COUNTRY UPDATE-Serbia: Securities & Banking

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Securities — regulators

Securities Commission

Primary regulator in the area of securities is the Securities Commission, which is entrusted with safeguarding the orderly functioning of the securities market, enhancing investor protection and ensuring integrity, efficiency and transparency of the market and overseeing the application of the regulations in this area including the Capital Markets Act (Official Gazette of RS, No. 31/2011, 112/2015, 108/2016 and 9/2020) (hereinafter Capital Markets Act or Act), Act on Takeover of Joint Stock Companies (Official Gazette of RS, No. 46/2006, 107/2009, 99/2011 and 108/2016) and the Law on Open Investment Funds with Public Offers (Official Gazette of RS, 73/2019).

Belgrade Stock Exchange

The activities of the market operator are entrusted to Belgrade Stock Exchange which exercises its competencies in relation to the regulated markets and multilateral trading platform (MTP). In addition the activities of MTP operator can be performed by a broker-dealer company or a Stock Exchange with a license from the Securities Commission.

Central Registry and Clearing House

Central Registry and Clearing House is in charge of the keeping of a registry of financial instruments, performing clearing and settlement operations on the basis of transactions with financial instruments and registration of rights of third parties attached to financial instruments or the transfer thereof.

Securities legislation

The main statute governing the securities regulation is the Capital Markets Act (O.G. of RS No. 31/2011 112/2015, 108/2016 and 9/2020) has been harmonised with the EU capital markets directives (Directive 2004/39/EC, Directive 2004/109/EC, Directive 2003/71/EC, Directive 2003/6/EC, Directive 97/9/EC).

The Act establishes the authority of the main regulators and provides for organisation of financial instruments markets into following: "regulated market" which includes listed and unlisted segments; and MTP. Furthermore, according to the Act, the trade may be also carried out on the OTC through an intermediary company licensed by Securities Commission or even without the involvement of the intermediary company, on the basis of sale and purchase agreements which has to be notified to the Central Registry and Clearing House.

In addition to the Central Registry, the clearing and settlement of financial instruments issued by the Republic of Serbia may be performed by one or more foreign legal entities engaged in, in accordance with the law governing public debt and the act of the Central Registry.

The definition of financial instruments, licensing, operation and supervision of investment companies as well as licensing requirements in relation to the market operators under the Act, have been transposed from the Directive 2004/39/EC. Accordingly, the following financial instruments fall beyond the remit of the Act: insurance and reinsurance policies and other insurance products issued by insurance companies; financial instruments issued in relation to turnover of goods and services, such as a bill of exchange, check,

written order (assignation), bill of lading, waybill or warehouse warrants; other documents relating to debt, money deposits or savings that do not have properties of financial instruments; shares in a general partnership, limited partnership or limited liability companies.

Furthermore in relation to the definition of investment companies the Act provides for exceptions with regards to certain market participants such as professionals performing investment services on an incidental basis, collective investment schemes, members of the EU central banking system and other public bodies responsible for management of public debt.

According to the Act, the financial instruments are issued and/or offered in a dematerialised form and recorded as electronic records on securities accounts kept with the Central Registry and Clearing House. The financial instruments issued and traded in Serbia are denominated in local currency save for few exceptions in relation to the debt securities and money market instruments which may be expressed in foreign currency subject to National Bank of Serbia approval and public debt instruments which are governed by a separate law.

Public offering and prospectus approval

Under the Act, public offer, the content of prospectus and summary prospectus as well as the exceptions where the prospectus does not have to be published, are regulated in line with the Directive 2003/71/EC.

The prospectus have to be prepared so as to contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market or MTP, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses, and prospects of the issuer and of any guarantor, and of the rights attaching to such securities. In addition the information contained in the prospectus is required to be authentic, complete and consistently presented in an easily analysable and comprehensible form.

The following persons are considered to be responsible in case of false, misleading prospectus or omission of certain information from the prospectus: issuer; directors and senior management of the issuer, unless a director has specifically voted against authorization of the public offering; any person making an offer other than the issuer; any guarantor of the securities; any investment firm providing underwriting services or serving as an agent in connection with the public offering; the issuer's independent auditors, but only with respect to the audited financial statements included in or accompanying the prospectus that are covered by their audit report; any other persons upon whose authority or expertise a statement is included in the prospectus, but only with respect to the adequacy and accuracy of such statement.

