



**TOMIĆ STEVIĆ DULIĆ**

ADVOKATSKA KANCELARIJA

# TSD NEWSLETTER

Advokatska kancelarija TOMIĆ STEVIĆ DULIĆ informiše o aktuelnostima u radu Kancelarije i u zakonodavnom reljefu RS / Die Rechtsanwaltskanzlei TOMIĆ STEVIĆ DULIĆ informiert über aktuelle Themen der Kanzlei und über den Rechtsrahmen der RS / The TOMIĆ STEVIĆ DULIĆ Law Office is informing about the actual activities of the Law office and the Law frame in RS/ Юридическая контора TOMIĆ STEVIĆ DULIĆ информирует о самых актуальных событиях, о работе конторы и законодательном релiefe РС / Glavni urednik/ Chefredakteur / Editor-in-Chief / Главный редактор: Ljubica Tomić /Lektor/Lektor/Proof reader/Лектор: Ivana Stojanović, Vojislava Katić, Nevena Stević, Magda Braun / **Br. 25/09**

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## CONTENT:

1. **New Public Procurement Law ([more...](#))**
2. **New Method of Validating Health Insurance Cards ([more...](#))**
3. **Law on the Liability of Legal Entities for Criminal Offences ([more...](#))**



## NEW PUBLIC PROCUREMENT LAW

The Parliament adopted a new Public Procurement Law ("Official Gazette of the RS", No 116/2008) which entered into force on 06 January 2009.

The new law aims to remove certain deficiencies recognized in practice, define with more clarity the accountability of the entities conducting the public procurement procedures and impose tighter control by significantly improving transparency in public procurement procedures and coordinated operations of the competent agencies (Public Procurement Office, Ministry of Finance, budget inspections etc).

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A particularly interesting strategy was designed in respect of the negotiated procedure without prior publication which, due to its lack of transparency, has rendered it difficult to introduce an efficient control of this procedure and was therefore quite frequent in practice and fairly popular with the procuring entities<sup>1</sup>.

Under the new law, the procuring entity is obliged, following the completion of the negotiated procedure without prior publication and the selection of the tenderer, to submit a report about the selection of the most advantageous tender (containing the information about the subject of procurement, the selected tender and the grounds for conducting the negotiated procedure), which is to be published in the "Official Gazette of the Republic of Serbia" and the Public Procurement Portal.

It is only upon expiry of term of eight days of the day of publication and subject to the condition that no request for the protection of tenderers' rights has been filed, that the procuring entity may enter into contract with the tenderer selected in the negotiated procedure without prior publication.

Introducing transparency into the hitherto rather opaque negotiated procedure aims at preventing the

<sup>1</sup> The term Procuring Entity is defined in Article 3 of the Law and its meaning is expanded in respect of the previous Public Procurement Law (Official Gazette of the RS Nos.39/2002, 43/2003, 55/2004 and 101/2005)



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irregularities and abuses in the application of the Law.

## II

The Law introduces a completely new concept - negative references of the tenderers.

The procuring agent may decline a tender if it has evidence indicating that the tenderer has failed to meet its obligations under previously concluded public procurement contracts involving the same subject of procurement over the past five years for work assignments and three years for goods and services.

The evidence may include a final court decision, certificate on realised security for fulfillment of contract, report by the supervising agent on works performed, statement on contract termination due to non-fulfillment of obligations etc.

## III

Unlike the previous Law, which explicitly dismissed the possibility of court protection in relation to decisions made in the procedures for the protection of tenderers' rights and public interest, the new Law stipulates that while the decision of the Republican Commission may still not be appealed, administrative procedure may be initiated before a competent court.

## IV

The new Law (as well as the old one) provides for preferential treatment of domestic tenderers and goods.

Specifically, if tenders are submitted by both domestic and foreign tenderers providing services or performing work assignments, the procuring agent has to select the tender submitted by a domestic tenderer, providing that the difference in sum total of weighted points, or the offered price (when the tender selection is based on the lowest price offered) between the tenders submitted by a foreign tenderer and a domestic tenderer does not exceed 20 weighted points, or 20% price, in favour of the foreign tenderer.

The same rule applies to tenders submitted by tenderers providing domestic goods and those providing foreign goods.

This preferential treatment of domestic tenderers and goods, upheld by the new law, is particularly remarkable from the viewpoint of the Central European Free Trade Agreement (CEFTA 2006), signed by the Republic of Serbia, obliging Serbia to ensure no later than 1 May 2010 the progressive and effective opening of its procurement market so that, with respect to any relevant laws, regulations, procedures and practices, the goods, services and tenderers of other signatories to the Agreement are granted a treatment no less favourable than that accorded to domestic goods, services and tenderers.

