

10) to collect donations and monetary contributions from abroad for scientific, cultural, or humanitarian purposes;

11) to collect compensation under a court ruling abroad, if the ruling sets out that collection is to be effected via a foreign bank account;

12) to cover costs of medical treatment abroad, as well as the costs of residing abroad for the purposes of such treatment, and

13) to cover tax and other fiscal duties toward foreign state (grantor of a concession) arising out of concession proceeds – provided that the rules of that foreign state prescribe that these duties can be settled only from an account opened in that state.

If a Serbian resident meets the requirements for opening an account abroad, he or she still needs to obtain permission from the NBS to do so.

The procedure for applying for NBS permission is rather straightforward. The request needs to contain data such as details about the resident (legal or natural person – and if legal entity, the address of its head office and telephone number, scope of business, ID number, etc.), grounds for holding foreign exchange abroad, amount and the time period for which such permission is requested, and the name of the country and details about foreign bank in which the account will be opened.

The NBS may reject the request to open an account if it deems that the purpose for which the application is made does not fall under any of the prescribed grounds.

When it is granted, permission is granted for one year or for as long as the need for keeping the account abroad exists (in case of long-term projects, e.g., construction works abroad). There is no deadline for the NBS to issue its approval following submission of a complete request for opening of a foreign account, but in practice the NBS usually falls within general administrative procedure, which envisages a 30-day deadline for issuance of administrative decisions.

Legislation is explicit that a Serbian resident holding foreign exchange on a bank account abroad contrary to NBS regulations will be fined for the offence between approximately EUR 870 and EUR 17,390, whereas a responsible person (in case of legal entity) will be fined between approximately EUR 45 to EUR 1,300.

The applicant has to provide the NBS with the foreign bank account number within 30 days from the day of opening the account and with balance of funds therein.

At this moment, it cannot be foreseen whether the financial regulator will reconsider this restrictive legislative framework in the near future in order to relax this rather important aspect of business activity. In practice we are faced with a number of requests from companies active in various industries investigating options and potential loopholes to work around these restrictions.

Milica Popovic, Local Partner, CMS

Belarus

The Financial Market in Belarus: On the Way to Formation of the Mega-Regulator



Following the trend set by fellow members of the Eurasian Economic Union Russia and Kazakhstan, Belarus is currently expanding the competences of its National Bank. This should lead to formation of a “mega-regulator” in the Belarusian financial market. The countries of the EEU intend to create a single financial market in the future and therefore harmonize their legislation.

The National Bank took charge of microfinancing and leasing markets in 2014 and the forfeiting market in 2015. Starting from 2016 the National Bank will be responsible for the Forex market and potentially also the insurance and securities markets. Appointment of the National Bank as new supervisor has been followed by amendments in various key regulations.

Microfinancing

Before 2014 there was no regulation of microfinancing activities in Belarus, and loans were often granted without the financial standing of the borrower being checked, while interest rates could exceed 700% per year. Eventually, activities of organizations other than banks and non-bank credit and financial organizations (NCFOs) granting unsecured loans on a regular basis were substantially restricted. Currently, only pawnshops and several types of non-commercial companies (consumer co-operatives and funds) are allowed to provide micro-loans (loans up to 15,000 Belarusian ‘basic units’ – about EUR 140,000 on the day of the agreement), more often than twice a month. A company must be included in the National Bank register in order to conduct micro-lending operations.

Leasing

Since 2014, Belarusian finance lessors must be registered with the National Bank and have a share capital equivalent to at least EUR 50,000. These requirements do not apply if during a calendar year a finance lessor concludes fewer than three lease agreements or the total value of leased assets does not exceed 10,000 basic units (about EUR 93,000). They also do not apply to foreign companies running finance lease businesses through permanent establishments and companies entitled to conduct finance leases according to decisions of the President of the Republic of Belarus. Banks and NCFOs also have the right to operate this business without being included in the register.

From the beginning of 2015 lease payments that are part of a finance lessor’s remuneration (income) and investment expenses are exempt from VAT, excluding investment expenses reimbursed from the cost of a leased asset.

