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LAW ON AMENDMENTS TO THE CRIMINAL CODE OF BRCKO DISTRICT OF BOSNIA AND HERZEGOVINA

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Pursuant to Article 22 of the Statute of Brčko District of Bosnia and Herzegovina – Consolidated Text (Official Gazette of Brčko District of BiH No. 2/10), the Assembly of Brčko District of Bosnia and Herzegovina at the 8th regular session held on 29 March 2017, adopted the following

LAW ON AMENDMENTS TO THE CRIMINAL CODE OF BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA

Article 1

In the Criminal Code of Brčko District of BiH (Official Gazette of Brčko District of BiH No. 33/13 – Consolidated Text and No. 26/16), in Article 2, paragraphs (3), (7) and (8) shall be amended to read as follows:

“(3) An *official person* means: a person elected or appointed to legislative, executive and judicial office within Bosnia and Herzegovina and other governmental and administrative institutions or services which perform particular administrative, expert and other duties, within the rights and responsibilities of the authority who has founded them; a judge, prosecutor, attorney general; a person who continuously or occasionally executes official duty in the mentioned administrative bodies or institutions; a notary, executor and arbitrator, an authorized person in a business enterprise or another legal person who has been entrusted by a law or other regulation enacted on the basis of a law or concluded contract on arbitration with the execution of public authorities, who performs certain duties within the scope of the such authorizations; and other persons who are performing certain official duties pursuant to the authorizations from the law or other regulations based on the law and person who has been practically entrusted with execution of certain official duties. When an official person has been indicated as the perpetrator of a particular criminal offence, persons referred to in this paragraph may be considered the perpetrators of such offences provided that it does not follow from the characteristics of a particular criminal offence or particular regulation that their perpetrator may only be one of the specified persons.

(7) A *foreign official person* means a member, functionary or officer of a legislative or executive body of a foreign state, a person who is a judge, juror, member, functionary or officer of a foreign country’s court or of an international court, prosecutor, person who is a member, functionary or officer of an international organization or of its bodies, as well as a person who is an arbitrator in a foreign or international arbitration.

(8) An *international official* means a member, functionary or officer of a legislative or executive body of an international or supranational organization BiH is member of or other employee of such an organization under contract pursuant to the meaning of the regulations governing the employment relations. An international official person is also any person, seconded or not, who executes the functions corresponding to those executed by the functionaries or agents of such an organization, a person who is a judge, member, functionary or officer of an international court or prosecutor of any international court or arbitration whose competence is accepted by BiH.”

After paragraph (8), new paragraphs (9) and (10) shall be added to read as follows:

“(9) A *lay judge* is a person who is a member of a collegiate body having a responsibility to decide on the culpability of an indicted person in the trial proceedings.

(10) An *arbitrator* is a person who is, on the basis of an arbitration agreement, called upon to make a legally binding decision in a dispute submitted to him by the parties to the agreement.”

After paragraph (21), new paragraphs (22), (23) and (24) shall be added to read as follows:

“(22) *Property gain* is any economic benefit that has directly or indirectly resulted from a criminal offense, and consists of any property.

(23) *Property* includes the property of every kind, no matter whether they comprise property or rights, either tangible or intangible, movable or immovable, and legal documents or instruments in any form proving the right to ownership over such property or the interest concerning such property.

(24) *Family members*, for the purpose of this Code, are: spouse or common-law partner, ex-spouse or ex-common-law partner, lineal relative, adoptive parent and adopted child, relative in a collateral line to the third degree and an in-law relative to the second degree inclusive.”

Current paragraphs from (9) to (38) shall become paragraphs from (11) to (42).

Article 2

In Article 16, paragraph (1), new sentence shall be added to read as follows:

“The running of the period set by the statute of limitations for criminal prosecution shall commence in the moment of end of the unlawful state.”

Article 3

In Article 51, paragraph (1), line e) shall be amended to read as follows:

“If a punishment of imprisonment not exceeding one year is prescribed as the lowest punishment for the criminal offence, it may be reduced to thirty days of imprisonment.”