Predrag Groza, Attorney-at-Law  
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## **NEW METHOD OF VALIDATING HEALTH INSURANCE CARDS**

Health insurance cards shall be validated by means of health insurance stamps as of 01 January 2009.

The employer shall attach the insurance stamp on the fifth page of the health insurance card where it says "L.S." and "signature" and indicate the term for which the card is being validated.

The health insurance stamps are issued, on employer's request, by the registry office of the Republican Bureau of Health Insurance in the territory of employer's domicile. The employer's request must contain the information on the total number of employees and members of their families receiving health insurance benefits, so that appropriate number of health insurance stamps may be issued.

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## **LAW ON THE LIABILITY OF LEGAL ENTITIES FOR CRIMINAL OFFENCES**

On 23 October 2008, the Parliament of the Republic of Serbia adopted the Law on the Liability of Legal Entities for Criminal Offences.

The Law introduces the concept of liability of legal entities to the Serbian legislation and adopts mechanisms originating with the Anglo-Saxon legal system, where both natural and legal entities may be the perpetrators of criminal offences.

This Law is applicable to national and foreign legal entities held accountable for a criminal offence committed in the territory of the Republic of Serbia, to foreign legal entities held accountable for criminal offences committed abroad to the detriment of the Republic of Serbia, Serbian nationals or national legal persons and to national legal entities held accountable for criminal offences committed abroad.

The Law does not apply to the Republic of Serbia, autonomous province, local-self government units, government authorities and authorities of the autonomous province, as well as legal entities vested with public powers in respect of the criminal offences committed in the process of exercising public powers.

Under this Law, a legal person is held accountable for criminal offences which have been committed for the benefit of such legal person by the responsible person acting within the scope of its operations or powers, and also where the lack of supervision or control by the



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responsible person allowed the commission of crime for the benefit of that legal person by a natural person operating under the supervision and control of the responsible person.

Conditions for establishing liability of legal entities for criminal offences depend on the nature of the criminal offence, relations between the legal entity and the criminal offence and the entity responsible for the criminal offence, and another requisite is the existence of intent to acquire benefits for the legal entity through commission of the criminal offence.

The liability of legal entities is based upon culpability of the responsible person, however a conviction pronounced on the responsible person does not constitute a condition for establishing liability of legal entities, and a legal entity may be held accountable even though criminal proceedings against the responsible person have been discontinued or the act of indictment refused pursuant to the Criminal Procedure Law.

The Law on the Liability of Legal Entities for Criminal Offences provides for two types of sentences:

- 1) termination of the status of a legal entity
- 2) fine which may be imposed solely as principal sentences.

The sentence of termination of the status of legal entity may be imposed if the activities of the legal entity were entirely or to a considerable extent conducted with the aim of perpetrating the criminal offences. Once the judgement becomes final, the sentence is enacted by initiating the winding-up or bankruptcy procedures. The fine is imposed in a certain amount, depending on the gravity of the criminal offence. The minimum fine is RSD 100.000 and the maximum fine may not exceed five hundred million dinars.

In addition to fines, the Law provides for three security measures:

- 1) prohibition to practise certain registered activities;
- 2) confiscation of items that were used or were intended for use to commit a criminal offence or that derived from the commission of a criminal offence;
- 3) publication the judgement, which is imposed by the court if it should deem that it would be useful for the public to get acquainted with the contents of the judgement, particularly if the publication of the judgement would contribute towards eliminating a danger to life or health or towards protecting the general interest.



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The Law provides for legal consequences of the conviction relating to termination or forfeiture of certain rights, to wit:

- 1) termination of practising certain activities or business operations;
- 2) forfeiture of certain permits, approvals, concessions, subsidies or other forms of incentives granted under a decision of a government authority or an authority of the local self-government unit;
- 3) prohibition on acquiring certain rights, specifically prohibition on practising certain activities or business operations, prohibition on participation in public procurement procedure, prohibition on participation in privatisation of business entities, prohibition on acquiring certain permits, approvals, concessions, subsidies or any other forms of incentives granted under a decision of a government authority or an authority of the local self-government unit.

Legal consequences of the conviction shall commence on the day the judgement ordering a fine becomes final. The duration of legal consequences of the conviction may not exceed ten years.

The Law contains provisions governing the criminal procedure conducted against a legal entity, providing for provisional safeguard measures in terms of the Law on the Enforcement of Proceedings in the course of the criminal proceedings, rejection of a criminal charge on grounds of viability, and provisions relating to the enforcement of court decisions.

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