

# INTRODUCTION

Last year the Special Auditor discovered that Public Companies in Bosnia and Herzegovina were losing tens of millions of KM of your money annually, through dishonesty or incompetence (sometimes through of a combination of both).

In October the three prime ministers promised to act. They said they would enact laws that will make it impossible for senior managers at public companies to line their own or their friends or their political masters' pockets. These laws have detailed rules that managers will have to stick to. They are designed to make Public Companies operate competitively and efficiently, so that they can keep existing jobs and create new jobs.

When these laws are enacted

- it will be harder for company directors to award themselves huge pay rises immediately before they are due to be dismissed;
- it will be harder for company directors to spend hundreds of thousands of KM in public funds without any supervision or oversight;
- it will be harder for managers fired because of incompetence or dishonesty to find other jobs in the same company because they have good connections with other incompetent and corrupt managers who have not yet been fired.

This brochure describes the laws that BiH Prime Minister Adnan Terzic, Federation Prime Minister Ahmet Hadzasic and RS Prime Minister Dragan Mikerevic promised to enact.

The purpose of these laws is clear. It's about jobs for the people - not jobs for the boys.

# BIH FRAMEWORK LAW ON AUDITING AND ACCOUNTING

*Who's responsible for getting this law enacted?*

BiH Treasury Minister Ljerka Maric

*When did Minister Maric assume responsibility for enacting the law?*

August 2003

*What is the current target date for enacting this law?*

May 2004



## Why does this law matter?

Because accountants and auditors are the first line of defence against crooked managers. They are the watchdogs for legitimate business.

Accounting and auditing is a state-of-the-art industry that has changed rapidly in the global economy – but in BiH the industry is badly organized and inefficient. Different professional bodies administer the training, certification and working practices of accountants and auditors in different parts of BiH; teachers routinely double up as examiners, creating huge opportunities for corruption - and qualifications obtained in one part of the country are not recognized in the other.

## What does the law do?

It sets the same standards for accountants and auditors throughout BiH. All accountants and auditors will sit for the same examinations, which will be marked according to a uniform system. Teaching will be kept separate from marking.

It will establish an independent BiH Accounting and Auditing Commission, headed by an international advisor appointed by the Council of Ministers, to make sure that EU standards are applied in the BiH accountancy and auditing profession.

Under the law there will be three professional accountancy titles in BiH - Certified Accounting Technician, Certified Accountant, and Authorised Auditor. It will be illegal for anyone to use these titles unless they are legally qualified. These titles will be recognized throughout BiH, and those who have earned titles will be able to work throughout BiH.

## Professor Vladislav Đurasović, President RS Association of Accountants and Auditors:

"We welcome the new framework law on accounting. It brings the regulatory scheme for accounting and auditing into conformity with EU requirements, and will result in higher standards in accounting and auditing. We look forward to assisting in making this reform succeed. We look forward to the day when all BiH accountants and auditors are recognised internationally, and are members of a body which is part of the International Federation of Accountants."

# BIH LAW ON PUBLIC PROCUREMENT

*Who's responsible for getting this law enacted?*

BiH Treasury Minister Ljerka Maric



*When did Minister Maric assume responsibility for enacting the law?*

January 2004

*What is the current target date for enacting this law?*

May 2004

## Why does this law matter?

Procurement is about how the government spends your money. It covers everything from giving companies multi-million KM contracts to decorating the office canteen. Procurement often offers easy opportunities for cheating.

If a company is planning to have building work done, and the contract goes to a firm that belongs to the managing director's brother-in-law, the purchasing process may have been inconsistent, excessively flexible or simply rigged. By having an open and transparent procurement process the public can be sure that the contract has been awarded to the best possible company – even if it happens to be run by a relative or friend of the managing director.

## What does the law do?

- It will give BiH citizens the same fair deal and protection that citizens in the rest of Europe depend on.
- The government is obliged to give written reasons to the company whose tender is rejected, so that they can compare their situation with the winning bidder.
- It will open the door to fair government purchasing procedures for thousands of companies in BiH.

The law, which benefits from the experiences of other countries in the region that have successfully introduced modern procurement laws, lays out uniform regulations governing how the governments spend your money.

It establishes a Public Procurement Agency, which will be responsible for making sure the Law is carried out and for raising awareness about the correct way in which your money should be spent. The Agency will also develop a nationwide electronic information system to supplement the Official Gazette in the publication of tender documents, and it will promote training, offer technical assistance in tenders, and keep an eye on public procurement procedures and the award of public contracts.