In this respect the Securities Commission has also passed the Rulebook on the format, minimum information contained in prospectuses and base prospectuses and advertisements as amended (O.G. of RS, No. 89/2011, 14/2013, 14/2016, 74/2016 and 61/2020). The Rulebook provides for certain exceptions where information may be omitted from the prospectus; instructions for filling and drafting unique prospectuses for derived and debtor securities. The procedure for obtaining the approval of prospectus as well as details have been regulated in the Rulebook on the content of an application for approving a prospectus and the attached documents (O.G. of RS, No. 89/2011, 14/2016 and 61/2020), as of 2020 said rulebook has been amended and now it allows issuers of debtors securities to only file a request to publish their respected prospectus without being obligation to send additional documents if certain conditions are meet.

Secondary trading

The application for admitting equity securities to trading on a regulated market or MTP in made to the Securities Commission. Debt securities are not required to be admitted to trading on a securities market and may also be traded off the market or MTP following their admission in accordance with the Act.

The Act also provides for the definition of qualified investors which includes the following entities: entities authorized to operate in the financial markets; Republic of Serbia, autonomous provinces and local government authorities, national and regional governments, National Bank of Serbia and central banks of foreign states, international and supranational institutions such as IMF, ECB, EIB etc.

The status of a qualified investor may be granted to legal persons which meet at least two of the three criteria according to the last annual financial statement or consolidated statement: (1) an average number of employees during the financial year of more than 250; (2) a total balance sheet exceeds 43,000,000 euros in dinar equivalent; (3) an annual net turnover exceeding 50,000 euros in dinar equivalent.

The Securities Commission maintains the register of qualified investors and has prescribed the procedure for obtaining a status of qualified investors, as well as the procedure upon request for termination of the investment company activity, in its rulebook on granting the qualified investor status and the qualified investors register (O.G. of RS, No. 89/2011).The Rulebook on giving permits for commencing business activities as an investment society (O.G. of RS, No. 89/2011 3/2016, 13/2018 and 59/2019) further regulates the administrative procedural rules for applying and what other documents should be filled in order to receive a permit. This rulebook extends it application not only to future investment societies, but also to: investment funds that provide services of portfolio management and investment consulting, broker dealer societies that provide services of an investment society and all question concerning their status changes.

The Rulebook on conditions for commencing business activities as a holding company that controls an investment fund (O.G. of RS, No. 15/09, 76/09, 41/11, 44/12, 94/13, 5/15 and 13/18) further elaborates what holding companies have to obtain before commencing business activities as controllers of investment funds.

Reporting

Public companies whose securities are traded and quoted on the regulated market are required to disclose and lodge their quarterly report with the Securities Commission and market operator. This has to be performed no later than within 45 days after the end of each of the first three quarters of the current financial year. In addition quarterly report has to be made available to public for a period of minimum five years from the date of its publishing. The contents and terms for disclosure of quarterly financial reports are prescribed by the Securities Commission.

Public company whose securities are traded on the unlisted segment of the regulated market are required to publish their quarterly, semi-annual and annual reports in line with the Rulebook on the content, form and manner of publication of quarterly, semi-annual and annual report (O.G. of RS, No. 14/2012, 5/2015, 24/2017 and 14/2020). The public company is obliged to publish the annual report as a complete document in PDF format and to submit it at the same time to the Securities Commission in the manner prescribed by the Rulebook governing the Official Register of Information. In addition public companies are obligated to disclose and lodge with the Securities Commission and the regulated market on which the company's securities their semi-annual report for the first six month of the financial year.

This has to be performed promptly and no later than within two months after the end of the reporting semi-annual period, in compliance with the rules that apply for annual report. The issuers whose securities are admitted to MTP are required to prepare and submit annual reports only.

In line with the EU Transparency Directive 2004/109/EC, the Act also provides that the annual financial reports with the auditor report have to be published and furnished to the regulated market, i.e., the MTF, within four months after the end of each financial year and shall publish its non-audited semi-annual financial reports within of 60 days after the first half of the year. The criteria which auditor of public companies are required to meet as well as enlisting to the list of eligible auditors and minimal content of the audit report have been regulated in the Rulebook on Auditing Financial statement of Publicly Traded Companies (Official Gazette of RS, No 114/2013, 112/15, 108/16 and 92/2018).

In addition, in the event that an individual or a legal entity directly or indirectly reaches, exceeds or falls under 5%, 10%, 15%, 20%, 25%, 30%, 50%, or 75% of the voting rights in a public limited company whose shares are traded on the regulated market, i.e. the MTP, the notification thereof has to be made to the Securities Commission, respective company and the regulated market, i.e. the MTP on which the shares of such company are traded.

