FOREIGN EXCHANGE OPERATIONS

1.33

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. 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.	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			√
Further liberalisation of foreign deposit transactions of residents, especially for companies subject to project financing by foreign banks and international financial institutions.	2018			√
Clearly regulate the treatment of inflows and outflows of cross-border donations, grants and other nonrefundable givings whereby domestic business entities participate, either as recipients or donors.	2018			√
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.	2022			√

CURRENT SITUATION

During last year, there were no significant changes in the field of foreign exchange regulations.

Since the last edition of the White Book, several by-laws to the Law on Foreign Exchange Operations (Official Gazette of RS Nos. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018) (Law)have been adopted and amended. Generally, the changes were related to the regulation of exchange transactions, and types of foreign currencies that can be sold and bought on the foreign exchange market, 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.

Positive trend introduced by the National Bank of Serbia (NBS) by publishing its responses on frequently asked forex questions on its website should be continued as it significantly contributes to legal certainty. Although 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 planning of 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. Engagement of the NBS in interpretation of the provisions of the Law through questions / answers published on the official website is very welcome, however it would be beneficial to commence with the implementation of standpoints of the NBS into the provisions of the Law and also make those sufficiently flexible for practical application without the need for additional interpretation with the aim to satisfy the needs of the market that is continuously evolving.

In similar manner, the needs of the groups of related persons seeking to simplify financial relations within the group could be addressed by prescribing the conditions by the NBS. i.e., by enabling, under the certain conditions, broadening the scope of the bank products, e.g., cash management, cash pooling and similar packages.

Certain practical difficulties in conducting cross-border loan transactions arise from the ex-ante reporting to the NBS of financial loans, which is a precondition for utilization of funds by resident companies. Due to purely statistical purpose of reporting, further simplification of the said procedure is needed, 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, as already introduced for certain other types of credit transactions. This would be in line with the previously expressed readiness of the NBS to continue with the activities with the goal to simplify procedure and decrease the reporting costs. We emphasize that the need to further solve issues of transfer, payment and collection of receivables based on current and capital transactions remains, as only Article 33 sets the rule for all types of permitted current and capital operations, but only for 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 - e.g., for receivables arising out of direct investment, guarantees, real estate, etc. 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 for the assignment of non-resident's receivables. Additionally, the term "state-owned company" used in these articles is not clear and should be clarified so as not to include companies with indirect state capital or minority state capital. We understand that in this regard the NBS, together with the Ministry of Finance, expressed readiness to explore the possibility to address recommendations from FIC. Implementation of the already published standpoints of the NBS on the official website would benefit the legal certainty, especially in relation to appli-

cation of Articles 7, 20 and 33 related to transfer of payment and collection of the receivables.

Also, 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 as the current set-off rules are defined only for certain types of operations, while there is a gap for 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, especially 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 other types of transactions pursuant to Article 26 of the Law regulating guarantees.

Also, the efforts should be aimed at relaxation of provisions regulating provision of financial loans by the residents and provision of the guarantees and other collateral for credit transactions abroad / with abroad, as well as other guarantee transactions which would enable companies operating in the region to participate in the transactions abroad together with consortiums of non-residents where they could undertake obligation to obtain guarantees for advance payment, good performance of works, etc. Particularly, there is the need to know in advance which collateral is deemed adequate for ensuring collection under the credit transactions.

Similarly, in the context of the on-going integration processes in the region it is suggested to consider gradual liberalisation of the regime within Open Balkan area, at least at the same level as awarded in relations with the non-residents from the EU.

Furthermore, Article 32 of the Law allows legal entities and entrepreneurs to perform cross-border payments 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 (indirectly indicating 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 Law in order to fully enable legal entities and entrepreneurs to perform cross-border payments through a payment institution and the public postal operator.

Also, 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 needed, especially for start-up companies in the IT and other sectors which require such funding in the initial stages of the development.

Finally, we would raise the systemic issue of more efficient collection of claims of non-residents arising from judicial and executive proceedings, execution of extra-judicial mortgages and bankruptcy proceedings. Currently, under the laws governing these 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 these 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 these 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.

Generally, 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

- Amend the Law to implement already published interpretations by the NBS with relaxation of positivistic manner of setting Law provisions. In addition, in the context of the on-going integration processes in the region the regime within Open Balkan area should be gradually liberalised, at least at the same level as awarded in relations with the non-residents from the EU, especially as statistically the highest number of mother companies are seated in the Republic of Serbia which enables easier control important for macroeconomic monitoring.

- 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, whereby, as noted – currently published standpoints may serve as the basis for further improvements of the Law.

- Reconsider restrictions for a resident to grant securities or guarantees in relation to foreign loans, especially in relation to regular foreign loans and regulate in detail restrictions in accordance with Article 23 of the Law and relevant bylaws. Additionally, clarifying type of collateral for receivables collection to be obtained from non-residents for the purpose of advance determining of their acceptability in case of granting loans to a non-resident or providing guarantees and other type of securities under credit operations between non-residents is required.

- 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, with prescribing adequate conditions, 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 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.