MOST FREQUENT QUESTIONS ABOUT THE APPLICATION OF REGULATIONS ON FOREIGN EXCHANGE OPERATIONS UNDER THE REMIT OF THE NATIONAL BANK OF SERBIA

❖ Status of a resident and/or non-resident under the Law on Foreign Exchange Operations

Article 2 of the LAW ON FOREIGN EXCHANGE OPERATIONS

Question: When does a resident natural person gain the status of a non-resident and do short visits to the Republic of Serbia affect a change in his status?

Opinion: Article 2, item (1), subitem 5) of the Law on Foreign Exchange Operations (RS Official Gazette, Nos 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018) (hereinafter: the FX Law and the Law) defines the status of residency and/or non-residency – a resident means, inter alia, a natural person residing in the Republic, except for a natural person holding a temporary residence abroad for over a year, who is considered a non-resident in accordance with item (2) of the above Article of the FX Law.

Based on the above provisions of the FX Law, a resident natural person gains the status of a non-resident by residing abroad for over a year, which can be determined by inspecting the relevant document permitting his stay abroad.

If a natural person has valid foreign documents that allow him to stay abroad for over a year (work/residence permits of a foreign country), but despite these documents he mainly resides in the Republic of Serbia (which can be determined, for instance, by inspecting the travel document), this person will not gain the status of a non-resident with the expiry of one year after the issuance of documents, but will still be considered a resident, i.e. the criterion that he automatically becomes a non-resident with the expiry of one year after the receipt of the relevant foreign documents will not be applied to this person.

A natural person who gained the status of a non-resident by staying abroad for over a year will not lose this status due to short visits to the Republic of Serbia (of private or business nature), but will continue to be considered a non-resident as long as he actually resides abroad, and/or while he carries out the majority of his life and business activities abroad.

CURRENT RESIDENT TRANSACTIONS

❖ Transfer of debts and claims arising from residents' foreign trade in goods and services

ARTICLE 7 OF THE FX LAW

Question: **Could a resident transfer claims to a non-resident under a foreign trade operation concluded with a foreign company which refuses to consent to such transfer of claims, and thus make collection from the non-resident – the transferee of claims, in the amount corresponding to the amount of claims?**

Opinion: Pursuant to the FX Law, banks, and/or residents, except for resident natural persons, and non-residents may transfer, and/or pay or collect claims and debts arising from residents' foreign trade in goods and services, provided the foreign trade operation is not considered a commercial credit

or loan (Article 7, paragraph 1). These operations may be performed only based on a contract between the transferor and the transferee of claims and debts, where the transferor shall notify the debtor under the underlying operation of the transfer of claims performed, and/obtain the creditor's consent under the underlying operation for the transfer of debts (Article 7, paragraph 2).

As these provisions of Article 7 of the FX Law envisage the possibility of transfer of resident's claims under foreign trade to the non-resident and the debtor's consent is not needed, while instead the transferor is obliged to notify the debtor under the underlying operation of the transfer of claims, the resident – legal entity could transfer its claims arising from foreign trade (e.g. export of goods to the non-resident) to another non-resident, and collect claims in the amount corresponding to the value of those claims. Such transfer can be made only based on the contract between the resident (transferor of claims) and the non-resident (transferee of claims), which pursuant to the above provision of the FX Law must contain in particular identification details of the contracting parties, data on foreign trade, including data on the debtor and/or creditor, the currency and amount of claims being transferred.

To make a collection in respect of the transferred claims, the bank must be presented, to allocate the inflow, with the contract on the transfer of claims from the resident to the non-resident, and the evidence that the debtor under the underlying operation is informed of the transfer (e.g. a copy of the notification sent to the debtor in written or electronic form).

Question: **Is it possible to make pledge on a monetary claim of one resident (person A) on another resident (person B), in favour of the pledge creditor – non-resident (person C) under a current transaction with a resident, if the claim of person A on person B is of local character?**

Opinion: Pursuant to the FX Law, banks, and/or residents, except for resident natural persons and non-residents, may transfer, and/or pay or collect claims and debts arising from residents' foreign trade in goods and services, provided the foreign trade operation is not considered a commercial credit or loan (Article 7, paragraph 1).

Although, in legal terms, the transfer of claims and establishment of pledge are different, if the subject of pledge is a monetary claim arising from the transaction between two residents and the pledge would be established in favour of the third person – non-resident, the provisions of the FX Law on the transfer of claims are applicable. As the FX Law stipulates that the transfer of claims and debts between the non-resident and resident is allowed under a foreign trade operation, i.e. operation of the resident with the non-resident, the resident cannot transfer to the non-resident the claim arising from the operation with another resident. The subject of the pledge right in the pledge contract between the resident and the non-resident cannot be the resident's claim on the debtor – another resident, regardless of whether transactions between residents are carried out in dinars (claim for rendered services or sale of goods in the Republic of Serbia) or in a foreign currency (claim in respect of lease based on the real estate lease agreement in the territory of the Republic of Serbia).

The above opinion refers exclusively to the provision of collateral under **current transactions** of residents**.** Resident legal entities can freely provide collateral under **foreign credit borrowing** transaction, as prescribed by Articles 18 and 23 of the FX Law. In this regard, a resident may provide collateral under foreign credit borrowing in favour of a non-resident over its assets, including its claims on residents or non-residents. Since collateral under foreign credit borrowing is activated only when a debtor fails to settle its due liabilities, the activation of a pledge on the claim of a resident debtor against another resident would not lead to an increase in external debt, as in this way the existing external debt under a credit, i.e. capital transaction would be settled.

Question: **Can the resident transfer to the non-resident a claim on another resident, whereas this claim initially originates from the underlying foreign trade operation as the resident obtained the claim by assuming it from the non-resident (creditor in the foreign trade operation) and thus became a new creditor in respect of the resident (debtor in the foreign trade operation)?**

Opinion: The non-resident can transfer claims arising from a foreign trade operation (e.g. export of services) which it has towards the resident, to another resident (in accordance with the provision of Article of the FX Law), whereby a debtor-creditor relationship between the two residents is established. However, FX regulations do not envisage the possibility that claims and debts between residents be transferred to non-residents.

Based on the above, and since this case does not imply the transfer of claims from the resident to the non-resident under a foreign trade operation, but represents the assignment of claims of the resident legal entity on another resident to the non-resident legal entity, the FX Law does not envisage the possibility of such transfer of claims.

CAPITAL TRANSACTIONS OF RESIDENTS

- ***Direct investment***

ARTICLES 11 AND 11A OF THE FX LAW

Question: **Is the payment of the purchase/sale price for stakes in a resident legal entity which the non-resident buyer would pay to the resident seller in instalments over the course of five years considered a foreign credit operation?**

Opinion: Pursuant to the FX Law, payment and transfer of capital under direct investment of non-residents in the Republic of Serbia is carried out freely, in accordance with the law governing investment (Article 11, paragraph 2). Direct investment, inter alia, includes the purchase of stake in the capital of a legal entity, and any other form of investment whereby the investor acquires at least a 10% stake in share capital, and/or at least 10% of voting rights, in a period not longer than one year following the first investment into that legal entity in the event of successive investments (for the purpose of reaching the 10% threshold) (Article 2, item (17), paragraph 2).

The FX Law also envisages that non-residents may make payment and collection for the purpose of buying and selling a stake in the capital of a resident legal entity provided such purchase and sale do not constitute direct investment, in accordance with the law governing companies (Article 11a, paragraph 2).

In line with these provisions of the FX Law, the purchase of stake of a non-resident in the capital of a domestic legal entity can be considered – depending on the level of the share of this stake in share capital of the legal entity purchased by the non-resident – either a direct investment of the non-resident or the purchase of a stake in capital of the resident legal entity which is not considered a direct investment. The circumstance that the purchase of stake in the capital of the resident legal entity is carried out in instalments over a five-year period does not change the fact that this is a non-resident investment, and not a foreign credit operation.

❖ ***Securities transactions***

ARTICLE 13 OF THE FX LAW

Question: **Is it possible to implement a scheme where employees in a company in the Republic of Serbia make investment, through that company, in the parent company abroad by acquiring shares of that company?**

Opinion: Under Article 13, paragraph 1 of the FX Law, resident legal entities, entrepreneurs and natural persons may make payment and collection for the purpose of buying and selling equity securities abroad that do not constitute direct investment.

Pursuant to this provision of the FX Law, there are no impediments for residents – employees in a domestic company which operates within a group to purchase shares of the foreign company belonging to the same group. These residents can make payments on these grounds also through the domestic company where they work, which, in their name and for their account, would transfer funds to the foreign company, whereby the employee, and not the domestic company, becomes the owner of shares. To carry out this purchase, the domestic company can directly, from a special account with a bank in the Republic of Serbia where employees' funds are accumulated, make payment to the foreign company in respect of the purchase of shares for its employees.

In addition, a resident natural person can also sell abroad the shares that he acquired in the specified way and thus make collection in foreign currency in his account with a bank in the Republic of Serbia. It should be borne in mind that this can give rise to tax liabilities towards the Republic of Serbia which are settled in accordance with tax regulations. The Ministry of Finance should be addressed in this context as it is responsible for the implementation and interpretation of these regulations.

In relation to this, pursuant to Article 13, paragraph 6 of the FX Law, the NBS adopted the Decision on Reporting on Securities Transactions (RS Official Gazette, No 40/2015). Under Section 1, item 5) of this Decision, the reporting entities must submit to the NBS the report on resident investment in securities issued by non-residents and kept in securities accounts abroad (in the concrete case, the reporting entity would be the domestic company).

Question: Can resident legal entities and natural persons make payments directly to a foreign legal entity based on the purchase of foreign equity securities?

Opinion: Article 13 of the FX Law stipulates that resident legal entities, entrepreneurs and natural persons may make payment and collection for the purpose of buying and selling equity securities abroad that do not constitute direct investment.

