

CODIFICATION OF OBLIGATIONS IN THE FIELD OF SUBSTANTIVE BUSINESS LEGISLATION

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Doing business in Serbia in accordance with substantive law is sometimes like solving a Rubik's cube, because the legal system in the field of economic operations is "overstandardised" and creates legal uncertainty for existing and new investments. Businesspeople are often unpleasantly surprised by trivial obligations which are sanctioned either as a misdemeanour or an economic offence. In this and the next issue of the magazine, we have tried to codify all the obligations which are "hidden" in the "jungle" of positive economic regulations.

We highlight the most important obligations in the following areas: labour legislation, Law on Occupational Safety and Health, Law on Companies, Law on Trade and the Rulebook on Sales and Purchase Ledgers, tax and procedural legislation, tax and substantive legislation, anti-money laundering, foreign currency operations, Law on Fiscal Cash Registers, Law on Food Safety and the HACCP system, Law on Accounting and Auditing and other regulations in this field.

LAW ON LABOR

Based on regulations which additionally govern rights, duties and responsibilities from labor relations, employer is required to have:

- collective agreement
- labor rule book, i.e. employment agreement, if there is no collective agreement
- rule book on organization and systematization of work

If there are five or less employees, employer is not obliged to enact rule book on organization and systematization of work.

Besides that, employer is also obliged to:

- conclude employment agreement with the employee in writing;
- provide a copy of compulsory social security application to the employee, no later than 15 days from the day employee began to work
- on each payment of wage and wage reimbursement, provide financial statement to the employee and keep monthly records on wage and wage reimbursement
- send employment agreement amendment offer in writing, with offer reasons, time-frame for the employee to respond to offer and notice about legal consequences that may arise from employee's refusal;
- before employment agreement notice, send a warning of the existence of reasons for employment agreement notice to the employee and to trade union whose member employee is;
- deliver employment agreement notice to the employee in writing;
- to provide technical support and premises for trade union and ensure access to data and information necessary to conduct trade union activities;

LAW ON OCCUPATIONAL SAFETY AND HEALTH

Law on occupational safety and health lays down implementation and promotion of occupational safety and health, in order to prevent injuries at work, occupational disease and work-related disease.

This law obliges the employer to:

- at least eight days before work commencement inform the competent Labor Inspection on commencement of work, work of the separate department, any change of technological procedure, if such changes alter the working conditions;
- if carries out construction or reconstruction of the building or alters technological process for longer than seven days, prepare a study on planning of the construction site and submit it in addition to the Report on the commencement of works to the competent Labor Inspection;
- ensure preventive measures in order to protect life and health of employees;
- adopt Risk Assessment Act in writing for all workplaces in the working environment;
- lay down rights, liabilities and responsibilities in the field of safety and health at work;
- in writing appoint the person responsible for workplace safety and health;
- inform the employees about the instructions for safe work;
- ensure equipment for work and personal protection at work and its maintenance;
- hire a certified legal entity in order to implement preventive and periodic examinations and testing of work equipment, as well as the preventive and periodic testing of working environment conditions;
- provide, based on Risk Assessment Act and evaluation from Occupational Health Service, prescribed medical examinations of employees;
- provide documentation in Serbian on usage, handling and maintenance of equipment for work and personal protection at work and hazardous substances, with all the necessary technical and safety information;
- hire Occupational Health Service;
- insure employees for injuries at work, occupational diseases and work-related diseases, in order to ensure compensations;

Employer is required to maintain and keep records of:

- workplaces with increased risk;
- employees assigned to workplaces with increased risk and medical examinations of employees assigned to such workplaces;

- injuries at work, occupational diseases and work-related diseases;
- employees trained for safe and healthy work;
- hazardous substances used in the work process;
- performed working environment examinations;
- performed examinations and testing of work equipment and means and equipment for personal protection at work;
- submitted reports (employer is obliged to, immediately and no later than 24 hours from occurrence, inform verbally and in writing the competent Labor Inspection and competent body of internal affairs about every fatal, collective or serious injury at work, injury at work which rendered employee to be unable to continue working for at least three consequent working days, as well as hazardous occurrence, which could jeopardize safety and health of the employees).

LAW ON BUSINESS COMPANIES

A company is required to keep the following documents and by-laws:

1. Articles of Association;
2. Decision on registration of incorporation;
3. general by-laws;
4. minutes of General Meeting sessions and decisions of the General Meeting;
5. by-laws on incorporation of every branch or other organizational unit;
6. documents evidencing title and other property rights of the company;
7. minutes of Supervisory Board sessions, if a company has a two-tier management system;
8. reports submitted by directors, and also by the Supervisory Board if a company has a two-tier management system;
9. list of addresses of directors and Supervisory Board members;
10. list of addresses of the company members;
11. agreements entered into between the

company and its directors, its Supervisory Board members if a company has a two-tier management system, and its members or their related parties.

