STUDY ON REMITTANCES IN SERBIA
EBRD – SECO

LEGAL ASSESSMENT REPORT

27 October 2006
Foreword

This Report addresses the issues included in the “Terms of Reference – Remittances in South-eastern Europe”, delivered to us by the EBRD – see relevant extract below – and in e-mails dated 5 April 2006 and 18 May 2006 that we received from the EBRD.

This Report consists of five chapters.

The opening chapter defines the term “Remittances”. The second chapter examines the Remittance transfers’ providers in the context of the legislation currently in force in Serbia. The third chapter provides information on the process of Remittances transfer in Serbia including the use of information. The fourth chapter tackles some tax issues related to Remittances. The fifth chapter builds on the assessments presented in the preceding chapters and examines the Remittances for the purpose of the development of the economy in general and the creditworthiness of the Remittances’ recipients. Finally, the sixth chapter details a series of recommendations on the various shortcomings found in the legal analysis.

Terms of Reference – Remittances in South-eastern Europe

Review of the existing laws and regulations and preparation of an assessment report (the “Legal Assessment Report”).

Based on interviews and meetings with key players the Legal Report will identify the practice of money transfer in the relevant jurisdictions and the different impediments which may stem from laws and regulations concerned. Whenever necessary, it will review in details these laws and regulations to precisely identify the possible bottleneck or gaps in legislation which is making transfer of money (in particular, remittances) a difficult or costly matter and thus discourages better flow of these remittances into the country.

It will also identify any legal or regulatory impediment preventing the use of remittances to improve access to credit in the country. In particular, it will assess the possibility for the remittances recipient (i.e. individuals, legal persons, entrepreneurs, consumers) to effectively channel the remittances into the banking or lending system so that the funds become available to individuals or businesses as credit.

Similarly, it will explore how these remittances can be taken into account by lenders and credit providers to access creditworthiness or scope of credit. This should cover all sorts of credit, including residential mortgages, commercial loans and credit guarantee scheme.

In carrying out such assessment, it shall particularly take into consideration, but not limited to, the following issues/factors:

- previous EBRD assessments and surveys;
- money laundering issues and relevant international standards (The Forty Recommendations of the Financial Action Task Force and Eight Special Recommendations on financing terrorism - FATF);
- banking supervision and relevant international standards (Core Principles for Effective Banking Supervision);
- “know-your-costumer rule”;
- protection of depositors regulation;
- procedures for money transfer and accessing credit;
- banking regulations, including Central Bank’s supervisory regulations
- leasing legislation;
- mortgage and pledge legislation.

A wide range of participants to the sector, in particular banks and non-bank lending institutions, leasing companies, entrepreneurs, micro and SMEs, suppliers and customers, consumers associations and Chamber of Commerce, etc. will be consulted.

The Legal Assessment Report shall emphasize the problems encountered, specifying whether these problems have their sources in legal or regulatory regimes or rather in practical or policy-based factors. The Report shall also include detailed recommendations tackling each problem evidenced.
Table of contents

