On December 28th, 2016, on the seventh sitting of the Second Regular Session in 2016, the National Assembly of the Republic Serbia, adopted:

- the Law on Amendments to the Law on Capital Market (“Official Gazette of RS”, no. 108/2016, hereinafter the “LCM”), and
- the Law on Amendments to the Law on Takeover of Joint Stock Companies (“Official Gazette of RS”, no. 108/2016, hereinafter the “Law”),

which entered into force on January 6, 2017.
Firstly, the LCM additionally defines certain terms which either present a complete novelty, such as the credit derivatives, spot contracts and spot markets, or defines terms and institutes that are already regulated or somehow connected with other institutes included in the LCM, but now in a more precise and detailed manner, which is the case with commodity derivatives, referent values, place of trading, stabilization etc.

However, most of the amendments to the LCM refer to the provisions regulating the abuses in the market, including the abuse of inside information and market manipulations.

In the light of introducing new terms and institutes, the LCM expands the application of the provisions on abuses in the market to certain spot contracts, derivative contracts or derivative instruments for transfer of credit risk and actions that have or may have impact on reference values. Additionally, inside information are now also information that may influence the prices of connected spot contracts for commodities.

Newly introduced Article 78a of the LCM ads a level of legal certainty to the potential abuse of inside information, prescribing that the very fact that a legal entity is in or was in possession of inside information, does not imply that the abuse of these information occurred, under the condition that such legal entity has introduced, implemented and maintained adequate and effective internal mechanisms and procedures aimed to prevent such abuses. In that context, the Article 79 of the LCM was also amended and now specifies that the issuer of financial instruments is obliged to publish inside information, as required by the LCM, and keep these public in the term of five years upon publishing.

Additionally, new Article 84a of the LCM introduces the ban for the managers of the issuer of financial instruments to participate in transactions involving financial instruments of such issuer, either for themselves or on behalf of third parties, directly or indirectly, during the period of 30 days prior to publishing the annual, semi-annual or quarterly reports. Exceptionally, the issuer may give its written consent to the management, enabling transactions during the period of ban, only if extraordinary circumstances would occur, as determined by the Commission for Securities („Commission“).

The LCM also regulates the market research institute, prescribing that publishing inside information during market research, may not involve inside information abuse, under the conditions prescribed by the LCM.

When defining market manipulations, the LCM introduces additional action of manipulation referring to transmitting false or misleading information or providing false or misleading basic information on referent values. It also specifies that trading financial instruments not only at the end of trading, but also at the beginning of the trading day, shall also be considered as market manipulation.
The provisions regulating the competence of the Commission have also been amended, now prescribing that the Commission, in the context of its authority to prevent abuses in the market, can request the judge for previous proceeding to render an order enabling the Commission to review phone calls records, from the subject of control. Also, unlike the previous provisions where the Commission could inform the public about the undertaken measures for preventing abuses in the market, the Commission is now obliged to do so, whereas such notifications shall be available for the public in the course of five years upon publishing.

The penal provisions of the LCM prescribe more severe penalties for market manipulations that have resulted in market disturbances, by increasing the legal minimum from one to three years of imprisonment and ad the criminality of the attempt to commit criminal offence, which also refers to the criminal offence of using, disclosing and recommending inside information. The Article 284 of the LCM introduces a new commercial offence punishable with the penalty of RSD 500,000.00 to RSD 3,000,000.00 for the issuer, public company and the bidders that have not delivered prescribed notifications on inside information, which was previously only a misdemeanour. Additionally, the LCM introduces misdemeanour for the management of the issuer and connected parties that do not deliver notifications prescribed by the LCM, punishable with penalty of RSD 5,000.00 to 150,000.00. Finally, all proceedings initiated before the Commission prior to entering into force of the LCM shall be finalized in accordance with the provisions of the previous Law on Capital Market („Official Gazette of the RS“, no.31/2011 and 112/2015).


The Law primarily harmonizes the provisions of the Law with the corresponding provisions of the law on companies, by introducing director, i.e. the board of directors, supervisory board, executive directors i.e. executive board of directors and management board for banks, as management bodies, instead of the previously prescribed only management board for all forms and types of legal entities.

The Law also alters the definition of the acting in concert, by defining that only members of the management structures of the companies acting in concert and the members of the management structures in which those members of the management structures are considered to act in concert, are included in acting in concert definition, while the previously used terms to define acting in concert are now only criteria used by the Commission for Securities („Commission“) when determining whether some action presents acting in concert.

