

Decision imposing the Law on Internal Payments System of the Republika Srpska

In the exercise of the powers vested in me by Article V of Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) to the General Framework Agreement for Peace in Bosnia and Herzegovina, according to which the High Representative is the final authority in theater regarding interpretation of the said Agreement on the Civilian Implementation of the Peace Settlement; and considering in particular Article II.1.(d) of the last said Agreement, according to the terms of which the High Representative shall “Facilitate, as the High Representative judges necessary, the resolution of any difficulties arising in connection with civilian implementation”;

Recalling paragraph XI.2 of the Conclusions of the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative’s intention to use his final authority in theatre regarding interpretation of the Agreement on the Civilian Implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid “by making binding decisions, as he judges necessary” on certain issues including (under sub-paragraph (c) thereof) “measures to ensure implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

Bearing in mind that the Peace Implementation Council at its meeting in Madrid on 16 December 1998 urged the authorities of Bosnia and Herzegovina to co-operate fully and without reservation with the international community on a comprehensive and coherent structural reform of the Payment Bureaux, to be completed by 31 December 2000;

Noting that while a Draft Law on Internal Payments System was completed on 1 November 2000, and was approved and supported by the Minister of Finance of Republika Srpska in a form substantially similar with the Law attached to this Decision, the Republika Srpska Government failed to adopt that Draft Law;

Considering that the entry into force of the Law on Internal Payments System is essential to ensure the necessary legislative framework for the above mentioned Payment Bureaux reform in general, and the regulation of the internal payments system in Republika Srpska in particular;

All this recalled, considered, borne in mind and noted, I hereby issue the following Decision. The Law which is hereinafter set out shall enter into force in accordance with Article 40 thereof on an interim basis, until such time as the National Assembly of Republika Srpska adopts this Law in due form, without amendments and with no conditions attached.

Pursuant to, and as an integral part of this my Decision herein, I require the appropriate authorities of Republika Srpska to take all necessary steps to ensure that all laws and regulations of Republika Srpska are and remain fully harmonized with the Law on Internal Payments System of the Republika Srpska hereinafter set out.

This Decision, which has immediate affect, shall be published without delay in the Official Gazette of Republika Srpska.

DECISION

On the Law on Internal Payments System of the Republika Srpska

I GENERAL PROVISIONS

Article 1.

This Law shall regulate internal Payment System Operations in Republika Srpska, shall determine organizations authorized for performance of payment operations and shall define the scope of work, governance, management and transformation of the Payment Bureau of Republika Srpska (hereinafter: the Bureau).

Article 2.

In terms of this Law, Payment System Operations shall mean opening and operating accounts of the Participants in the Payment System and payments among Participants in the Payment System through the accounts kept with the Authorized Organizations.

The payment in the payment system shall imply the following: settlement through accounts, transfer of funds from one account to another, collection of payments from accounts, payment into accounts, and other payments system activities in accordance with the law.

Article 3.

Participants in the Payment System, in terms of this Law, shall be legal persons, independent small businesses and physical persons who shall perform payments through the accounts (hereinafter: Participants in the Payment System), pursuant to the regulations.

Participants in the Payment System may also be foreign legal and physical persons, pursuant to the law and other regulations.

Article 4.

In terms of this Law, Organizations Authorized to Perform Payment System Operations (hereinafter: Authorized Organizations) shall be: banks licensed by the Republika Srpska Banking Agency (hereinafter: the Agency) to perform Payment System Operations, the Central Bank of Bosnia and Herzegovina (hereinafter: Central Bank), the Payment Bureau of the Republika Srpska, and other authorized institutions as described by this Law.

Banks licensed by the Agency shall provide payment services in line with the regulations issued by the Agency and provisions of this Law and other regulations.

Article 5.

The Participants in the Payment System shall keep funds in the accounts with Authorized Organizations and execute all payments through these accounts.

Apart from the provisions of paragraph 1 of this article, legal entities may carry out payments in cash under the conditions and in the manner stipulated by the regulations issued on the basis of this Law.

II ORGANIZATIONS AUTHORIZED TO PERFORM PAYMENT SYSTEM OPERATIONS

Article 6.