1. DEFINITIONS AND LEGAL NATURE OF REMITTANCES ......................... 5
   1.1 Legal nature of Remittances ................................................................. 7
   1.1.1 Physical Transfers ............................................................................ 7
   1.1.2 Family Transfers ................................................................................ 8
2. METHODS FOR SENDING REMITTANCES TO SERBIA .................... 9
   2.1 Authorized Remittances’ Channels ....................................................... 10
      2.1.1 Banks licensed for cross-border operations .................................. 10
      2.1.2 Money Transfer Service Provider: Western Union ...................... 12
      2.1.3 Carrying funds personally into Serbia .......................................... 13
   2.2 Unauthorized Remittances’ transfer providers .................................... 18
      2.2.1 Informal methods .......................................................................... 18
      2.2.2 Postal services ............................................................................... 20
3. PROCESSING OF REMITTANCES ....................................................... 21
   3.1 Accessibility of the Remittance transfer services to general public .... 21
      3.1.1 Opening of bank accounts ............................................................. 22
      3.1.2 Consumer Protection Rules ......................................................... 25
   3.2 Control of cross-border operations ...................................................... 26
   3.3 Risks of misuse of Remittances for illegal causes – money laundering prevention rules ............................................................ 26
   3.4 Reporting by the Remittance recipients or banks to the NBS .......... 32
      3.4.1 Reporting for balance of payments forecasts ............................. 32
      3.4.2 Reporting for statistical purposes ................................................. 33
      3.4.3 Use of information collected ....................................................... 34
4. TAX TREATMENT OF REMITTANCES ........................................... 36
   4.1 Physical Transfers ................................................................................ 36
   4.2 Family Transfers .................................................................................. 39
5. UTILIZATION OF REMITTANCES – WAYS TO DEVELOP THE ECONOMY ............................................................................. 41
   5.1 Recognition of commercial potential of Remittances for recipient .... 41
      5.1.1 Introduction ................................................................................... 41
      5.1.2 Analysis of the legislation ............................................................. 43
      5.1.3 Analysis of the market ................................................................. 45
      5.1.4 Conclusions .................................................................................. 47
5.2 Other use of Remittances by Remittances’ recipient – pledging the Remittances .... 48
5.3 Utilization of Remittances inflow by the banks – possibilities of securitization of Remittances................................................................................................................ 49
5.3.1 Introduction ................................................................................................................ 49
5.3.2 Analysis of the legislation.......................................................................................... 49
6. RECOMMENDATIONS ................................................................................................. 51
6.1 Recommendations deployable in the short term ........................................................ 52
6.1.1 Increasing awareness ............................................................................................... 52
6.1.2 Removing ambiguities in regime of “personal transfers” ........................................ 52
6.1.3 Rectifying the problem of ambiguous reporting duties imposed on nonresidents.... 52
6.1.4 Rectifying the lack of sanction towards individuals under the AML Law .............. 53
6.1.5 Acknowledging that Remittances as a constituent of creditworthiness ................. 53
6.2 Recommendations deployable in medium term ......................................................... 53
6.2.1 Rectifying the problem of ambiguous reporting duties imposed to nonresidents...... 54
6.2.2 Rectifying the lack of sanction towards individuals under the AML Law .............. 54
6.2.3 Rectifying ambiguous reporting duties on border crossings..................................... 55
6.2.4 Measure to rectify the problem of currency of Remittances..................................... 55
6.2.5 Improving the number of bank outlets ..................................................................... 56
6.2.6 Introducing non-banking sector Remittance carriers ................................................. 56
6.2.7 Acknowledging Remittances as a constituent of creditworthiness .......................... 57
6.2.8 Harmonizing definitions of “families” in Serbian Law ............................................. 57
6.2.9 Measure to permit securitization of Remittances ................................................. 57
6.3 Recommendations deployable in long term ............................................................... 58
6.3.1 Taking an active role in international institutions Remittances............................... 58
ANNEX 1 – REFERENCES TO REGULATIONS ................................................................ 59

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1. DEFINITIONS AND LEGAL NATURE OF REMITTANCES

The Serbian translation of that term remittances is *doznake*. In absence of a restricted definition, the use of term *doznake* would prove to be inadequate and too wide for the purpose of this Report. To give an example, *doznake* denotes any transfer, cross-border or local, and is to a great extent interchangeable with wire transfers in a lay context. In the cross-border operations legislation, *doznake* is voluminously defined as a category of payment instruments.

Remittances denote a different category in the context examined hereunder: moderate transfers that Serbian migrants make to individuals residing in Serbia in a recurring or incidental manner. The Serbian Law on Foreign Currency Operations - the “Forex Law” does not regulate such transfers as a separate category.

