



TOMIĆ STEVIĆ DULIĆ

ADVOKATSKA KANCELARIJA

TSD NEWSLETTER

Advokatska kancelarija TOMIĆ STEVIĆ DULIĆ informiše o aktuelnostima u radu Kancelarije i u zakonodavnom reljefu SCG / Die Rechtsanwaltskanzlei TOMIĆ STEVIĆ DULIĆ informiert über aktuelle Themen der Kanzlei und über das Rechtsrelief der SCG / The TOMIĆ STEVIĆ DULIĆ Law Office is informing about the actual activities of the Law office and the Law frame in SCG / Glavni urednik/ Chefredakteur / Editor-in-Chief: Ljubica Tomić / Lektor/Lektor/Proof reader: Ivana Stojanović, Vojislava Katić/ **Br. 19/07**

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EVENTS

Representative Office of the Serbian Chamber of Commerce in Frankfurt and "Tomić Stević Dulić" Law Office from Belgrade organised a meeting for German companies planning to relocate production or to start business in Serbia. The meeting was held on 04 December 2007 at the building of Frankfurt Chamber of Commerce and Industry and Frankfurt Stock Exchange. Ms Milanka Vučić, Director of the Representative Office of the Serbian Chamber of Commerce in Germany, delivered the opening address and Dr. Jürgen Ratzinger, Managing Director of International Business of the Frankfurt Chamber of Commerce and Industry, spoke on behalf of German colleagues. Various useful information for making business in Serbia was presented at the meeting, and special attention was given to the tax regulations. Mr Manfred Naefgen from German company Grammer AG, which started manufacture in Serbia in mid-2007, spoke affirmatively of the experiences of this company in Serbia, which drew great attention from all present, who at the end asked that such professional meetings be held every two months. In the second part of the meeting, numerous representatives of German companies had the opportunity to obtain additional information in individual interviews with lawyers of the "Tomić Stević Dulić" Law Office, Ms Ljubica Tomić, Ms Gordana Stević-Dulić and Mr Predrag Groza, as well as Mr Michael Schmidt, German adviser for foreign investments at the Ministry of Economy and Regional Development.

Article taken from: "Info-Business News from Germany, Representative Office of the Serbian Chamber of Commerce in Germany" 08/07, info@wirtschaftskammer-serbien.de





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GREEN-FIELD INVESTMENTS AND FINANCIAL INCENTIVES

The Republic of Serbia has created an incentive programme for green-field investments in Serbia, whose application will continue in the coming 2008, in compliance with the Decree on Terms and Conditions of Attracting Direct Investments (Official Gazette of the Republic of Serbia Nos. 56/2006 and 50/2007).

Serbia Investment and Export Promotion Agency (SIEPA) has been entrusted with implementation of this programme. SIEPA is supervised by the Ministry of Economy and Regional Development (Art 37, Law on Ministries (Official Gazette of the Republic of Serbia No. 43/2007)).

The funds for attracting direct investments are determined according to the number of new job positions created within the period of three years. Namely, the above financial incentives in the manufacturing sector range between EUR 2.000 and EUR 5.000 for every new job position, in the internationally marketable service sector between EUR 2.000 and EUR 10.000 EUR, and in the research and development sector between EUR 5.000 and EUR 10.000 (Art 4 of the Decree).

The total value of financial incentives is determined according to the foregoing and the following criteria: investor's references; level of participation of domestic suppliers and the effect of investments on the productivity of other domestic economic associations, enterprises and other legal entities that are active in the same sector; sustainability of the investment/longevity of business; effects of the investment as far as the research and development are concerned; effects of investment on human resources; assessment of the environmental impact for investments into the manufacturing sector and research and development sector; volume of international trade; effects of investments on the development of underdeveloped municipalities; Letter of Intent of local authorities of the municipality in which the investor intends to invest.

There are conditions that an investor needs to met for the funds to be assigned, depending on the relevant sector. The requirement in the manufacturing sector is securing at least 50 new job positions in the period of three years starting from the date of allocation of funds, and the minimum value of investment ranging between EUR 1.000.000 and EUR 3.000.000 (depending on the unemployment rate in the municipality where specific investments are being made). The requirement in the internationally marketable services sector is securing at least 10 new job positions and the minimum value of investment of EUR 500.000. In the research and development sector, the requirement is minimum value of investment of EUR 250.000, and securing at least 10 new job positions, also within the period of three years following the allocation of funds (Art 7 of the Decree)

The participants in the procedure to whom funds have



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not been assigned have the right to object do the decision on allocating financial incentives. Such an objection is submitted to the Minister Economy and Regional Development within a period of eight days starting from the date of receipt of the notification of the decision with justification. The decision on the objection is brought in an emergency procedure, within 15 days starting from the date of receipt of the objection.

