

New Regulation on the Order for Exercising the Rights of the State in Companies with State Participation in the Capital

Decree No 112 of the Council of Ministers (CMD) of 23 May 2003 adopting new Regulation on the Order for Exercising the Rights of the State in Companies with State Participation in the Capital (the Regulation) was promulgated in issue 51 dated 3 June 2003 of State Cassette, by means of which the Regulation on the Order for Exercising the Rights of the State in the Companies effective to date (issued in relation with the application of the repealed Law on Transformation and Privatization of State-owned and Municipal Enterprises) was repealed. The new Regulation **enters into force as from 7 June 2003.**

The issues regulated by the new Regulation to a large extent are covered by the repealed Regulation. The prevailing part of the provisions of the Regulation provides for the activities of the sole owner companies with state participation. Certain provisions of the Regulation containing new moments, however, also relate to the limited liability companies (OOD) and the joint stock companies (AD) with state participation in the capital. More significant amendments concerning **the companies with state participation in the capital, in which the state is not the sole owner**, might be summarized in the following:

- **A prohibition** is introduced for the state representatives in the bodies of the companies with state participation to take part in **more than one management or control body** of such companies.
- § 2 of the Conclusive provisions of the CMD No 85/1998 for amendment of the repealed Regulation provided for that **the Rules for determination of the remunerations of the members of the executive and control bodies of the companies with more than 50 % state participation shall include the indicators, criteria and values determined in the Regulation.** This requirement is included also in § 5 of the Transitional and Conclusive Provisions of the new Regulation, as the text is made more précised insofar the inclusion of the requirements of the Regulation in the Rules for determination of the remunerations shall be made after taking the respective decision by the General Meeting of the company. According to the new Regulation the remunerations of the members of the executive and control bodies of the sole owner companies with state participation (under the provisions of §5 TCP of the Regulation also of the state participation companies where these rules are approved by the General Meeting) shall continue be determined by observing the general provisions of the order under the repealed regulations. Certain **new provisions** are introduced concerning **the indicators and the criteria** used in the determination of the remunerations of the members of the

executive and control bodies as well as **certain specific rules on the determination of the remunerations of the representatives of the state** in those bodies.

➤ According to the new Regulation **the receipt of tantiemes is conditioned solely by the financial status and indicators of the company.** The necessary preconditions for payment of tantiemes are the following: **(1)** increase of the accounting profit vs. the prior year one; **(2) the company shall not have any uncovered prior year loss, and (3)** the company shall not have any arrears.

➤ At present the Law on Privatization and Post-Privatization Control along with the acts on its application (including the Regulation) **do not provide for any requirements for initiation of a tender procedure** upon concluding of certain types of transactions **by the companies with state participation in the capital** where the state is not a sole owner.

By means of §1 of the TCP of the CMD No 112, by means of which the Regulation is adopted, **a 3-month period following entering the Regulation into force is set** (i. e. till 7 September 2003 inclusive). Within this time period the respective Ministers exercising the rights of the state in the **sole owner companies** with state participation shall undertake actions on making the Statutes and the Articles of incorporation of the companies, the composition of the management and control bodies, as well as the contracts concluded with the members of the management and control bodies complied with the provisions of the Regulation. The provision of §1 **does not state a time period regarding the companies with state participation** but by analogy it may be accepted that this time period is also valid for the rest of the companies with state participation where the state is not a sole owner of the capital.

If you wish to have access to the detailed commentaries of AFA on the provisions of the new Regulation or should additional questions arise concerning its application, please contact us on tel. 943 37 00, fax 943 37 07 or send an e-mail message to office@afa.bg.