Instead, in Serbia\(^1\) two categories of regulated money transfers can be considered for purposes hereunder:

(i) transfers directed to the livelihood of nonresidents’ families ("Family Transfers") - defined by the Forex Law as a category of current payments; and

(ii) physical transfers of Serbian dinars ("CSD"), foreign currency and securities, made personally by the transferor, defined under the Forex Law as “Physical Transfers"\(^2\).

Each of these two categories has a particular legal regime, which is detailed throughout this Report.

On this basis, and using an international definition of remittances\(^3\), remittances are defined for purposes of this Report as:

“cross-border payments of relatively low value sent by Serbian nonresident\(^4\) individuals to individuals in Serbia, either gratuitously or as contributions towards livelihood of such nonresident individual’s family” (“Remittances”).

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\(^1\) This Report examines only inward Remittances directed to Serbia and not Remittances originated from Serbia to other territories. Serbia, for the purpose of the present Report, denotes the part of Republic of Serbia other than the territory of the Serbian Autonomous Province of Kosovo i Metohija (presently UN administered). Inflows of highly liquid non-pecuniary assets (such as bearer negotiable instruments) shall not be considered as they are outside the scope of the definition of “Remittances”.

\(^2\) Forex Law, Article 2, definition 26.

\(^3\) Introduced under the document titled “General Principles for International Remittance Services” prepared by the Committee on Payment and Settlement Systems of the World Bank, namely: "cross-border person-to-person payments of relatively low value”

\(^4\) The Forex Law defines nonresident individuals as all individuals with the exception of those having place of residence in Serbia, unless however their temporary stay abroad lasts for more than a year, and foreign citizens staying in Serbia for more than a year on the basis of stay permits.
The Forex Law provides the regime of current and capital affairs.

Payments based on current affairs include foreign trade based payments, payments of interest and profits payouts, partial payments of principle debts, withdrawals of FDIs, payments for to sustain families.

Capital payments include FDIs, investments to real estate, long term and short term securities, cross border lending, etc (form a residual definition).

The Forex Law regulates that Physical Transfers are a standalone category acknowledging that the transfers included therein are not based on performance of a legal obligation.

The remaining standalone category of the Forex Law are “personal transfers” which are defined as transfers of funds to and from foreign countries between a resident individual and a non-resident otherwise than in performance of a legal obligation, and rather on the basis of gratuitous donations (gifts and aid), inheritance, long term sustenance, and includes also payment of immigrants’ debts and funds carried out of the country by the expatriates. Although such payments could fall in the category of the Remittances hereunder, the NBS Decision on Conditions for Personal and Physical Transfers of Means of Payment to and from Foreign Countries (the “NBS Unilateral Transfers Decision”) regulates only such transfers that are directed from Serbia to foreign countries.

The Forex Law regulates “personal transfers” as transfers between a resident individual and a non-resident otherwise than in performance of a legal obligation. Such transfers comprise both inward and outward transfers.

Conversely, the NBS Unilateral Transfers Decision regulates only the outward “personal transfers”. The reason behind is the concern of the NBS that the money flows out of Serbia either (i) unjustifiably, or (ii) justifiably, but in excessive amounts. As an example, outward transfers on the basis of inheritance may be made only on the basis of a final court extralitigation decision on division of bankruptcy estate, and a transfer on the basis of a gift may not exceed EUR 3,000.

Similar concerns are not expressed for inward transfers. Consequently such transfers need not be substantiated and are not capped. Some of the “personal transfers”, when inward, overlap with the above defined Family Transfers. Given that the latter need

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5 Forex Law, Article 2, definition 25
6 examined in more details under Chapter 2.1.3 of this Report
to be sent through a Serbian bank (as discussed below), this manner of transferring the funds appears as the only restriction thereto.

Nonetheless, the discrepancy between the Forex Law that regulates both inward and outward “personal transfers” and the NBS Unilateral Transfers Decision ought to be harmonized by express acknowledgement that the inward “personal transfers” are liberal, save for the permitted manner of transfer, i.e. through a Serbian bank.