A company shall permanently keep the documents and by-laws referred to items 1 through 7 and 11, while all other listed documents and by-laws must be kept at least five years, after which they shall be kept in accordance with the regulations pertaining to archive material.

A company shall keep above listed documents and by-laws in its registered office or at another place known and accessible to all company members.

Access to the company's documents and by-laws

Director shall, upon request in writing, make the above listed documents and by-laws, company's financial statements any other documents relating to the company's operations or the exercise of company members' rights available to every company member, as well as to every previous company member insofar as they relate to the period in which he/she was a company member. Such members are entitled to examine or copy those documents at their own expense.

If director fails to provide access to the company documents within five days of receipt of such request, the applicant shall be entitled to seek satisfaction before the court in non-litigious proceedings.

Such proceedings shall be expedited and the court shall decide on such claim within eight days of receipt.

Right to information

Every director shall without delay notify every member of the company about all relevant facts relating to the company's operations or the exercise of company members' rights.

Every member of the company shall without delay notify director upon cognition of all relevant facts relating to the company's operations.

In case of failure to provide such notification, responsible person shall be liable to the com-

pany concerned and/or its members for any damage resulting from such failure.

Every company member shall have the right to receive from a director, upon request in writing and for that member's own cost, without delay and no later than within eight days of the date of receipt of a request, a copy of every decision adopted by the General Meeting.

A director may deny a company member the right to information and/or access to the company's documents and by-laws if:

- there is a reasonable concern that it could be used for purposes detrimental to the company's interests or for a purpose unrelated to that person's membership in the company;
- it would cause material damage to the company or its related parties.

Change of the address of the company

In case of change of the address of the company, such change must be made within 15 days in vehicle registrations of the company's vehicles. Failure to conduct such change in vehicle registrations is infringement from the article 326. of Law on road traffic safety, for which is a fine ranging from RSD 100.000 to 800.000 for a legal entity, and ranging from RSD 6.000 to 50.000 for a responsible person is prescribed.

LAW ON TRADE AND RULE BOOK ON TRADE OF GOODS AND SERVICES RECORDS

The trader is obliged to possess the documents on production, procurement, transport, storing and sale of goods (invoice, customs document, dispatch note, warehouse warrant and similar), as well as the documents confirming the fulfilment of conditions in regard to the properties of goods when it is defined through special regulation. Documents have to accompany the goods in transport and to be original ones or copies, in written or electronic form.

The trader is obliged to possess the documents on provision of services as well as the

documents accompanying certain services by special regulation.

The trader is obliged to keep records on procurement, sales and selling price of the goods and other records on delivery and/or transport of goods.

Such records must be available in every facility and/or, in case of trade outside the sales facility, at the place on which the Ministry has been notified.

For trade outside the sales facility, the records are kept based on the overall sale of that trader on the market of Republic of Serbia.

Along with the goods in retail enclosed must be a declaration containing data on the name and kind of goods, content and quantity, as well as other data in accordance with special regulation, and especially on producer, country of origin, production date and expiration date, importer, quality (class), as well as warning about potential danger or hazard of the goods.

The declaration must be placed on the goods and/or on the packaging (including tag, label, ring wrapper), or next to the goods at the points of sale (e.g. goods in bulk), in accordance with special properties of goods noticeably displayed, and/or in catalogue or other material with the offer of that goods which is available to consumers for free at the sales point, prior to purchase.

All such data must be put in clear, easy to spot manner in Serbian language, in Cyrillic or Latin alphabet.

Declaration may contain data in foreign languages, as well as trade mark, GT/N identification (bar-code) and other information identifying in detail the goods and its features/properties.

The trader is obliged to indicate the selling and unit price of the goods/services in retail in a clear, unambiguous, easy to spot and readable manner.

Selling price is the total, final price per unit of goods, with tax included.

The retailer is obliged to display the working hours in a clear and easy to spot manner on a sales facility and/or another point of sale and

to adhere to the indicated working hours at all time.

The trader may offer goods/services with special sale incentives (sales campaign, discount, sale, promotion and similar) and/or offer them under more favourable conditions in comparison with regular or previous offer, particularly at a lowered price, special sales and delivery conditions or other incentives, with a prize promised, participation in a prize contest, gifts and/or other incentives in accordance with the law.

If the reason for sales incentive is potential reduction of use value of the goods (flawed good, damaged goods, near expiration date etc), such reason must be indicated with the mark of the type of the incentive.

It is forbidden to offer sales incentives for the goods in such small quantities that is obvious that the intention is to attract buyers to buy other goods.