Given the mentioned provision of the Law, there are no impediments for resident legal entities and natural persons to make payments based on the purchase of equity securities abroad directly to a foreign legal entity whose shares are purchased. For the purpose of making payment, in accordance with the Decision on Terms and Conditions of Performing Foreign Payment Transactions and the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions, the resident must present to the bank a document that proves the obligation of foreign payment and determines the grounds of foreign payment, which can be a contract with a legal entity whose shares the resident is buying or other document based on which it is possible to determine the payment obligation based on the purchase of shares of a foreign legal entity. In addition, if the regulations of the country in whose securities the resident intends to invest stipulate the opening of a bank account in that country as a condition for the payment of those securities, the approval of the National Bank of Serbia is required

in accordance with the provisions of the Decision on Terms and Conditions Under Which Residents May Hold Foreign Exchange in Bank Accounts Abroad.

❖ *Foreign credit operations*

➢ *Foreign credit operations in dinars*

ARTICLE 18, PARAGRAPH 2 OF THE FX LAW

Question: **Can a non-resident legal entity grant to a resident legal entity a loan in dinars?**

Opinion: Pursuant to Article 18, paragraph 2 of the FX Law, only a particular category of non-residents – international financial organisations and development banks or financial institutions founded by foreign states may grant to resident legal entities and resident entrepreneurs dinar credits and loans, under the terms and conditions prescribed by the NBS. Hence, a non-resident legal entity which does not belong to this category of non-residents cannot grant a dinar loan to a resident legal entity or entrepreneur, and this loan cannot be repaid in dinars.

➢ *Credits granted by a bank to a non-resident*

ARTICLE 18, PARAGRAPH 3 OF THE FX LAW

Question: **In what currency can a domestic bank grant a credit to a non-resident?**

Opinion: Under Article 2, item (21), paragraph 2, subparagaph 2 of the FX Law, foreign credit operations are also financial credits and loans in foreign currency granted by a creditor (bank) by crediting the debtor's account, while paragraph 6 of this item specifies that foreign credit operations are also dinar credits granted by banks to non-residents.

Under Article 18, paragraph 3 of the FX Law, a bank may conclude foreign credit operations in its own name and for its own account, in its own name and for somebody else's account and in somebody else's name and for somebody else's account. When performing foreign credit operations, a bank shall obtain collateral instruments from the non-resident. Under paragraph 2 of this Article, only banks may grant credits in dinars to non-residents, under the terms and conditions prescribed by the NBS.

In accordance with Section 10 of the Decision on Terms and Conditions of Performing Foreign Credit Transactions in Dinars (RS Official Gazette, No 98/2013), adopted based on Article 18, paragraph 2 of the FX Law, banks may grant credits in dinars to a non-resident legal or natural person by crediting the payment card account of that non-resident with a bank in the Republic of Serbia, and crediting the account of a resident seller and/or lessor to whom the non-resident is obligated to make payment under current or capital transactions permitted by the FX Law. Under Section 3 of this Decision, these dinar credits are extended without an FX clause, which implies the FX clause within the meaning of the FX Law, as well as any other clause which ensures hedging against the dinar exchange rate risk.

Given the above, a bank may grant to a non-resident a financial credit in FX and dinars without an FX clause, and before crediting the funds, a bank must obtain from the non-resident adequate collateral instruments.

A bank reports to the NBS on foreign credit operations in accordance with the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020).

Pursuant to Article 32, paragraph 5 of the FX Law, a bank reports to the NBS on a financial FX credit it grants to the non-resident before crediting the account of the non-resident debtor.

Question: **Can a bank grant to a non-resident an FX credit for the purchase of real estate?**

Opinion: Under Article 2, item (21), paragraph 2, subparagaph 2 of the FX Law, a bank may grant FX financial credits to non-residents by crediting the debtor's account (a foreign credit operation). Under Article 18, paragraph 3 of the FX Law, when performing foreign credit operations, a bank shall obtain collateral instruments from the non-resident.

In this regard, a bank may grant an FX financial credit to a non-resident, including a non-resident natural person, and there are no impediments that the purpose of this credit be the purchase of real estate (located in the Republic of Serbia or abroad), under the condition that the bank, before disbursing the credit, obtains from the non-resident an adequate collateral instrument.

The bank must inform the NBS on this credit on forms KO-2 and KO-3A, which are accompanied with the documents prescribed by Section 7 of the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020).

Question: **When granting a housing credit to a non-resident natural person, can a bank establish mortgage on real estate owned by a resident legal entity (investor), which is purchased with housing credit funds, as an additional collateral instrument?**

Opinion: In accordance with Article 18, paragraph 3 of the FX Law, when performing foreign credit operations, a bank **shall obtain collateral instruments from a non-resident**. In accordance with banking regulations and the Law, a bank may obtain guarantees, warranties and other collaterals from non-residents under credits granted to non-residents.

In this particular case, a bank grants a housing credit to a non-resident natural person for the purpose of paying the purchase price of real estate in the country to a resident legal entity (investor). By no later than before disbursing the credit funds to a non-resident natural person, the bank shall obtain collateral instruments from a non-resident, and there are no impediments for the bank to obtain, in addition to these collateral instruments, the pledge statement of the resident legal entity (investor) as the seller of real estate, in order to place mortgage on the real estate, which is purchased with the credit funds, bearing in mind that upon payment of the purchase price from that credit, the non-resident becomes the owner of mortgaged real estate – i.e. mortgage debtor to the bank.

Question: **Can a bank, in accordance with regulations in force, grant to a non-resident natural person a credit in foreign currency for the purpose of refinancing an existing housing loan in dinars that the same domestic bank granted to the same non-resident for the purpose of purchasing real estate?**

Opinion: In accordance with Article 18, paragraph 3 of the FX Law, a bank may conclude foreign credit operations, which also implies the granting of credits to non-residents, provided that, when performing these operations, a bank shall obtain collateral instruments from a non-resident. Under the same paragraph, a bank may obtain guarantees, warranties and other collaterals from non-residents under credits granted to non-residents in accordance with banking regulations and the Law.

Based on the above, in accordance with regulations on foreign exchange operations in force, there are no impediments for a domestic bank to grant a credit in foreign currency to a non-resident, including a non-resident natural person, with the obligation to obtain from the non-resident adequate collateral instruments; there are no impediments that the credit funds be also used for the refinancing of a previously granted housing credit in dinars.

A bank is obliged to report to the National Bank of Serbia on a credit in foreign currency that it grants to a non-resident before disbursing the credit funds, on the prescribed KO forms in accordance with Section 7 of the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020) (hereinafter: the Decision). It is also obliged to report to the National Bank of Serbia about the termination of claims on a non-resident under a previously granted credit in dinars, on the KOD Form in accordance with Section 8 of the Decision.

Question: **Can a bank – when granting a credit to a non-resident with the seat in the European Union (EU) and when issuing a guarantee for the non-resident's obligations under a credit operation between two non-residents – obtain warranty from the resident legal entity? When granting a credit to a non-resident with the seat outside the EU, can a bank obtain a warranty from a resident legal entity? How is the warranty of a resident legal entity under a credit granted by a domestic bank to a non-resident reported on?**

Opinion: Under Article 18, paragraph 3 of the FX Law, when performing foreign credit operations, a bank shall obtain collateral instruments from the non-resident and may, in accordance with banking regulations and the FX Law, issue bank guarantees, sureties and other types of warranties in favour of a non-resident creditor under credit operations between non-residents, provided that it contracts and obtains collateral instruments from the non-resident.

Under Article 18, paragraph 7 of the FX Law, a resident legal entity may issue, in line with Article 23 of the FX Law, warranties and other collaterals in favour of a non-resident creditor under foreign credit operations and credit operations between non-residents. Based on the authorisation from Article 23, paragraph 2 of the FX Law, the Decision on Conditions and Manner in which Residents May Grant Financial Loans to Non-Residents and Issue Warranties and Provide Other Collaterals under Foreign Credit Operations and Credit Operations between Non-Residents (RS Official Gazette, Nos 32/2018 and 122/2020) (hereinafter: Decision) was adopted, which regulates in more detail the conditions under which resident legal entities may issue warranties and provide other collaterals in favour of non-resident creditors under foreign credit operations and credit operations between non-residents.

The FX Law stipulates that a bank may issue bank guarantees, sureties and other types of warranties in favour of a non-resident creditor under credit operations between non-residents, provided that it contracts and obtains collateral instruments from the non-resident. The FX Law does not explicitly envisage the possibility for the bank to obtain additional collateral from the resident legal entity under such credit operation and does not specifically regulate the situation concerning the possibility that the resident legal entity issues collateral under a credit that a domestic bank granted to the non-resident.

However, given that in line with Article 23, paragraph 1 of the FX Law, a resident legal entity may also issue warranties under credit operations between non-residents and that the Decision prescribes the conditions under which the resident may guarantee for the obligations of the non-resident in favour of the non-resident creditor, we are of the opinion that there are no legal obstacles for the resident legal entity to issue collateral for the purpose of additionally securing the credit which the domestic bank granted to the non-resident (with the seat in the EU or with the seat outside the EU, under the conditions stipulated by the Decision). In this regard, although the FX Law only prescribes the bank's obligation to obtain collateral from the non-resident, there are no impediments for the bank to obtain the other, additional collateral, including the collateral it would receive from the resident legal entity, but in that case the resident legal entity which issues collateral in favour of the domestic bank as additional collateral for the non-resident's obligation under the credit taken from the bank would have the same obligation to obtain from the non-resident collateral instruments, as prescribed by the Decision in the cases when it issues collateral in favour of the non-resident creditor under credit operations between non-residents.