The Act also prescribes the method of acquisition of holding of a significant proportion of voting rights and empowers the Securities Commission with the authority to supervise the compliance with these provisions.

Market abuse

The definition of the inside information and market manipulation are in line with the Directive 2003/6/EC. In addition the list of entities holding inside formation as well as their liability is defined under the Act.

Investors' Protection Fund

In accordance with the Investor Compensation Schemes Directive, Republic of Serbia established the Investor Protection Fund, pursuant to the provision of the Capital Markets Act. The Rulebook concerning the Investor Protection Fund (O.G. RS, No. 44/2012) aims to provide protection to investors whose assets or financial instruments are exposed to risks in case of bankruptcy of an investment firm, credit institution or management company providing services and activities related to custody of financial instruments and money. The fund is managed by the market operator licensed by Securities Commission. The Act also regulates the framework and procedures for assertion and payments of claims of clients toward members whose claims are secured up to 20,000 euros in dinar counter value per member

The previously mentioned Rulebook is also accompanied by the Rulebook of conduct of Investor Protection Fund (O.G. RS, No. 94/2015, 5/2017 and 30/2019) and the Rulebook on calculating, methods and deadlines for paying annual contributions by the members of Investor Protection Fund to the Fund (O.G. RS, No. 97/2015, 5/2017, 103/2018 and 19/2021). Both rulebooks are of administrative nature, that are only concerned with how the Investor Protection Fund should operate, how much and when the members of the Fund must pay their annual contributions to the Fund.

Investment companies

The Act set out the provisions for licensing and operation of investment companies their staff and organizational capacity, conditions for the members of their management board and directors as well as their minimum capital requirements. The organizational requests the providers of investment services have to meet have been prescribed in the Rulebook on organizational requests for provision of investment services and performance of investment activities and additional services ("OG RS", no. 89/2011, 44/2012, 94/2013 and 3/2016).

Investment funds

The Investment Funds Act (O.G. RS, No. 46/2006, 51/2009, 31/2011 and 115/2014) is no longer valid and it has been replaced with the Law on open investment funds with public offers (O.G. RS, No. 73/2019).The replacement law only regulates: organizing and managing open investment funds with public offers; formation, activities and business of such investment funds; duties and rights of the

depositary; the jurisdiction of the Securities Commission; oversight over the work and operations of such investment funds and other questions of vital importance for such investment funds.

The Law on open investments funds with public offers is accompanied by the following rulebooks: Rulebook on the conditions for commencing activities as holding company that controls an open investment fund with public offers (O.G. RS, No. 61/2020), Rulebook concerning open investment funds with public offers (O.G. RS, No. 1/2020 and 63/2020 – correction), Rulebook concerning the capital of holding company that controls open investment funds with public offers (O.G. RS, No. 61/2020) and the Rulebook on the conditions for commencing activities as depositary of open investment fund with public offers (O.G. RS, No. 61/2020).

The National Assembly of the Republic of Serbia adopted the Law on Alternative Investment Funds (O.G. RS No 73/2019). This law also regulates: organizing and managing open alternative investment funds; formation, activities and business of such investment funds; duties and rights of the depositary; the jurisdiction of the Securities Commission; oversight over the work and operations of such investment funds and other questions of vital importance for such investment funds. However, it extends it application to: holding companies of alternative investments funds that have their seat in the Republic of Serbia, that control one or more alternative investment funds; holding companies of alternative investments funds that have their seat in a EU member state, that control one or more alternative investment funds; and holding companies of alternative investments funds that have their seat in third world countries, that control one or more alternative investment funds.

The Law on Alternative Investment Funds is accompanied by the following rulebooks: Rulebook on Alternative Investment Funds (O.G. RS No 61/2020), Rulebook on types of Alternative Investment Funds (O.G. RS No 61/2020), Rulebook on the conditions for commencing activities as holding company that controls Alternative Investment Funds (O.G. RS No 61/2020 and 72/2021), Rulebook concerning the capital of holding company that controls Alternative Investment Funds (O.G. RS No 61/2020) and the Rulebook on the conditions for commencing activities as depositary of Alternative Investment Funds (O.G. RS No 61/2020). The Securities Commission has issued instructions how to calculate the capital for a closed alternative investment funds that are legal persons. The spreadsheet on how to apply said instructions is freely available on the Commission's website.