Sales incentives must contain:

1. kind of incentive defined (discount, gift with the product, participation in a prize contest, or some other incentive);
2. precisely and clearly determined goods/services that it pertains to;
3. duration of the incentive, with beginning date indicated;
4. all possibly present conditions related to using the right on an incentive
5. total expenses of receiving or taking over of goods, including delivery and/or all expenses on the burden of the consumer.

Companies, other legal entities and entrepreneurs which perform trade of goods activities and provide services, are obliged to keep records on received, sold and delivered goods and services provided in the Book of trade and services records - KEPU form enclosed with Rule book on trade of goods and services records.

In the records book, data on business changes in relation to trade of goods and services providing (procurement, sale, returns, write-off, expense etc) is entered no later than on the next day for the previous day.

Entries into the records book are entered based on the authentic documents (invoice, POD, receipt, daily cash register re-

port or fiscal document, minutes, inventory list, confirmation, agreement on the service provided etc), and obligor - commission agent also based on the reception records - KR form and paid-up and returned goods records - KR-1 form, which are enclosed with the Rule book on trade of goods and services goods.

Bill of lading, invoice, POD, receipt any other suitable document must contain the following information: name, address and bank account of the supplier and/or buyer, city and address of the location goods are being shipped from, with full name and signature of the person who sent the goods, unique reference number and the date of the document, name, address and signature of the person who received the goods, description of the goods, including name, price per unit and total amount price and information about carrier of the goods.

LAW ON TAX PROCEDURE AND TAX ADMINISTRATION

Taxpayers - legal persons who perform processing and entry of data into books on the computer shall be under obligation to provide, at the request of tax authority:

1. excerpt from data from their electronically kept books and records, in organised structured computer files, in a standard form enabling further simple data processing;
2. access to and insight into data in their electronically kept books and records;
3. access to and insight into software and hardware equipment and database used within the system for electronic keeping of books and records and enable the test of correctness of electronic programmes and electronic data processing.

Data and manner of insight into such data must be provided in one of the following manners:

1. on electronic mediums;
2. by use of modern telecommunication services;

3. direct connections of the tax authority with the taxpayer's system (local connection);

4. indirect connection of the tax authority with the taxpayer's system through telecommunication means (remote connection).

In such cases it's necessary to provide an adequate level of protection, preservation of confidentiality and integrity of data.

Taxpayers who process data electronically are obliged to:

1. keep in electronic form data processed or received in electronic form and enable access to such data in electronic form;
2. enable readability of original data;
3. enable due keeping of data during the period prescribed by the law;
4. enable access to electronically kept books and records, even when kept in electronic form by other persons or in a different state;
5. keep data in adequate form enabling inspection in reasonable time;
6. ensure authenticity of issued documents and the person who issued such documents, as well as the integrity of the contents of the issued documents.

Taxpayer - legal entity - shall be under the obligation to make available to the tax authority, at its request, documents providing full description of the electronic system for keeping books and records. Such documents must include the following descriptions:

1. electronic solutions (base, build, run);
2. subsystem and files (contents, structure, relations);
3. functional procedures within electronic solutions;
4. control enabling correct and safe operation of electronic solutions;
5. control preventing unauthorized addition, change or deletion of entered electronic records.

Each change in electronic solutions (electronic programs, procedures and databases) must be documented in accordance with the time the

change took place, along with the cause, type, consequence and date of such change.

Information on facts relevant for taxation may be withheld by:

1. taxpayer's family members, in terms of legislation governing personal income tax;
2. member of clergy, tax advisor, auditor and doctor in regards to what the taxpayer has confided in them or what they have learned in this capacity, which relates to the taxpayer's tax liability.

As of July 1, 2014, all legal entities and entrepreneurs shall file their tax returns, except for the altered tax return, solely in electronic form, if this law does not prescribe otherwise.

LAW ON PROPERTY TAX

Any taxpayer who acquires, begins to or stops using property in the course of the year, or if his tax liability starts running or ceases on other grounds, shall file a tax return within 30 days from the date of such occurrence.

For the property included in the tax return, the taxpayer that keeps financial records is obliged to file a tax return with the property tax determined, by the March 31 of each tax year.

For the property included in the tax return, the taxpayer who does not keep financial records is obliged to file tax return by the January 31 - if a change occurred that affects the amount of tax due, and the information regarding the change are not included in the tax return.

If a natural person, in the course of the tax year, becomes a taxpayer that keeps financial records, he is obliged to file a tax return regarding real estate that are constituting the assets in his financial records, within a 30 days period starting from the day of the change.

Entrepreneur that keeps financial records is obliged to file tax declaration regarding the property he ceases to register in financial records in the course of a tax year, within 30 days of mentioned change. ▣

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