

SERBIA: FINANCE

FURTHER LIBERALIZATION OF THE SERBIAN FOREIGN EXCHANGE REGIME

Serbia has made one further step towards foreign exchange liberalization, with the Parliament's adoption of a new set of amendments to the Law on Foreign Exchange on 15 December 2012. The amendments came into force on 25 December 2012. Although the amendments significantly relax the conditions applicable to cross-border payments, some important restrictions remain intact.

Most notably, a prohibition on Serbian companies to lend money to a non-resident or grant security for debts of a non-resident to another non-resident continues, with the exception of downstream loans or security.

Cross-border lending

In the area of cross-border loans, the most significant change pertains to the liberalization of the conditions for participation of Serbian banks in banking syndicates. Previously, a Serbian bank was permitted to participate in a foreign syndicate granting a loan to a Serbian borrower only if its share in the syndicate was not lower than 10%. By virtue of the amendments, the minimum participation threshold has been removed.

Serbian branches of foreign companies, which were thus far permitted to take cross-border loans from their parent company only if those loans were subordinated and repayable in no less than five years, are now permitted to take loans from their parent company provided the repayment term is longer than one year.

The amendments lift a ban on Serbian individuals on taking loans from foreign lenders. They are now allowed to take cross-border loans provided the maturity date is longer than one year. The proceeds of a cross-border loan must be paid into the individual's Serbian bank account, since the prohibition on holding off-shore accounts remains (with narrow exceptions).

Set-off and assignments of debts and claims under cross-border loans have been significantly liberalized. The regulation of the conditions for off-setting debts owned by Serbian banks, companies and Serbian branches of foreign companies under cross-border loans with claims held by those Serbian entities against their foreign lenders has been removed from the competence of the Ministry of Finance and is now within the exclusive competence of the National Bank of Serbia. Most importantly, set-off in this context is no longer subject to the approval of the Ministry of Finance.

Assignment of claims under a cross-border loan granted to a Serbian debtor no longer requires the debtor's consent. In line with the general contract law, it is now sufficient that the Serbian debtor is notified of the assignment. The law prescribes certain mandatory content of the assignment agreement. Furthermore, a claim towards a Serbian debtor can be assigned to a Serbian or a foreign assignee while previously the assignment to a foreign assignee was subject to special conditions determined by the National Bank of Serbia. A special regime applies to assignment of claims against state-owned companies and companies in the process of privatisation.

Cross-border capital transactions

The amendments specify that Serbian residents may purchase shares (quotas) in foreign legal entities. Previously, the relevant provision referred only to equity securities. Furthermore, it is specified that Serbian residents may invest in foreign investment funds, however only via Serbian-licensed investment companies (brokers or custody banks) and not directly.

Cross-border trade payments

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Assignment of cross-border trade receivables and payables will be significantly relaxed as the consent of the debtor is no longer required for such assignment to be effective. Instead, in line with general contract law, it is now sufficient that the assignor notifies the debtor of the assignment. The law prescribes certain mandatory content of the assignment agreement. A special regime applies when the debtor is a state-owned company or a companies in the process of privatisation.

The amendments give an important boost to e-commerce, by expressly declaring that cross-border payments via institutions issuing e-money are permitted. Until now, a dilemma as to the legality of these operations has persisted because of the prohibition on Serbian residents to hold money in off-shore accounts.