The Authorized Organizations shall be authorized to perform the following Payment System Operations:

1. keep accounts of Authorized Organizations, accounts of legal entities, accounts of independent businesses and physical persons in accordance with the regulations, accounts for collection and the public revenue distribution and settlement accounts for Payment System Operations, and execute and record payments through these accounts;
2. record the public revenue collection and distribute these revenues to users in accordance with the regulations;
3. perform cash Payment System Operations;
4. ensure deposit place and safe-keeping of cash received from the Central Bank for the needs of Authorized Organizations, in accordance with the Law on the Central Bank;
5. perform operations related to exchange and withdrawal of damaged and worn out bank-notes as well as coins from circulation, on behalf of the Central Bank, in accordance with guidelines promulgated by the Central Bank;
6. monitor and state the balance of funds on each account of Authorized Organizations, and monitor their solvency in terms of the Law on Financial Operations;
7. carry out settlements and harmonization of the payment system among Authorized Organizations;

8. ensure data for management of the credit and monetary policy and monitoring of the current economic trends;
9. report on a daily basis to the Treasury of the RS in the Ministry of Finance on all transactions in the accounts of Ministries and other budget beneficiaries, as required under the rules promulgated by the Ministry of Finance;
10. keep records and provide reports to Authorized Organizations in accordance with regulations;
11. perform other activities regulated by this Law and other laws.

Article 7.

The Central Bank shall perform Payment System Operations in accordance with the Law on the Central Bank of Bosnia and Herzegovina.

Article 8.

The Enterprise "Srpske poste", through its branches, may perform the following Payment System Operations for the Authorized Organizations:

1. receive payments from physical persons;
2. perform payments to physical persons on behalf of legal and other persons that have accounts with Authorized Organizations;
3. receive cash payments to the credit of accounts of legal persons, independent businesses and physical persons that carry out payments through accounts;
4. accept and deliver cash to the Authorized Organization and carry out settlements with the Authorized Organization.

III ACCOUNTS FOR CARRYING OUT PAYMENT SYSTEM OPERATIONS AND METHODS OF PAYMENTS

Article 9.

Authorized Organizations shall open accounts for the Participants in the Payment System at their request and perform payment transactions in the manner and under the

conditions stipulated by this Law and other laws that govern the area of Payment System Operations as well as by regulations adopted on the basis of these laws.

Article 10.

Participants in the Payment System shall open accounts with Authorized Organizations of their choice, if not otherwise stipulated by the law.

Participants in the Payment System Operations may have accounts held with several Authorized Organizations.

Article 11.

Authorized Organizations may open to Participants in the Payment System the following types of accounts:

1. an account for regular business operations;
2. an account of a legal person for carrying out Payment System Operations of its organizational unit;
3. accounts for public revenue collection;
4. other types of accounts.

Article 12.

Authorized Organizations shall close accounts of Participants in the Payment System upon their request or ex-

officio in accordance with the law.

Article 13.

Authorized Organizations shall be entitled to rely on the information provided by the account holder who is a Participant in the Payment System, unless notified in writing of any change in the account holder's status and other significant changes. Any change in the status of the account holder who is a Participant in the Payment System and other significant changes shall be effective on the day of receipt of the notification by the Authorized Organization.

Article 14.

Payments through the accounts shall be made by means of non-cash payments, cash payments and settlement.

Non-cash payments (transfer of funds from one to another account) and cash payments (in and out-payments) through accounts shall be made by issuing payment orders for crediting/debiting the accounts kept with the Authorized Organization.

Article 15.

Participants in Payment System Operations may also settle mutual monetary obligations directly, i.e. by transfer of securities, by agreements on changes of creditor or debtor under a certain obligation relationship, by settlement, by debt clearance and assignation, in accordance with the law regulating these relationships.

Participants in Payment System Operations may not settle their obligations by assignation, or by cession, or debt takeover, if they have outstanding liabilities recorded on the account based on a forced collection and existing secured payment instruments in the Authorized Organization.

IV METHODS OF EXECUTION OF PAYMENT SYSTEM OPERATIONS

Article 16.

Payment orders shall be issued in writing or electronically according to the Law on Payment Transactions and the operating rules promulgated by the Central Bank of Bosnia and Herzegovina.

Article 17.

Payment orders from the accounts shall be issued by:

1. Participants in the Payment System- account holders;
2. Participants in the Payment System-creditors based on: securities, secured payment instruments and other regulated or agreed authorizations;
3. bodies and organizations-on the basis of legal authorizations;
4. the Authorized Organizations on the basis of court documents and other enforceable documents, legal or contractual authorizations for the issuance of its internal orders for executing these orders, collection of fees for its services, correction of mistakes, etc.

