



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 Radović, Vesna Gašić, Vojislava Katić, Danijela Stanić, Magda Braun / Br. 36/11

Carice Milice 3/II, Beograd, SCG, TEL/FAX +381 (0)11 3285.227, +381 (0)11 3285.208, +381 (0)11 3285.153, office@tomic-stevic.co.rs, www.tomic-stevic.co.rs

## LAW ON ENFORCEMENT AND SECURITY

The new Law on Enforcement and Security of the Republic of Serbia "Official Gazette of RS" No. 31/2011) was drafted in response to a need to align domestic enforcement procedures with basic standards of procedural law contained in the European Convention on Human Rights and Fundamental Freedoms, allowing, *inter alia*, for expeditious and effective collection of claims, as part of full application of the principle of judicial protection of subjective civil rights.



These are some of the most important solutions introduced by the new Law on Enforcement and Security (the Law):

- application of combined – dual system of conducting enforcement, by introducing licensed enforcement officers ("private enforcement officers"),
- significant changes relating to the grounds for granting enforcement by extending the number of documents deemed to be writs of execution, or authentic documents,
- changes relating to mandatory contents of motions to enforce, and some solutions related to the proceedings on legal remedies,
- changes relating to enforcement debtor's statement of assets,
- introduction of Register of Injunctions.

The Law has applied since 17 September 2011. The enforcement and security proceedings where physical enforcement had commenced before the Law entered into effect, shall be *completed in accordance with the new Law*.

### I) Introduction of private enforcement officers

The law defines a **private enforcement officer** (PEO) as an individual appointed by the Minister of Justice to *conduct enforcement* in accordance with the enforcement ruling, in the capacity of an authorized officer, and to exercise other authorities invested in him/her under the Law.

The Law provides in detail for the procedure and conditions for appointment as PEO, authorities and duties of PEOs, and their liability for any damage caused in the course of enforcement proceedings

As regards the procedure of conducting enforcement, it may basically be inferred that **the Law has invested the court and the PEOs with equal rights**, with the exception of enforcement of rulings *pertaining to family relations* and *reinstatement of employee to work*, which remain in the exclusive competence of the court.



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 Radović, Vesna Gašić, Vojislava Katić, Danijela Stanić, Magda Braun / **Br. 36/11**

Carice Milice 3/II, Beograd, SCG, TEL/FAX +381 (0)11 3285.227, +381 (0)11 3285.208, +381 (0)11 3285.153, office@tomic-stevic.co.rs, www.tomic-stevic.co.rs

Under the Transitional and Final Provisions of the Law, the PEOs shall commence work within one year from the day the Law enters into force, *i.e.* **as of 17 May 2012.**

## II) Grounds for granting enforcement

The new Law retains the earlier organisation of grounds for granting enforcement into writs of execution and authentic documents.

### a.

The earlier law provided for the following writs of execution: **(i)** an enforceable court decision and enforceable court settlement, **(ii)** an enforceable decision issued in an administrative and misdemeanour procedure and settlement in an administrative procedure, relating to collection of a pecuniary claim, unless a specific law provided otherwise, **(iii)** other documents defined as writs of execution by the law.

The Law retained the enumeration principle in defining writs of execution, while including the following into writs of execution:

- excerpt from the Register of Pledges on Movable Property and Rights and excerpt from the Financial Leasing Register containing data on financial leasing agreements and leased assets;
- mortgage agreements or statement of liens drafted in accordance with the mortgage law;
- adopted reorganisation plan in bankruptcy, the adoption of which has been confirmed by a court decision;
- enforceable decision certified as European Writ of Execution (enforcement based on this type of decision shall apply once Serbia obtains EU membership);

### b.

The new Law also extends the number of documents considered as authentic documents, thus in addition to the documents recognised as authentic by the earlier law, the enforcement related to collection of a pecuniary claim may also be granted based on:

- bill of exchange and cheque, or an invoice issued by a **foreign entity**,
- interest calculation with evidence of maturity and amount of claim,
- interim or final payment certificates related to construction works,
- calculation of lawyer's fees and consideration.

