FOREIGN EXCHANGE OPERATIONS

1.38

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adapt the wording of the Law and interpretation in practice so that prohibited operations are explicitly prescribed as such, whereas all other activities are considered permitted.	2017			√
Further relaxation of administrative requirements (e.g. delivering of documentation via e-mail instead in hard copy), and particularly switching to ex post reporting of cross-border financial loans.	2021			√
Continue the practice of publishing of opinions of state authorities in charge of forex operations, in particular NBS, for the consistency in application of regulations by all participants.	2021	√		
Reconsider the wide scope of NBS' discretion to restrict a resident from granting securities or guarantees in relation to foreign loans, especially in relation to regular foreign loans and further regulate the procedure in accordance with Article 23 of the Law and relevant bylaws. Additionally, the clear instructions are required regarding the type of securities for receivables collection that are to be obtained from non-residents in case of granting loans to a non-resident or providing guarantees and other type of securities under credit operations between non-residents.	2021			√
Simplify the set-off rules from the Article 6 of the Law (and relevant by-laws) for all types of current and capital transactions and allow cash pooling between affiliated parties.	2012			√
Reconsider Articles 7, 20 and 33 of the Law so that the transfer, payment and collection of receivables and debts are resolved adequately for all types of current and capital transactions.	2013			√
Enable foreign inflows without prior notification to the bank, as currently envisaged by by-laws governing cash inflow and outflow with abroad, subject to condition (if necessary) for such notification to be made subsequently and electronically at certain time intervals, if possible, directly from the companies and not threw commercial banks (e.g., monthly, quarterly, etc.) For natural persons, enable automatic distribution of all inflows from abroad, i.e., without exceptions regarding the notification of the Bank on certain bases of inflow.	2018		√	
Further liberalisation of foreign deposit transactions of residents, especially for companies subject to project financing by foreign banks and international financial institutions.	2018			√

CURRENT SITUATION

As of 28 April 2018, when the amendments to the Law on Foreign Exchange Operations (Official Gazette of RS Nos. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018) (Law) entered into force, no significant changes in the field of foreign exchange regulations have occurred.

Since the last edition of the White Book, several by-laws have been adopted and amended. In general, the changes were related to the regulation of exchange transactions, while there were no changes to the regulations to which the Council's recommendations refer.

POSITIVE DEVELOPMENTS

During the last year there have been no material changes of the Law and/or the bylaws, and thus significant positive

developments in this area have not been made.

A significant improvement in terms of transparency and availability of opinions of the National Bank of Serbia (NBS) in interpreting the provisions of the Law achieved in the first half of 2021, when the NBS began publishing its responses on frequently asked forex questions on its website, should be continued as it significantly contributes to legal certainty. Although it is clear on the basis of this document that the NBS maintains a positive approach to interpretation of the Law, in the sense that only explicitly prescribed operations in the Law are considered allowed, the public availability of these opinions significantly contributes to the knowledge of stakeholders of the regulator's views, what is important for planning transactions.

REMAINING ISSUES

Despite the partial liberalisation in the field of forex operations, the current legislation remains restrictive, with the aim of protecting and preserving the macroeconomic stability.

Recognising the position of the regulator regarding the necessity to preserve macroeconomic and financial stability, we believe that there is still a need to adapt the wording of the Law and the interpretation in practice to the approach in which prohibited operations are explicitly prescribed as such, while all other activities should be considered permitted. This principle has already been set out in Articles 3 (1) and 10 (1) of the Law, however, due to the legislative approach prescribing, in other parts of the Law, which transactions residents and non-residents may perform, the predominant interpretation in practice, as well as by the NBS, remains that all other unregulated activities are not in accordance with the Law. Legal transactions and the market continuously evolve, and it is neither possible nor expedient to apply a legislative technique that lists the allowed operations, while regarding the others as unpermitted. In practice, this perennial approach results in situations where certain operations, which the legislator does not seem to intend to exclude, cannot be performed due to the lack of governing norms. In addition, it is noticeable that, in certain matters, the competent authorities' interpretation narrows down the scope of application of certain rules, thereby constraining the operations of participants in the field of forex operations.