Payment orders shall be signed by persons whose signatures have been deposited within the Authorized Organization, or other authorized persons when they are acting in cases described under paragraph 1, points 3. and 4.

Article 18.

Authorized Organizations shall receive payment orders and other documentation for the payment system from Participants in the Payment System, if the orders and documents have been properly filled in.

Authorized Organizations shall return the payment orders that have not filled out in accordance with Paragraph 1 of this Article and draw attention of the party submitting the payment order to the shortcomings and errors for the purpose of their removal.

Article 19.

Payments from the accounts, in terms of Article 2 of this Law, shall not exceed the amount of funds available in the account, as provided by the Law on Payment Transactions.

Article 20.

Each Authorized Organization shall carry out orders for enforced collection and other orders of the creditors on the basis of the secured payment instruments from all the funds of participants kept in the accounts held with that Authorized Organization.

In the event of a shortage of funds for the execution of order for enforced collection in totality, an Authorized Organization which has received the order for enforced collection, shall partly carry out the order up to the amount of funds available in the account, in accordance with the priority payments schedule as provided in the Law on Financial Operations.

Article 21.

Based on the Decision by the competent authorities, the Authorized Organization shall carry out a forced collection of public revenues from the account of the Participant in the Payment System in accordance with an order prescribed by law.

Article 22.

The Authorized Organization shall immediately send non-executed payment orders of the Participant in the Payment System, whose account has been closed, back to the party who has submitted the order.

Article 23.

Authorized Organizations shall submit monthly reports to the authorized tax administration office on newly opened and closed accounts of the participants.

Authorized Organizations shall deliver information on payments from accounts of the Participants in the Payment System to competent authorities in accordance with the law upon their written request.

Article 24.

The Authorized Organizations shall make available to the Participants in the Payment System reports on all transactions in their accounts, as requested by the participants.

V RECORDS AND FINANCIAL STATISTICS

Article 25.

Based on order and other payment operations documentation, Authorized Organizations shall establish, keep and deliver the records on executed payments, collection of public revenues, financial flows, as well as on other information envisaged by the law and other regulations.

Authorized Organizations shall organize and keep records on the basis of:

- stipulated plan of accounts;
- plan of accounts for payment and allocation of public revenues;
- register of account holders;
- records on the balance and changes of the funds on the accounts of account holders;
- other records kept in accordance with law and other regulations.

Article 26.

All information on changes and balance of the accounts of Authorized Organizations and payment system participants shall represent a business secret, except in the cases determined by law.

VI PAYMENT BUREAU

Article 27.

The Republika Srpska Payment Bureau (hereinafter: Bureau) shall be an independent financial institution established pursuant to the Law on the Bureau for Payments and Financial Control (Official Gazette of Republika Srpska no. 4/92, 14/92 and 19/92), and as an Authorized Organization in terms of this Law, shall continue to perform payment operations, as follows:

1. Keep accounts of Authorized Organizations, accounts of Participants in the Payment System, accounts for public revenue collection, payment system settlement accounts and other accounts;
2. Execute and record payments through accounts;
3. Organize places for settlement, and perform daily or periodical clearing;
4. Record collection of public revenues and allocate them to users in accordance with regulations;
5. Conduct cashier's and treasury activities;
6. Ensure storage and safekeeping of cash;
7. Determine the deposit balance for each depositor separately and include it in its account;
8. Carry out other activities determined by the law and other regulations.

The Bureau shall continue to perform operations from Paragraph 1, Points 1 through to 8 of this Article, until the completion of transformation of the Payment Bureau and transfer of its functions to banks and other competent authorities and institutions in accordance with the law and Government's decisions.

Article 28. In carrying out activities pertaining to financial statistics on executed payment operations, the Bureau shall provide the following data until such time as the statistical function of the Bureau is transferred to another institution:

- from the records created and kept by the Bureau on the statement and changes on the accounts;
- from the data on financial flows in the payment system recorded and submitted to the Bureau by the other Authorized Organizations.

Statistical data presentation and processing shall be carried out according to the prescribed unified methodology.

Article 29. Organization, administration and management of the Bureau shall be carried out under the Law on the Bureau of Payment and Financial Control, this Law and other general regulations of the Bureau.**Article 30.**

In terms of this Law, the governing bodies of the Bureau shall be the Governing Board and the Director.

