcija	Učešće
Društveni kapital	/	51,86%	Republika Srbija	11.650.612	76,70%
Akcijski kapital	4.226.121	48,14%	Zaposleni (besplatne akcije)	2.740.770	18,04%
Republika Srbija	3.976.455	45,30%	Akcionarski fond	548.154	3,61%
Ostali akcionari	249.666	2,84%	Ostali akcionari	249.666	1,64%
<b>Ukupno</b>	<b>4.226.121</b>	<b>100,00%</b>	<b>Ukupno</b>	<b>15.189.204</b>	<b>100,00%</b>

Izvor: kreacija autora

<sup>13</sup> Ne omogućuje različite opcije prodaje, prilagođene tržišnim uslovima.

<sup>14</sup> Na primer: sprovođenje prodaje 70% društvenog kapitala, putem tendera, i raspodele besplatnih akcija u „Triglav osiguranju“ a.d.o, gde ukupan društveni kapital iznosi samo 0,12% ukupnog kapitala društva.

<sup>15</sup> Službeni glasnik RS, br. 44/21.

<sup>16</sup> Društvenim kapitalom se smatra kapital u društvenom vlasništvu i sredstva dividende ostvarena po osnovu tog vlasništva.

Predviđeno je i da Vlada donese odluku, za svako društvo za osiguranje (subjekt prenosa) posebno, koja, pored ostalog, sadrži podatke o društvenom kapitalu koji se prenosi i rokovima za okončanje postupka. Što se tiče prava na besplatne akcije koje dobijaju zaposleni,<sup>17</sup> utvrđeno je da se pravo može ostvariti najviše za 35 godina provedenih u radnom odnosu (sticanje akcija čija je ukupna nominalna vrednost 200 evra u dinarskoj protivvrednosti po zvaničnom srednjem kursu, za svaku punu godinu rada u radnom odnosu kod subjekata prenosa), pod uslovom da pravo na akcije bez naknade nisu na bilo koji način ostvarili, u celosti ili delimično, u skladu sa nekim od ranijih zakona koji su regulisali privatizaciju i/ili podelu besplatnih akcija. Takođe, uzimajući u obzir racionalnost i efikasnost, predmetnim zakonom je predviđen izuzetak kod raspodele društvenog kapitala, gde je utvrđeno da se u društvima za osiguranje u kojima društveni kapital iznosi do 0,2% ukupnog kapitala društva taj kapital prenosi na Akcionarski fond.

**Tabela 2. Kapital kompanije „Dunav Re“ pre i posle sprovedene Odluke Vlade RS**

Struktura kapitala PRE sprovođenja Odluke Vlade			Struktura kapitala NAKON sprovedene Odluke Vlade		
Naziv	Broj akcija	Učešće	Naziv	Broj akcija	Učešće
Društveni kapital	/	4,58%	Republika Srbija	46.650	5,32%
Akcijski kapital	810.830	95,42%	Zaposleni (besplatne akcije)	16.660	1,90%
Kompanija „Dunav osiguranje“	751.260	88,41%	Akcionarski fond	3.332	0,32%
Ostali akcionari	59.570	7,01%	Kompanija „Dunav osiguranje“	751.260	85,62%
			Ostali akcionari	59.570	6,79%
<b>Ukupno</b>	<b>810.830</b>	<b>100,00%</b>	<b>Ukupno</b>	<b>877.472</b>	<b>100,00%</b>

Izvor: kreacija autora

Na osnovu pomenutog zakona, Vlada je početkom septembra 2021. godine donela Odluku o prenosu društvenog kapitala Akcionarskog društva za osiguranje „Triglav osiguranje“ a.d.o. Beograd,<sup>18</sup> kojom je, pored ostalog, propisano da subjekt

<sup>17</sup> Zaposlenima se smatraju državljani Republike Srbije koji su zaposleni ili ranije bili zaposleni (smatraju se i penzioneri) u subjektu prenosa i kontrolisanim društvima subjekta prenosa.

<sup>18</sup> Službeni glasnik RS, br. 86/21.

prenosa u određenom roku sprovede prenos društvenog kapitala<sup>19</sup> na Akcionarski fond „Triglav osiguranje“ a.d.o. Beograd je sprovedo sve neophodne radnje, u skladu sa navedenom odlukom, tako da je 5. oktobra 2021. godine<sup>20</sup> u Centralni registar, depo i kliring hartija od vrednosti upisan Akcionarski fond kao akcionar „Triglav osiguranja“ a.d.o. Beograd, što praktično znači da u strukturi ukupnog kapitala „Triglav osiguranja“ a.d.o. Beograd više nema društvenog kapitala.