The assigned funds will be disbursed to the investor periodically, in increments of 25% of the total amount of the assigned funds, namely: upon signing of a purchase agreement or an agreement on the land rental; upon obtaining a construction permit; upon obtaining a usage permit; upon achieving full employment envisaged in the investment project. The funds' beneficiary must provide a payable guarantee issued by a commercial bank to the credit of the Republic of Serbia

The dynamics of start-up projects must be fine-tuned with process of submitting the application for the above green-field financial incentives. The timing of applying for the above funds should coincide with obtaining permission for the construction of planned green-field investment. Subsequent applications may receive a smaller number of points by the relevant commission, while for an investor, the early applications are linked to the issue of previously acquiring the right to use or ownership title over the construction land. Furthermore, one should bear in mind that the three-year period for the investment and creating new job positions commences as of the day of allocation of the funds, hence later applications allow more time to the investor (counting from the commencement of the start-up projects) for fulfilling the above conditions.

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NEW LAW ON CONSTITUTIONAL COURT

On 28 November 2007, a new Law on Constitutional Court was published, and as of the day it entered into force, the Law on Procedures before the Constitutional Court and the Legal Effect of Its Decisions ceased to be valid. This law provides for the rules concerning the procedure of electing and appointing judges of the Constitutional Court, termination of their tenure in office, as well as procedures before the Constitutional Court and the legal effect of its decisions.

The Constitutional Court consists of 15 judges elected and appointed as described in the Constitution. Six months before the expiry of the nine-year tenure to which he or she was appointed, President of the Constitutional Court, or an elected judge of the Constitutional Court must inform thereof the Mover Authorised and the National Assembly.

A judge of the Constitutional Court shall be dismissed if:

- he or she should become a member of a political party,
- violate the conflict of interest prohibition,
- permanently lose the work ability to discharge the function of a judge of the Constitutional Court.



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A judge of the Constitutional Court may not discharge in any other public or professional function or a position, with the exception of the position of a professor at a College of Law in the Republic of Serbia.

In the event there are reasons for dismissal, a judge may be removed from his/her duty under a decision adopted by President of the Constitutional Court, in compliance with this Law.

The Constitutional Court has President elected by judges of the Constitutional Court from amongst themselves, Vice-President, who replaces President of the Constitutional Court in case of his/her absence, Secretary, and Administrative and Professional Services, which take care of professional and other activities of the Constitutional Court.

In respect of the procedures before the Constitutional Court, the Law provides for parties in the procedure, as well as various procedures including procedure of assessing constitutionality or legality of general acts, procedure of assessing constitutionality of a law prior to its coming into force, procedure of deciding about suspending the enforcement of a decision of an agency of an autonomous province, procedure of settling the issue of conflict of jurisdiction, procedure of deciding about electoral disputes, procedure of deciding about banning a political party, trade union organization, association of citizens, or religious association, procedure pursuant to a constitutional appeal, procedure of deciding about violation of the Constitution by President of the Republic, procedure pursuant to appeals lodged by judges, public prosecutors and deputy public prosecutors concerning the decision on termination of tenure of office.

The New Law provides for cooperation with state and other agencies and organisations, and international cooperation.

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RECOVERY OF DEBTOR THROUGH BANKRUPTCY

Under Article 67 of the Law on Registration of Business Entities (published in the Official Gazette of the Republic of Serbia No. 55 dated 21 May 2004; 61/05), the business entities, which have failed for two consecutive years to submit the annual financial statement to the Business Registration Agency Register in the manner prescribed by this law, shall be given the status of an inactive entity by the Registrar and shall be marked as "INACTIVE".

The named law, which is procedural in character, introduced the institute of "inactive business entity" to Serbian legislation. The Company Law (published in the Official Gazette of the Republic of Serbia No. 125 dated 22 November 2004) makes no reference to this institute. A company that has acquired the status of an inactive business entity does not lose its legal status, and legal proceedings may be initiated against such entity. The Registrar of the Business Registration Agency may register another company under the identical business



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name, and the information that the entity was given the status of an inactive business entity is provided to the NBS, which closes the accounts of the entity and transfers the existing assets to a special account intended for assets not in use.