The Governing Board of the Payment Bureau (hereinafter: the Governing Board) shall have five members, four of whom are appointed and dismissed by the RS Government and the fifth member shall be the Governor of the Central Bank of BiH.

Article 31.

The Governing Board shall direct and supervise the operation of the Bureau and take measures for the efficient and rational performance of operations falling within the competency of the Bureau.

The Governing Board shall adopt and implement a plan approved by the Government

for the transformation of the Bureau, which will transfer all its liabilities and assets, to the institutions.

The aforesaid transformation plan of the Bureau shall comprise of a comprehensive review of all functions, responsibilities, tasks and obligations of the Bureau, as well as methods of their transfer to other institutions. All assets and liabilities of the Bureau shall be assigned and/or transferred or sold.

Article 32.

In carrying out authorizations from Article 31 of this Law, the Governing Board of the Bureau shall:

1. enact the Statute and other general regulations of the Bureau;
2. adopt the Financial Plan and Report on business performance and monitor their execution;
3. appoint and dismiss the Director of the Bureau;
4. adopt a tariff for remuneration for the activities and services rendered by the Bureau;
5. decide on other issues established by the Statute of the Bureau.

Article 33.

The Director of the Bureau may be appointed for a period of up to four years and may be re-appointed.

The Director of the Bureau shall manage the Bureau's business operations and shall be held accountable for his performance by the Governing Board.

Article 34.

The Statute of the Bureau shall regulate appointments, responsibilities, and duties of persons having special authorizations as well as persons having special authorizations in the process of transformation (Secretary, the chief Financial Officer and the Internal Auditors of the Bureau).

Article 35.

Persons who have been sentenced to imprisonment for criminal offences against at property and office cannot perform any function in the Bureau.

Article 36.

The Bureau shall be financed through fees paid by Participants in the Payment System for its services performed within the scope of its work.

The Governing Board shall both approve and publish in the Official Gazette of the RS all commissions for services charged by the Bureau.

All commissions, dues and other tariffs shall be collected from all Participants in the Payment System in the same amount and manner for the same type of service.

VII PENALTY PROVISIONS

Article 37.

An Authorized Organization shall be fined for a violation in the amount of 3.000 KM – 17.000 KM if it:

1. performs the payment from the account contrary to the provisions of Article 19;
2. when executing the payment order, acts contrary to the provisions of Article 20;
3. when executing collection based on a Decision issued by an authority for public revenue collection, acts contrary to the provisions of Article 21;
4. does not provide the competent body with the reports according to the provisions of Article 23, Paragraph 1, or with data according to the provisions of Article 23, Paragraph 2;
5. does not provide the Participants in the Payment System with the reports and data on executed payments and collections, contrary to the provisions of Article 24.

An Authorized Organization will be fined for a violation in the amount of 1.000 KM – 13.000 KM if it:

1. does not establish or keep the records, contrary to the provisions of Article 25;
2. discloses data considered to be a business secret, contrary to the provisions of Article 26.

The Responsible person in the Authorized Organization shall be fined for a violation of Paragraphs 1 and 2 of this article in the amount of 500 KM – 1.700 KM.

VI TRANSITIONAL AND FINAL PROVISIONS

Article 38.

In performing duties within the scope of his/her competence, the Minister of Finance of Republika Srpska shall issue regulations pertaining to the following:

1. manner and procedure for supervision of Payment System Operations, apart from cases when the manner and procedure of supervision have been determined by separate regulations;
2. accounts for payment of public revenues, conditions and terms for distribution of those revenues;
3. method of keeping records on performed Payment System Operations;
4. other activities within the scope of the payment system.

Article 39.

By-laws supporting the implementation of this Law shall be adopted within 60 days from the day of the entry into force of this Law.

Article 40.

This Law shall enter into force on the eighth day after its publication in the Official Gazette of Republika Srpska.

Article 41.

With the entry into force of this Law, the Law on Payment System of the RS (Official Gazette of Republika Srpska no. 15/96, 3/98, 6/99 and 18/99) shall stand as repealed and the provisions of Articles 47 through to 76 and of the articles 77 through to 84 of the Law on the Bureau of Payments and Financial Control (Official Gazette of Republika Srpska no. 4/92, 14/92 and 19/92), as well as books of rules, instructions, decisions and methodologies prescribed by the Republika Srpska Payment Bureau if these are inconsistent with this Law, shall be revoked.

Sarajevo, 20 December 2000

Wolfgang Petritsch
High Representative

Office of the High Representative