

# FOREIGN EXCHANGE OPERATIONS

## CURRENT SITUATION

The Law on Foreign Exchange Operations ("RS Official Gazette", No. 62/2006 of July 19th 2006) came into force on July 26<sup>th</sup> 2006, and since that day there have been no amendments and supplements thereto.

The Law on Foreign Exchange Operations regulates the following areas:

- current transactions;
- capital transactions;
- payment operations:
- foreign exchange market and RSD exchange rate;
- measures of protection;
- foreign exchange supervision
- foreign exchange inspectorate;

In June 2009, the draft Law Amending the Law on Foreign Exchange Operations was published and interested parties provided their comments and suggestions to the Law proposer and/or the National Bank of Serbia and the Ministry of Finance of the Republic of Serbia.

## POSITIVE DEVELOPMENTS

In accordance with FIC recommendation, published in 2008 WB, the adoption of the "Instruction on Reporting of Transactions Against Purchase of Securities" was initiated. Mentioned Instruction was adopted by National Bank of Serbia in November 2008 and this Instruction closely defines the role of banks as agents of international payment operations and intermediaries in securities trading as well as reporting to the National Bank of Serbia thereon.

## REMAINING ISSUES

The Law on Foreign Exchange Operations, in principle, allows nonresidents to purchase claims based on foreign trade and international credit transactions from residents under the conditions prescribed by the Government. The Government has not yet adopted these by-laws.

The Law on Foreign Exchange Operations provides that residents - legal entities may collect the realized export of goods and services by the realized import of goods and

services only under the exceptional circumstances under the terms and conditions prescribed by the Government. Apart from not clearly defining whether these transactions require approval by the competent Ministry, in practice this procedure has proved to be unnecessary if such approval is required. In particular, it refers to multinational corporations that are allowed, according to the foreign legislations, to set-off liabilities between connected parties – residents through their founders, i.e. legal entities – nonresidents (for cost-saving purposes, etc.).

The Law on Foreign Exchange Operations stipulates that nonresident, as well as resident – branch of a foreign legal entity, that perform business transaction through a non-resident account shall effect transfer from such an account to abroad, provided that its tax liabilities towards the Republic arising from its business activities have been settled. This provision imposes additional liabilities and costs to nonresident legal entities – investors based on the obligation to present certificates on tax settlement, issued by the tax authorities, whereat the tax on revenues from securities shall be paid by the domestic legal entity that is obliged to calculate and pay all taxes in connection with securities transactions and revenues arising from securities.

A large number of documents to be submitted by clients to the banks for international payment operations (primarily documents proving the existence of payment obligation and basis) and documentary control of the National Bank of Serbia in this area complicate the operation of banks and clients and impair international payment operations efficiency.

### FIC RECOMMENDATIONS

- Appropriate by-laws should be passed to regulate terms and conditions under which nonresidents may purchase claims based on foreign trade and international credit transactions;
- Approval of the competent ministry should be excluded;
- The obligation of nonresidents – legal entities to present certificates on tax settlement, issued by the tax authorities in case of transfer of funds earned against securities transactions and revenues arising from securities from non-resident accounts to abroad should be excluded in order to reduce costs of investors – nonresidents and to achieve higher efficiency in international funds transfers;
- Control of documents that prove the payment liability and basis in international payment operations should be performed with the ordering party, i.e. client of the bank and/or banks should be relieved from the obligation to collect, control and keep such documents. However, banks should still have an option to request in international payment operations the delivery of certain documents required for execution of international payments.