Article 4

Article 78 shall be amended to read as follows:

“Article 78 Forfeiture

- (1) Objects that were in any way, wholly or partially, used or destined for use in the perpetration of a criminal offence, or to those that resulted from the perpetration of a criminal offence, shall be forfeited if those objects are owned by the perpetrator.
- (2) Objects referred to in paragraph (1) of this Article shall be forfeited even if not owned by the perpetrator; however, such forfeiture shall not affect the rights of third parties to obtain damage compensation from the perpetrators.”

Article 5

In Article 114, paragraph (1), after the wording: “gain”, a comma and wording: “income, profit or other benefit resulting from the material gain” shall be added.

In paragraph (2), the word “gain” shall be replaced with words: “property gain, income, profit or other benefit resulting from the material gain”.

Article 6

In Article 114a, paragraph (1), after the wording: “material gain”, wording: “property gain, income, profit or other benefit resulting from the material gain” shall be added, and after the wording: “material gain”, wording: “property gain, income, profit or other benefit resulting from the material gain”.

Article 7

In Article 115, paragraph (1), the words: “may be confiscated” shall be replaced with words: “shall be confiscated”.

In paragraph (2), the word: “may” shall be replaced with word: “shall”.

In paragraph (3), the words: “may be” shall be replaced with word: “shall”.

Article 8

In Article 213, the title shall be amended to read “Common-law Marriage with a Junior or Child”, and in paragraph (2), the wording: “aged between fourteen and sixteen” shall be replaced with wording: “who has not reached sixteen years of age”.

Article 9

In Article 218, paragraph (3), after the wording: “health impairment”, wording: “or the criminal offense referred to in paragraphs (1) and (2) was perpetrated in front of a juvenile or child” shall be added.

Article 10

After Article 236, new Article 236a shall be added to read as follows:

“Article 236a

Abuse in the Procedure of Public Procurement

(1) The responsible person in an enterprise or in other entity of economic business that has the capacity of a legal person, or an entrepreneur who in the procedure of public procurement submits a bid based on false data, or agrees in an illicit manner with other bidders, or undertakes other illicit actions with intention to thus influence the decision making of the purchaser in any stage of the procedure of public procurement, shall be punished imprisonment for a term between six months and five years.

- (2) If the offence referred to in paragraph (1) of this Article was perpetrated in the procedure of public procurement value of which exceeds the amount of three million convertible marks, the perpetrator shall be punished imprisonment for a term between one year and ten years.
- (3) The perpetrator who voluntarily discloses that the bid is based on a false data or on an illicit agreement with other bidders, or that he undertook other illicit actions with intention to influence the decision making of the purchaser before he makes the decision of the selection of the bid, may be punished more leniently or be acquitted.”

Article 11

After Article 237, new Article 237a shall be added to read as follows:

“Article 237a Accepting and Giving Bribe in the Bankruptcy Procedure

- (1) A creditor or member of the board of creditors who demands or accepts the bribe or who accepts the offer or promise of a bribe for himself or other person in order to vote in certain manner or to miss voting or in other manner act in order to bring about damage to at least one creditor in a bankruptcy procedure, shall be punished by imprisonment for a term between six months and five years.
- (2) If a bankruptcy manager perpetrates the act referred to in paragraph (1), he/she shall be punished by imprisonment for a term between one and eight years.
- (3) Whoever offers, promises or gives a bribe to a creditor, member of the board of creditors or bankruptcy manager in order to perpetrate the criminal offense referred to in paragraphs (1) or (2) of this Article, shall be punished by imprisonment for a term of up to three years.”