Forfeiting

Since May 21, 2015, Belarusian exporters may accept bills of ex-

change as payment under export contracts. Such bills of exchange should be issued or confirmed by foreign banks having at least two of the following ratings:

- Long-Term Foreign Currency Rating by Fitch Ratings or Standard&Poor's not lower than BB- for banks of Russia, Kazakhstan, and Armenia and not lower than BBB- for other foreign banks; or
- Long-Term Foreign Currency Bank Deposits Rating by Moody's Investors Service not lower than Ba3 for banks of Russia, Kazakhstan, and Armenia and not lower than Baa3 for other foreign banks.

Activities on bill discounting may be performed by the banks, NCFOs, and legal entities having a share capital not less than EUR 50,000. If an entity wishes to discount bills more than once a year, it must be registered with the National Bank.

FOREX operations



On March 7, 2016, a new regulation on Forex operations in Belarus will come into force. The activities of Forex companies in Belarus were not regulated before, and there was no explicit definition of Forex operations as off-exchange transactions. This created a risk that these operations would be classified as bets, claims related to which are not subject to judicial protection in Belarus.

Operations by Belarusian clients with foreign Forex companies drew the concern of Belarusian officials not only because of the capital outflow and unpaid taxes, but also because the interests of Belarusian residents were not protected.

After the new regulation enters into force only following companies will be entitled to perform Forex operations in Belarus: the National Forex Center (a company in which the state's share is more than 50%), banks, NCFOs, and Belarusian Forex companies.

Belarusian Forex companies will be registered with the National Bank. Specific requirements for these companies include, for example, a minimum share capital of BYR 2 billion (about EUR 100,000) and the obligation to meet safe operating standards and keep internal control and risk management systems. Forex companies shall form enforcement capital to ensure the repayment of margin security to the clients. This capital will not be included in the debtor's assets in case of a Forex company's bankruptcy and may be used only to satisfy the claims of clients. The repayment of the margin security will also be guaranteed by the National Forex Center.

Personal income received under agreements on Forex operations with Belarusian Forex companies, banks, or NCFOs is exempt from personal income tax until March 1, 2019. The corporate income tax rate for Belarusian Forex companies and the National Forex Center received from Forex operations will be reduced by 50% within the same time frame.

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Hungary

Hungary Wants to Become Creditor-Friendly



Hungary has recently provoked criticism and elicited recommendations on account of its unfriendly environment towards investors, with a report issued by the EBRD having significant impact. Against this backdrop, the Hungarian Ministry of Justice has indicated that it will amend certain laws that are related to the enforcement of claims. With the ultimate goal being to make creditors' lives easier, near-term changes are likely to be made to such fundamental laws as the country's Civil Code, the act on court enforcement, and the act on insolvency and bankruptcy proceedings.

Transfer of Loan Agreement

The rules of the Civil Code on the transfer of contractual position have been the target of particularly severe criticism. In its current form, the Civil Code stipulates that the security interest terminates in case of a transfer of contract, regardless of which position is affected by the transfer (i.e., the creditor's or the debtor's) and irrespective of whether the security provider has given its consent to the transfer. The proposed amendment foresees that the security interest will not terminate under any circumstances, but rather remain in place. In addition, the security provider's consent will only be required in the event that the debtor transfers its contractual position. These changes may enhance Hungary's secondary loan market, as the country's banks have so far been reluctant to transfer loan portfolios or even a single loan agreement under the current rules, as they feared losing the security interest.

Furthermore, this summer the country's parliament amended the Hungarian Banking Act so that the Hungarian National Bank's approval is now required for those loan portfolio transfers that exceed the threshold of either 1) HUF 10 billion (approximately EUR 33 million), regardless of the number of loan contracts to be transferred, or 2) 20 contracts regardless of their aggregate value. Together with the envisaged amendment of the Civil Code, this means that even though the transfer of loan portfolios will be possible and feasible under the Civil Code, those transfers that cross either threshold will be subject to the Hungarian National Bank's approval.

Resurrection of the Non-Accessory Mortgage

The Hungarian National Bank intends to stimulate the market of mortgage-backed instruments. For many years, these instruments relied on non-accessory mortgages, which were transferable without the transfer of the underlying loan. The Civil Code that entered into force on March 15, 2014, abolished this non-accessory mortgage, which caused a hiccup in the market. For this reason, the envisaged amendments may re-introduce this type of security interest for the sake of mortgage-backed instruments.