However, if a list of permitted transactions is retained, we believe that it needs to be expanded wherever justified and feasible, especially when it comes to groups of affiliates, which seek to simplify financial relations within the group. Therefore, the issue of liberalisation of foreign credit and deposit operations remains open, and such liberalization is necessary to enable the provision of more sophisticated banking services, such as cash management, cash pooling and similar packages.

Certain practical difficulties in conducting cross-border loan transactions arise from the ex-ante reporting procedure of the NBS on financial loans, which is a precondition for utilization of funds by resident companies. Given the purely statistical purpose of reporting, we believe in need of further simplification of the said procedure e.g., by introducing the obligation of ex-post aggregate reporting by e-mail, with a reduced volume of documentation or in a similar manner.

We emphasize that the issues of transfer, payment and collection of receivables based on current and capital transactions are not adequately regulated, since only Article 33 sets the rule for all types of permitted current and capital operations, but only in transfers between two non-residents. Articles 7 and 20 regulate transfers in 'realised' foreign trade and credit transactions, while similar rules are missing for all other types of transactions - for example, for receivables arising out of direct investment, guarantees, real estate, etc. The very concept of realised foreign trade is not clear and brings into question the possibility of transfer under Article 7 when it comes to claiming an advance payment refund before the performance of the transaction. Also, the provisions on obtaining the approval of the Government for certain operations, in particular Articles 7, 20 and 33, need to be re-examined as they appear to be unnecessarily broad and restrictive, especially when it comes to the assignment of non-resident's receivables. In addition, the term "state-owned company" used in these articles is not defined and not clear and should be defined and specified so as not to include companies with indirect state capital or minority state capital (in which cases it appears inappropriate to be required to obtain approval from the Government).

Moreover, in relation to the Article 6 of the Law and the relevant by-laws, it remains necessary to liberalize the cross-border set-off of mutual receivables and debts, in accordance with the general rules of contract law. The current set-off rules are defined only for certain types of operations, while there remains a gap when it comes to other

operations (e.g., real estate operations) and the interpretation in practice that these are unpermitted. Also, necessity in practice remains to further liberalise foreign deposit operations of residents, including for companies that are the subject of project financing by foreign banks and international financial institutions.

Furthermore, the by-laws regarding foreign cash inflows do not fully allow the automation of international payment transactions. In order for a resident to realise foreign cash inflow, it must first provide the bank with information for statistical purposes regarding the basis for collection and in certain situations documentation for justification of the basis of collection. Only certain types of inflows of up to 1,000 euros have been exempt from the procedure as part of the gradual liberalisation process. In addition, as of 1 April 2021, the implementation of the amended provisions of the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions (amendments from July 2020) has begun, which prescribes the obligation to enter data on invoice in payment/collection order in accordance with the single customs document for operations of import and export of goods. The change required significant changes in bank systems and adds an administrative burden in carrying out international payment transactions.

It also remains unclear why the possibilities of providing guarantees i.e., collaterals by residents are limited only to credit operations between non-residents, and not for the guarantees pursuant to Article 26. of the Law. Therefore, further liberalisation of the Law in this direction is also required.

Additionally, the restriction on residents to approve a financial loan to a non-resident only if it is majority owned by a resident is still applicable to non-residents outside of the EU member states. Moreover, the discretion of the NBS to restrict individual residents from providing guarantees and other types of security for foreign loans or from granting loans to non-residents creates significant legal uncertainty. The restriction procedure itself and the moment at which the NBS may render the decision on restriction are not further defined. Furthermore, the wide scope of this discretion of the NBS applies not only to foreign loans granted by a resident to a non-resident and guarantees/securities for foreign loans, but also to guarantees/securities provided by residents for foreign loans taken by residents (for which the amendments from 2018 practically tightened the legal regime). Also, it remains an open question what specific type of security for collection of receivables need to be obtained from non-residents in case of granting loans to a non-resident or providing guarantees and other types of securities under foreign credit operations between non-residents, so additional specifying is required in order for the parties to be timely aware of what is an acceptable collateral for the NBS before structuring the credit transaction, and not after receiving comments from the NBS in this regard after the signed loan agreement and reporting thereof.

With the UK's exit from the EU completed, the NBS is expected to harmonise its stance towards UK-based banks in the coming period with the position of EU member states and with any bilateral documents that are or will be in force between Serbia and the UK.