Takeover of joint stock companies

The Act on Takeover of Joint Stock Companies (O.G. of RS, Nos. 46/2006, 107/2009, 99/2011 and 108/2016) sets out the conditions and procedures for takeovers of joint stock companies with registered offices in the Republic of Serbia, the rights and obligations of participants in takeover procedures and supervision proceedings over the implementation of joint stock company takeover procedures as well as exemptions in relation thereto. Reporting requirements which companies form management of investment funds have towards the Commission are provided in the Rulebook on conditions for performance of activities of companies managing investment funds (OG no 15/2009, 76/2009, 41/2011, 44/2012, 94/2013,5/2015, 13/2018 and 70/2018).

The application of the Act is mandatory when a natural person or a business entity acquires 25% or more shares with voting shares of the target company. In addition the Act applies wherever (1) a natural person or a business entity based on the takeover bid has acquired less than 75% of voting shares in case of further acquisition, or (2) if based on the takeover bid such person has acquired more than 75% of voting shares when: after the takeover bid, the person has acquired at least 5% additional voting shares of the target company or in the course of 18 successive months, acquires at least 3% of additional voting shares of the same target company.

Law on digital property (O.G. of RS no.153/2020)

The law regulates the issuance and secondary trade in digital assets (crypto-assets), the provisions of services related to digital assets, pledge on digital property, and also introduces special actions and measures to prevent money laundering and terrorist financing, in connection with digital property. The law does not apply to: 1) transactions with digital assets if they are performed exclusively within a limited network of persons who accept these digital assets; 2) acquisition of digital assets by participating in the provision of computer transaction confirmation service (mining). Mining is allowed but the provisions of this law do not apply to property acquired in this way, however, persons who acquire property in this way may dispose it through digital property service providers in which case the law applies, (or through the OTC market). Supervision over the implementation of the law, as well as the Law on Prevention of Money Laundering and Terrorist Financing over digital service providers, is carried out by the National Bank of Serbia and the Securities Commission, through indirect (collection and analysis of reports and other documentation and data submitted by the supervised entity) and direct supervision (inspection of business books and other documentation and data of the subject of supervision).

In 2021 the Securities Commission adopted the following Rulebooks that concern digital tokens and assets: Rulebook on white paper and additional paper related to digital tokens (Official Gazette of RS, No. 69/2021), Rulebook on preventing abuse on the digital token market - (Official Gazette of RS, No. 69/2021), Rulebook on publicizing initial coin offers that have not been given approvals for their white papers and publishing digital tokens that have received secondary approval (Official Gazette of RS, No. 69/2021), Rulebook on the operating information – communication systems for providers of services that are connected to digital tokens (Official Gazette of RS, No. 69/2021), Rulebook on the conditions and methods of checking and determining the identity of the natural person by using mediums of electric communication (Official Gazette of RS, No. 69/2021), Rulebook on content and form of keeping financial statements by providers of services relating to digital tokens that hold monetary assets (Official Gazette of RS, No. 69/2021), Rulebook on the method of calculating minimal capital requirements and disclosing the minimal capital of providers to provide services relating to digital tokens (Official Gazette of RS, No. 69/2021), Rulebook on closer determination of conditions for granting or retracting approval for providers of services related to digital tokens (Official Gazette of RS, No. 69/2021), and the Rulebook on application of provision of

the Law on Digital assets that are related to giving permit for providing services related to digital tokens and approval of the Securities market (Official Gazette of RS, No. 69/2021).

The 2021 rulebooks on digital tokens provide a clear and concise framework for digital token service providers on how to: receive and apply for a permit to conduct services concerning digital tokens; publish white papers and conduct initial coin offers in order to capitalize on providing service regarding digital tokens; keep evidence for each financial statement; deal and disclose insider information; protection against market abuse; minimal capital requirements and disclosure of minimal capital; how to open a branch and/or directly provide their services relating to digital tokens abroad; how to operate an information communication system and what protection customers may receive if a service providers has a catastrophe; procedures for rejected white papers and secondary rejected digital coins; and the technical, organization and experience related requirement that each service providers must have obtain in order to receive a permit.

It is worth pointing out that the Rulebook on the conditions and methods of checking and determining the identity of the natural person by using mediums of electric communication (Official Gazette of RS, No. 69/2021) allows the use of electric communication mediums to identify legal persons, natural and their representatives without the need for them to be physically present. Caution and diligence must be implemented with Rulebook on the method of calculating minimal capital requirements and disclosing the minimal capital of providers who provide services relating to digital tokens (Official Gazette of RS, No. 69/2021) due to the fact that it extends its application to commercial legal persons that applied for conducting one or more service relating to digital tokens, and it also applies to service providers who received a permit from the Securities Commission.

