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ZAKON O IZMENAMA I DOPUNAMA ZAKONA O PLATNOM PROMETU

Rezime

Donošenjem Zakona o platnom prometu (Sl. list SRJ br. 3/02 i 5/03 i Sl. glasnik RS br. 43/04, 62/06 i 111/09) bliže su regulisani prava i obaveze banke i klijenata u obavljanju poslova u platnom prometu, otvaranje i vođenje računa za obavljanje platnog prometa, korišćenje instrumenata platnog prometa (nalozi za plaćanje i naplatu), izvršavanje transakcija plaćanja (transferi zaduženja i odobrenja), odgovornost, naknada štete i povraćaj sredstava, kao i prinudna naplata sa računa klijenta. Takođe, donet je Zakon o izmenama i dopunama Zakona o platnom prometu i koji je objavljen 9.5.2011. godine u Službenom glasniku RS broj 31.

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Summary

With the adoption of the Law on Payment Transfers (“Official Gazette of the Federal Republic of Yugoslavia”, No. 3/02 and 5/03, and the “Official Gazette of the Republic of Serbia”, No. 43/04 and 11/09), the rights and obligations of banks and clients in the execution of payment transfers were regulated in more detail, and also the opening and keeping of bank accounts for payment transfer operations, deployment of payment instruments (payment orders and collection orders), execution of payment transactions (debiting and crediting transfers of funds), responsibilities, compensation of damages, and reimbursement of funds, as well as forced collection of claims from client’s accounts. In addition, a law was also passed entitled Law on Amendments to the Law on Payment Transfers, published on 9 May 2011 in the Official Gazette of the Republic of Serbia, under No. 31.

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THE LAW ON AMENDMENTS AND SUPPLEMENTS TO THE LAW ON PAYMENT TRANSFERS

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Koji su razlozi za donošenje Zakona o izmenama i dopunama zakona o platnom prometu?

Najznačajniji razlozi za donošenje ovog zakona koji inicira promenu postojećeg Zakona o platnom prometu se odnose na unapređenje operativnog nivoa realizacije poslova platnog prometa (izmene o uplati gotovine, statusne promene i sl.), podsticanje finansijske discipline (uvođenje Registra menica i ovlašćenja i prinudna naplata) i primerenijeg uređenja kaznenih odredbi ovog zakona.

Koji su nivoi izmena i na koje segmente Zakona se oni odnose?

Prvi nivo izmena se odnosi na operativne izmene u tehnologiji obavljanja poslova platnog prometa koja obuhvata produženje roka za uplatu gotovine iz dnevnog pazara na sedam

dana, za pravna lica i fizička lica koji obavljaju delatnost. Takođe, doneta je i izmena zakona koja se odnosi na tehnologiju usklađivanja statusnih i drugih podataka klijenata, pravnih lica i fizičkih lica koja obavljaju delatnost, koji se vode u banci, sa podacima koji se vode u nadležnoj organizaciji za vođenje Registra privrednih subjekata (APR) i to na nivou tri radna dana od dana preuzimanja koje se vrši svakoga radnog dana u elektronskoj formi. U domenu prinudne naplate, doneta je izmena zakona kojom je brisan je institut predblokade, i uvedena naplata sa računa u bankama prema visini sredstava na tim računima (od računa sa najvišim iznosom sredstava ka najmanjem iznosu sredstava).

Drugi nivo izmena ima za cilj podizanja finansijske discipline, na privrednom i finansijskom tržištu Srbije u kome je primetan veliki broj blokiranih računa po osnovu menica i ovlašćenja. Menice i ovlašćenja

su najzastupljeniji instrumenti obezbeđenja potraživanja u našem sistemu, koji svom imaocu pružaju sigurnost da će najbrže i najjeftinije naplatiti svoje potraživanje. U sadašnjem sistemu platnog prometa nije bilo moguće utvrditi tačan broj izdatih menica i ovlašćenja, odnosno poverioci nisu imali mogućnost da saznaju da li su njihovi potencijalni dužnici i u kom broju izdali menica i ovlašćenja. Uvođenjem elektronskog javnog Registra menica i ovlašćenja u Narodnoj banci Srbije, poverioci dobijaju mogućnost da pre sklapanja poslovnog odnosa dužnikom, izvrše uvid u izdate menice i ovlašćenja dužnika i na taj način realnije procene njegovo finansijsko stanje. Zahtev za registracijom menica i ovlašćenja



Rationale for the adoption of the Law on Amendments and Supplements to the Law on Payment Transfers

The most important arguments in favour of adoption of this Law, which is initiating amendments to the present Law on Payment Transfers, are aimed at the upgrading of the operational level in the implementation of payment transfer operations (amendments to cash payment on accounts, status changes, etc.), instigation of financial discipline (introduction of a Register of the Bills of Exchange and Warrants, and forced collection of claims), and a more appropriate regulation of the punitive clauses of this Law.