The new Law, unlike the earlier law, provides for the obligation of submitting, together with a motion to enforce, not only the invoice, but also the **delivery note**



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 Radović, Vesna Gašić, Vojislava Katić, Danijela Stanić, Magda Braun / **Br. 36/11**

Carice Milice 3/II, Beograd, SCG, TEL/FAX +381 (0)11 3285.227, +381 (0)11 3285.208, +381 (0)11 3285.153, office@tomic-stevic.co.rs, www.tomic-stevic.co.rs

**or other written evidence that the enforcement debtor was informed of its obligation.** There is clearly a need for court practice to define as soon as practicable the "other written evidence" whereby creditors may prove they have informed debtors.

Under the new Law, where maturity of the claim cannot be determined from the authentic document, enforcement may be granted **only if the creditor submits to the court written evidence** of having requested the enforcement debtor to settle the liability by a certain deadline.

### **III) Some changes relating to the contents of motions to enforce and legal remedies in enforcement procedure**

**a.**  
Under the earlier law, a motion to enforce had to state the means and objects of enforcement. However, the new Law provides that enforcement creditor may apply for **enforcement against all assets of the enforcement debtor**, or submit, attached to a motion to enforce, a **request for obtaining the enforcement debtor's statement of assets**, without stating the means and objects of enforcement. In such cases, the court orders enforcement/security without listing the means and objects of enforcement, and defines them subsequently in its decision, after the enforcement debtor's assets have been identified.

On the other hand, if an enforcement ruling does not state the means and objects of enforcement, a **private enforcement officer** carries out enforcement based on its own judgement, against the means and objects of enforcement best suitable to satisfy the enforcement creditor's claim.

**b.**  
Unlike earlier, the new Law provides for **objection** as the only legal remedy, which must be filed within **five business days** from the date of delivery of the enforcement ruling.

Bearing in mind that proper service is a *sine qua non* for important legal and procedural effects to take place, we wish to draw your attention to the fact that the Law introduces significant changes related to **service of decisions and other written documents**.

Specifically, where it is impossible to perform service at the registered address in case of a legal entity or entrepreneur or permanent or temporary residence in case of an individual, even upon expiry of a period of five business days of sending the written document, the service is made by *posting the written document on the notice board of the competent court*. Exceptionally, in case of service of an enforcement ruling based on an authentic document, another attempt at service must be made after 15 days, and if that attempt should also fail, the service is then performed by posting on the court's notice board. The service is deemed to have been duly made upon expiry of 5 business days of the day of such posting.



It is also worth noting that, under the new Law, the enforcement debtor is required to state any and all grounds for contestation in the objection, and **attach to the objection all written evidence substantiating the allegations contained in the objection** (e.g. if it claims that it has settled its liability, it has to provide a payment order in a written or electronic form etc), **under pain of rejection of the objection** under a court ruling.

#### **IV) Enforcement debtor's statement of assets**

Unlike earlier, the new Law provides that enforcement creditor with a pecuniary claim, who has already initiated enforcement procedure or a procedure of acquiring security for claims, may submit to the competent court a request for obtaining a statement on the enforcement debtor's assets. Such request may be filed both **with the enforcement motion and all the way during the enforcement procedure up to its termination.**

The *ratio legis* of this new legal solution lies, in our opinion, in the legislators' intention to allow the enforcement creditor to determine, in the earliest stage of enforcement procedure, all debtor's assets and rights which may be subject to enforcement.

#### **V) Register of Injunctions**

The Law introduces Register of Injunctions, as a unique, public register containing data on provisional measures forbidding the alienation or encumbrance of movable assets, real estate or real estate titles, or the real estate against which the claim has been made, under the terms and conditions prescribed by Law.

The Law provides that the Register of Injunctions is kept by the Serbian Agency for Commercial Registers.

Under the Law, the enforcement creditor is required to request, without delay, registration of the imposed provisional measure in the Register of Injunctions. **As of the moment of such registration, all third parties are deemed to be aware of the existence of the ban and no one may claim ignorance of the data registered with the Register of Injunctions.**