In accordance with Section 7 of the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020), a domestic bank reports to the National Bank of Serbia on the credit granted to a non-resident, including the obtained collateral instruments under that transaction, by submitting the prescribed forms (Form KO-2 and Form KO-3A) with the accompanying documentation. In addition to other documentation, if the warranty of a resident legal entity is obtained as an additional collateral instrument under a credit granted by a domestic bank to a non-resident with the seat outside the EU, the documentation proving that the resident legal entity issuing the warranty is the majority owner of the non-resident debtor should also be submitted, as well as the decision of the governing body of the resident legal entity with a direct or indirect state share in capital on the issuance of warranty, or the statement of a resident legal entity without a direct or indirect state share in capital on the issuance of warranty, with information on the amount of the warranty, the date of its issuance and the conditions under which it is issued, as well as collateral instruments which a resident obtained from a non-resident, in accordance with the conditions stipulated by the Decision. We wish to note that the bank must first try to make collection from the collateral obtained from the non-resident. If it fails to do so within a reasonable timeframe, it can activate the additional collateral obtained from the resident legal entity.

- ***Foreign credit operations of natural persons***

ARTICLE 18, PARAGRAPHS 11 AND 12 OF THE FX LAW

Question: **Should a loan granted by the non-resident legal entity outside the EU to its owner – natural person with dual citizenship (of Serbia and foreign country) be reported to the NBS as a foreign credit operation as the loan agreement would specify that the natural person is the national of a foreign state?**

Opinion: Under Article 2, item (1), subitem 4) of the FX Law, a resident is the natural person residing in the Republic, except for a natural person holding a temporary residence abroad for over a year. Under Article 2, item (21), paragraph 1 of the FX Law, foreign credit operations are credits granted by a bank or a foreign bank, and loans between residents and non-residents, on which residents report to the NBS.

Given the above, if the natural person, a national of Serbia and a foreign state, fulfils the conditions envisaged by the said provisions of the FX Law, based on which he is considered a resident, he should notify the NBS about the loan taken from the non-resident legal entity in accordance with the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020). The fact that the natural person is at the same time a national of a foreign country is not crucially important for the implementation of provisions of the FX Law; what is important is the person's temporary residence abroad for over a year.

In addition, as the creditor non-resident is outside the EU, in accordance with Article 18, paragraphs 11 and 12 of the FX Law, a resident natural person may take loans from a non-resident with the seat in anon-EU member state only if their repayment term is over one year, and the funds are credited to the account of that resident with the domestic bank.

The implementation of regulations in the field of FX operations does not prejudice consistent implementation of measures and actions determined by anti-money laundering regulations and, if necessary, the implementation of enhanced due diligence actions and measures.

- ***Offsetting of debts and claims under foreign credit operations in foreign exchange***

ARTICLE 6, PARAGRAPH 3 OF THE FX LAW

Question: **What regulations govern the offsetting of claims of a resident legal entity on a non-resident based on a foreign trade transaction that has not been settled for longer than a year (a claim that is considered a foreign credit operation, on which it is obliged to report to the National Bank of Serbia) against the claim of that non-resident on the said resident?**

Opinion: In accordance with Article 4 of the FX Law, exports and imports of goods or services contracted in foreign exchange or in dinars for which payment has not been collected and/or made for longer than one year from the day of execution of exports or imports, as well as goods or services that were not exported and/or imported for longer than one year from the day the advance payment in foreign exchange or in dinars was made and/or collected (claims/debts under foreign trade for which payment has not been collected and/or made for longer than one year) shall be deemed commercial credits and loans, on which a resident is obliged to report to the National Bank of Serbia in accordance with Section 13 of the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020).

The offsetting of debts or claims under foreign credit operations is regulated by Article 6, paragraph 3 of the FX Law, based on which the Decision on the Offsetting of Debts and Claims under Foreign Credit Operations in Foreign Exchange (RS Official Gazette, No 50/2013) (hereinafter: the Decision) was adopted.

In accordance with Article 6, paragraph 3 of the FX Law and Sections 1–3 of the Decision, debts and claims of a resident legal entity under foreign credit operations in foreign exchange (including the above credit operation under Article 4 of the FX Law) can be offset against a claim or debt between the same participants, under another foreign credit operation, or under effected foreign trade in goods or services, or under direct investment, i.e. unpaid due liability and/or uncollected due claim in respect of share in profit, or under investment in real estate – unpaid purchase price as defined in the real estate sales agreement. The offsetting is carried out based on the offsetting agreement concluded by the parties in writing or based on a written consent to offsetting sent by one party to the other, provided the other party is willing. Such debts and claims may be offset in whole or in part. Under Section 7 of the Decision, a resident shall report to the National Bank of Serbia on the offsetting under foreign credit operations in accordance with the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020). Under Section 13 of the Decision on Reporting on Foreign Credit Transactions, exports of goods or services that have not been collected for longer than one year after the day of exports shall be reported on the P-1 Form – Report on resident's claims under foreign trade transactions that have not been settled for longer than one year.

- ***Transfer of debts and claims arising from foreign credit operations between residents and between residents and non-residents***

ARTICLE 20 OF THE FX LAW

Question: **Can a non-resident legal entity, as a creditor, transfer to a resident natural person a claim on a resident legal entity arising from a foreign credit operation?**

Opinion: Under Article 20, paragraph 1 of the FX Law, banks, and/or residents, other than resident natural persons, and non-residents may transfer, and/or pay or collect claims and debts of residents arising from foreign credit operations.

The Law does not envisage the possibility of transferring claims on the resident legal entity (debtor) under foreign credit operations from the non-resident legal entity as the initial creditor to the resident natural person as the new creditor. Given that the resident natural person cannot take over from the non - resident legal entity a claim arising from a foreign credit operation and thus become a creditor under this operation, he cannot pay the purchase/sale price for such claim on the non-resident legal entity and cannot collect such claim from the resident legal entity.

Question: **Can a resident legal entity assume the debt of its subsidiary – non-resident to a resident under foreign credit operations, and the debt of that non-resident to other non-residents?**

Opinion: In accordance with Article 20 of the FX Law, banks, and/or residents, other than resident natural persons, and non-residents may transfer, and/or pay or collect claims and debts of residents arising from foreign credit operations (paragraph 1), as operations between a resident and a non-resident. Under the same Article, the transfer of debt under foreign credit operations may be performed only based on a contract between the transferor and the transferee of debts, where the transferor shall obtain the consent for the transfer of debts from the creditor under the underlying operation (paragraph 2). The Law does not provide for the possibility for a resident to assume debt under current or capital transactions that one non-resident has towards another non-resident.

In the concrete case, a resident legal entity could, in the manner envisaged by Article 20 of the FX Law, assume the debt of a non-resident to a resident based on a granted loan, including debt under a foreign trade transaction that has not been settled for longer than a year from the date of export of goods or services from the Republic of Serbia (which, according to Article 4 of the FX Law, is considered a foreign credit transaction, i.e. a commercial loan), but not the debt that the non-resident has to another non-resident.

Question: **Can a non-resident legal entity assume the claim of a resident legal entity under a financial loan granted by that resident to another non-resident legal entity?**

Opinion: In accordance with Article 20 of the FX Law, banks, and/or residents, other than resident natural persons, and non-residents may transfer, and/or pay or collect claims and debts of residents arising from foreign credit operations (paragraph 1). Under the same Article, the transfer of claims under foreign credit operations may be performed only based on a contract between the transferor and the transferee, where the transferor shall notify the debtor under the underlying operation of the transfer of claims performed (paragraph 2). The contract shall contain in particular identification details of the contracting parties, data on the grounds of claims and debts being transferred, including data on the debtor and/or creditor, as well as data on the currency and amount of claims and debts being transferred (paragraph 3).

A resident legal entity shall report to the National Bank of Serbia on a financial loan granted to a non-resident on the KO forms prescribed by the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020). In accordance with Section 7 of that Decision, a resident creditor shall report to the National Bank of Serbia on the KO-5 Form (paragraph 1, subparagraph c) of this Section) on the assignment of claims, and/or change of creditor under a lending transaction to a non-resident, along which it shall submit the contract or other document changing the lending transaction participants, through the reporting bank, i.e. the bank through which it disbursed the loan funds, within ten days from the day of the change of creditor under a credit operation (paragraph 2 of this Section). In addition, a resident legal entity shall report to the National Bank of Serbia on the termination of claims on the KO-3B Form in accordance with Section 7, paragraph 1, subparagraph d) of the above Decision, in the manner and under the conditions stipulated by paragraph 2 of this Section.

➢ ***Use of foreign financial credits and loans***

ARTICLE 21 OF THE FX LAW

Question: **In the context of the Decision on the Terms and Conditions of Using Foreign Financial Credits for Purposes Set out in Article 21, Paragraph 2 of the FX Law, is a branch of a foreign bank, with the seat in the EU, whose parent company has the seat in a non-EU country, considered a non-resident with the seat in the EU, given that the said branch intends, as a lender, to grant a loan to a resident, with the disbursement made from the account of that branch with a bank in the EU?**

Opinion: In accordance with Section 2, paragraph 1 of the Decision on the Terms and Conditions of Using Foreign Financial Credits for Purposes Set out in Article 21, Paragraph 2 of the FX Law (RS Official Gazette, Nos 6/2013, 74/2013, 32/2018 and 3/2021) (hereinafter: the Decision), a financial credit or loan that a non-resident granted to a resident, other than that intended for the payment of imports of goods and services, financing of construction works abroad and refinancing of foreign debt, may be repaid only after the expiry of one year from the date of its disbursement, and if drawn in tranches – after the expiry of one year from the date of the drawdown of each individual tranche. Under Section 2a of the Decision, exceptionally, a financial credit or loan taken out from a non-resident with the seat in an EU member state may be repaid even before the expiry of the said deadline.

In this particular case, the loan contract is concluded by a branch of a foreign bank in the EU, as a lender, which operates in accordance with EU regulations, funds under that loan are disbursed from the account of that branch with a bank in the EU, and the resident debtor will repay the loan to the account of the branch. As the said branch has the seat in an EU member state, in accordance with the Decision, the repayment term for this loan may be shorter than one year from the date of its disbursement.

