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NEW INTEGRITY RULES FOR ROMANIAN PUBLIC PROCUREMENT PROCEDURES

The public procurement procedure in Romania has recently been updated with new provisions aimed at preventing conflicts of interest. To this end, Law no. 184 of October 17, 2016 establishing a mechanism for preventing conflicts of interest regarding the award of the public procurement contracts has been published in the Official Gazette, Part I, no. 831 of October 20, 2016. („Law no. 184/2016”).

In essence, Law no. 184/2016 introduces a mandatory form of integrity to be drafted and submitted as part of the tendering documentation. This form of integrity will support three tiers of information as follows: (i) data regarding the tender procedure, the decisional factor, the evaluation committee, the consultants and experts, (ii) data regarding the bidders/candidates and finally (iii) a section regarding the measures implemented in order to overcome the potential conflict of interest as a result of an integrity warning issued by the National Integrity Agency.

Once the forms of integrity are filled with the required information, they will be uploaded in the Electronic Public Procurement System (known as „SEAP”). From here the forms of integrity can be directly accessed by the inspectors of the National Integrity Agency via a special platform defined as the Prevention System, which interconnects with SEAP.

Every contracting authority is compelled to designate the persons responsible with drafting the forms of integrity. These forms must be constantly updated considering the strict timeframe provided by Law 184/2016. Failure to update and upload the forms of integrity in due time, will generate an alarm, that will be digitally addressed both to the contracting authority and the National Integrity Agency.

In the event that the Prevention System detects the prerequisites of a potential conflict of interests within a specific public procurement procedure, the inspectors of the National Integrity Agency will issue an integrity warning. The integrity warning will be made available via SEAP to the contracting authority, to the National Integrity Agency and to other agencies entitled to monitor the public procurement procedures in Romania. Additionally, the integrity warning will be digitally sent to the persons from within the contracting authority responsible with drafting and updating the forms of integrity. These persons will next forward the integrity warning to the subject suspected of breaching the integrity regulations and to the director of the contracting authority.

The director of the contracting authority is compelled to take all necessary measures to overcome the conflict of interest. Such measures might consist in: replacing a member of the evaluation committee, excluding a bidder, excluding an associated bidder part of a consortium etc.

Very importantly, the deficiency of an integrity warning or the absence of measures issued by the director of the contracting authority in order to overcome the conflict of interest identified by an integrity warning, does not preclude any future investigations in respect of the integrity breach. Hence the responsible persons may be subject to disciplinary action, civil claims, administrative proceedings or criminal prosecution.

Law no. 184/2016 will enter into force in its substance, on June 20, 2017.

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