

Legal opinion, February 17, 2010

1. Commercial companies, banks, public enterprises which were not privatized, and subjects of privatization regarding whose privatization the Business Registers Agency has terminated the contract

In the sense of Article 2, second paragraph of the Law, a public official is also any representative of the Republic of Serbia, autonomous province, local self-government, or public enterprise elected, appointed, or designated to an authority of another organization. Among such organizations are:

- public enterprises which were not privatized;
- legal entities regarding whose privatization the Agency for Privatization has terminated the contract;
- commercial companies and banks of which the Republic of Serbia, the autonomous province, local self-government, or a public enterprise is a founder, shareholder, or member;

2. Rights of public officials who were discharging other activities or occupations on January 1, 2010

Public officials who were discharging an activity or occupation beside their public office on the date of the start of the Law's implementation also have the right to file a request for approval to discharge an activity or occupation in addition to their public office. Such public officials are required, in the sense of Article 82, paragraph 1 of the Law, which is also being applied, to opt for keeping the public office or for undertaking other activities or occupations; alternatively, they need to file a request to the ACA in order to obtain its approval to undertake other activities or occupations during their term in office before April 1, 2010.

3. Engagement in private occupation

According to the law regulating entrepreneurship, public officials who engage in private occupation may not transfer management rights, considering that an entrepreneur is a natural person, and that businesses, or other forms of private occupations (agencies, bureaus, studios, etc.) are not considered commercial companies.

According to the law regulating entrepreneurship, private occupations are classified as additional occupations, in the sense of Article 30 and 31 of the Law on the Anti-Corruption Agency, and in order to undertake them it is necessary to obtain the approval of the Anti-Corruption Agency.

Public officials who have obtained approval to engage in a private occupation as entrepreneurs are required by the Law on Entrepreneurs to temporarily cease managing their business during a term of office requiring full-time employment, and continue the occupation via an employee who would act as manager based on a written authorization. In the sense of Article 25 of the Law on Entrepreneurs, engagement in private occupation through an employee acting as authorized manager may be considered a transfer of management rights during a term in public office of an entrepreneur holding public office.

Adopted at the session of the Board held on February 17, 2010.