➢ ***Issuance of warranties of the resident legal entity under credit operations between non-residents***

ARTICLE 23 OF THE FX LAW

Question: **Can a resident legal entity be a warranty provider under the agreement on loan that a foreign bank outside the EU would grant to the non-resident legal entity outside the EU, if the resident legal entity is indirectly related to the debtor under this credit operation through a joint owner – non-resident from the EU?**

Opinion: Under Article 23, paragraphs 1 and 2 of the FX Law, a resident legal entity may issue warranties and other collaterals under foreign credit operations and credit operations between non-residents, and the NBS may prescribe the conditions and manner of performing these operations.

Based on this provision, the Decision on Conditions and Manner in which Residents May Grant Financial Loans to Non-Residents and Issue Warranties and Provide Other Collaterals under Foreign Credit Operations and Credit Operations between Non-Residents (RS Official Gazette, Nos 32/2018 and 122/2020) (hereinafter: Decision) was adopted. According to this Decision, a resident – legal entity may issue warranties and provide other collaterals in favour of a non-resident – creditor under credit operations between non-residents with the seat in an EU member state, and may issue warranties and provide other collaterals in favour of a non-resident – creditor under credit operations between non-residents without the seat in an EU member state, under the condition that the resident is the majority owner of the non-resident – debtor (Section 3, paragraphs 2 and 4 of the Decision).

In accordance with these provisions of the FX Law and the Decision and given that in the concrete case the non-resident – debtor under the credit granted by a foreign bank is not in the majority ownership of the resident legal entity that would be a warranty provider in this transaction, and that both non-resident parties to the credit are seated in a non-EU member state, the resident legal entity cannot be the warranty provider of the credit transaction between two non-residents.

Question: **Can a resident legal entity give a pledge statement to place mortgage on real estate in its ownership, as collateral in respect of the loan that the non-resident with the seat outside the EU granted to another non-resident with the seat outside the EU, while the non-resident – debtor is the sole owner of the resident – collateral provider?**

Opinion: In accordance with Section 3, paragraphs 2 and 4 of the Decision on Conditions and Manner in which Residents May Grant Financial Loans to Non-Residents and Issue Warranties and Provide Other Collaterals under Foreign Credit Operations and Credit Operations between Non-Residents (RS Official Gazette, Nos 32/2018 and 122/2020), a resident – legal entity may issue warranties and provide other collaterals in favour of a non-resident – creditor under credit operations between non-residents with the seat in an EU member state, and may issue warranties and provide other collaterals in favour of a non-resident – creditor under credit operations between non-residents without the seat in an EU member state, under the condition that the resident is the majority owner of the non-resident – debtor.

As the concrete case concerns credit operations between non-residents without a seat in an EU member state and the resident – issuer of collateral is not the majority owner of the non-resident – debtor, in line with the above regulations, he cannot give a pledge statement to place mortgage on real estate as collateral in respect of credit operations between two non-residents with the seat outside the EU.

Question: **When issuing a warranty or other collateral under credit operations between two non-residents, should the resident legal entity obtain collateral exclusively from the non-resident – debtor under this credit operation or it can obtain it from any non-resident?**

Opinion: In regard to the collateral that the resident legal entity, as the issuer of warranty under credit operations between two non-residents, is obliged to obtain from the non-resident, we highlight that the collateral can be obtained from the non-resident – debtor under a credit operation or from any other non-resident in accordance with the Decision on Conditions and Manner in which Residents May Grant Financial Loans to Non-Residents and Issue Warranties and Provide Other Collaterals under Foreign Credit Operations and Credit Operations between Non-Residents (RS Official Gazette, Nos 32/2018 and 122/2020).

- ***Reporting on foreign credit operations***

ARTICLE 24 OF THE FX LAW

Question: **On what forms and how the resident – debtor should report to the NBS on credit borrowing from a non-resident?**

Opinion: Pursuant to Section 6, paragraph 2 of the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020) (hereinafter: Decision), adopted based on Article 24 of the FX Law, the resident – debtor reports to the NBS on credit borrowing through the bank through which the credit is disbursed and/or guarantor bank if the credit is concluded against bank guarantee, within ten days from the conclusion of the agreement on credit transaction, on the following forms, which the debtor submits through the bank in paper and electronic form:

– Form KZ-2 – Report on credit borrowing, accompanied, in line with the Decision, with the documentation prescribed by Section 6, paragraph 1 of the Decision. In accordance with Section 15, paragraph 2 of the Decision, the NBS may request from the resident to submit other documentation should that be necessary for reporting on a foreign credit operation. The documentation is submitted in original or certified copy; along with the documentation in a foreign language, a stamped translation should be submitted, which need not be certified by a court interpreter;

– Form KZ-3A – the credit borrowing disbursement schedule, unless the credit is disbursed on a revolving basis, i.e. with the possibility that the resident, in accordance with the agreement, uses again the amount of the previously repaid credit;

– Form KZ-7 – specification along with the report on credit borrowing, only if the credit operation involves several loan users, several non-residents – creditors/suppliers or the funds in the transaction are used for several purposes.

In accordance with Article 32, paragraph 5 of the FX Law, payment transactions under financial credits and loans (FX inflow from abroad in respect of the disbursement of such credit or loan) may be performed only if residents have previously reported to the NBS on those operations in accordance with the Decision.

Question: **What documentation should be submitted when reporting to the NBS about the change of the non-resident – creditor under a foreign credit operation in accordance with Article 33 of the FX Law and the Decision on Reporting on Foreign Credit Transactions?**

Opinion: In accordance with Article 33 of the FX Law, a resident may make payments under a capital transaction to a non-resident other than the one with regard to whom the resident has any debts, provided that such transaction is permitted by this Law, only on the basis of a contract concluded by all parties to the transaction or a resident's statement confirming notification of the transfer of claims. The contract, and/or statement of the resident shall contain in particular identification details of all parties to the transaction, data on the grounds of the claim under the underlying operation and data on the currency and amount of claims being the subject of transfer.

In case of a change of the non-resident creditor under a foreign credit operation, as a type of capital transaction, the resident – debtor reports thereon to the NBS on Form KZ-5 in accordance with Section 6, paragraph 1, item c) of the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020) (hereinafter: Decision), which stipulates that the form should be accompanied with an annex to the credit agreement or other document changing parties to the credit transaction of which the resident previously notified the NBS. Under paragraph 2 of that Section, the form shall be submitted within ten days from the date of amending the credit agreement, i.e. in the concrete case, from the day of changing the creditor – through the bank through which the credit is disbursed and/or guarantor bank if the credit is concluded against bank guarantee, in paper and electronic form. Since the resident, over the loan duration, can change the bank through which it reports to the NBS on a foreign credit operation, after changing the reporting bank in the manner envisaged by the Decision and the Instruction on Filling Out the Forms for Reporting on Foreign Credit Transactions (RS Official Gazette, No 102/2018), the resident – debtor shall report on the transfer of claims through the other bank, as the reporting bank.

In accordance with Section 15 of the Decision, the documentation prescribed hereunder shall be submitted in the original or certified copy, while the documentation submitted in a foreign language shall be supported with a certified translation. The NBS may request from the resident to submit other documentation should that be necessary for reporting on a foreign credit transaction.

Given the above stated, a change of the non-resident – creditor under a foreign credit operation should be reported to the NBS on KZ-5 form, through the bank through which the foreign credit or loan was disbursed, or through another bank if the debtor previously informed the NBS about the change of the reporting bank on KZ-5 form. When reporting on the change of the creditor, it is necessary to submit a tripartite agreement concluded between all parties to the transaction or the statement of the resident – debtor, confirming he is informed about the transfer of claims between non-residents. The documentation (agreement or statement) is submitted in original or certified copy, while the documentation submitted in a foreign language shall be supported with a stamped translation which need not be certified by a court interpreter, and must contain data on all parties to the transaction, the grounds of the claim under the underlying operation and data on the currency and amount of the claim transferred.

- ***Performance of foreign payment operations under foreign credit transaction***

ARTICLE 32, PARAGRAPH 5 OF THE FX LAW

***Question*: Which documentation should a resident legal entity submit to a domestic bank in order to make a foreign payment under a contract on the assumption of claims concluded by such resident with a non-resident creditor in respect of the borrowing of another resident abroad?**

Opinion: Pursuant to Article 20 of the FX Law, banks and/or residents, other than resident natural persons, and non-residents may transfer claims on residents arising from foreign credit transactions. The FX Law sets out that the transfer of claims on a resident may only be performed based on a contract between the transferor and the transferee of claims, and that the transferor has the obligation to notify the debtor under the underlying operation of the transfer of claims performed (Article 20, paragraph 2). The FX Law also prescribes the important elements of such contract (Article 20, paragraph 3).

A claim arising from a foreign credit transaction of a resident public enterprise and legal entity with state-owned capital or legal entity in the process of restructuring or privatisation may be transferred, in line with Article 20, paragraph 4 of the FX Law, only based on a contract, consent or statements signed by all parties to the transaction, subject to prior consent of the Government.

The FX Law stipulates that residents shall report to the NBS on credit transactions concluded with non-residents and on all changes under such transactions, in the manner and within the deadlines regulated in more detail by the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020) (hereinafter: Decision), adopted pursuant to Article 24 of the FX Law. This decision prescribes that the resident reporting to the NBS on a credit transaction concluded with a non-resident shall be responsible for the accuracy of data and documents submitted to the NBS in the reporting procedure.

Section 6 of the Decision prescribes the forms on which a resident reports to the NBS on foreign borrowing and all changes under such borrowing, as well as the documentation which the resident borrower submits to the NBS. In line with this Section, the borrower reports on the change of parties to or terms of borrowing to the NBS using K3-5 Form, along with prescribed documentation, including annex to the agreement on a credit transaction or another document changing the parties or terms of borrowing; specifically, in this concrete case, this would be the agreement on the transfer of claims on a resident (borrower) from a non-resident – original creditor to another resident – new creditor. In line with Section 6, paragraph 2 of the Decision, a resident borrower submits the above form along with documentation to the NBS within ten days from the change of the agreement on foreign borrowing,

including the change of creditor under such borrowing, through the bank through which the credit is disbursed and/or guarantor bank if the credit is concluded against bank guarantee, in both paper and electronic form.

