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SERBIA: FINANCE

Amendments to the Law on Foreign Exchange¹

The amendments to the Law on Foreign Exchange came into force on 25 May 2011.²

CAPITAL TRANSACTIONS

Financial derivatives are now classified as “capital transactions.” All other issues relevant for transactions with financial derivatives have been left to be regulated by the National Bank of Serbia (“**NBS**”). The NBS should prescribe the conditions for “payments, collection, transfers and offsetting [i.e. netting],” as well as reporting obligations, related to financial derivatives.

Cross-border lending. A Serbian bank may participate with foreign banks in **syndicated lending** transactions involving a non-resident borrower, provided it obtains security from the borrower. The same condition (security from the borrower) is also applied in cases where a Serbian bank guarantees for the obligations of a non-resident borrower to a non-resident lender (e.g. the parent bank).

Participation of a domestic bank in a foreign syndicate granting a loan to a Serbian borrower for the purpose of import financing is permitted only up to the value of the imports, whereas in other cases, the Serbian bank may participate in such a syndicate, only if its share in the syndicate is at least equal to 10% of the loan.

A Serbian syndicate member is permitted to purchase the receivables of another syndicate member, as well as to sell its receivables. If the sale and purchase of receivables under a syndicated loan is between two Serbian banks, payments between them can be in the foreign currency of the loan even though the transaction has taken place in Serbia.

¹ *Zakon o deviznom poslovanju* (“Sl. glasnik RS”, br. 62/2006)

² With the exceptions of several provisions on penalties and on foreign exchange operations, which will become applicable on 31 December 2011 or 1 January 2012 (depending on the provision).

The requirement to register cross-border loans with the NBS remains. Proceeds cannot be drawn down prior to such registration.

Debt push-down remains prohibited. Residents cannot grant security to non-residents (including parent companies) for obligations to other non-residents.

FOREIGN TRADE TRANSACTIONS

The previously existing 180-day deadline for **collecting the proceeds of exports or import of goods paid in advance** has been prolonged to one year. If this deadline is exceeded, the export/import transaction is regarded as a cross-border loan and has to be reported to the NBS.

The regime applicable to **offsetting receivables and payables in foreign trade transactions** is not substantially changed. Set-off will be possible only under the conditions to be prescribed by the Government. Currently, offsetting in foreign trade has been practically reduced to transactions involving electricity trading and even in that case, an approval of the Ministry of Economy is required. It is still to be seen whether the Serbian Government will expand the scope of foreign trade transactions eligible for set-off of payments and whether or not approval requirements will be eased or dispensed with.

Offsetting payments are now permitted, in principle, also **in relation to cross-border loan transactions, direct investments and investments in real estate**, subject to the conditions to be prescribed by the Government upon the proposal of the NBS. Once those conditions are set forth, each particular set-off operation will have to undergo a bureaucratic procedure which involves obtaining a certificate from the NBS on the amount of payables and receivables to be offset and the approval of the Ministry of Finance to be issued based on such NBS certificates.

Transactions with Tax Havens. The amendments prescribe for the obligation of Serbian resident entities to report to the Foreign Exchange Inspectorate on all payments made to or received from the counterparts residing in the so-called “tax havens”. The list of tax havens should be prepared by the Government.