What are the amendments levels and which segments of the Law do they cover?

The first level of amendments pertains to the operational changes in the technology of execution of the payment transfer operations, introducing extension of the deadline for cash payments to be made on accounts from the daily takings, to a period of seven days, for legal entities and physical persons conducting business activities. In addition, Law was also amended in the area of technology for harmonisation of data on status of clients and other client-related data, both for legal entities and physical persons conducting business activities, which are kept in the banks, with the data kept at the organisation competent for keeping commercial registers (Agency for Commercial Registers), harmonisation to be done within three working days from the day of importing data, effected every working day, in an electronic form. In the field of forced collection of claims, the Law is amended in the way that the institute of pre-blockade is being deleted, and collection of due claims from the bank accounts instituted, in accordance with the amount of funds kept on such accounts (forced collection to start from the account with the highest amount of funds, downwards towards the account with the lowest amount of funds).

The second level of amendments is focused on boosting of financial discipline, both on commercial and financial markets in Serbia,

where it is observed that a very large number of blocked accounts, based on bills of exchange and warrants, prevail. Bills of exchange and warrants are the most commonly used instruments for securing claims on receivables in our system, which are granting their beneficiaries the safest way of collecting their due receivables in the fastest and the cheapest manner. In the present-day system of payment transfers, it was not possible to determine the precise number of issued bills of exchange and warrants, i.e. creditors were not able to find out whether their potential debtors have issued other bills of exchange and warrants, and in what number. With the introduction of the electronic public Register of Bills of Exchange and Warrants at the National Bank of Serbia, creditors are now given the opportunity to gain an insight into the issued bills of exchange and warrants by their potential debtor, before entering business partnership with that particular obligor, and in that way appraise more realistically his financial situation. Request for registration of bills of exchange and warrants is being submitted by the obligor to his bank, and the bank shall, in turn, issue a receipt for registration and be held liable for the accuracy and credibility of data presented on the registered bill of exchange or a warrant. Register of Bills of Exchange and Warrants covers all the relevant data pertaining to the obligor, creditors, the amount and date of issue and maturity of the bill of exchange and the warrant. National Bank of Serbia, in its by-law, shall regulate in more detail data to be kept in the Register, and also terms and conditions for its keeping, within 30 days from the days of coming into force of this Law (by 16 June 2011 at the latest). This novelty in the Law on Payment Transfers is also initiating amendments in the field of forced collection of claims, and this pertains to the option for the forced collection of due claims to be conducted only on those bills of exchange and warrants which have been registered with the Register of Bills of Exchange and Warrants at the National Bank of Serbia. Bills of exchange and warrants taken by the creditor, but which were not registered with the Register of Bills of Exchange and Warrants at the National Bank of Serbia, can not serve as legal grounds for issuing an order for the forced collection of claim by the National Bank

podnosi dužnik svojoj banci, koja mu o registraciji izdaje potvrdu i odgovara za tačnost i verodostojnost podataka o registrovanoj menici ili ovlašćenju. Registrom menica i ovlašćenja su obuhvaćeni svi relevantni podaci koji se odnose na dužnika, poverilaca, iznos i datum izdavanja i dospeća

menica i ovlašćenja. Narodna banka Srbije će podzakonskim aktom bliže urediti podatke koje sadrži registar, kao i uslove i način njegovog vođenja, u roku od 30 dana od dana stupanja na snagu ovog zakona (do 16.6.2011. godine). Ova novina u Zakonu o platnom prometu inicira i izmenu u delu prinudne naplate, i odnosi se na mogućnosti realizacije naplate putem prinudne naplate samo nad menicama i ovlašćenjima koji su evidentirani u Registru menica i ovlašćenja Narodne banke Srbije. Menice i ovlašćenja koja je poverilac uzeo, a koja nisu evidentirana u Registru menica i ovlašćenja Narodne banke Srbije, ne mogu biti osnov za ispostavljanje naloga za prinudnu naplatu koju vrši Narodna banka Srbije u skladu sa zakonom o platnom prometu, već ih poverilac može naplatiti u skladu sa drugim zakonskim propisima (protestom dužniku ili putem suda).