In line with Article 32, paragraph 5 of the FX Law and Section 24 of the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions (RS Official Gazette, Nos 24/2007, 31/2007, 41/2007, 3/2008, 61/2008, 120/2008, 38/2010, 92/2011, 62/2013, 51/2015, 111/2015, 82/2017 and 98/2020), a bank makes a payment under a foreign credit transaction if the resident – order issuer has previously reported that transaction to the NBS, on the basis of documents that prove this and which the order issuer presents to the bank (certified K3 forms).

Based on the above, in this specific case, at the time of submitting a foreign payment order in respect of the agreed fee for the assumption of a claim, a resident legal entity which assumed from a non-resident a claim on a resident borrower submits evidence to a domestic bank that the resident borrower has reported on the change of creditor to the NBS (certified K3-5 Form), as well as a copy of the agreement on the transfer of claims, specifying the level of the agreed fee. Also, if this is a transfer of claims arising from a foreign credit transaction referred to in Article 20, paragraph 4 of the FX Law, the prior consent of the Government should also be submitted to the domestic bank (in addition to the contract, consent or statements signed by all parties to the transaction)

➢ ***Transfer of debts and claims in respect of foreign credit transactions between non-residents***

ARTICLE 33 OF THE FX LAW

Question: **In what way can a resident repay the principal and interest in respect of a credit to another non-resident, other than the original non-resident creditor, if such other non-resident became creditor under such credit by settling the obligation to the original creditor instead of the resident borrower, based on a security agreement?**

Opinion: Pursuant to Article 33 of the FX Law, a resident may make a collection from and/or payment to a non-resident other than the non-resident to whom the resident has any debts under a capital transaction, in this specific case, under a foreign credit transaction. Payments and collections may only be performed on the basis of a contract concluded by all parties to the transaction or a resident's statement confirming notification of the transfer of claims. The contract and/or statement of the resident should contain the identification details of all parties to the transaction, data on the grounds of the claim under the underlying operation and data on the currency and amount of claims being the subject of transfer.

Also, in line with Section 6 of the Decision on Reporting on Foreign Credit Transactions (RS Official Gazette, Nos 56/2013, 4/2015 and 42/2020), a resident borrower shall report to the NBS on the change of creditor under a foreign credit transaction using the K3-5 Form (change to or cancellation of the report on the borrowing transaction) along with a document changing the parties to a borrowing transaction.

Therefore, in this specific case, a resident may repay a loan (principal and interest) to a new non-resident creditor after reporting, through the reporting bank, to the NBS about the change of creditor using the K3-5 Form (along with the document – statement of notification about the performed transfer of claims, issued on the basis of documentation available to the resident and containing the details prescribed in Article 33 of the FX Law) and/or after the certification of the above form in the NBS.

❖ *Guarantee operations*

ARTICLE 26 OF THE FX LAW

Question: **Can a domestic bank issue a counter-guarantee under which a resident would make a deposit, in respect of a guarantee issued by a foreign bank to a non-resident upon the order of the resident's branch office abroad for the purpose of performance of construction works abroad, where the domestic bank would, in case payment is requested under such counter-guarantee, settle its claims from such deposit?**

Opinion: Article 26 of the FX Law prescribes that a bank may issue and obtain guarantees, sureties, warranties and other collaterals, in accordance with banking regulations (paragraph 1) and that a resident legal entity may obtain a guarantee and warranty from a non-resident in respect of the performance of construction works abroad to another non-resident (paragraph 6).

If a foreign bank guarantee in favour of a non-resident investor is to be obtained by a resident company's branch office incorporated abroad, it should be noted that the FX Law does not regulate this situation in detail, but that the Law on Companies (RS Official Gazette, Nos. 36/2011, 99/2011, 83/2014 – other law, 5/2015, 44/2018, 95/2018 and 91/2019) prescribes that a company branch office is a separate organizational unit of a company which does not have the capacity of a legal entity, that it acts on behalf and for the account of the company in legal transactions, and that the company is liable, without limits, for the obligations of the branch office towards third parties. Therefore, from the viewpoint of domestic regulations and according to foreign exchange regulations, we consider that there are no impediments for a resident's branch office abroad to obtain, on behalf and for the account of its founder, a foreign bank guarantee issued in favour of a non-resident ordering party of construction works abroad, nor for the domestic bank to issue, under such transaction and at the order of the company, a counter-guarantee in favour of the foreign bank.

Question: **At the time of issuing a guarantee under a commercial transaction between two non-residents, can a bank obtain a warranty from a resident legal entity?**

Opinion: Pursuant to Article 26, paragraph 1 of the FX Law, a bank may issue and obtain guarantees, sureties, warranties and other collaterals, in accordance with banking regulations.

If, under a commercial transaction between non-residents, a bank issued a guarantee for the liabilities of one of the non-residents, but at the same time obtained a warranty from a resident legal entity, the bank would thereby establish a business relationship not only with the non-resident (contract on guarantee issuance) but also with the resident (contract on warranty issuance between a domestic legal entity and bank).

With regard to such transaction, we consider that, in addition to paragraph 1 of Article 26 of the FX Law, account should also be taken of other provisions of this Article which explicitly prescribe the transactions under which resident legal entities may perform guarantee operations (issue warranties to non-residents and obtain guarantees and warranties from non-residents). In line therewith, Article 26, paragraph 4 of the FX Law prescribes that a resident legal entity may issue a warranty to a non-resident only under transactions of imports of goods and services of another resident, as well as to a non-resident performing construction works in the Republic of Serbia. In view of this provision, a resident legal entity may not issue a warranty to a non-resident under a commercial transaction between that non-resident and another non-resident.

Therefore, if a domestic legal entity issued a warranty to a bank which is the guarantor under a transaction between two non-residents, and such guarantee and the warranty obtained as collateral by

the bank from a domestic legal entity were activated, the indirect effect of this would be the same as if the economic entity has issued a warranty to a non-resident under a commercial transaction between two non-residents, which is a possibility not envisaged in Article 26 of the FX Law.

Question: **Can a domestic company pay a fee to a parent company abroad in respect of a warranty to be issued by such parent company at the order of the domestic company in favour of another resident in the Republic of Serbia with which it has a business relationship?**

Opinion: Article 26, paragraph 6 of the FX Law sets out that a resident legal entity may obtain a guarantee and warranty from a non-resident against claims under exports and imports of goods and services, against claims from another non-resident arising from the performance of construction works abroad, construction works of the non-resident in the Republic, as well as against claims arising from the operations between that resident and another resident legal entity in the Republic.

Based on the mentioned provision of the FX Law, there are no impediments for a domestic company to obtain warranty from a parent company abroad under a transaction concluded by such company with another resident in the Republic of Serbia.

Based on such warranty, the domestic company could, under the warranty agreement concluded with the parent company, make payment of the fee which would represent the cost borne by such company for the issued warranty, since the domestic company would be required to pay an appropriate fee to the bank for the issued guarantee in case of obtaining a banking guarantee.

When agreeing on the level of the above fee, it should be borne in mind that, if the fee is higher than the fee charged by banks when issuing guarantees, this might signal an attempt to sidestep not only FX regulations but also other regulations, notably tax and anti-money laundering regulations. The question might then arise why the guarantee is not requested from a domestic bank but from the parent company. Therefore, the level of the agreed fee should correspond to the actual costs borne by the parent company in relation to the issuance of the warranty in question.

In order to make the payment of the above fee, the domestic company is required to submit to the bank the warranty agreement concluded with the parent company, which defines the obligation to pay the fee for the issued warranty, the level of such fee and the timeframe for its payment.

Question: **Can a resident who entered into a contract of real estate lease in the territory of the Republic of Serbia (lessor) with another resident (lessee) obtain, for the purpose of securing the claims on such lessee, a guarantee from a foreign bank at the order of the non-resident founder of the lessee?**

Opinion: Article 26, paragraph 6 of the FX Law prescribes that a resident legal entity may obtain a guarantee and warranty from a non-resident against claims arising from the operations between such resident and another resident legal entity in the Republic of Serbia.

In line with the above provision, there are no impediments for the operation of lease in the Republic of Serbia between two resident legal entities to be secured by a guarantee issued by a foreign bank, at the order of the non-resident founder of the debtor (lessee) under the above legal operation.

Therefore, the contract of real estate lease in the Republic of Serbia should stipulate an obligation for the resident lessee to provide a guarantee from a non-resident as collateral for its debt to the resident beneficiary of the guarantee (lessor).

It should also be taken into account that, on the basis of the issued guarantee, a legal relationship is established between the resident debtor under the underlying operation of real estate lease (lessee) and its non-resident founder – principal under the guarantee, which should be regulated in a contract.

Question: **Can a foreign bank issue a guarantee in euros for a legal operation between two residents in the Republic of Serbia which is performed in dinars, and under what conditions?**

Opinion: Article 26, paragraph 6 of the FX Law prescribes that a resident legal entity may obtain a guarantee and warranty from a non-resident under, among other things, an operation between such resident and another resident legal entity in the Republic of Serbia.

In line with the above provision of the FX Law, there are no impediments for a legal operation in the Republic of Serbia agreed between two resident legal entities with dinars as the payment currency to be secured by a guarantee issued by a foreign bank in a foreign currency, at the order of one of the parties to the transaction.

At the same time, the contract on a concrete legal operation in the Republic of Serbia between two resident legal entities should stipulate an obligation for the resident debtor to provide a guarantee of a foreign bank, as collateral for its debt to the other resident – beneficiary of the guarantee, including the manner of calculating the value of the guarantee issued in a foreign currency for a legal operation in dinars.