Banking and finance sector

Introduction — regulators and legislation

The banking and financial sector in Serbia is primarily regulated and closely monitored by the National Bank of Serbia. Other regulating authorities in this Sector are: Securities Commission, Central Registry of Securities and the Agency of Company Registers. The status, organization and authorities of the National Bank of Serbia (NBS), as well as its relationship with state bodies and international financial organizations, are established and regulated by the Constitution of Republic of Serbia ("RS Official Gazette" No.98/2006), by Law on National Bank of Serbia ("RS Official Gazette" Nos. 72/2003, 55/2004, 44/2010 and 76/2012, 106/2012, 14/2015,40/2015 and 44/2018) and by Law on Banks (O.G. of RS, Nos. 107/2005, 91/2010 and 14/2015).

According to the Constitution, the National Bank of Serbia is an independent and autonomous authority but it is accountable to the National Assembly of the Republic of Serbia.

The scope of its authority prescribed by the Law on NBS is wide and covers the following: determination and implementation of country monetary and foreign exchange policy, management of foreign exchange reserves, financial stability, financial markets, payment system, international relations, banking system, bank, leasing, insurance and voluntary pension funds supervision (i.e., granting and revoking of operating licences, approvals and/or authorizations, supervising the legality of operations, liquidity and capital issues of banks, leasing and insurance companies and funds, etc.), consumer protection, enforced collection of debts (i.e., by blockades of debtors' bank accounts), issue of banknotes and coins and cash flow management, restructuring of banks and/or banking groups, statistics and publishing activities.

Since 2012, the banking and finance sector in Serbia experienced serious problems and challenges, mainly due to the effects of the economic crisis in Europe, as well as the decision of Switzerland to stop controlling the Swiss Frank. In order to ensure the financial stability, in February 2015 the Government amended several laws which regulate the Serbian banking and finance sector (O.G. of RS no.14/2015), namely the Law on Banks, the Law on Agency for Insurance of Deposits, the Law on Insurance of Deposits, the Law on Bankruptcy and Liquidation of Banks and Insurance Companies, the Law on National Bank of Serbia.

This enforced the control power of NBS over commercial banks and introduced mechanisms of early intervention of the Regulator when the commercial banks experience problems in their operations, such as the new function of the NBS in restructuring of banks and/or banking groups. In the process of restructuring of banks, NBS has a choice of several measures – sale of shares, or assets and debts; transfer of shares, or assets and debts to a special purpose bank; separation of assets; and finally distribution of losses between shareholders and creditors.

The aim of these legislative measures was to ensure the financial stability as well as to reduce the use of the money from the Budget as much as possible, by introducing the distribution/allocation of losses of commercial banks among shareholders and creditors primarily, but up to the level of loss they would have suffered in case of bankruptcy of the bank. In case of bankruptcy of the commercial bank, as per EU directives the priority for payments from the bankruptcy estate is given to creditors whose deposits are insured.

The money accumulated in the Fund of Insured Deposits can only be used for payment of secured deposits or for financing of the restructuring of the commercial bank, in carefully controlled volume and terms. Should there be no sufficient money in the Fund for payment of secured deposits, then the money can be borrowed from the Republic of Serbia or other creditors.

Following the said package of amendments to the laws of the banking and financial sector, the response of the IMF was mainly positive, stating that in light of challenging economic conditions, the financial sector of Serbia showed resilience, the total capitalization remained strong and the banks liquid. But the issues of vulnerability remain and the Serbian Government needs to continue with strong reforms.

The Constitutional Court of Republic of Serbia made a Ruling on December 23, 2014 that provisions of Article 86b of the Law on National Bank of Serbia (which prescribed that officers of NBS are not liable for damages from their actions and/or omissions, even if they cease to be the officers of NBS, unless the claimant proves their intention or gross negligence) are not in accordance with the Serbian Constitution and the Law on Contracts and Torts, however this Ruling was published in O.G. of RS no. 40/2015, in May 2015.

The Article 86b of the Law on National Bank of Serbia is no longer valid. Presumably the rules on damages now apply to all equally, but the Ruling specifically addresses article 86b of the Law on NBS and not also article 9a of the Law on Banks, which also contains the contested provisions.