S obzirom na strukturu kapitala i učešće društvenog kapitala, odluke Vlade koje se odnose na prenos društvenog kapitala Kompanije „Dunav osiguranje“ a.d.o. Beograd<sup>21</sup> i „Dunava Re“ a.d.o. Beograd<sup>22</sup> su kompleksnije imajući u vidu da propisuju i postupak raspodele besplatnih akcija zaposlenima.

**Tabela 3. „Triglav osiguranje“ a.d.o. Beograd pre i posle sprovedene Odluke Vlade RS**

Struktura kapitala PRE sprovođenja Odluke Vlade			Struktura kapitala NAKON sprovedene Odluke Vlade		
Naziv	Broj akcija	Učešće	Naziv	Broj akcija	Učešće
Društveni kapital	/	0,12%	„Triglav Int“ d.d.	1.962.879	99,88%
Akcijski kapital <sup>23</sup>	1.962.879	99,88%	Akcionarski fond <sup>24</sup>	2.376	0,12%
<b>Ukupno</b>	<b>1.962.879</b>	<b>100,00%</b>	<b>Ukupno</b>	<b>1.965.255</b>	<b>100,00%</b>

Izvor: kreacija autora

Ove odluke, pored odredbi koje se tiču prenosa društvenog kapitala Republici Srbiji i Akcionarskom fondu, sadrže i odredbe koje detaljno propisuju proceduru u vezi sa raspodelom besplatnih akcija zaposlenima. Tako da su, pored ostalog, propisani rokovi u vezi sa javnim pozivom kojim se obaveštavaju zaposleni o odluci subjekta prenosa o izdavanju akcija zaposlenima, bez naknade, obavezan sadržaj javnog poziva, kao i nadležnost Ministarstva privrede da vrši kontrolu ispunjenosti zakonskih uslova za prenos društvenog kapitala i sl. Takođe, odluke propisuju i

<sup>19</sup> 0,12% iskazano u 2.376 akcija.

<sup>20</sup> <http://www.crhov.rs/?obavestjenjeID=8da1c04b-3815-4824-89be-cc9ab6305fb9>

<sup>21</sup> Odluka o prenosu društvenog kapitala Kompanije „Dunav osiguranje“ a.d.o. Beograd, *Službeni glasnik RS* br. 96/21.

<sup>22</sup> Odluka o prenosu društvenog kapitala Društva za reosiguranje „Dunav Re“ a.d.o. Beograd, *Službeni glasnik RS* br. 96/21.

<sup>23</sup> Jedan akcionar – „Triglav Int“ d.d.

<sup>24</sup> U međuvremenu je većinski akcionar „Triglav Int“ d.d. Ljubljana izvršio prinudni otkup akcija od Akcionarskog fonda, tako da je sada jedini akcionar „Triglava Int“ d.d., <http://www.crhov.rs/?obavestjenjeID=7be31f19-b10f-42f7-9bd9-80202e51e754>



tretman razlike<sup>25</sup> između ukupne visine društvenog kapitala koji se prenosi i ukupne nominalne vrednosti akcija koje će biti izdate po osnovu prenosa društvenog kapitala. Kompanija „Dunav osiguranje“ a.d.o Beograd i „Dunav Re“ a.d.o. Beograd sproveli su sve neophodne radnje u skladu sa navedenim odlukama tako da su 25. novembra 2021. godine,<sup>26</sup> odnosno 7. decembra 2021. godine,<sup>27</sup> Republika Srbija i Akcionarski fond upisani, po osnovu prenosa društvenog kapitala, u Centralni registar, depo i kliring hartija od vrednosti, kao akcionari ova dva društva. Oba društva su, u rokovima i na način propisan predmetnim odlukama Vlade, objavili javni poziv za upis akcija bez naknade,<sup>28</sup> tako da se može očekivati, uzimajući u obzir proceduru za donošenje rešenja Ministarstva privrede o prenosu kapitala zaposlenima bez naknade, da do sredine 2022. godine ni Kompanija „Dunav osiguranje“ a.d.o. Beograd ni „Dunav Re“ a.d.o. Beograd u strukturi ukupnog kapitala neće imati društveni kapital, odnosno da će učesnici na tržištu osiguranja u Republici Srbiji napokon poslovati bez učešća društvenog kapitala.