In case this guarantee is activated, the collection under the issued guarantee by the resident – beneficiary of the guarantee from the underlying operation with another resident in the Republic of Serbia, would be made in a foreign currency. The return of funds by the resident borrower from the underlying operation to the foreign bank which made the payment under the guarantee would be effected in foreign currency as well.

- ***Residents' deposit operations abroad***

ARTICLE 27 OF THE FX LAW

Question: **What are the obligations of a company to which the NBS issued the approval to hold foreign exchange in an account with a bank abroad (hereinafter: approval of the NBS) to finance the costs of the representative office,** in the case when:

- a company holds a valid approval of the NBS, and the account with a bank abroad is being closed,
- the approval of the NBS has expired, the representative office ceases to perform its activity but the company wishes to keep the account of the representative office with a foreign bank?
- Is a company required to continue reporting even if there are no transactions in the account? If it fails to do so, will this constitute a breach of foreign exchange regulations?

Opinion: Residents' deposit operations abroad are regulated by Article 27 of the FX Law which prescribes that residents may keep foreign exchange in accounts with banks abroad under the terms and conditions prescribed by the NBS. The NBS issued a Decision on Terms and Conditions under Which Residents may Hold Foreign Exchange in Bank Accounts Abroad (RS Official Gazette, Nos 31/2012, 71/2013, 98/2013, 125/2014, 102/2015 and 37/2018) (hereinafter: Decision). Section 3 of this Decision lists the grounds under which residents may, subject to approval of the NBS, keep foreign exchange in accounts with banks abroad, and indent 4) of this Section prescribes that these grounds may also include

the payment of current operating costs of representative offices, up to the amount of planned monthly costs.

When it comes to the obligations of a company to the NBS in a situation when a resident has opened, subject to the approval of the NBS, an account with a bank in the country in which the activity of the representative office is carried out, and the validity of such approval has not expired but the resident decided to close the account of its representative office with a foreign bank, the Guidelines for Implementing the Decision on Reporting Requirements in Respect of Foreign Payment Transactions (RS Official Gazette, Nos 87/2009 and 40/2015 – other decision) prescribe that, in the case of closing of an account abroad, the resident has the obligation to specify the account closing date in point 16 of the Account Description section of the RN Form.

If a resident no longer holds a valid approval of the NBS and the representative office terminates the performance of its activity abroad, the resident does not have the obligation to close the account with a foreign bank, if such resident expects that the representative office will start working again in the coming period, but it may not keep foreign exchange in such account before receiving a (new) approval to keep foreign exchange abroad. When the representative office starts performing its activity again, the resident should submit to the NBS a new application for the approval to keep foreign exchange in an account with a foreign bank, specifying among other things the number of the account which was not closed in the meantime.

When it comes to the requirement to report to the NBS, the Guidelines for Implementing the Decision on Reporting Requirements in Respect of Foreign Payment Transactions prescribe an obligation for residents to report on the balance and transactions in accounts with a foreign bank, using the RN Form, subject to the validity of the approval of the NBS, regardless of there being no transactions in the account.

We wish to point out that Article 59, paragraph 1, indent 50) and paragraph 2 of the same Article of the FX Law prescribe that a resident legal entity and the responsible person in a legal entity shall be fined for misdemeanour if they keep foreign exchange in an account with a bank abroad in contravention of the NBS's regulations.

Question: **Can a current and foreign exchange account be opened for the affiliate of a domestic company abroad and is there an obligation to obtain the NBS's approval in this respect?**

Opinion: The Decision on Terms and Conditions under Which Residents may Hold Foreign Exchange in Bank Accounts Abroad (RS Official Gazette, Nos 31/2012, 71/2013, 98/2013, 125/2014, 102/2015, 37/2018 and 13/2020) (hereinafter: Decision) explicitly prescribes the cases in which residents may hold foreign exchange in bank accounts abroad, freely (Section 2) or subject to approval of the NBS (Section 3).

In line therewith, the Decision prescribes that a resident, subject to the approval of the NBS, may hold foreign exchange in an account with a bank abroad to cover current operating costs of its representative office or branch office abroad, up to the amount of average planned monthly costs, based on the specification of these costs and a document issued by the competent foreign authority which proves that the legal entity set up a representative office or branch abroad (Section 3, paragraph 1, indent 4)), and that the account with a bank abroad for the opening of which the approval of the NBS is required shall also be the account opened by the branch of the resident legal entity abroad, as a separate organisational part of that legal entity (Section 3, paragraph 2).

In line therewith, if a domestic company established a branch or a representative office abroad, as a separate organizational part which does not have the legal entity status, in order to hold foreign

exchange in an account with a bank in that country, such company must obtain the prior approval of the NBS.

On the other hand, if a domestic legal entity set up an independent legal entity abroad (subsidiary), this entity, subject to Article 2, indent 2 of the FX Law, has the status of a non-resident and is therefore not subject to FX regulations of the Republic of Serbia. Therefore, a non-resident legal entity holds foreign exchange in accounts with banks abroad in accordance with the regulations of the foreign country.

Question: **Can a natural person from the Republic of Serbia make a payment in respect of the purchase of real estate located abroad and owned by a domestic company, to the company's foreign bank account where it holds foreign exchange on some other grounds for which it had previously obtained the approval of the National Bank of Serbia?**

Opinion: Section 2, paragraph 1 of the Decision prescribes which residents may hold foreign exchange in bank accounts abroad without the approval of the National Bank of Serbia, including owners of real estate abroad for the purpose of selling such real estate – up to the amount of the real estate value specified in the sale contract (indent 7). Subject to paragraph 2 of this Section of the Decision, after cessation of grounds for a resident to hold foreign exchange in a bank account abroad, the resident is required to repatriate the remaining funds and to close the account with the foreign bank within the following 30 days.

A domestic company may, therefore, collect payment from a resident – real estate buyer in respect of sale of real estate abroad, to the credit of its bank account in that country opened on some other grounds for which the company had previously obtained the approval of the NBS. The domestic company is required to transfer the proceeds from the sale of such real estate to its account with a bank in the Republic of Serbia within 30 days from the day of real estate sale/purchase, and continue to use the account with the bank abroad in line with the conditions and timelines specified in the approval of the NBS, for the purpose for which such approval was issued.

Question: **Under which conditions can a resident natural person hold foreign exchange in a bank account abroad based on dual nationality and/or work permit/residence permit?**

Opinion*:* Section 2, paragraph 1, indent 8 of the Decision sets out that persons holding dual nationality – that of the Republic of Serbia and of another country but domiciled in the Republic of Serbia, nationals of the Republic of Serbia domiciled in the Republic of Serbia and permitted to stay abroad up to one year based on a work visa, special category of visa, residence permit or some other document to that effect, may hold foreign exchange in bank accounts abroad.

In line with the above provision of the Decision, our citizens domiciled in the Republic of Serbia who hold dual nationality – that of the Republic of Serbia and of another country, may hold foreign exchange in bank accounts abroad, primarily in order to settle the costs incurred in a foreign country (e.g. tax obligations), which is why this provision should be interpreted restrictively. Namely, residents holding dual nationality can hold foreign exchange only in accounts with a foreign bank in the country which issued them a foreign passport, but not in a third county.

Similarly, Serbian nationals residing in the territory of another country based on an appropriate document (e.g. work permit/residence permit) may hold foreign exchange in a bank account in the country which issued them such document, as residence in such country also entails corresponding costs which would be much more difficult to settle from an account with a bank in the Republic of Serbia.

With regard to the evidence of residence in a foreign country (based on which a resident may hold foreign exchange in a bank account abroad), in addition to documents allowing the resident's stay in a given country, another condition which the legislator had in mind when prescribing the above provision of the Decision is that the resident actually resides in that country. This can be proved through, for example, presentation of the travel document of such resident or in another appropriate manner.

❖ ***Deposit operations of non-residents in the Republic of Serbia***

ARTICLE 28 OF THE FX LAW

Question: **Which person, in addition to the legal representative, can sign and submit the request to open a non-resident account with a bank in the Republic of Serbia, together with other prescribed documentation?**

Opinion: Section 7, paragraph 7, indent 2) of the Decision on the Conditions of Opening and Manner of Maintaining Foreign Exchange Accounts of Residents and Foreign Exchange Accounts of Non-Residents (RS Official Gazette, Nos 51/2015, 82/2017, 69/2018 and 96/2018) (hereinafter: Decision) prescribes that the request for account opening and the specimen signature card and/or another document authorising a specific person to dispose of the funds in the account of a non-resident legal entity, may be signed, in addition to the representative designated in the decision on the registration of such non-resident, also by another person that, subject to an appropriate document or a decision issued by a competent body of the non-resident, is authorized to grant authorization for the disposal of funds in the account, in accordance with the general terms of operation of the bank with which the account is being opened.

In view of the above provision, the request for the opening of the account and other prescribed documentation can be signed and submitted to the bank by the person authorised to do so by a certified authorisation signed by the representative designated in the decision on the registration of the non-resident. In addition, the above documentation may also be signed by another person explicitly authorised to do so, but the bank may, in accordance with its general terms of operation, additionally define the manner and the conditions in which the authorised person may sign and submit such documents.

When designating the persons authorized to dispose of the funds in the account, subject to Section 8, paragraph 3 of the Decision, a different manner of verifying the identity of the payment order submitter and/or of granting consent to the execution of a payment transaction, may be agreed with the bank, while, pursuant to Section 7, paragraph 4, indent 4) of the Decision, "another document authorising the specific person to dispose of the funds in that account" means a relevant document from which it is possible to verify that the specific person is authorized to dispose of the funds in the account, e.g. the standard type of authorization which does not necessarily have the form of a specimen signature card.