Furthermore, the Law specifies the obligation of publishing the takeover bid for additional acquisition of shares. Thus, the Article 6 of the Law now stipulates that, upon reaching and crossing the control threshold and publishing takeover bid, the acquirer is obliged to publish the takeover bid when, either acting independently or jointly, directly or indirectly, acquires voting shares of the target company so that the total number of shares exceeds 10% or if through such additional acquisition acquires over 75% of shares, regardless of the percentage of additional
acquisition. Further acquisition of shares above 75% does not create the obligation of publishing the takeover bid.

The exceptions from application of the Law have also been changed, by, inter alia, now prescribing the obligation of the persons that are exempt from publishing the takeover bid to inform the Commission of using such exemption, in the course of four days upon occurrence of the circumstances justifying such exemption.

The Law also changes certain terms, i.e. prescribes longer terms for certain actions. For example, the term for announcing the notice on takeover intent is now two instead of one working day; term for submitting the request for approval of the takeover bid to the Commission is now 15 working instead of 15 days; term for rendering the decision of the Commission on submitted request is now ten instead of seven days while the term for deciding upon submission of altered request is now two instead of one working day.

Probably the most significant amendments to the Law refer to determination of the takeover price. The Law introduces an additional obligation of submitting the elaboration on fair share price, among other documents accompanying the takeover bid, which elaboration contains the assessment of fair share price for illiquid shares, determined on the day of publishing the takeover bid or on the day of submitting the request, in special occasions stipulated by the Law.

The Article 22 of the Law regulating the takeover price has been completely changed so that it now introduces the term of trading days into the definition of share liquidity, while prescribing only two alternative takeover prices for liquid shares: average weighted price of shares in the last six months and the highest price of shares at which the acquirer or the persons it acts in concert with acquired in the last 12 months. The Law sets forth additional restrictions for the acquirer or the persons it acts in concert with, by prescribing that if, in the period of one year upon closing of the takeover bid, acquirer or the persons it acts in concert with sell shares at the price exceeding the price from the takeover bid, they are then obliged to make the payment of the difference in these prices in favour of the shareholders from the takeover procedure and inform the Commission thereof. Breaching this obligation presents a misdemeanour punishable with the penalty ranging from RSD 1,000,000.00 to 3,000,000.00. The compensation for shares can be paid in money or securities, whereas the ratio between the money and the securities is freely formed.

The Law also prescribes the exemption from the prohibition of disposal of shares once the obligation to publish the takeover bid has occurred, by allowing the acquirer and the persons it acts in concert with to sell the shares without publishing the takeover bid, under the conditions set forth in the Law, mostly referring to the obligation of publishing and notifying on all details and elements of disposal of shares.

The Article 37 of the Law specifies the provisions regulating restoring voting right once the acquirer or the persons it acts in concert with drop under 25% of shares, when the Commission renders the decision on restoring their voting right.
Due to the practical problems that have appeared in interpretation of the Article 41b of the Law regulating the enforced purchase of shares if the takeover bid has not been published in accordance with the law, the Law now further elaborates this right of the shareholders by stipulating that the shareholders are entitled to demand enforced purchase before the competent court even if the submitted request for publishing the takeover bid was not orderly and valid; if such request has been rejected or dismissed by the Commission; if, once the request has been approved, the takeover bid has not been published as well as if the takeover procedure has been suspended.

The Law introduces a new misdemeanour for all persons that do not inform the Commission in terms prescribed by the Law on prescribed exemptions from publishing the takeover bid, or do not inform the Commission on additional acquisition of shares at a higher price than the takeover price or on payment of such difference to the shareholders from the takeover procedure. Such misdemeanour is punishable with the penalty in range from RSD 100,00.00 to 200,000.00 for legal entities and RSD 40,000.00 to 50,000.00 for individuals and responsible persons within the legal entities.

Final, the transitional provisions of the Law prescribe the following general rules in application of the Law:

- the takeover and inspection procedures that have been initiated prior to the entering into force of the Law, shall be finalized in accordance with the law in force on the day of initiation of such procedures;
- the obligation to publish the takeover bid that has occurred in the time the previous Law on Capital Market (“Official Gazette of the RS”, no.46/2006, 107/2009,99/2011) was in force and applicable, shall be realized in accordance with the Law;
- all persons possessing over 25% of shares, that did not for any reason publish the takeover bid in accordance with the previous law, shall be obliged to do so for any additional acquisition exceeding 25% of shares, in accordance with the Law.