The Law also establishes a Procurement Review Body consisting of six experts. This body will hear complaints from suppliers who believe a tender has been in any way irregular. If you know of a case where a public procurement process has been abused, you can alert the Procurement Review Body. The Procurement Review Body will have the power to cancel transactions that are found to have violated the Law. Its decisions will be subject to appeal before the courts.

## Ana Kravic, Managing Director, Olympus BH d.o.o:

"We would welcome the introduction of a transparent and standardized procurement process across BiH. Firstly, it would make it that much easier for us to prepare bids and become aware of potential tenders. Secondly, we would be sure that we are entering the game on a level playing field which would encourage us to make the effort to take part in the bid. And finally, such procurement practices should uphold the quality standards for products and services purchased which, in the short as well as in the longer term, can only have positive effects on the economy and the development of our business interests in this country."

# BIH LAW ON PUBLIC PROCUREMENT

The BiH Law on Public Procurement lays out in detail the criteria for different types of tendering procedures --

- by open procedure (inviting any company to bid)
- by restricted procedure with pre-qualification (only companies deemed to have the capacity to do the job are invited to submit a tender)
- by negotiated procedure (a direct approach to one or more companies with full public disclosure); or
- by design contest (where a plan or design is selected by a jury after being put out to competition)

The Law also lays out the kind of information which contracting parties must include in their procurement notices and tender documents (preventing favoured insiders from receiving more detailed information than other bidders).

BiH standards used in tenders will comply with EU standards, and any inconsistency in technical regulations due to differences in Entity legislation will not be acceptable grounds for a bid to be rejected.

All suppliers will be charged the same fee for tender documents - and this fee must be limited to covering the cost of reproducing and sending the documents to suppliers.

Offering a gift to a current or former employee of the contracting authority will be enough to have a prospective bidder disqualified from the tender.

# BIH LAW ON REGISTRATION OF BUSINESSES

*Who's responsible for getting this law enacted?*

BiH Justice Minister Slobodan Kovac



*When did Minister Kovac assume responsibility for enacting the law?*

December 2003

*What is the current target date for enacting this law?*

June – July 2004

## **Why does this law matter?**

BiH is among the most time-consuming countries in Europe in which to register a business.

Because registering a business in BiH is time-consuming and difficult, businesspeople and investors simply give up – and instead start their new companies in other countries.

No new companies in BiH means no new jobs in BiH.

Not only do we make it difficult for businesspeople to start companies and create jobs – we make it expensive. Each unnecessary form that the entrepreneur has to fill is accompanied by a fee – the more forms, the more fees.

Another reason is obsolescence. Business legislation has to keep up with the times. Requirements which were standard 20 years ago may no longer be relevant today – but they are still on the books, and they usually come with a form. This means that businesspeople are routinely asked to supply useless information -- and to do so they must fill in more forms and pay more fees.

## **What does the law do?**

It will simplify, rationalize and speed up the process of registering a company. Business registration will now take a total of five days from the day you fill in the form to the day you are issued with a registration certificate.

A consolidated registry will be maintained for all companies in BiH, which members of the public will be legally entitled to view.

Registration fees will be limited to the cost of maintaining the register.

Among the items of information which companies will be obliged to supply and which will be open to public scrutiny are:

- The address of the company
- A description of the company and its activities, including its start-up capital
- The company's ownership structure

The founders or authorised representative of the company must submit this information personally, and will be held accountable for its accuracy.

When the company is registered the court will issue a registration certificate, which will list the company's Identification Registration Number, its Tax Identification Number and its Customs Number.

This certificate will be sent to the local tax office, the local municipality, the relevant Statistical Institutions, the relevant pension and invalid insurance institutions, the relevant customs office and other relevant authorities.

## **Adel Niksic, businessman:**

"I know it is my responsibility to register my company, but I need to work throughout BiH. It is unfair to make me register three times. It costs too much and takes too much time. I welcome the fact that the Law on Business Registration will create a business registration certificate that will allow my business to operate legally anywhere in BiH. The Single Economic Space is important to my business and to the future of our country."

# ENTITY LAWS ON INVESTMENT OF PUBLIC FUNDS

*Who's responsible for getting this law enacted?*

*RS Finance Minister Branko Krsmanovic, Federation Finance Minister Dragan Vrankic*

*When did Ministers Vrankic and Krsmanovic assume responsibility for enacting the law?*

*October 2003*

*What is the current target date for enacting this law?*

*May 2004*



## Why does this law matter?

The Special Auditor's reports on government ministries and departments revealed widespread cheating by bureaucrats and politicians. This problem is found at municipal, cantonal, Entity and State levels of administration. The results are that

- money goes to the wrong places, into the hands of crooks rather than into better services for citizens;
- citizens do not trust the authorities;
- the authorities acquire a reputation for poor finances and consequently cannot obtain commercial and bilateral loans to provide better services.