Article 12

After Article 246, new articles 246a and 246b shall be added to read as follows:

“Article 246a Unlawful Acceptance of Reward, Gift or other Benefit

- (1) Whoever, while representing property interests of a legal person, demands or accepts a reward, gift or any other benefit in order to conclude or not to conclude a contract, or to do or not to do some act to the detriment of the legal person and thereby causes serious damage to the legal person, shall be punished by imprisonment for a term between one and eight years.
- (2) The perpetrator referred to in paragraph (1) of this Article who demands or accepts a reward, gift or any other benefit after having concluded or not concluded a contract or having done or not having done some act to the detriment of the legal person, shall be punished by imprisonment for a term between six months and five years.
- (3) The reward, gift or any other benefit shall be confiscated.

Article 246b Unlawful Giving of Reward, Gift or other Benefit

(1) Whoever gives or attempts to give or promises a reward, gift or any other benefit to a person representing property interests of a legal person in order to obtain some unlawful advantage in concluding a contract referred to in paragraph (1) of Article 238 of this Code, shall be punished by imprisonment for a term between one and eight years.

(2) Whoever gives or attempts to give or promises a reward, gift or any other benefit or advantage to a person representing property interests of a legal person as a counter-favor for concluding a contract or performing some act, shall be punished by imprisonment for a term between six months and five years.

(3) The perpetrator of the criminal offence referred to in preceding Paragraphs who had given a gift or reward on request or reported the offence before it has been discovered or before knowing that the offence has been discovered, may be released from punishment.

(4) The gift or reward shall be confiscated.”

Article 13

In Article 330, paragraph (3) shall be amended to read:

“If the criminal offence referred to in Article 326, paragraph (3) in conjunction to paragraph (2), Article 327, paragraph (2), Article 328, paragraph (2) and Article 329, paragraph (3) of this Code resulted in grievous bodily injury of a person or in large-scale damage of property, or if the criminal offence referred to in Article 326, paragraph (3) in conjunction to paragraph (1), the perpetrator shall be punished by imprisonment for a term between six months and five years.”

Article 14

Article 374 shall be amended to read:

“Article 374

Accepting Gifts and other Forms of Benefits

(1) An official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official person or international official or arbitrator or lay judge, who demands or accepts a gift or other benefit for himself or another person, or who accepts a promise of a gift or other benefit for himself or other person to perform, within the scope of his function, an action which he should not perform, or not to perform an action he should perform, or who intercedes in such bribing of an official or responsible person, international official or arbitrator or lay judge, shall be punished by imprisonment for a term between one and ten years.

(2) An official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official person or international official or arbitrator or lay judge, who demands or accepts a gift or other benefit for himself or other person, or who accepts a promise of a gift or other benefit for himself or another person to perform, within the scope of his function, and action that he should perform, or not to perform an action he should not perform, or who intercedes in such bribing of an official or responsible person, international official or arbitrator or lay judge, shall be punished by imprisonment for a term between six months and five years.

- (3) An official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official person or international official or arbitrator or lay judge, who, after performing or not performing referred to in paragraphs (1) and (2) of this Article, and in relation to that demands or accepts a gift or other benefit for himself or another person shall be punished by the sentence referred to in paragraph (1) of this Article.
- (4) The accepted gift or property gain shall be confiscated.”

Article 15

Article 375 shall be amended to read:

“Article 375 Giving Gifts and Other Forms of Benefits

- (1) Whoever gives or promises a gift or any other benefit to an official or responsible person in the institutions of Brčko District of Bosnia and Herzegovina, including also a foreign official person or an international official or arbitrator or lay judge, for himself or another person, in order that he performs within the scope of his official function of an act, which ought not to be performed by him, or abstains from performing of an act which ought to be performed by him, or whoever mediates in such bribing of the official or responsible person, international official or arbitrator or lay judge shall be punished by imprisonment for a term between six months and five years.
- (2) Whoever gives or promises a gift or any other benefit to an official or responsible person in the institutions of Brčko District of Bosnia and Herzegovina including also a foreign official person or arbitrator or lay judge or an international official, for himself or another person, in order that he performs within the scope of his official function an act, which ought to be performed by him, or abstains from performing of an act, which ought not to be performed by him, or whoever mediates in such bribing of the official or responsible person, international official or arbitrator or lay judge shall be punished by a fine or imprisonment for a term not exceeding three years.
- (3) The perpetrator of the criminal offence referred to in paragraph (1) and (2) of this Article who had given a bribe on request of the official or responsible person in the institutions of Brčko District of Bosnia and Herzegovina including also a foreign official person or an international official, or arbitrator or lay judge but reported the deed before it being discovered or before knowing that the deed has been discovered, may be released from punishment.”