Imajući u vidu sve navedeno, konačni rezultat ovakvog rešenja za regulisanje društvenog kapitala u društvima za osiguranje trebalo bi da bude sledeći:

## **VI. Zaključak**

Neophodnost regulisanja društvenog kapitala u društvima za osiguranje u Republici Srbiji nijednog trenutka nije bila upitna, naročito ako se ima u vidu da je pitanje društvenog kapitala rešeno pre deceniju ili dve u svim državama bivše Jugoslavije i da društveni kapital ne postoji ni u jednom društvu za osiguranje niti u bilo kom drugom subjektu u finansijskom sektoru. Imajući u vidu neprimenljivost i neadekvatnost (prevaziđenost) pravnog okvira u vezi sa postupanjem sa društvenim kapitalom u društvima za osiguranje, na predlog Vlade (Ministarstva finansija) usvojene su izmena i dopune Zakona o osiguranju, čime je napravljen pravni okvir kojim se omogućava konačno brisanje, odnosno pretvaranje društvenog kapitala u akcijski kapital u društvima za osiguranje. Usvojeno rešenje je na najbolji način pomirilo mnoge aspekte tako da će situacija, po okončanju celog postupka prenosa društvenog kapitala na propisane subjekte (Republiku Srbiju, Akcionarski fond, zaposlene), imati višestruke pozitivne efekte: predmetna društva će napokon imati čistu strukturu kapitala koja će im omogućiti nastavak poslovanja u modernom korporativnom okruženju (što može da ima samo pozitivan uticaj na ukupno

<sup>25</sup> Razlika je manja od nominalne vrednosti jedne akcije.

<sup>26</sup> Za Kompaniju „Dunav osiguranje“ a.d.o. Beograd, <http://www.crhov.rs/?obavestenjeID=22ea5423-9ac2-414d-b232-6d1aeedc0a8d>

<sup>27</sup> Za „Dunav Re“ a.d.o. Beograd, <http://www.crhov.rs/?obavestenjeID=d37be872-1bd2-4b64-8e6c-f7cc5c01086d>

<sup>28</sup> Rok za upis akcija je bio do 29. decembra 2021. godine, <https://www.dunav.com/media/obavestenja-oglasii/>, <http://dunavre.rs/>

poslovanje ovih društava, kao i na celokupno tržište osiguranja), zaposleni će odmah dobiti besplatne akcije (a ne tek po okončanju postupka privatizacije, kako je bilo pravilo po ranijim zakonima koji su regulisali privatizaciju) i time dobiti mogućnost da raspolažu tom svojom imovinom, dok bi pozitivan uticaj to trebalo da ima i na tržište kapitala i promet na berzi (povećava se broj akcija kojima može da se trguje (tzv. *free float*), na način da se povećava atraktivnost tržišta kapitala i zainteresovanost potencijalnih investitora (naročito institucionalnih investitora).

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**Professor Mladenka M. Balaban, PhD<sup>1</sup>**  
**Dejan V. Hadžić, B. Sc. econ<sup>2</sup>**  
**Rade S. Tojagić, LL.B<sup>3</sup>**

## **REGULATING SOCIALLY-OWNED CAPITAL IN INSURANCE COMPANIES IN THE REPUBLIC OF SERBIA**

REVIEW ARTICLE

### **Abstract**

Socially-owned capital, as a specificity of the Socialist Federative Republic of Yugoslavia, survived in some insurance companies in Serbia in the first half of the twenty-first century. The possession of socially-owned capital in the total capital structure hindered the operation of insurance companies and practically placed them in an unequal position in relation to their direct competitors and other participants in the financial market. The aforementioned situation prompted the Government to propose amendments to the Insurance Law, which systematically and permanently regulates the issue of socially-owned capital in insurance companies.