The latest development concerning controversial credits, including the Swiss ones is the newest Supreme Cassation Court's legal stance on allowing contractual clauses for costs of credit that was unanimously accepted during the meeting of civil department of the Supreme Cassation Court on the 16th of September 2021. This controversial stance states the following: ,,Banks have the right to collect costs and reimbursement of banking service from the credit debtors, under the condition that the offer of the bank was concise and unambiguous; banks may and may not calculate said costs in some manners; banks are freed from the burden of proof to prove the structures and amount of the calculated costs". This controversial stance was met with great hostility by hand of the legal and non-legal community of Serbia

Overview of specific laws

The main body of legislation relevant to the banking and finance sector, consists of: the Law on Banks, Foreign Exchange Transactions Law, Law on Prevention of Money Laundering and of Financing of Terrorism, Insurance Law, Law on Protection of Consumers of Financial Services, Payment Transactions Law, Payments Services Law, Law on Foreign Investment, Law on Insurance of Deposits, Financial Leasing Law, Law on Voluntary Pension Funds and Pension Schemes and other. There is also a number of Decisions and Ordinances of the NBS, which regulate in greater detail the provisions and activities prescribed by the said laws. The following is a short overview of some of the most important laws.

The Law on Banks (O.G. of RS, Nos. 107/2005, 91/2010 and 14/2015)

In short, this Law regulates the establishment, operations and organization of banks, the management and founding acts of banks, issues of capital, mergers and acquisitions, activities which banks can perform, NBS role in issues of licences, in bank supervision, in restructuring of banks and/or banking groups, establishment of special purpose banks, and termination of banks' operations. It also prescribes offences and penalties in case of breach of provisions of this law.

The NBS issues a number of licenses and consents pursuant to this law, such as: preliminary permit for foundation of bank, operating license, prior consent to acquisition of own shares, consent to bank's articles of association and appointment of members of management (board of directors and executive board), prior consent to acquisition of ownership, then issue of operating license to a special purpose bank, approval to set up or acquire a subordinated company in Republic of Serbia or abroad, approval to banks to act as insurance agents.

Through this complex licensing system, NBS actually controls banks in all areas and aspects of their business and ensures the legality of their operations, adequacy of their capital and good liquidity, and appointment of members of their management with good standing and reputation.

The role of NBS is in fact prescribed in such a manner to ensure sound monetary policies, steady and predictable cash flow and financial stability for all market participants, which as explained above proved necessary due to the detrimental effects of economic crisis in the world. That is why the NBS prescribes minimum of mandatory requirements in relation to capital, reserves and liquid assets of commercial banks. These are based on the requirements of the Basel Committee on Banking Supervision - the Basel II rules.

This Law is clear on business activities which can be performed by the banks:

- accepting and placing of deposits;
- lending activities (granting and taking loans);
- foreign exchange transactions and exchange operations;
- payment transactions;
- issuing of payment cards;
- activities regarding securities (issuing securities, custody bank activities, etc.);
- brokerage-dealership activities;
- issuing guaranties, sureties on promissory notes and other types of warranties (guarantee operations);
- purchase, sale and collection of receivables (factoring, forfeiting, etc.);
- insurance agency activities; (1) acceptance of deposits, (2) granting of loans and issuing of payment cards;
- as well as activities which can be performed exclusively by the banks.

Banking secrecy is ensured by several laws: Law on Banks, Penal Code and Protection of Citizen Data Law. Banks cannot reveal data and information without the express consent of their clients in writing, and there are only few exceptions to this rule (e.g., in case information is requested officially by the courts of law, by relevant authority for prevention of money laundering, taxation authority etc).

This Law ensures liquidity of banks and financial stability in the country. The section on definitions is extensive and specific, especially regarding the connected persons and affiliates, on critical functions and key business activities. It also regulates restructuring of banks. This NBS has the power to enact its rules regarding control of quality of securities requested by commercial banks. Detailed provisions on members and the scope of authority of managing bodies of commercial banks are provided in this Law.

Also, NBS has the authority to conduct diagnostic investigation of banks' operations, not only for purposes of collecting, handling and analysing the data, but even beyond that. The section of this Law on measures which NBS can chose to impose in the process of inspecting of banks' operations provides a number of instruments, which include early intervention measures with a view of solving the determined problems (e.g. to order the bank to implement one or more measures of recovery; to prepare an action plan for recovery with the clear timeframe; to prepare a proposal for restructuring of the bank; to contact a prospective buyer etc.). NBS has discretion in choosing the said measures.

