

Decision imposing the Law on Financial Operations 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 theatre regarding interpretation of the said agreement on the civilian implementation of the peace settlement; and considering in particular Article II.1 (d) of the *same* Agreement, *in terms of which* the High Representative shall *have the power to* “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 the implementation of the Peace Agreement throughout Bosnia and Herzegovina and its Entities”;

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 theatre 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 Financial Operations 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 Financial Operations is essential to ensure the necessary legislative framework for the above mentioned Payment Bureaux reform in general, and in particular the regulation of financial operations of legal entities with their headquarters on the territory of Republika Srpska which perform business activities in accordance with regulations on standard classification of business activities in the Republika Srpska;

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 as provided for in Article 16 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 Financial Operations of the Republika Srpska hereinafter set out.

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

DECISION

ON THE LAW ON FINANCIAL OPERATIONS OF THE REPUBLIKA SRPSKA

I - GENERAL PROVISIONS

Article 1

This Law shall regulate financial operations of legal entities whose central office is in the territory of Republika Srpska, performing business activities defined by the regulations on standard classification of business activities in Republika Srpska.

Article 2

Financial operations in terms of this Law shall include:

1. financing of business operations;
2. payments and maintenance of solvency;

II - FINANCING OF BUSINESS OPERATIONS

Article 3

Legal entities shall acquire and secure funding from:

1. founders' investments in the form of initial capital and reserves;
2. issuance and sales of securities in accordance with regulations;
3. business results;
4. domestic and foreign investments;
5. loans;
6. earmarked subsidies;
7. other sources in accordance with regulations.

Funds referred to in paragraph 1 of this Article shall be acquired and secured in accordance with relevant laws.

Article 4

Obligations shall be considered long-term if the maturity period exceeds one year, and short-term if the maturity period is up to one year.

III - PAYMENTS AND MAINTAINANCE OF SOLVENCY

Article 5

Legal entities shall perform financial transactions in cash or through their accounts with authorized payment operations organizations (hereinafter: the Authorized Organization) in accordance with the Law on Payment Transactions.

Article 6

Legal entities shall meet their obligations within the agreed or prescribed deadlines through their accounts, by Transfer Orders and by other payment instruments, including cash in accordance with law and other regulations.

Legal entities may pay their mutual obligations by transferring securities, by compensation, clearing, assignation and in other ways in accordance with the laws regulating this matter.

Exceptionally to the provisions referred to in paragraph 2 of this Article, legal entities may not meet their mutual obligations by compensation nor in any other way stipulated by the regulations on obligations as long as they have overdue obligations subject to forced collection and other secured payment instruments.

In case of legal entities failing to pay taxes and contributions, the authorized Tax Administration will issue a forced collection order to the Authorized Organization through transfer of funds from the legal entity's account to the appropriate tax and contributions account.

If an obligation is not fully met in the way stipulated in paragraph 4 of this Article, the authorized Tax Administration will issue a decision on forced collection from the entire property of the legal entity or other obligee.

Expenses incurred as a result of procedures referred to in Paragraph 5 of this Article shall be borne by the legal entity or other taxpayer.

Article 7

In terms of this law, a legal entity shall be considered insolvent if it has insufficient funds in its account the authorised organization for payment of all orders, or instruments for collection on the due date.

Article 8

If a legal entity is insolvent, Payment Orders and other instruments for collection shall be executed according to the following priorities:

1. Payment Orders and instruments for collection of customs duties and fees, excises, sales tax on goods and services and other taxes in accordance with specific regulations;
2. Payment Orders and instruments for collection of income tax and contributions;
3. Payment Orders and instruments for collection of other public revenue in accordance with specific regulations;
4. Payment Orders and instruments for collection under other enforceable decisions passed by administrative and court authorities;
5. Payment Orders on the basis of secured payment instruments;
6. other Payment Orders.

Scheduling of execution of Payment Orders and instruments for collection within the priorities referred to in paragraph 1 of this Article shall be determined by the Authorized Organization on the basis of the time of receipt, and according to the priorities set forth in paragraph 1 of this Article.

Payment Orders and instruments for collection from the next priority may be executed only after the execution of all Payment Orders and instruments for collection from the previous priority including Payment Orders and instruments for collection which have been received in the meantime.

Provisions of this Article shall also apply to the account holders – sole proprietors and individuals identified as taxpayers in accordance with the regulations, who have accounts with the Authorized Organizations.

Article 9

The Authorized Organization shall keep records on the order of receipt of the instruments for collection and Payment Orders of the same priority level by the day and the hour of their receipt and execute them according to that order. The Authorized Organization shall inform the creditor on the order of collection of his or her claim, upon his or her request.

Article 10

Once a month, no later than the fifteenth of the month for the previous month, the Authorized Organization shall publish, in all its organizational units and provide data thereof for publishing in the Official Gazette of Republika Srpska, the name, headquarters/residence, address, and the account number of insolvent legal and physical entities – account holders, who, as of the last day of the previous month, have been:

1. continuously insolvent for 30 or more days;
2. continuously insolvent for 90 or more days;
3. intermittently insolvent for 15 or more days during the previous month.

Article 11

A creditor may arrange to receive from a debtor a Bill of Exchange, check, bank guarantee or secure the payment in another way in accordance with the law.

Place, time and methods of transfer of the secured payment instruments referred to in paragraph 1 of this Article shall be agreed by the parties.

Article 12

Acceptance orders verified by creditors and submitted to the Authorized Organization by the due date, which were not executed due to lack of funds at the debtor's account, shall be executed not later than 90 days from the day this Law becomes effective if the funds for their execution become available.

Acceptance orders which do not fall due shall be submitted by creditors to the Authorized Organization within 30 days from the day this Law becomes effective.

The Authorized Organization shall register the acceptance orders referred to in paragraph 2 of this Article and execute them on the due date, but not later than 90 days from the date this Law becomes effective if the funds on the debtor's account are not made available.

Upon the expiration of the 90 days deadline referred to in paragraphs 1 and 2 of this Article, the Authorized Organization shall return the non-executed acceptance orders to the creditors, unless otherwise stipulated by law.

Article 13

The Ministry of Finance of Republika Srpska shall supervise the implementation of the provisions of this Law.

>IV - PENALTY PROVISIONS

Article 14

A legal entity shall be fined from 1,000 to 5,000 KM if it fails to adhere to the provisions of Article 6, paragraph 3 and while an enforced collection order is outstanding.

The authorized person of the legal entity shall also be fined from 500 to 1,700 KM for offences referred to in Paragraph 1 of this Article.

Article 15

The Authorized Organization shall be fined from 1,000 to 10,000 KM if it fails to:

1. effect payment in the order prescribed by this Law (Article 8)
2. inform creditors on the sequence of collecting his or her claims (Article 9)
3. publish the data on insolvent account holders in the prescribed way (Article 10).

For the offenses referred to in paragraph 1 of this Article, the authorized person from the Authorized Organization shall also be fined from 200 to 1,000 KM.

V - TRANSITIONAL AND FINAL PROVISIONS

Article 16

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

Article 17

The Law on Financial Operations of Republika Srpska ("Official Gazette of Republika Srpska" no.5/93, 19/93) shall be annulled upon the entry into force of this Law.

Sarajevo, 20 December 2000

Wolfgang Petritsch
High Representative

Office of the High Representative