Koje izmene su izvršene a odnose se na blokirane privredne subjekte?

Takođe, u cilju postizanja veće finansijske discipline, doneta je izmena zakona kojom je u slučaju blokade računa pravnih lica i fizičkih lica koja obavljaju delatnost zbog neizmirenih obaveza, proširen broj zabranjenih oblika plaćanja, pored asignacije i cesije i na pristupanje dugu, preuzimanje duga i ustupanje duga. U isto vreme, u cilju obezbeđenja ravnopravnosti poverilaca u odnosu na prirodu potraživanja prema blokiranom privrednom subjektu, ukinuta je mogućnost da na bilo koji od ovih načina plaćanja dužnici čiji su računi blokirani

zbog neizmirenih obaveza vrše isplate sa svojih, blokiranih računa (isplata zarada, naknada troškova dolaska i odlaska na posao, otpremnina, solidarna pomoć u slučaju smrti člana porodice i sl.).

Koja su pitanja ostala otvorena i koja treba precizirati po objavljivanju Zakona?

Nakon objavljivanja zakona, za njegovu potpunu i efikasnu

primenu neophodno je dati odgovore na neka od otvorenih pitanja u koja spadaju:

- a. Kada se očekuje promena uslova i načina plaćanja u gotovom novcu u dinarima za pravna i fizička lica koja obavljaju delatnost koja saglasno članu 2. ovog zakona iz nadležnosti Narodne banke Srbije prelazi u nadležnost Ministarstva finansija, i u kom pravcu će ići ove promene?
- b. Da li produženje roka za predaju gotovine na 7 radnih dana (član 3. ovog zakona) može imati uticaja na povećanje gotovine u blagajnama pravnih i fizičkih lica koja obavljaju delatnost, i da li će se to odraziti na količinu gotovog novca u platnim tokovima i „preradi“ gotovog novca?
Po ovom je pitanju je potrebno da Narodna banka Srbije obrati posebnu pažnju na ne samo na „nestašicu“ gotovog novca, već i na kvalitet novčanica (starije i pohabanije novčanica) zbog sporije prerade gotovog novca i njegovog zadržavanja u platnim tokovima.
- c. Kada će Agencija za privredne registre propisati način preuzimanja podataka, kako će se ti podaci preuzimati (pitanje selekcija po matičnom broju), u kom formatu, na koji način i po kojoj tarifi (pitanje visine naknade za preuzete podatke - na dnevno nivou, mesečnom nivou, paušalno ili po preuzetom podatku)?
Da li je potrebno da po primeni ove izmene zakona, banke u statusnoj dokumentaciji imaju papirnu potvrdu za pravna lica i fizička lica koja obavljaju delatnost i koja se



of Serbia, under the provisions of the Law on Payment Transfers, but the creditor may collect due claims through other legal options (by bill protest, or in a judicial law suit).

What are the amendments made that pertain to the blocked corporate entities?

In order to achieve a higher level of financial discipline, an amendment was introduced to the Law stipulating that in the case of blockade of the bank account held by legal entities and physical persons engaged in business activities, who have failed to service their liabilities, the number of prohibited forms of payment was extended to cover, in addition to assignation and cession, also the accession to debt, acceptance of debt, and assignation of debt. Concordantly, with the aim of providing for an equitable treatment of creditors with respect to the nature of claim receivable from the blocked corporate entity, the option was deleted for debtors to make payments, if their bank account is blocked because of defaulted liabilities, from the blocked bank accounts, in any of the following forms (payment of salaries, compensation of commuting expenses for employees coming to work and return home, severance pay, solidarity assistance in case of demise in the family, etc.).

What are the other pending matters to be specified after the publication of the Law?

Upon publication of the Law, in order to secure its full and efficient implementation, it is necessary to provide answers to some of the remaining pending questions:

- a. When is it expected to have the amendments made into the terms and conditions of cash payments made in dinar currency for legal entities and physical

persons, engaged in business activities, who are now under the provisions of Article 2 of this Law, passing from the competences of the National Bank of Serbia to the competencies of the Ministry of Finance, and what is the direction that these amendments will take?