On the level of consolidated control of the banking group, NBS can also request a detailed plan for recovery of the group, which can also include an agreement of financial support within the group. In relation to the new function on restructuring of banks, NBS has a duty to assess and determine if shareholders and creditors are better off through bankruptcy or through restructuring of the commercial bank (having in mind the above mentioned measures regarding banks' shares, assets and debts and regarding the distribution/ allocation of losses).

Foreign Exchange Transactions Law (O.G. of RS, Nos. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018)

This law regulates the following areas: current business activities, payments and transfers, imports and exports, deposits, loans between residents and non-residents, banks, individuals and companies.

This Law provides: full liberalization of payments under current business transactions with foreign entities, partial liberalization on capital transactions with foreign entities and free market formation of the exchange rates and credit/loans.

This Law establishes the Foreign Exchange Inspectorate (FX Inspectorate) which has a mandate to monitor all foreign exchange transactions, including cross border loans and exchange offices, foreign trade and issues of anti-money laundering and financing of terrorism.

The presumption of this Law is that all the transactions with foreign element are free, unless specifically regulated otherwise.

The Law has a clear framework for factual, legal and financial expectations of both residents and non-residents concerning foreign exchange transactions.

In the section on credit/loans transactions of this law, it further elaborates on the transactions between residents and non-residents. Also compensations resulting from foreign trade agreements are allowed, to both companies and entrepreneurs. The profits made abroad in investment projects do not have to be transferred into Serbia; however there is an obligation to inform the FX Inspectorate.

The number of payment transactions allowed in foreign exchange is increased. There is a number of activities which must be evidenced and the relevant authorities are the NBS and the said FX Inspectorate. Irrespective of how the government presents this particular Law, it is nevertheless still quite restrictive in many ways.

This law prescribes a duty to inform the NBS of the cross border loans.

Payment transactions for financial and subordinated loans in foreign currency and certain loans between non-residents and residents in RSD, can only be performed upon prior information to NBS. The same provision applies to commercial loans and direct payments based on foreign trade transactions.

Payments in other credit transactions/loans with foreign element are not subject to prior notification of NBS.

(ii) Commodity loans no longer exist as separate category, they are now included in the definition of commercial loans.

(iii) Definitions and differences between financial and commercial loans are now much detailed and clearer.

(iv) Now the resident companies can approve to non-residents financial loans, as well as provide surety and other collaterals for transactions between two non-residents under specific conditions.

(v) Also, now the resident individuals can take foreign financial loans with tenure longer than one year. However, they still cannot give sureties and other collaterals to non-residents.

Set-offs of debts and receivables, including transfer of debts and receivables are possible in certain instances.

Overseas payment transactions can be done by residents, through foreign institutions for electronic purchase of goods and services. Number of transactions which can also be paid in foreign currency in Serbia is increased, ie. for payments based on guarantees; payments of salaries of residents earned overseas, as well as for transactions and securities regulated by the Law on Capital Market, and transactions pursuant to now invalid Law on Investment Funds, that has been replaced by the Law on Open Investment Fund with Public Offers.

The Law also includes definitions of: the payment institution and issuer of electronic money. By doing so it allows residents to do more transactions through a wider choice of institutions, and it gives NBS the authority to inspect the operations of the electronic and payment institutions.

In accordance with this Law residents - legal persons, entrepreneurs and natural persons can perform payments and collection for the purchase and sale of short-term securities issued by the European Union, member states of the European Union, international financial organizations and development banks or financial institutions in which member states of the European Union participate, as well as those whose issuers are legal entities established in those countries. Also, banks are free to perform payments and collection on the purchase and sale of short-term securities issued by the European Union, member states of the European Union and OECD, international financial organizations and development banks or financial institutions in which member states of the European Union and OECD participate, as well as those whose issuers are legal persons established in those states and finally non-residents who are established or domiciled in the member states of the European Union can perform payments and collection for the purchase and sale of short-term securities in Serbia, in accordance with the law governing the capital market.

When performing foreign credit operations, the bank is obliged to obtain from the non-resident the instruments of collateral security.

Furthermore, resident - a natural person may take credits and loans from a non-resident established or resident in a member state of the European Union with a repayment period of less than one year, which are used to make payments to a resident's bank account, while such credits and loans resident - a branch of a foreign legal entity may take from a non-resident founder established in a member state of the European Union.

The resident legal entity may grant financial loans to a non-resident debtor, as well as provide guarantees and other collateral for foreign and non-resident credit operations, which is subject to NBS restrictions, if it deems it justified.

The Tax Administration can issue and revoke the authorization to perform exchange operations and the control of foreign exchange operations of residents and non-residents and exchange offices.