Under Article 68, Paragraph 2 of the Law on Registration of Business Entities, in the event that within 12 months from the day of having its status changed to inactive, the company should fail to pay the prescribed fees, the Business Registration Agency Registrar shall delete it from the Register. Pursuant to Article 2 of the Decree concerning the Proceedings by State Agencies, Organisations, and Legal Entities in respect of Inactive Business Entities Deleted from the Register of Business Entities (Official Gazette of the Republic of Serbia No. 49/2006) as of the day of deletion of the business entity from the Register of the Business Registration Agency, the business entity loses its legal capacity and civil capacity. This has an effect on the court proceedings which are suspended or terminated.

Under the above provisions of the Law on Registration of Business Entities, a company may lose its legal status by failing to submit a financial statement without implementation of the bankruptcy/liquidation procedures, which constitute the only means of termination of a company under the Company Law (Official Gazette of the Republic of Serbia No. 125/2004). Such legal gap and inconsistency are remedied in judicial practice by applying Article 73 of the Law on Civil Procedure (Official Gazette of the Republic of Serbia No. 125/2004) which provides that the court in charge of civil procedure may, exceptionally, producing legal effect in a certain civil lawsuit, concede the status of being a party even to such corporate forms that do not have the litigation capacity, provided that it is established, bearing in mind the subject of the lawsuit, that they essentially meet the requirements for acquiring the litigation capacity, and in particular if they should own assets which could be subject to enforcement. Therefore the prevailing stand of the judicial practice is that simple deletion of a company from the Register of Business Registration Agency does not have the same legal consequences as the termination of a company through bankruptcy or liquidation, as the court is allowed to recognise the litigation capacity of such corporate forms under its decision, provided that such entities should have assets, which is a reasonable solution as it protects the interests of creditors of the deleted company. Thus it would be necessary to initiate a lawsuit to establish the litigation capacity of the deleted entity, and then initiate the bankruptcy or liquidation of the entity.

Under this law, provisions have been made for penalties for the companies which fail to meet their obligations relating to submitting financial statements, but on the other hand, these provisions put the creditors of such companies at a disadvantage.

Bearing in mind these legal provisions, it would be sensible for any creditor of any company that has acquired the status of an inactive business entity to initiate bankruptcy procedure for the recovery of its



claim, and thus avoid the procedure of establishing the litigation capacity of the deleted company and eventually get the amount receivable paid back.

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AMENDMENTS TO THE INSURANCE LAW

The Law on Amendments to the Insurance Law (Official Gazette of the Republic of Serbia No. 101/07) was adopted by the National Assembly at its regular session and it entered into force on 14 November 2007.

These amendments aim to further develop a trust in insurance market, offer a more comprehensive protection to the insured persons and other insurance beneficiaries, and to strengthen corporative management and transparency of operations of insurance companies.

The following are the most important amendments of the Law:

- a branch of a foreign entity may engage in insurance activities in Serbia after having obtained a licence from the competent agency for performance of such activity (this legal provision will be applied upon expiry of five years from the day of accession of the Republic of Serbia to the World Trade Organisation),
- reinsurance may be performed directly abroad (this legal provision will be applied upon expiry of five years from the day of accession of the Republic of Serbia to the World Trade Organisation),
- the condition of reciprocity is no longer required for foreign legal entities and persons in order to incorporate a joint stock insurance company or invest funds in a joint stock insurance company (This legal provision will be applied as off the day of accession of the Republic of Serbia to the World Trade Organisation),
- the provisions relating to the corporate bodies of an insurance company, incorporation document, etc are being brought into compliance with the Company Law (Official Gazette of the Republic of Serbia No. 125/04),
- provisions are adopted relating to liability on part of the National Bank of Serbia and its employees for the damages arising out of performance of obligations provided by the Law, insurance companies having licences for performing insurance activities are allowed an additional term until 31 December 2009 to perform relevant changes in their status and activities, relating to a differentiation between life and non-life insurance activities,
- provisions relating to privatisation of socially owned capital in insurance companies are being amended:
 - a) the insurance companies shall show the socially owned capital in stocks and register those stocks into the Central



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- register, Depot and Cliring of the securities,
- b) 70% of the socially owned capital shall be sold in the process of privatisation,
 - c) spezial fee (provision) is imposed, which has been realised by entering into the agreement on purchase of capital, that is property, settled of the purchase price, which will be determined by the Minister of Finance,
 - d) after the sale costs are settled, 10% of the means realised by the sale of capital shall be docked for the needs of the guarantie insurance funds while the rest shall be paid into the budget of the Republik of Serbia.

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