**Keywords:** *socially-owned capital, insurance companies, privatization, shares*

### **I. Introduction**

Socially-owned capital and self-management represented the specificity and basis of the economic environment and business in the Socialist Federative Republic

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<sup>1</sup> Professor, Belgrade Banking Academy, Faculty of Banking, Insurance and Finance, e-mail: mladenka.balaban@bba.edu.rs

<sup>2</sup> Head of Insurance and Real Estate Group at the Ministry of Finance, e-mail: dejanh78@yahoo.com

<sup>3</sup> Independent Advisor to the Insurance and Real Estate Group at the Ministry of Finance, e-mail: radetojagic@gmail.com

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of Yugoslavia. Colloquially, socially-owned capital was presented as “everyone’s and nobody’s”, that is, as capital that does not have a clearly defined owner, which certainly had a negative impact on productivity, efficiency and economy, and therefore on competitiveness in relation to the companies with other forms of ownership. It was in 1988 when social property was described as capital in the amendments to the Constitution, when the process of its transformation was initiated. In accordance with global socio-economic changes, at the end of the 1980s, the ownership transformation of socially-owned capital into privately-owned, i.e., state capital began as one of the main factors of the entire transition from one socio-economic system to another. Organizing a business environment for a company actually means organizing individual institutions, their market-based relationships, and arranging all these relationships into a consistent system. This required organizing the functions of the state in a modern way, as a stimulating, development-oriented factor of the economy.<sup>4</sup> Such ownership transformation, i.e., privatization, was carried out through the enactment of various laws that over the last thirty years have changed, with more or less success. Until 2021, socially-owned capital still survived in particular insurance companies<sup>5</sup> which account for a significant share in the Serbian insurance market.<sup>6</sup>

## II. Legal Framework to Date

In the highest legal authority, the Constitution, social property is mentioned only in Article 86, which, under the title *Equality of all forms of property*, guarantees private, cooperative and public assets (which includes state assets, assets of autonomous provinces and assets of local self-government units) and all these forms of assets have equal legal protection, while “existing social assets shall become private assets under the terms, in a manner and within the deadlines stipulated by the law” (stated in Regulation 1).

For more than 30 years, various legal solutions (regulations listed in the literature) and by-laws have regulated the transformation, that is, the privatization of socially-owned capital, namely, the sale of public property. Bearing in mind the specifics of certain activities, particular provisions concerning privatization were part of the systemic laws that govern a specific area, while a special law was passed (listed in Regulation 10) that governs the distribution of free shares of large state-owned enterprises.<sup>7</sup> All the aforementioned regulations regulated the method of

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<sup>4</sup> Cvijanović D, Mihailović B, Simonović Z.(2008): „Tranzicija u Srbiji: efekti i ograničenja“, *Tranzicija*, Vol. 10, Publisher Ekonomski institut Tuzla, JCEA Zagreb, DAEB, IEP Belgrade, feam Bukurest, pp. 87–100

<sup>5</sup> Dunav Insurance Company a.d.o. Beograd, „Dunav Re“ a.d.o. Belgrade i „Triglav osiguranje“ a.d.o. Belgrade.

<sup>6</sup> More than a third of the market, according to the premium amount in 2020.

<sup>7</sup> Public enterprise Electric Power Distribution of Serbia Belgrade, Telecommunication Company Telekom a.d. Belgrade and Public Company Airport Nikola Tesla, Belgrade.

transformation, that is, the privatization of socially-owned capital, determined the methods of sale, distribution of “free” shares, entities that receive “free” shares, the ratio of distribution of “free” shares, the institution responsible for implementing the procedure, etc. Market liberalization and the formation of efficient institutions in the financial sector posed a significant challenge for countries in transition, especially due to the fact that the formation of market-oriented banking systems and capital markets started from scratch.<sup>8</sup>

### **III. Socially-Owned Capital in Insurance Companies**

Three<sup>9</sup> Serbian insurance companies entered year 2021 with higher or lower share of socially-owned capital in the total capital structure: Dunav Insurance Company a.d.o. Belgrade, „Dunav Re“ a.d.o. Belgrade and „Triglav osiguranje“ a.d.o. Belgrade. The participation of socially-owned capital in these companies is different - from 0.12% in “Triglav osiguranje”, more than 4.58% in “Dunav Re”, to 51.86% in Dunav Insurance Company. In addition, over the years, the share of socially-owned capital has decreased for various reasons. For example, in 2006, when “Kopaonik osiguranje” was taken acquired, the participation in (present) “Triglav osiguranje” was 8.39%, but over the years, through decisions of the majority shareholder on loss coverage and capital injections, that participation increased to 0.12% %, while the participation of socially-owned capital in Dunav Insurance Company before the capital increase by the state (in December 2014) amounted to 94.61%. The existence of such kind of unregulated capital i.e., socially-owned capital without a clearly defined owner, in the insurance market, namely, one of the most important segments of the overall financial market, was certainly one of the factors that prevented the insurance sector to achieve its full potential, especially if we have in mind that the market leader operated with the majority socially-owned capital. Bearing in mind that social property is not recognized in the Constitution, and that it does not have the owner, those insurance companies found it difficult to operate and keep the business books and such situation put them in an unequal position compared to other market participants. An example that supports the foregoing is the difficult application of the Law on Business Companies (the relationship between the ownership and management structure), whereas the obligations created based on unpaid dividends belonging to socially-owned capital (as they cannot be paid, because the owner of the socially-owned capital is not known) make it difficult to prepare for the future alignment of capital requirements with the Solvency II Directive.