The Foreign Exchange Transactions Law is complemented and accompanied by the Law on Foreign Currency Transactions ("Official Herald of the Republic of Serbia", No. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018) and this law governs: payments, collections, sales, purchases and transfers between residents and non-resident; unilateral transfers of means of payment from and into the Republic of Serbia; current and deposit accounts of residents abroad and of residents and non-residents in the Republic of Serbia, and credit facility operations in the Republic of Serbia that are executed in foreign currencies and international credit facility operations.

Law on Protection of Consumers of Financial Services (O.G. of RS, No 36/2011 and 139/2014)

Under this particular Law, the commercial banks are obliged to retroactively from December 6, 2011, align the contracts to initially agreed terms and conditions.

This Law’s circle of protected consumers is extensive, references to internal policies or other vague terms is strictly prohibited by this law, financial institutions have a duty to clearly and visibly inform customers of terms and conditions of provision of services, in Serbian language and minimum 15 days prior to implementation of those terms and conditions. Besides financial institutions having the duty to always and at any time provide full and understandable information and explanation in relation to all products and consumer rights, they are also mandated to provide such comprehensive information prior to conclusion of contracts.

Besides providing comprehensive information prior to acceptance of the offer, the offer in question must also contain terms and conditions for termination of contracts. Also, the Law requests that the copy of the contract with the Repayment Schedule and List of relevant elements of contract are also given to the person who provided collaterals (if different from the debtor). This Law imposes a duty on financial institutions to offer their products in Serbian dinars first, with the aim of minimizing the negative effects of exchange rates.

The Law provides a period of 3 years for objection, in which period a contract may be fully consumed. The Law on Payment Services is applied in conjunction with this Law. The previous law is accompanied by the Law on Protection of Consumers of Financial Services regarding remote contracting ("Official Herald of the Republic of Serbia", No. 44/2018) that sets out to regulate the rights of consumers of financial services in the area of contracting financial services via remote communication devices, as well the conditions and methods of achieving their prescribed rights.

Law on Investments ("Official Gazette of the Republic of Serbia", No. 89/2015 and 95/18)

This law equalizes the status and rights of foreign investors with the Serbian entities, by awarding them the full freedom to invest, the National Treatment status and legal security. The Government also provides certain incentives for foreign investors.

The Law on Foreign Investment is far more efficient in the realization of investments, significantly improves the business climate in Serbia and attracts a bulk of new foreign investors, by also offering them good and serious projects and incentives to invest in Serbia.

The Law establishes a development agency and local Investment offices, that both look over the interests of foreign and other investors and the wellbeing of Serbian economy and its various regions. The Law also regulates: the equal status and protection of all investors, foreign and local, authority of courts and arbitrations, freedom to invest and dispose of assets, freedom of bookkeeping according to other standards and not just Serbian etc.

This Law allows the possibility to ban an investor who opened or tries to open a company in Serbia, who was previously banned in his own country to perform certain business operations, this a failsafe mechanism that prevents suspicious or illegal business and money entering Serbia (providing the law will be adhered to by the Serbian authorities). This Law also prescribes the obligation of investors to register at the Development Agency.

Law on Payment Services (O.G. of RS no.139/2014 and 44/2018)

The Law on Payment improves and modernizes the payments systems in Serbia, it enables a number of different payment transactions, including electronic and with foreign countries. With this act Serbia is on the right path of harmonizing its legislative framework with the legislation and practices of the EU concerning payment services.

This Law defines and regulates payment institution and the electronic money and electronic payments, It also prescribes clear duties of payment institutions in the context of protection of consumers (for example, to keep the data of all transactions, to regularly inform customers of any changes, in case of contested transaction, the data kept by payment institution may not be the sole credible evidence etc.).

Few other laws in the set of financial laws are now in line with this law (e.g. the Law on Protection of Consumers of Financial Services).

Closing thoughts

It is clear that there are several particularities of the Serbian banking and finance sector. While Serbia was still part of the former SFRY, the banking system was organized but restrictive and completely controlled and run by the state. The political turmoil ensued in the 1990s, resulted in the crash of the system and dissipation and transfers of capital and assets abroad. In its post turmoil phase, the Serbian government kept the restrictive approach, especially in regards the transactions of non-residents, transfers of money abroad and obligation to bring the money back to Serbia, in the case of foreign trade or investment abroad transactions. Now, Serbia is clearly committed to harmonization with the EU (and also the WTO) rules and legislation and on the path to have full compatibility, alignment and harmonization of local legislation.

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Complaints Procedure