

SERBIA: FINANCE

Decree on the Conditions for and Manner of Setting-off of Payables and Receivables under Cross-border Foreign Credit Transactions¹

This regulation, effective as of 4 January 2012, implements the recently amended Law on Foreign Exchange Transactions (*Zakon o deviznom poslovanju*, *Official Gazette of the RS 62/2006 and 31/2011*) ("**Forex Law**") (see BDK Newsletter 09/2011 at:

<http://www.bdklegal.com/upload/Finance%20Newsletter%2009-2011.pdf>) which gave mandate to the Government of Serbia to determine the conditions for and the manner of setting-off payables and receivables arising out of cross-border loan transactions.

According to the regulation, Serbian banks and other resident commercial entities may set-off their payables/receivables arising out cross-border loan transactions with:

- (i) payables/receivables under cross-border loans taken from or granted to non-residents and registered with the National Bank of Serbia (payables/receivables arising under loan agreements between non-financial entities may be set-off only if the loan was taken or, as the case may be, granted after 28 April 2002);
- (ii) payables/receivables under transactions for export/import of goods or services;
- (iii) dividend receivables arising from direct investments abroad or dividend payables arising from direct investments of foreigners in Serbia;
- (iv) purchase price owed for real property purchased abroad or purchase price claimed from non-residents for real property sold in Serbia.

Both bilateral and multilateral (within the group of companies) set-off is permitted in the presence of the abovementioned grounds, however, only if all parties to the set-off operation consent in writing to the set-off in each specific case and subject to a written approval of the Ministry of Finance for each set-off operation. A request for the approval of the Ministry of Finance must be accompanied with an extensive set of documentation, including:

- (i) a confirmation of the National Bank of Serbia on the amount of outstanding payable/receivable sought to be set-off;
- (ii) the documentation evidencing the exact amount of payables/receivables (e.g. invoices, resolutions on distribution of dividends, etc);
- (iii) written consents of the parties to set-off, specifying the payables/receivables sought to be set-off;

¹ Uredba o uslovima i načinu prebijanja dugovanja i potraživanja po osnovu kreditnih poslova sa inostranstvom u devizama ("Official Gazette of the Republic of Serbia", No. 99/2011)

- (iv) in case of a multilateral set-off, excerpts from the relevant commercial registries evidencing that the companies involved in the set-off operation are members of the same group.

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Each particular set-off has to be registered with the National Bank of Serbia within 10 days from the date of it being approved by the Ministry of Finance (which is the date when the set-off operation is deemed to be effected). If payables/receivables under a cross-border loan agreement are set-off with receivables/payables arising out of export/import transactions under which the payment is outstanding for more than one year after export/import, set-off has to be reported to the National Bank of Serbia within 10 days from the expiry of the quarter in which the set-off was effected.

Set-off of payables/receivables in cases other than those foreseen by this regulation (e.g. where both payables and receivables subject to set-off arise under export/import of goods or services) still remains to be regulated.