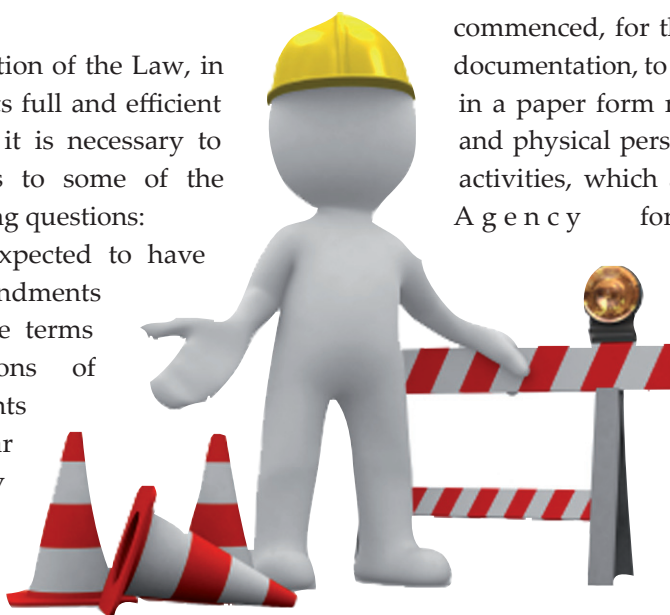
- b. Whether the deadline for handing over of cash, now extended to 7 working days (Article 3 of the Law), will have an impact on the increase of cash amounts held in the cash-registers of legal entities and physical persons engaged in business activities, and will this, in turn, have an influence on the amount of cash money available in the cash flows and “recycling” of cash money?

This is the matter that must draw especially the attention of the National Bank of Serbia, regarding not only the “shortage” of cash money, but also the quality of banknotes in circulation (older and worn-and-thorn banknotes) because of a slower recycling of cash money and its longer retention in the cash flow circulation.

- c. When will the Agency for Commercial Registers prescribe the manner of data input, when will such data be imported (question of selection according to the personal identity code), in what format, in what way and at what tariff fee (matter of fees for imported data – at a daily level, monthly level, lump sum payment, or per every data item imported)?

Is it necessary, after the implementation of the amendments to this Law has commenced, for the banks keeping status documentation, to have also a confirmation, in a paper form receipt, for legal entities and physical persons engaged in business activities, which are registering with the Agency for Commercial Registers?

- d. What are the binding data, i.e. which controls shall be made of the data in the process of registration of bills of exchange and warrants with the Register of Bills of Exchange and Warrants at the National Bank



- registruju u Agenciji za privredne registre?
- d. Koji su obavezujući podaci, odnosno koje kontrole će se vršiti nad podacima u procesu registracije menica i ovlašćenja u Registru menica i ovlašćenja Narodne banke Srbije, imajući u vidu i blanko menice (izdate kao kolateralna po plasmanima banaka), indosirane menice?
 - e. Koji podaci u Registru menica i ovlašćenja Narodne banke Srbije se mogu smatrati javnim (u smislu zakona koji se bavi zaštitom ličnih podataka) i da li podaci o potencijalnom dugovanju po menici ili ovlašćenju mogu biti javni imajući u vidu visok nivo tajnosti podataka u Kreditnom birou?
 - f. U postupku prinudne naplate u redosledu prema visini sredstava na računima dužnika u bankama, nejasno je koji kriterijum se primenjuje u slučaju jednakog stanja na računima u dve ili više banaka?

of Serbia, bearing in mind also the blanco bills of exchange (issued as collateral for the bank placements), and endorsed bills of exchange?

- e. Which data, kept at the Register of Bills of Exchange and Warrants at the National Bank of Serbia, may be deemed to be public in character (in the sense of the law governing personal data protection), and whether data on potential indebtedness per a bill of exchange or a warrant may be deemed to be

public bearing in mind a high level of data confidentiality governing data kept at the Credit Bureau?

- f. In the procedure of forced collection of claims, the priority according to the amount of funds kept on the bank accounts of the debtor in different banks, it is not clear what criteria will be applied in the case of an equitable balance on bank accounts held in two or more banks?