Furthermore, Article 32 of the Law allows legal entities and entrepreneurs to perform cross-border payment transactions through a payment institution and the public postal operator. At the same time, however, the Law on Payment Transactions of Legal Entities, Entrepreneurs and Individuals Not Engaged in Business Activity ("Official Gazette of RS" no. 68/2015) prescribes the obligation for legal entities and entrepreneurs to make payments through a current account opened with a bank or the Treasury Department (which indirectly indicates that payment institutions and the public postal operator are not authorised to conduct international payment operations). For this reason, it is necessary to harmonise the aforementioned law and the law regulating payment services with the amendments to the Law in order to fully enable legal entities and entrepreneurs to perform cross-border payment transactions through a payment institution and the public postal operator.

Additionally, it is necessary to regulate the treatment of inflows and outflows of cross-border donations, grants and other non-refundable givings whereby domestic business entities participate, either as recipients or donors. Currently, such payments are not regarded as current nor capital transactions defined by the Law, hence, their legal treatment is not clear. Detailed regulation in this regard is required start-up companies, especially in the IT sector, require such funding in the initial stages of the development of particular innovations.

Finally, we would raise the systemic issue of more efficient collection of claims of non-residents arising from

judicial and executive proceedings, execution of extrajudicial mortgages and bankruptcy proceedings. Currently, under the laws governing the aforementioned procedures, non-resident account is required at the time of submission of the proposal for execution and/or collection in dinars, making the collection procedure for non-residents ineffective, as the opening of non-resident bank accounts can take months. This issue needs to be systematically resolved through changes/interpretations of all relevant laws regulating the aforementioned procedures and in coordination with competent authorities. As per the Law, it would be useful to amend or interpret Articles 32 and 34 of the Law to enable payment in foreign currency directly to the account of non-residents abroad in such cases. Where the laws governing the aforementioned procedures prescribe the collection or denomination of receivables in dinars, possibility of introducing an exception for payments to non-residents in foreign currency directly to an account abroad should be considered.

Therefore, the forex policy should be directed towards the further liberalisation of current and capital transactions to harmonise the applicable Serbian legislation with EU rules and international standards in this area. Application and interpretation of the laws by the competent authorities should be accompanied by adequate amendments.

FIC RECOMMENDATIONS

- Adapt the wording of the Law and interpretation in practice so that prohibited operations are explicitly prescribed as such, whereas all other activities are considered permitted.
- Further relaxation of administrative requirements (e.g. delivering of documentation via e-mail instead in hard copy), and particularly switching to ex post reporting of cross-border financial loans. Enable foreign inflows without prior notification to the bank, as currently envisaged by by-laws governing cash inflow and outflow with abroad, subject to condition (if necessary) for such notification to be made subsequently and electronically at certain time intervals, if possible, directly from the companies and not through commercial banks (e.g., monthly, quarterly, etc.) For natural persons, enable automatic distribution of all inflows from abroad, i.e., without exceptions regarding the notification of the Bank on certain bases of inflow.
- Continue the practice of publishing of opinions of state authorities in charge of forex operations, in particular NBS, for the consistency in application of regulations by all participants.
- Reconsider the wide scope of NBS' discretion to restrict a resident from granting securities or guarantees in relation to foreign loans, especially in relation to regular foreign loans and further regulate the procedure in accordance with Article 23 of the Law and relevant bylaws. Additionally, the clear instructions are required regarding the type of securities for receivables collection that are to be obtained from non-residents in case of granting loans to a non-resident or providing guarantees and other type of securities under credit operations between non-residents.
- Simplify the set-off rules from the Article 6 of the Law (and relevant by-laws) for all types of current and capital transactions and allow cash pooling between affiliated parties.
- Reconsider Articles 7, 20 and 33 of the Law so that the transfer, payment and collection of receivables and debts are resolved adequately for all types of current and capital transactions.
- Further liberalisation of foreign deposit transactions of residents, especially for companies subject to project financing by foreign banks and international financial institutions.

- Clearly regulate the treatment of inflows and outflows of cross-border donations, grants and other non-refundable givings whereby domestic business entities participate, either as recipients or donors.
- Re Articles 32 and 34 of the Law, enable the direct collection of claims of non-residents in foreign currency to their accounts abroad in judicial and extrajudicial enforcement proceedings and bankruptcy proceedings to make the proceedings more efficient.