## What does the law do?

It will ensure that all investments at every level of the government pyramid are only made according to clear and enforceable criteria on where and how much public money can be invested. This process will start to roll back the negative effects of the kind of misuse of public funds that has become common.

All investment decisions must be made by an authorized (and identifiable) investment manager, who is personally responsible for these decisions. The investment manager may be an individual not employed in the public realm or a duly licensed bank. Banking services must be supplied on the basis of competitive bidding.

Not only must the investment manager report regularly to the respective government departments, government departments also have an obligation to report all investment decisions to the Entity Ministry of Finance annually. The Ministries of Finance will compile all the information on these investments and make this information available to the Entity Parliaments. The investments will be subject to audit by the Entity Supreme Auditor.

Investment managers and government officials will be liable to fines of up to 50,000 KM if they violate the law.

## Andre Van Hove, General Manager of Bosna Bank International d.d. Sarajevo:

“We see the new Law on Investment of Public Funds as an excellent opportunity to expand our expertise in managing public funds. As the banking services must be competitively bid, competition among banks will definitely increase, and only banks with the best track record/fees ratio will be appointed. The list of authorized instruments is wide enough for the selected banks to obtain the highest available return while meeting the cash-flow needs of the public authorities.”

# ENTITY LAWS ON PUBLIC COMPANIES



## *Who's responsible for getting this law enacted?*

RS Minister of Economy, Energy and Development Milan Bogicevic and  
RS Minister of Communications Dragan Solaja,  
Federation Minister of Energy, Mining and Industry Izet Zigic  
and Federation Minister of Communications Nedžad Brankovic

## *When did Ministers assume responsibility for enacting the law?*

December 2003

## *What is the current target date for enacting this law?*

May 2004

## **Why does this law matter?**

Traditionally, senior managers of large companies in BiH haven't had to explain their decisions to workers, or lower-level managers, or members of the public. Yet often these decisions affected the livelihoods and well-being of tens of thousands of people.

Senior managers have also been allowed to make decisions at their own discretion – the rules governing their conduct are not clear. When the Special Auditor uncovered management practices that would be illegal in other countries a common line of defence was: *we didn't know it was wrong*, or *we didn't know it was our responsibility* or *what we were doing is not technically illegal*.

## **What does the law do?**

It makes clear what is right and wrong when it comes to the management of public companies.

It makes clear who has responsibility for what.

It requires companies to adopt and apply a Code of Ethics (which explains that even things that are not technically illegal, if they damage the company or the interests of its workers or its shareholders or its consumers, are unacceptable).

The law lays out in detail the ways in which public companies in BiH should be organized, supervised and run.

The governing bodies will be

- the General Assembly
- the Supervisory Board
- the Management

and each of these bodies will have a clear reporting relationship to the other two.

The members of the General Assembly are the owners of the company, and will take final decisions on, for example, the company's Code of Ethics, its business plan, and the appointment or dismissal of the Audit Board and Supervisory Board.

The Supervisory Board, elected by the General Assembly, is responsible for ensuring that the Management are doing their jobs properly. Among other things, the Board supervises the Management, draws up the Code of Ethics, reviews procurement guidelines and makes sure they are followed. It also selects the members of the Audit Board and endorses the Audit Board's recommendations on the distribution of profits. The Audit Board appoints an external auditor and provides monthly summary reports to the Supervisory Board.

# ENTITY LAWS ON PUBLIC COMPANIES

Management, selected by the Supervisory Board, reports to the Supervisory Board. Each member of management will now be responsible for a specific task in the company, for example, one manager will implement the Code of Ethics, another will make sure the Procurement Law is implemented in the company. Management proposes distribution of profits in a transparent way, ensures that the Internal Audit Department is able to do its job properly by giving them full access to all company records, hires and fires employees who fail to meet the new higher standards, and makes sure that a fired employee is actually excluded from the building so that he cannot continue to show up for work and claim his salary.

Under the terms of the Law, the Company Code of Ethics must contain, at the very least:

- prohibitions on conflict of interest
- prohibitions on disclosure of business secrets
- a statement stipulating the duties of the senior management
- a prohibition of loans (companies will be banned from extending loans to employees or third parties, or giving guarantees for such loans)

RS Supreme Auditor Bosko Ceko:

“Current mismanagement practices will not be possible in the future. Managers will be accountable for public companies’ spending.”

# DENIS

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