❖ ***Transfer of funds from a non-resident account to accounts abroad***

ARTICLE 29 OF THE FX LAW

Question: **Can a part of the purchase/sale price of a real estate (collateral) remaining after its sale in the enforcement proceedings and satisfaction of the enforcement creditor be transferred to a non-resident enforcement debtor to its account with a bank abroad and/or an authorised person's account in the Republic of Serbia?**

Opinion: The FX Law stipulates that a non-resident transacting business through a non-resident account can make transfers from that account to accounts abroad only after all tax liabilities to the Republic of Serbia arising from the relevant business operation have been settled, of which proof issued by the competent tax authorities must be presented (Article 29, paragraph 1).

This provision aims to provide for proper application of tax regulations in all cases where the non-resident is a tax obligor in the Republic of Serbia so as to ensure tax collection.

Given the above, it is not within the NBS's scope of competences to interpret tax regulations as any questions pertaining to the application of tax regulations should be addressed to the Ministry of Finance – Tax Administration, which establishes whether any tax liabilities to the Republic of Serbia will arise in the process of sale of a real estate of a non-resident enforcement debtor.

Should the Ministry of Finance conclude that from the aspect of tax regulations there are no hindrances for the transfer of a part of the purchase/sale price of a real estate after satisfaction of the enforcement creditor to the account of a non-resident enforcement debtor with a bank abroad and/or an authorised person's account in the Republic of Serbia, FX regulations whose application lies within the scope of competences of the NBS would be no impediment to the realisation of the said transactions.

- ***International payment transactions under current and capital operations (other than foreign credit operations)***

ARTICLE 32 OF THE FX LAW

Question: **Can certain categories of non-residents make payments in dinars to public enterprises and other providers of utility and similar services, as well as payments of tax liabilities in the Republic of Serbia in the same way as residents, i.e. directly as domestic payment transactions?**

Opinion: The FX Law governs, among other things, transactions between non-residents and residents in foreign currency and in dinars (Article 1) and precisely defines the persons considered residents and non-residents (Article 2, indents 1 and 2), with the residency principle (envisaging, inter alia, that non-residents acquire the status of residents after residing in the country for one year) taken over from the IMF methodology (Balance of Payments Manual, Balance of Payments and International Investment Position Manual).

As for transactions between residents and non-residents, the NBS adopted regulations governing the manner and conditions of performing international payment transactions pursuant to which non-resident natural persons in the Republic of Serbia make payments to public enterprises and other providers of utility and similar services, as well as payments of tax liabilities, via orders for international payment transactions, by submitting to the bank the documents underlying the payment. Banks are required to report to the NBS on these transactions and these data are important for developing the country's balance of payments projection, as the analytical basis for determining monetary policy objectives and tasks and for monitoring the achievement of that projection.

Otherwise, i.e. if these transactions were realised as domestic payment transactions, the NBS would have to prescribe an obligation for banks to submit special reports on these grounds to ensure data comprehensiveness.

Based on the above, transactions between non-residents and residents cannot be performed in the same way as transactions between residents, nor would it be justified to exempt certain categories of non-resident natural persons from the rule applicable to transactions with an international element, especially if we take into account the potential risk that a non-resident could make, through dinar transactions, a payment under a foreign trade operation which may be realised only in accordance with FX regulations.

It should also be noted that FX regulations are no impediment when it comes to non-residents performing these transactions electronically, as it is solely up to the bank and its IT solutions whether it will offer to non-residents the service of digital banking.

Question: **Does a resident (legal entity and entrepreneur) who for the execution of an international payment order provides foreign exchange by buying it from a bank have to have an FX current account opened with the bank, or is it sufficient for the resident to have a dinar current account that would provide cover for the purchase of foreign exchange and for the execution of an international payment order?**

Opinion: The Decision on the Conditions of Opening and Manner of Maintaining Foreign Exchange Accounts of Residents and Dinar and Foreign Exchange Accounts of Non-Residents (RS Official Gazette, Nos 51/2015, 82/2017, 69/2018 and 96/2018) prescribes, inter alia, that a foreign exchange account is an account in which a resident's or a non-resident's foreign exchange funds are maintained and may be a current account within the meaning of the law regulating payment services, and that a current account is a foreign exchange or dinar account used for performing payment transactions (Section 2).

International payment transactions are regulated by the Decision on Terms and Conditions of Performing Foreign Payment Transactions (RS Official Gazette, Nos 24/2007, 31/2007, 38/2010 and 111/2015), (hereinafter: Decision), and the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions (RS Official Gazette, Nos 24/2007, 31/2007, 41/2007, 3/2008, 61/2008, 120/2008, 38/2010, 92/2011, 62/2013, 51/2015, 111/2015, 82/2017 and 98/2020), (hereinafter: Guidelines), adopted based on the FX Law.

Pursuant to the Decision, for effecting a foreign payment, a resident must submit a payment order to the bank for which cover (FX or dinar funds) has been provided in the bank, as well as a document underlying the payment, and the bank must execute the payment within the time limit agreed upon with the order issuer (Section 8).

The Guidelines prescribe that a bank will execute a foreign payment based on a foreign payment order issued by a resident (Section 20), provided that the order contains the elements defined by the Guidelines, that it has been signed by an authorised person of the order issuer by hand or electronically or has been issued in another way (in accordance with the contract between the bank and the order issuer), that the order is supported by the documents proving the foreign payment obligation and establishing the grounds for payment, and the cover for it is provided in the bank. Besides, Section 27 of the Guidelines prescribes that if a bank effects a foreign payment by remittance or against the presentation of collection documents, such payment is debited to the accounts referred to in Section 3 of the Guidelines, i.e. to the resident's foreign exchange account maintained by the bank in accordance with the regulation governing analytical accounts in the Chart of Accounts for Banks.

Based on the above regulations, when a bank client – a resident legal entity or entrepreneur is buying foreign exchange (for dinars) from a bank for the purposes of execution of a foreign payment order, the bank should effect the foreign payment from the resident's foreign exchange account, meaning that the resident cannot have only a dinar current account with a bank to provide cover for the purchase of foreign exchange and execution of a foreign payment, but should also have its own foreign exchange account opened with the bank.

Question: **How to allocate inflows from abroad to a resident's account when the order issuer is making the payment directly to the resident's account in the Republic of Serbia via an electronic money institution from a third country that is not on the List of Electronic Money Institutions**

from Third Countries published by the NBS, while at the same time the resident is not transacting business through that institution, but only the order issuer is?

Opinion: Article 32 of the FX Law prescribes that international payment transactions may be performed in foreign exchange and dinars through a bank (paragraph 1), and through an electronic money issuer in case of electronic purchase/sale of goods and services, as well as through a payment institution and a public postal operator providing payment services, in accordance with the law governing payment services (paragraph 2).

Pursuant to Article 225 of the Law on Payment Services (RS Official Gazette, Nos 139/2014 and 44/2018), provisions of the law governing foreign exchange operations shall apply to the operations of electronic money institutions from third countries through which residents, in accordance with provisions of the law governing foreign exchange operations, perform foreign payment transactions (paragraph 1). At the same time, these institutions are required to notify the NBS of their business name and head office and the relevant number under which they have been registered in the home country's register, as well as of the name and address of the head office of the supervisory authority, prior to the start of providing services to residents if they have not started to provide such services before the application date of the Law on Payment Services (paragraph 2). The NBS publishes the list of electronic money institutions from third countries which submitted the said notification (paragraph 3).

Starting from the above legal provisions, residents may perform foreign payment transactions through their account – electronic money account with a foreign electronic money institution only in case of internet trade and if the electronic money institution concerned is on the NBS's list. Should that be the case, the transfer of resident's funds maintained with a foreign electronic money institution to an account with a bank in the Republic of Serbia represents a separate transaction of the purchase of electronic money. This transaction/service is provided to the resident based on a contractual relationship the resident has with the foreign electronic money institution and it need not be directly linked to the payment transaction underlying the inflow of funds to the electronic money account with the foreign electronic money institution, but rather represents a separate transaction.

In this connection, it cannot be deemed that a resident is performing a foreign payment transaction through a foreign electronic money institution if the resident does not have an account with the foreign electronic money institution that is not on the List of Electronic Money Institutions from Third Countries and if only the non-resident payment order issuer has an account with that electronic money institution, who in this way directly makes payment to the resident's foreign exchange account with a bank in the Republic of Serbia.

In line with the above, there are no impediments for the bank to allocate the relevant inflow to the resident's account in the case described, but the resident must provide a statement on not having an electronic money account with the foreign institution, in which case, the reference code to be used for collection is the reference code envisaged for the principal transaction in respect of which the resident is making the collection.

Question: **Can natural persons collect payment from abroad based on a standing order on the grounds of such collection, without limits as to the amount?**

Opinion: Section 7, paragraph 1 of the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions (Guidelines) sets out that a bank shall credit the account of the collection beneficiary specified in the non-resident's order if it has received a foreign bank's notification that foreign exchange was credited to such bank's account as well as data from the

collection beneficiary relating to the grounds and details necessary for effecting payment in respect of such collection (along with the document if the enclosure of such document is stipulated as a precondition for payment execution). Paragraph 3 of the above Section of the Guidelines sets out that if the collection beneficiary is a natural person, a bank can copy the reference code for collection from the data specified in the payment order issued by a non-resident natural person, while in case of non-resident legal entities the bank shall act in compliance with paragraph 1 of this Section. In addition, pursuant to paragraph 4 of this Section of the Guidelines, in the event of foreign collection up to the amount of EUR 1,000, the collection beneficiary may issue to the bank a standing order on the grounds of collection for these inflows, if these inflows are made on the same grounds, when the bank credits the account of the collection beneficiary without specially obtained data on the grounds of collection from that beneficiary.