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<sup>8</sup> Kovačević R. (2002), „Tranzicija zemalja centralne i istočne Evrope u tržišnu privredu“, *Privredna izgradnja*, Belgrade. XLV: 3-4, pp. 149–178

<sup>9</sup> Note: Privatization of socially-owned capital in insurance company DDOR a.d.o. Novi Sad was carried out at the beginning of 2008.

#### **IV. „Privatization” of Socially-Owned Capital in Insurance Companies – Legal Framework**

The legal framework for the possible privatization of socially-owned capital in insurance companies was quite tangled, and would be difficult or almost impossible to implement in practice. Namely, the new 2014 Insurance Law, with the provisions of Article 280 paragraph 2, made a connection with the previous law on insurance (which ceased to be effective upon the adoption of the new law) by establishing that “the provisions of Art. from 243 to 243v. and Art. from 243 d. until 243 of the Insurance Law (*Official Gazette of RS*, no. 55/2004, 70/2004 - correction, 61/2005, 61/2005 - other law, 85/2005 - other law, 101/2007, 63/2009 - decision US, 107/2009, 99/2011, 119/2012 and 116/2013) shall be applied to insurance companies until the completion of privatization procedure of those companies”.

And what did that old insurance law provide for? It established that the subject of privatization was socially-, i.e., state-owned capital in insurance companies, that the privatization process shall be initiated by the decision of the Ministry of Finance (which supervises the implementation of the process), while the Deposit Insurance Agency shall organize and implement the capitalization process. In the privatization process, 70% of the socially-owned capital was to be sold, and the sale was to be carried out by the public tender method in accordance with the Government’s decree (see the regulations under 16). It was also determined how the funds from the sale should be distributed.<sup>10</sup> In addition, it was determined that the provisions of the law governing the privatization of socially-owned and state-owned capital in companies and other legal entities shall be applied to the procedure of capital privatization in insurance companies, unless otherwise regulated by the law in question. The decisions in the aforementioned regulation were harmonized with the decisions on the privatization of other legal entities to be carried out by the method of public tender (since for other legal entities there was also the possibility of privatization by auction). That law was also harmonized with the presently old law on privatization (see the regulations under 5), which stipulated that the transfer of capital without consideration shall be carried out after the sale of capital (transfer of shares to employees and transfer of shares to citizens), and that the capital for the acquisition of shares without consideration in the subject of privatization by public tender method shall be maximum of 15% of the capital to be privatized.

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<sup>10</sup> Funds generated from the sale, after the costs (sales costs, commission) and allocation of 10% of the realized purchase price for insurance guarantee fund, are paid by the Deposit Insurance Agency to the budget account of the Republic of Serbia.

