

## Advokati Srbije sprečavaju pranje novca

- Novi srpski Zakon o sprečavanju pranja novca i finansiranja terorizma u primeni od 27. marta 2009, obavezuje i advokate.

Srbija se uključila u globalnu borbu za sprečavanje pranja novca i finansiranje terorizma donošenjem novog, istominog zakona, koji je nedavno stupio na snagu i obavezuje na ovakvu aktivnost i advokate.

Nove propise za sprečavanje pranja novca i finansiranje terorizma koji važe i u Srbiji objašnjavaju pravni stručnjaci ortočkog Advokatskog društva iz Beograda Janković, Popović & Mitić, koje saraduje sa kancelarijom Cerha Hempel Spiegelfeld Hlawati (CHSH) iz Beča.

Novi Zakon o sprečavanju pranja novca i finansiranja terorizma koji je u primeni počev od 27. marta 2009. godine, u skladu sa evropskim standardima u ovoj oblasti i međunarodnim konvencijama, u 98 članova veoma precizno reguliše ovu materiju koja ne poznaje državne granice. To je razlog što Zakon posebno insistira na međunarodnoj pomoći nadležnih organa u borbi protiv navednih pojava.

Navedeni Zakon predviđa 52 privredna prestupa i isto toliko prekršaja za nepoštovanje svojih odredaba od strane svih onih koji su obavezni na njegovu primenu, a kao posebna vrsta prekršaja (kojih ukupno ima 11), pored navedenih, definisana su kršenja odredaba Zakona od strane advokata.

Pranjem novca u smislu novog Zakona smatraju se sledeće aktivnosti: konverzija ili prenos imovine stečene izvršenjem krivičnog dela, prikrivanje ili netačno prikazivanje prave prirode, porekla, mesta nalaženja, kretanja, raspolaganja, vlasništva ili prava u vezi sa imovinom koja je stečena izvršenjem krivičnog dela, kao i sticanje, držanje ili korišćenje imovine stečene izvršenjem krivičnog dela.

Obveznici primene radnji i mera na sprečavanju pranja novca i finansiranja terorizma su banke, menjačnice, osiguravajuća društva, PTT preduzeća, brokersko-dilerska društva, revizori, poreski savetnici, posrednici u prometu nekretnina, preduzetnici, advokati i advokatska ortočka društva i drugi.

Oni su obavezni da, počev od 27. marta 2010. godine, primenjuju mere kao što su poznavanje i praćenje poslovanja svojih klijenata, dostavljaju Zakonom propisane informacije Upravi za sprečavanje pranja novca, da odrede iz reda zaposlenih ovlašćena lica za sprovođenje konkretnih obaveza iz ovog Zakona, da vode i čuvaju niz Zakonom precizno utvrđenih evidencija koje predstavljaju službenu tajnu i druge obaveze.

Posebnu pažnju Zakon posvećuje obaveznim vidovima i načinu provere identiteta fizičkog i pravnog lica, njihovih zastupnika, prokurista i punomoćnika od strane navedenih obveznika primene ovog Zakona, putem originalnih dokumenata ili overenih fotokopija, uz lično prisustvo klijenta. Zakon reguliše obavezu praćenja poslovanja klijenta, uz naročito pojačane mere kod uspostavljanja Loro-korespondentskog odnosa sa stranom bankom sa sedištem u državi koja ne primenjuje međunarodne standarde u ovoj oblasti, zatim u slučaju kada je klijent strani funkcioner itd.

Serbia joined global combat to prevent money laundering and terrorist financing by adopting the new Law on Prevention of Money Laundering and Terrorist Financing which has recently entered into force and is bidding the lawyers to perform these activities as well.

New regulations for prevention of money laundering and terrorist financing that are valid in Serbia too are explained by the experts from the Law Firm Partnership in Belgrade Jankovic, Popovic & Mitic which cooperates with the Cerha Hempel Spiegelfeld Hlawati (CHSH) Office in Vienna.

New Law on Prevention of Money Laundering and Terrorist Financing which has been implemented since 27 March 2009, in accordance with European standards in this field and international conventions, governs through its 98 articles very precisely the issue which is not restricted to some country frontiers. This is the reason why this Law especially insists on assistance to be provided by relevant bodies in their combat against the mentioned occurrences.

The afore mentioned Law envisages 52 commercial torts and the same number of them for not observing the Law provisions by those who are obliged to implement it, while as special torts (there are 11 of them in total) in addition to the mentioned ones, offences against the Law made by the lawyers are defined.

Money Laundering stipulated by this Law includes the following activities: conversion or transferring of ownership acquired by criminal act, covering or false presentation of real nature, origin, location, movement, availability, ownership or other rights related to the property acquired by criminal act, as well as acquisition, holding and using of property acquired by criminal act.

The following entities are bound to apply acts and measures for prevention of money laundering and terrorist financing: banks, exchange offices, insurance companies, PTT companies, brokers and dealers firms, auditors, tax advisers, real estates agents, entrepreneurs, lawyers and law firm partnerships and others.