Based on the above provisions of the Guidelines, a bank may allocate inflows from abroad to the account of the collection beneficiary – natural person based on a standing order issued by such person only if these inflows do not exceed EUR 1,000 and are made on the same grounds. The non-resident ordering party may be either a legal or a natural person. If collection from abroad exceeds EUR 1,000, the bank is required to act in line with paragraph 1, Section 7 of the Guidelines, i.e. to request data on the grounds of collection from the collection beneficiary – natural person, except where the foreign ordering party is a natural person, in which case the bank does not request data on the grounds of collection but may fill out the grounds of collection itself based on the data specified in the non-resident's order.

It should be noted, however, that when the bank is required to obtain data on the grounds of collection from the foreign collection beneficiary, the beneficiary can submit such data to the bank electronically or in another way, subject to conditions agreed with the bank, without the obligation to come to the bank in person.

Question: Can residents make payments from their accounts with banks in the Republic of Serbia to payment institutions registered abroad, for the purposes of settling liabilities incurred by using an international corporate card issued by a foreign payment institution to companies in the Republic of Serbia and their employees, in respect of foreign trade transactions**?**

Opinion: Article 3 of the FX Law stipulates that payment, collection and transfer under current transactions between residents and non-residents may be executed freely, in accordance with this Law, as well as that payments and transfers under current transactions include, inter alia, payments under foreign trade transactions and other external current transactions within the meaning of the law governing foreign trade.

Pursuant to Article 32, paragraph 2 of the FX Law, residents may perform international payment transactions through a bank, through an electronic money issuer – for the purpose of making payments and collections under electronic purchase/sale of goods and services, as well as through a payment institution and a public postal operator providing payment services, in accordance with the law governing payment services. Article 2, indent (3a) of the FX Law defines a payment institution as a resident legal entity with a head office in the Republic which is licensed by the NBS to provide payment services as a payment institution, in accordance with the law governing payment services.

In line with the above provisions, residents may effect payments to non-residents abroad in respect of foreign trade services provided by those non-residents, but exclusively through payment service providers listed in Article 32, paragraph 2 of the FX Law.

However, in this particular case where payment to non-residents would be made through a foreign payment institution that issued the card, the payment would not be in compliance with Article 32 of the FX Law.

As for the possibility for a foreign payment institution to issue a card to resident companies and their employees, it should be taken into account that Article 4, paragraph 1, indent 5) of the Law on Payment Services envisages as a type of payment services the service of issuing and/or acquiring of payment instruments where the payment service provider enables to the payee the execution of payment transactions initiated by the payer by using a specific payment instrument.

In this connection, it should be borne in mind that the issuing to residents of a card enabling payments abroad is considered a payment service within the meaning of the Law on Payment Services and that pursuant to Article 10 of the Law that service cannot be provided by a foreign payment institution which is not licensed by the NBS to provide payment services in the territory of the Republic of Serbia. Hence, any payments made by residents to a foreign payment institution in respect of such issued cards would not be in compliance with the law.

❖ ***Transfer of claims and debts between two non-residents under current and capital transactions with a resident (other than foreign credit transactions)***

ARTICLE 33 OF THE FX LAW

Question: **Can a non-resident – warranty provider under a transaction between two residents, who after settlement of liabilities arising from the warranty agreement has become a new creditor to the resident debtor in the underlying operation, transfer this claim to another non-resident?**

Opinion: Pursuant to Article 26, paragraph 6 of the FX Law, a resident legal entity may obtain a guarantee and a warranty from a non-resident against claims under exports and imports of goods and services, against claims from another non-resident arising from the performance of construction works abroad, construction works of non-residents in the Republic of Serbia, as well as against claims arising from the operations between that resident and another resident legal entity in the Republic of Serbia.

Article 33 of the FX Law prescribes that a resident may make collection from and/or payment to a non-resident other than the one with regard to whom the resident has any debts and/or claims under a current or capital transaction, provided that such transaction is permitted by this Law (paragraph 1), that these operations may be performed only on the basis of a contract concluded by all parties to the transaction or a resident's statement confirming notification of the transfer of claims and/or stating its consent to the transfer of debts (paragraph 3), as well as that the contract and/or statement of the resident must contain in particular identification details of all parties to the transaction, data on the grounds of the claim and debt under the underlying operation and data on the currency and amount of claims and debts being the subject of these operations (paragraph 4).

Based on the above provisions of the FX Law, it can be concluded that there are no impediments for a non-resident warranty provider, onto whom the claim on a resident debtor under the underlying operation has been transferred as result of the settlement of liabilities arising from the warranty agreement, to transfer such claim to another non-resident provided such transfer of claims is not in contravention of other regulations.

❖ ***Payment transactions in foreign exchange in the Republic of Serbia***

ARTICLE 34 OF THE FX LAW

Question: **Can a third person, instead of the buyer, make a payment in foreign exchange in respect of the purchase of real estate in the Republic of Serbia?**

Opinion**:** Pursuant to Article 34 of the FX Law, payments, collections and transfers between residents and between residents and non-residents in the Republic of Serbia are made in dinars (paragraph 1), and, by way of exception, in foreign exchange (paragraph 2) on the grounds listed in that Article, including the sale and lease of a real estate (paragraph 2, indent 5). Having in mind that the said provision prescribes the grounds for making payments in foreign exchange in the Republic of Serbia, as well as that in some situations it may be justified for a third person to effect payment, given the legal relationship between a third person and the buyer (e.g. parents and children, donor and donee), payments in respect of the purchase of a real estate made from a third person's foreign exchange account to the account of the seller would not be in contravention of Article 34, paragraph 2, indent 5) of the FX Law, provided that the real estate purchase/sale agreement explicitly stipulates that the purchase/sale price of the real estate will be paid in the name and for the account of the natural person buyer, by a third person.

In order to eliminate or mitigate the risks associated with money laundering, banks where accounts are opened for the purpose of transferring foreign exchange funds in the above-described transactions should regulate in their internal acts the taking of appropriate actions in accordance with anti-money laundering regulations.

Question: **Can collection in respect of a guarantee deposit for the reservation of real estate in the Republic of Serbia be made in foreign exchange?**

Opinion: Article 12 of the FX Law sets out that payments made for the purpose of acquiring ownership of real estate by non-residents in the Republic shall be made freely, in accordance with the law governing legal property relations.

Therefore, a seller of real estate in the Republic of Serbia may, based on a real estate reservation agreement, make collection from potential real estate buyers from abroad – non-residents, as collateral that non-residents will enter into the legal transaction of purchase of real estate in the manner stipulated by the above reservation agreement.

The distribution of the funds in question would be done in accordance with the provisions of the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions, using the reference code for collection 893 – collections arising from agreement between a resident and a non-resident.

In the case of payments made on the above grounds by potential buyers of real estate in the Republic of Serbia (both residents and non-residents making payments from resident and non-resident accounts with banks in the Republic of Serbia), it should be noted that Article 34 of the FX Law sets out, as a rule, that payments, collections and transfers between residents, and between residents and non-residents in the Republic, shall be made in dinars (paragraph 1). The same article prescribes exceptions when these transactions can be made in foreign exchange, including payment of deposit as collateral (paragraph 2, item 3).

Therefore, in the case where residents, as potential buyers of real estate, make deposit payments as collateral in order to buy real estate in the Republic of Serbia (subject to an agreement stipulating such collateral) from their accounts with domestic banks, these transactions can also be made in foreign exchange. In this specific case, this would be a neutral transaction booked internally through a general

foreign exchange order, whereas if foreign exchange payments are made by non-residents from non-resident accounts with domestic banks, these payments would be made in the same way and using the same reference code for collection (893) as when collection from abroad is made.

Question: **Is there a possibility of transfer of foreign exchange in the Republic of Serbia in case of a status change involving spin-off and acquisition by a company – recipient company?**

Opinion: Article 34 of the FX Law sets out that payments, collections and transfers between residents and between residents and non-residents in the Republic may be made in foreign exchange by way of exception, if the possibility of payment, collection and transfer in foreign exchange is prescribed by another law (paragraph 6).

In this regard, if the status change involving spin-off and acquisition by another company occurred in a company in line with the Law on Companies and if the agreement on the status change (and appropriate financial statements) defines that the subject of transfer to the recipient company are also the FX assets in the account of the company or forming part of the assets of the transferring company, in line with Article 34, paragraph 6 of the FX Law the transfer of foreign exchange, earned through the performance of FX operations in line with the law, can be made from the FX account of the transferring company to the FX account of the recipient company.

Question: **Can a legal entity issuing an order for the payment of costs of business travel abroad for its employee be exempt from the requirement to submit documentation to the bank?**

Opinion: Pursuant to Article 34 of the FX Law, payments, collections and transfers between residents and between residents and non-residents in the Republic of Serbia are made in dinars (paragraph 1), and, by way of exception, in foreign exchange (paragraph 2) on the grounds listed in that Article, including remuneration for business travel abroad, which may also be effected in foreign cash (paragraph 2, indent 8).

Section 8 of the Decision on Terms and Conditions of Performing Foreign Payment Transactions and Sections 20 and 21 of the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions establish an obligation for a resident order issuer to support the foreign payment order with a document on the basis of which the payment is made in accordance with regulations, i.e. which proves the payment obligation and grounds.

Paragraph 4 of Section 8 of the Decision envisages an exception in the sense that the bank and the order issuer may agree in writing that the order issuer is not obliged to submit along with the payment order a document underlying the payment, i.e. proving the obligation of payment and determining the payment grounds, unless stipulated by other regulation that the payment order must be supported by specific documentation. In this context, please note that Section 21a, paragraph 1, indent 5 of the Guidelines envisages that the document proving the payment obligation and grounds must be submitted to the bank for transactions, which pursuant to the law governing foreign exchange operations, may be performed also in foreign exchange.

As the above stated exception, where based on an agreement with the bank payments can be made without submitting the underlying documents (Section 8, paragraph 4 of the Decision), may not be applied to the transactions which can be made in foreign exchange in the Republic of Serbia, including remuneration of costs of business travel abroad, in this specific case, the document proving the payment obligation and grounds, irrespective of the amount of payment, must be submitted to the bank along with the payment order.