In the beginning of 2021, the situation was as follows - in addition to the already mentioned new Insurance Law (since 2014), we also had a new Law on Privatization, which regulated the issues of privatization in a completely different way<sup>11</sup> and thus added to the confusion prevailing in the privatization of socially-owned capital in insurance companies. Namely, there was a provision that, if that law regulated an issue that is regulated in a different way by another law, the provisions of that law shall be applied. Measures were stipulated toward preparing and relieving the burden of entities. These were, among other things, debt write-offs after a successful sale of capital or capital increase (MPRS). The law set a deadline for completing the privatization of socially-owned capital by the end of 2015, which was not realized.<sup>12</sup> Among other things, socially-owned or public capital or property in companies and other legal entities, including public companies, was defined as the subject of privatization. It was stipulated that privatization was mandatory for the privatization subjects with socially-owned capital and that the socially-owned capital of the privatization subject shall be privatized no later than until December 31, 2015! All privatization procedures were to be implemented and controlled by the Ministry of Economy, privatization models were determined (sale of capital, sale of assets, transfer of capital without consideration and strategic partnership), while the method of sale of capital and assets was public collection of bids with subsequent public bidding. In the capital sale procedure, the capital for the acquisition of shares without consideration could not exceed 30% of the privatized socially-owned capital, and the Ministry of Economy was to submit a proposal to initiate the bankruptcy procedure of the subject of privatization in the event that the privatization of the subject of privatization with majority socially-owned capital was not by 31 December 2015. The Law on the Deposit Insurance Agency stipulated that the Agency shall continue to perform the tasks it performed in accordance with the previous law on the Deposit Insurance Agency (see the regulations under 6), and which it did not perform in accordance with the provisions of this law, until they are taken over by the Ministry of Finance, or other competent authority, in accordance with the law. These tasks, among others, were the implementation of the procedure for the sale of socially-owned capital in insurance companies in accordance with the law regulating insurance. Finally, one of the responsibilities of the Ministry of Finance, according to the existing law on ministries, is state administration work related to participation in the management of banks, insurance companies, and other financial institutions in which the Republic of Serbia is a shareholder, as well as organizing and implementing the

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<sup>11</sup> A completely different concept compared to the previous law on privatization with which the Law on Insurance was aligned – so far it is aimed at non-privatized companies (mainly in restructuring).

<sup>12</sup> Milosavljević J, Milošević I.; (2019), „Privatizacija u Republici Srbiji“, *Civitas* 9 (2), pp. 101–113



procedure for the sale of shares in them, and privatization and rehabilitation of banks and other financial organizations.

## **V. Solution for Regulating Socially-Owned Capital in Insurance Companies**

Taking into account all the above, it was clear that the existing legal framework that would solve the issue of socially-owned capital in insurance companies is inadequate and practically unenforceable. Namely, as a result of legal regulations that have been changed in recent years, there have been conflicting provisions: competence for organizing and implementing privatization (Deposit Insurance Agency and Ministry of Finance vs. Ministry of Economy, sales method (public tender vs. several different models and methods of privatization), different distribution of funds, instituting bankruptcy by the Ministry of Economy for privatization subjects that do not complete privatization by the end of 2015 (impossible for insurance companies, because it is not in accordance with many of the above-mentioned laws), etc. In addition, if we ignored the provisions of the law on privatization and analyze only the provisions prescribed by the Insurance Law, we would come to the conclusion that the proposed solution was obsolete (not in accordance with the existing market conditions<sup>13</sup>), namely, that it was irrational and inefficient.<sup>14</sup>

With all that in mind, at the end of April 2021, the Law on Amendments to the Insurance Law was adopted.<sup>15</sup> We would say that the law in question succeeded in reconciling the various provisions of previous laws dealing with the issue of socially-owned capital in insurance companies, as well as the current practice of selling socially-owned capital and distributing free shares to employees, on the one hand, with the interests of insurance companies, the state, employees and market conditions, on the other hand. Namely, the law foresees the change of ownership rights in the socially-owned capital<sup>16</sup> by transferring 70% of the socially-owned capital to the Republic of Serbia, up to 25% of the socially-owned capital to employees, without consideration (so-called free shares), while at least 5% of the socially-owned capital is transferred to the Equity Fund.

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<sup>13</sup> Does not enable different sale options adjusted to market conditions.

<sup>14</sup> For example: the sale of 70% of the socially-owned capital by tender, and the distribution of free shares in "Triglav osiguranje" a.d.o., where the total socially-owned capital is only 0.12% of the total company capital.

<sup>15</sup> *Official Gazette of RS*, no. 44/21

<sup>16</sup> Socially-owned capital is considered capital in social ownership and dividends realized on the basis of such ownership.

