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Serbia: Amendments and Supplements to the Banking Act Adopted

At the beginning of February 2015, the Parliament of the Republic of Serbia ("**RS**") adopted a set of banking-related laws.

The following were published in the Official Gazette of RS no. 014/2015: (i) Amendments and supplements to the Banking Act ("**BA**"), (ii) Insolvency and Liquidation of Banks and Insurance Companies Act, (iii) Deposit Insurance Agency Act, (iv) Deposit Insurance Act, and (v) Amendments and supplements to the Act on the National Bank of Serbia.

Led by the BA, this latest legal reform of Serbia's banking sector aims to set a new, systematic legal framework for the restructuring of banks in the country with the goal of adhering to the European Union legislative framework (particularly with regard to the provisions of the Directive 2014/59/EU on the recovery and resolution of credit institutions).

Based on the framework established by Serbia's newly-adopted banking laws, the National Bank of Serbia ("**NBS**") takes on the key role in the restructuring of banks, the Deposit Insurance Fund ought to be consolidated, while the Deposit Insurance Agency will lose the role it had with regard to the restructuring process for banks and the implementation of the test of minimum costs.

It remains to be seen how the reformed banking regulations will be implemented in practice and within Serbian banks' operations.

The BA's main features are related to preventive actions, early intervention measures and, finally, bank restructuring measures. The new restructuring concept is established so as to maintain banks' financial stability.

BA is in force as of 12 February 2015, and shall be effectively implemented as of **1 April 2015**.

Among the significant changes the BA introduces, we would like to highlight the following:

1. General provisions

1.1 It is now explicitly defined that the subject matter of the BA comprises the bank's restructuring (NBS conducts the restructuring in the special administrative proceedings);

1.2 A more precise definition is provided for the notion of undercapitalization of a bank; the previously existing notions of of significant undercapitalization and critical undercapitalization are removed;

1.3 In order to prevent abuses, the BA envisages that the delivery of the decisions and other NBS acts related to its supervisory powers and a bank's restructuring shall be deemed to be delivered to the members of the bank's management, which cannot be rebutted proving the contrary.

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2. Bank's operations

2.1 The BA regulates the entirely new set of provisions governing the (i) obligation of the bank to draft and maintain a **recovery plan**, (ii) the contents of such plan, (iii) the assessment of the recovery plan, and (iv) its implementation. This is one of the novelties of the BA, and is aimed at introducing preventive within the Serbian banking sector. The recovery plan provides for different recovery options and outlines the measures the bank will apply in the event of a significant deterioration of its financial condition;

Banks are obliged to submit their first recovery plans to the NBS by 30 September 2015.

2.2 The provisions on the competencies of the bank's Managing Board and Executive Board are put into more concrete terms, with a clear delineation of their responsibilities, particularly on risk management matters.

3. NBS's supervisory function

3.1 The BA introduces the so-called *diagnostic examination* which the NBS can conduct through direct inspection of a bank's business books and other documentation; the BA also outlines that in the process of exerting direct control, the NBS may engage a person who is not one of its employees, due to the need for special, expert knowledge;

3.2 Within the NBS supervision, the BA describes various **measures of early intervention** that can be applied if the NBS determines the bank acted in contravention to the BA or the regulations of the NBS or other relevant regulations, or if it is likely that the bank will contravene them soon, due to the fact that its financial situation is rapidly worsening, including a deterioration of liquidity, or an increasing level of indebtedness, non-performing loans, or concentration of exposure;

3.3 In the event that the measures of early intervention do not improve the financial condition of the bank, the BA authorizes the NBS to order the **dismissal of members of the bank's management** or other persons in leading positions within the bank;

3.4 If none of the previous measures help to improve the bank's status, the NBS may nominate the bank's provisional administrator(s) (**provisional administration**), while the provisions of the old law regarding the receivership are deleted.

4. Bank restructuring

4.1 An entirely new section (*Va; Bank Restructuring*) has been added by the BA to lay down the objectives and principles of restructuring, planning, assessment of possibilities of restructuring and removing obstacles to restructuring, write-off and capital conversions, the start of restructuring, measures and instruments of restructuring, measures for the protection of shareholders, creditors and third parties, as well as financing of restructuring;

4.2 The NBS initiates the restructuring process when it finds that (i) the bank's condition is such that it cannot or will not likely be able to continue to operate; (ii) it is unlikely that any other measure could, within a reasonable timeframe, remedy the obstacles to to bank's operations; (iii) that the bank's restructuring is in the public interest;

4.3 The NBS shall render a decision to initiate the restructuring, which defines the **instruments and measures** to restructure the bank or the banking group, based on the test of minimum costs;

4.4 The measures the NBS may order are numerous, while the restructuring instruments are: (i) the sale of shares, assets and liabilities, (ii) transfer of shares or assets and liabilities to the bridge bank, (iii) assets separation; and (iv) the distribution of losses to shareholders and creditors.

Should you have any questions concerning the BA, please do not hesitate to contact us.