Starting from 27 March 2009, they are obliged to apply the measures such as acquaintance with and monitoring of business operations of their clients, submitting to the Anti-money Laundering Administration all information stipulated by the Law; they have to designate somebody from their staff as authorized person to implement concrete obligations stemming from this Law and to keep the records of a number of data defined precisely by the Law as confidential, as well as to fulfill other obligations.

Special attention of the Law is attached to the obligatory modes and ways of verifying the identity of physical and legal persons, their representatives, procurators and authorized person by checking the original documents or certified copies in the presence of a client himself by persons bound to apply this Law.

# Serbian Lawyers to Prevent Money Laundering

- New Serbian Law on Prevention of Money Laundering and Terrorist Financing enforced on 27 March 2009 is also binding for lawyers

Naročito je bitno istaći da Zakon zabranjuje vođenje anonimnih računa, štednih knjižica, na šifru ili donosioca, kao i bilo kakvo vršenje usluga koje prikrivaju identitet klijenta. Zabranjuje se poslovanje sa "kvazi" bankama, kao i prijem gotovog novca za prodaju roba ili vršenje usluga u vrednosti iznad iznosa od 15.000 €, već samo preko računa itd. Novina je i da su obveznici primene ovog Zakona dužni da, u roku od tri dana od izvršene transakcije, obaveste Upravu za sprečavanje pranja novca o svakoj transakciji u iznosu od 15.000 € i više, sa svim propisanim podacima o klijentima. Ova obaveza postoji i u slučajevima nižih iznosa kada postoje osnovi sumnje da se nekom transakcijom vrši pranje novca ili finansiranje terorizma. Jedini izuzetak za advokate od navedene obaveze, Zakon predviđa u slučaju zastupanja klijenta u sudskom postupku. Novi Zakon takođe precizno utvrđuje tajnost podataka, informacija i dokumenata, način njihovog korišćenja, kao i sadržaj obaveznih evidencija jer bi narušavanje poverljivosti istih moglo dovesti do kršenja Ustavom zagarantovanih sloboda i prava građana.

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## Osnovana Uprava za spečavanje pranja novca

Sprečavanje pranja novca u našoj sredini prvi put je regulisano zakonom SR Jugoslavije iz 2002. godine. Ovaj zakon je na veoma uopšten način regulisao ovu materiju odredbama 31. člana, sankcionisanim sa devet privrednih prestupa i devet prekršaja, kao i krivičnim delom pranja novca.

Uopšteno, definisani pojmovi i nedovoljno jasno definisane obaveze banaka, PTT preduzeća, državnih organa, osiguravajućih društava i drugih institucija da preduzimaju radnje i mere na otkrivanju i sprečavanju pranja novca, razlog je i siromašne sudske prakse u ovoj oblasti.

Počev od 10. decembra 2005. godine do 27. marta 2009. godine, u primeni je bio Zakon o sprečavanju pranja novca Republike Srbije koji je u 41. članu šire i jasnije definisao pojam pranja novca, proširio krug pravnih lica obaveznih da učestvuju u otkrivanju i sprečavanju ove negativne pojave - uključujući i advokatsku delatnost, osnovao Upravu za sprečavanje pranja novca, kao organa u sastavu Ministarstva finansija, i sankcionisao sa 16 privrednih prestupa i 16 prekršaja kršenje ovog Zakona.

The Law stipulates the obligation to monitor the clients operations with special precaution when it concerns the establishment of Loro-correspondent relations with foreign banks with a seat in a country that does not apply international standards in this field, then in cases when clients are a foreign country official, etc.

It is of particular importance to point out that the Law prohibits no name accounts and coded bank savings or bearer accounts, as well as provision of any other services that cover the identity of clients.

It is forbidden to do the business with "fake banks", as well as to accept cash for sale of goods or services amounting above 15.000 €; this amount is payable only to bank account, etc.

Novelty is that persons liable to apply this Law are bound to inform the Anti-money Laundering Administration within three days after the transaction has been made about any transaction amounting to 15.000 € and above, including all data about the client defined by the Law.

his obligation is also relevant for smaller amounts in case that there is a justified suspicion that specific transactions are money laundering or terrorist financing. As envisaged by the Law, lawyers are exempted from these obligations only when they are client's attorneys at law in the court proceedings.

Data, information and documents confidentiality are also precisely defined by new Law, as well as their use and contents of obligatory records kept, since their disclosure could bring to the violation of citizens freedoms and rights guaranteed by the Constitution.

## Anti-money Laundering Administration established

Prevention of money laundering was for the first time regulated by the 2002 Law of Socialist Republic of Yugoslavia. This Law regulated the issue in a general way through provisions of Article 31 which envisaged sanctions for nine commercial torts and for criminal act of money laundering. Generally speaking, defined notions and insufficiently defined obligations of the banks, PTT companies, authority bodies, insurance companies and other institutions to act and undertake measures in order to discover and prevent money laundering resulted in poor law practice in this field.

From 10 December 2005 until 27 March 2009 Republic of Serbia applied the Law on Prevention of Money Laundering which defined in 41 article more widely and clearly the notion of money laundering, enlarged list of liable legal entities obliged to participate in discovering and preventing these negative occurrences (including law firms); it established Anti-money Laundering Administration, as body of the Ministry of Finance, and defined 16 commercial torts and 16 torts as offenses of this Law.