**Table 1 Capital of Dunav Insurance Company before and after the implemented Decision of the Serbian Government**

Capital structure BEFORE implemented Government Decision			Capital structure AFTER implemented Government Decision		
Name	Number of shares	Share	Name	Number of shares	Share
Socially-owned capital	/	51.86%	Republic of Serbia	11.650.612	76.70%
Share capital	4.226.121	48.14%	Employees (free shares)	2.740.770	18.04%
Republic of Serbia	3.976.455	45.30%	Equity Fund	548.154	3.61%
Other shareholders	249.666	2.84%	Other shareholders	249.666	1.64%
<b>Total</b>	<b>4.226.121</b>	<b>100.00%</b>	<b>Total</b>	<b>15.189.204</b>	<b>100.00%</b>

Source: created by the author

It is also envisaged that the Government shall make a Decision for each insurance company (subject of transfer) separately, which, among other things, shall contain data on the transferred socially-owned capital and the deadlines for completing the procedure. Regarding the free shares distributed to employees,<sup>17</sup> it is stipulated that this right can be exercised for a maximum of 35 years spent in employment (acquisition of shares with a total nominal value of 200 EUR in Dinar equivalent at the official mean exchange rate, for each full year of employment with the transferee and/or controlled entity), provided that they have not exercised the right to shares without consideration in any way, in whole or in part, pursuant to any of the earlier laws that regulated privatization and/or the distribution of free shares. In addition, taking into account rationality and efficiency, the relevant law provides for an exception to the distribution of socially-owned capital, where it is determined that in insurance companies where socially-owned capital amounts to 0.2% of the total company capital, that capital shall be transferred to the Equity Fund.

<sup>17</sup> Employees are citizens of the Republic of Serbia who are employed or were previously employed (retirees are also included) in the subject of the transfer and companies controlled by the subject of the transfer.

**Table 2 Capital of the company “Dunav Re” before and after the implemented Decision of the Serbian Government**

Capital structure BEFORE implemented Government Decision			Capital structure AFTER implemented Government Decision		
Name	Number of shares	Share	Name	Number of shares	Share
Socially-owned capital	/	4.58%	Republic of Serbia	46.650	5.32%
Share capital	810.830	95.42%	Employees (free shares)	16.660	1.90%
<i>Dunav Insurance Company</i>	751.260	88.41%	Equity Fund	3.332	0.32%
<i>Other shareholders</i>	59.570	7.01%	Dunav Insurance Company	751.260	85.62%
			Other shareholders	59.570	6.79%
<b>Total</b>	<b>810.830</b>	<b>100.00%</b>	<b>Total</b>	<b>877.472</b>	<b>100.00%</b>

Source: created by the author

Under the mentioned law, at the beginning of September 2021, the Government adopted the Decision on the transfer of the socially-owned capital of the Joint-Stock Insurance Company “Triglav osiguranje” a.d.o. Belgrade<sup>18</sup>, which, among other things, stipulates that the transfer subject shall carry out the transfer of socially-owned capital<sup>19</sup> to the Equity Fund. “Triglav osiguranje” a.d.o. Belgrade implemented all the necessary actions, in accordance with the aforementioned decision, so that on October 5, 2021<sup>20</sup>, the Equity Fund was registered in the Central Securities Depository and Clearing House as a shareholder of “Triglav osiguranje” a.d.o. Belgrade, which practically means that socially-owned capital no longer exists in the structure of the total capital of “Triglav osiguranje” a.d.o. Belgrade.

Considering the capital structure and share of socially-owned capital, the Government decisions concerning the transfer of socially-owned capital of Dunav Insurance Company a.d.o. Belgrade<sup>21</sup> and “Dunav Re” a.d.o. Belgrade<sup>22</sup> are more

<sup>18</sup> Official Gazette of RS, no. 86/21

<sup>19</sup> 0.12% expressed in 2.376 shares.

<sup>20</sup> <http://www.crhov.rs/?obavestjenjeID=8da1c04b-3815-4824-89be-cc9ab6305fb9>

<sup>21</sup> Decision on transfer of socially-owned capital of Dunav Insurance Company a.d.o. Belgrade, Official Gazette of RS, no. 96/21

<sup>22</sup> Decision on transfer socially-owned capital of reinsurnace company, „Dunav Re” a.d.o. Belgrade, Official Gazette of RS, no. 96/21

complex since they also prescribe the procedure for distribution of free shares to employees.