Article 16

In Article 376, the title and the text of the Article shall be amended to read:

“Article 376 Accepting Reward or Other Form of Benefit for Trading in Influence

- (1) Whoever directly or indirectly demands or receives or accepts a gift or any other benefit or promise of a reward or any other benefit for himself or another person in order to, that by using his actual or presumed official position or social position or position of influence or other status,

intercede that an official or responsible person in the institutions of Brčko District of Bosnia and Herzegovina or a foreign official person or an international official or arbitrator or lay judge perform or not perform official or other action, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever intercedes, by using his official position or social position or position of influence or other status, that an official or responsible person in the institutions of Brčko District of Bosnia and Herzegovina or a foreign official person or an international official or arbitrator or lay judge perform or not perform official or other action, shall be punished by imprisonment for a term between one and eight years.

(3) If the perpetrator had demanded or received or accepted a reward or any other benefit for himself or another person for perpetration of the criminal offense referred to in paragraph (2) of this Article, he/she shall be punished by imprisonment for a term between one and ten years.

(4) Any received reward or some other benefit shall be confiscated.”

Article 17

After Article 376, new Article 376a shall be added to read as follows:

“Article 376a Giving Reward or Other Forms of Benefits for Trading in Influence

(1) Whoever directly or indirectly gives or offers or promises to a person with official position or social position or position of influence or other status a reward or any other benefit in order to intercede that an official or responsible person in the institutions of Brčko District of Bosnia and Herzegovina or a foreign official person or an international official or arbitrator or lay judge perform or not perform official or other action, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever directly or indirectly, at the request of a person with official position or social position or position of influence or other status, perpetrates he criminal offense referred to in paragraph (1) of this Article, but reported the deed before it being discovered or before knowing that the deed has been discovered, may be released from punishment.

(3) Any received reward or some other benefit shall be confiscated.”

Article 18

In Article 377, after paragraph (3), new paragraph (4) shall be added to read:

“(4) Any received reward or some other benefit shall be confiscated.”

Article 19

After Article 377, new Article 377a shall be added to read:

“Article 377a Illegal Favoring

(1) An official or responsible person in Brčko District of Bosnia and Herzegovina, who, on the basis of an agreement, favors on of economic subjects by adapting the terms of a public procurement or who concludes a contract with a bidder whose bid is contrary to the terms of bidding documentation, shall be punished by imprisonment for a term between six months and five years.

(2) An official or responsible person in Brčko District of Bosnia and Herzegovina, who takes advantage of their position or authorization in granting, taking or contracting jobs for their activity or activity of a person with whom they are related by interest, shall be punished by the sentence referred to in paragraph (1) of this Article.”

Article 20

In Article 378, after paragraph (3), new paragraph (4) shall be added to read:

“(4) Money, securities or other mobile items as well as gained benefit shall be confiscated.”

Article 21

In Article 379, after paragraph (3), new paragraph (4) shall be added to read:

“(4) Gained benefit in property shall be confiscated.”

Article 22

In Article 381, paragraph (1), the word: “severe” shall be replaced with words: “more severe”.

Article 23

The Legislative Commission of the Assembly of Brčko District of Bosnia and Herzegovina is hereby obliged to establish the Consolidated Version of the Criminal Code of Brčko District of Bosnia and Herzegovina within 90 days from the day this Law was promulgated in the “Official Gazette of Brčko District of Bosnia and Herzegovina”.

Article 24

This Code shall enter into force on the eighth day from the day of its publication in the “Official Gazette of Brčko District of Bosnia and Herzegovina”.