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14.06.2016

Legislative amendments in the foreign exchange field

On June 10, 2016 the Law no.94 of May 13, 2016 for amending and supplementing the Law on foreign exchange regulation no.62-XVI of March 21, 2008 [1] was published in the Official Monitor of the Republic of Moldova no.157-162.

The main purpose of the amendments to the Law on foreign exchange regulation is to improve the legal framework in the foreign exchange filed, taking into account the commitments of the Republic of Moldova assumed under Moldova-EU Association Agreement, developments on the financial, monetary and foreign exchange markets, consequences of the global financial crisis, changes in the legal framework in certain related fields.

The legislative amendments are aimed to gradual elimination of administrative measures (NBM authorisation) for residents performing foreign exchange operations; development and greater efficient operation of the domestic foreign exchange market; enhancing the competition on the foreign exchange market; strengthening the protection of consumer rights in respect of clients of foreign exchange entities; optimisation of external debt statistics; improving the legal framework related to licensing, functioning and control over the activity of foreign exchange entities; development of the legal framework related to the activity of providing services within foreign exchange operations by non-bank payment services providers.

Amendments related to the foreign exchange field in general

The most important amendments to the Law on foreign exchange regulation relate to:

- gradual liberalization of some capital foreign exchange operations, which were subject to the NBM authorisation (operations with foreign financial instruments carried out by licensed banks and entities whose activity is regulated and supervised by the National Commission for Financial Markets; granting of financial loans to non-residents by the licensed banks; import into / export from the Republic of Moldova by non-resident banks of cash in foreign currency; import into / export from the Republic of Moldova by resident banks and non-resident banks of cash in national currency in the amount not exceeding MDL 100 000; a series of capital foreign exchange operations of residents in the amount up to EUR 10 000);
- application of the notification regime at the NBM on external loans / credits received by residents within operations related to direct investments, as well as exemption from the notification regime of loans / credits and guarantees received by residents from non-residents, the amount of which does not exceed EUR 50 000;
- extending on non-bank payment service providers of the provisions regarding the rights and obligations of licensed banks related to foreign exchange operations;
- reducing the use of cash within the foreign exchange operations (e.g., the right of resident legal entities to receive from non-resident individuals cash in foreign currency as loans/credits was excluded, and for some cases the amount of an operation related to receipt by resident legal entities from non-residents of cash in foreign currency was limited up to EUR 5 000);
- stipulation of the right (not an obligation) of the NBM to apply a new safeguard measure in the event of a systemic financial crisis, namely the possibility to prohibit or limit cash and non-cash withdrawals in foreign currency from the accounts in foreign currency opened with resident payment services

providers, allowing only withdrawals of national currency. If in case of systemic financial crisis, depending on a specific situation, such a safeguard measure will be considered strictly necessary, it will be applied by the NBM in consultation with the Government (with immediate information of the Parliament) and only during a limited period of time (up to 6 months). Such mechanism would allow state authorities to act urgently in order to avoid worsening the systemic financial crisis situation

Amendments related to the activity of foreign exchange entities

A substantial part of the amendments is aiming to amend the conditions for licensing and functioning of foreign exchange entities. The most important amendments relate to:

- cancellation of the obligation of the licensed banks to provide at the beginning and during the working day the amount of MDL 100 000 for each foreign exchange bureau;
- cancellation of the requirement for foreign exchange offices to ensure at the beginning and during the working day the minimum amount at the equivalent of MDL 400 000 for performing the operations with individuals. However, the requirement for foreign exchange offices to hold circulating cash assets (consisting of pecuniary contributions to equity capital) in the amount of MDL 500 000, including for each branch, has been maintained;
- setting the unlimited term of validity for the license of foreign exchange office and that of hotel holding foreign exchange bureau (hotel), while increasing the license fee for the foreign exchange office up to MDL 12 000 and MDL 6 000 for the hotel;
- amending the list of documents to be submitted to the NBM in order to obtain a licence for foreign exchange offices and hotels;
- allowing to perform foreign exchange operations in cash with individuals through automated foreign exchange devices;
- establishing the right of foreign exchange entities to change the currency exchange rates during the working day (in accordance with elaborated internal procedures), along with the NBM right to establish the frequency of change in currency exchange rates during working day, as well as specifying the obligations of foreign exchange entities to establish bid and ask rates of US dollar, Euro, Pound sterling, Romanian leu and the Ukrainian hryvnia with two decimal places, and the Russian ruble - three decimal places;
- establishing the right of the foreign exchange entity`s client to request revocation of the operation performed through the operational window within 30 minutes after its completion..

The law also amended certain provisions on foreign exchange control over the activity of foreign exchange entities and the application of sanctions to them. These amendments are intended to contribute to improving the sanctions regime applicable to foreign exchange offices and hotels, as well as to increase the level of responsibility of administrators and shareholders / associates of the foreign exchange offices for compliance with licensing and functioning conditions.

Certain provisions of the Law no.94 of May 13, 2016 came into force on the date of publication (e.g.., liberalizations related to capital operations), while others will come into force on the expiry of 6 months from the date of publication (e.g. provisions related to the activity of foreign exchange entities, notification of external loans /credits within operations related to direct investments).

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