**Table 3 “Triglav osiguranje” a.d.o. Belgrade before and after the implemented Decision of the Serbian Government**

Capital structure BEFORE implemented Government Decision			Capital structure AFTER implemented Government Decision		
Name	Number of shares	Share	Name	Number of shares	Share
Socially-owned capital	/	0.12%	„Triglav Int“ d.d.	1.962.879	99.88%
Share capital <sup>23</sup>	1.962.879	99.88%	Equity Fund <sup>24</sup>	2.376	0.12%
<b>Total</b>	<b>1.962.879</b>	<b>100,00%</b>	<b>Total</b>	<b>1.965.255</b>	<b>100,00%</b>

Source: created by the author

These decisions, in addition to the provisions concerning the transfer of socially-owned capital to the Republic of Serbia and the Equity Fund, also contain the provisions that prescribe in detail the procedure related to the distribution of free shares to employees. Thus, among other things, the following were prescribed: deadlines in connection with the public invitation to inform employees about the decision of the transferee to issue shares to employees without consideration, the mandatory content of the public invitation, the competence of the Ministry of Economy to control the fulfillment of the legal conditions for the transfer of socially-owned capital, etc. The decisions also prescribe the treatment of difference<sup>25</sup> between the total amount of the transferred socially-owned and total nominal value of shares to be issued based on such transfer. Dunav Insurance Company a.d.o. Belgrade and “Dunav Re” a.d.o. Belgrade carried out all the necessary actions in accordance with the aforementioned decisions, so that on November 25, 2021,<sup>26</sup> that is, on December 7, 2021,<sup>27</sup> the Republic of Serbia and the Equity Fund were registered, based on the transfer of socially-owned capital, in the Central Securities Depository and Clearing House, as shareholders of these two companies. Both companies, within

<sup>23</sup> One shareholder – “Triglav Int” d.d.

<sup>24</sup> In the meantime, the majority shareholder “Triglav Int” d.d. Ljubljana carried out compulsory acquisition of shares from the Equity Fund and thus, now is the only shareholder of „Triglav Int“ d.d., <http://www.crhov.rs/?obavestenjeID=7be31f19-b10f-42f7-9bd9-80202e51e754>

<sup>25</sup> Difference is lower than the nominal value of one share

<sup>26</sup> For Dunav Insurance Company a.d.o. Belgrade, <http://www.crhov.rs/?obavestenjeID=22ea5423-9ac2-414d-b232-6d1aeedc0a8d>

<sup>27</sup> For Dunav-Re a.d.o. Belgrade, <http://www.crhov.rs/?obavestenjeID=d37be872-1bd2-4b64-8e6c-f7cc5c01086d>

the deadlines and in the manner prescribed by the Government's relevant decisions, published a public call for the subscription of shares without consideration,<sup>28</sup> so it can be expected, taking into account the procedure for adopting the decision of the Ministry of Economy on the transfer of capital to employees without consideration, that by mid-2022, Dunav Insurance Company a.d.o. Belgrade and "Dunav Re" a.d.o. Belgrade will not have socially-owned capital in the total capital structure, namely, the participants in the Serbian insurance market will finally operate without the share of socially-owned capital.

Bearing in mind all of the above, the final result of such a solution for the regulation of socially-owned capital in insurance companies should be as follows:

## **VI. Conclusion**

The necessity to regulate socially-owned capital in Serbian insurance companies has never been questioned, especially when borne in mind that the issue of socially-owned capital was resolved a decade or two ago in all countries of the former Yugoslavia, and that socially-owned capital does not exist in any insurance company or any other entity of the financial sector. Bearing in mind the inapplicability and inadequacy (obsolescence) of the legal framework in relation to dealing with socially-owned capital in insurance companies, amendments to the Insurance Law were adopted at the proposal of the Government (Ministry of Finance), which created a legal framework that enables the final deletion, that is, the conversion of socially-owned capital of insurance companies into share capital. The adopted solution has reconciled many aspects in the best way, so that the situation, after the completion of the entire transfer of socially-owned capital to the prescribed entities (the Republic of Serbia, the Equity Fund, employees), will have multiple positive effects: the companies in question will finally have a clear capital structure that will enable the continuation of business in a modern corporate environment (which can only have a positive impact on the overall business of these companies, as well as on the entire insurance market), employees will promptly receive free shares (and not only after the end of the privatization procedure, as was the rule under the previous laws that regulated privatization) and thus get the opportunity to dispose of their property, while it should also have a positive impact on the capital market and stock exchange transactions (the number of shares that can be traded (so-called free float) will increase and thus increase the attractiveness of the capital market and raise the interest of potential investors (especially institutional investors).

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<sup>28</sup> Deadline for subscription of shares is 29 December 2021, <https://www.dunav.com/media/obavestenja-oglasij/>, <http://dunavre.rs/>

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Translated by: **Zorica Simović**