1.1 Legal nature of Remittances

In the general Remittances regime there are differences between Family Transfers and Physical Transfers; for example in permitted manner of transfer, etc. However, the practical implications lie mostly in the tax treatment of these transfers. This treatment will be examined under chapter 4 of this Report.

1.1.1 Physical Transfers

Physical Transfers are regulated by the Forex Law as a standalone category and are not regarded as the current or capital payments.

Being in a standalone regime, Physical Transfers:

(i) do not need to be - and can not be - intermediated by a bank, - which instead is mandatory for current and capital payments; and

(ii) are limitedly subject to protective measures which the Government of Republic of Serbia may exceptionally and provisionally impose on proposal of the NBS.

Physical Transfers are the only category of transfers for which the Forex Law had not acknowledged the legal cause (unlike the current affairs, capital affairs and the personal transfers). That does not however exonerate the transferor and the transferee (the recipients of Physical Transfers) to determine the underlying legal cause, due to the following reasons:

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7 The accompanying National Bank of Serbia Decision on Conditions for Personal and Physical Transfers of Means of Payment to and from Foreign Countries regulates the process and will be presented in more detail under the below chapter 2.1.5.
8 only for foreign currency and securities, but not on CSD
9 in the event of grave disturbances in payment balances, when the payment flow threatens to gravely hamper the implementation of the economic and monetary policy.
10 not longer than six months, and within such period the measures must be discontinued as soon as the disturbances have ceased.
1. according to the Code of Obligations, transfers must have an underlying legal cause\(^{11}\), which is deemed to exist until proven otherwise\(^{12}\). Transfers without an underlying cause can be considered null and void\(^{13}\) and the beneficiary - unjustifiably enriched - liable to repay the transferred financial assets\(^{14}\). The repayment of any funds upon determination of unjust enrichment would entail another cross-border transfer, however an outward transfer this time.

2. the transfeerees have an interest in substantiating their enrichments as they otherwise might face skepticisms by banks when considering their respective creditworthiness. Substantiation of enrichment accrued though gifts has tax repercussions. These repercussions are elaborated in chapter 4.1 hereof.

1.1.2 **Family Transfers**

Family Transfers (i.e. payments made by a nonresident for the sustenance of their family residing in Serbia) are regarded by the Forex Law as current payments\(^{15}\).

Being current payments, they must be received through a Serbian bank\(^{16}\).

Although current payments are prescribed by the Forex Law to be in principle in liberal regime\(^{17}\), they could be made subject to extraordinary protective measures in the event of grave disturbances in payment balances, when the payment flow threatens to gravely hamper the implementation of the economic and monetary policy\(^{18}\). However, such measures may be imposed on such payments that are due on the basis of the obligations and affairs with foreign countries, and the Family Transfers are, as will be discussed below, partly based on obligations imposed by a Serbian Law and are partly unilateral undertakings. In any event, protective measures were not imposed in the recent past and such possibility is perhaps more theoretical than real.

Family Transfers are unlikely to be considered without an underlying cause - and therefore subject to being considered null and void as discussed above for the Physical Transfers - as the Code of Obligations prescribes that unjustifiable enrichment shall not occur when the payment has its basis in provisions of a law\(^{19}\).

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\(^{11}\) Code of Obligations, Article 51.
\(^{12}\) idem, Article 51.
\(^{13}\) idem, Article 52.
\(^{14}\) idem, Article 210.
\(^{15}\) idem, Article 3.
\(^{16}\) idem, Article 32.
\(^{17}\) idem, Article 6.
\(^{18}\) idem, Article 42.
\(^{19}\) Code of Obligations, Article 210.
Contributing towards a family’s livelihood is the duty of family members in accordance with the provisions of the Family Law.\(^{20}\)

2. **METHODS FOR SENDING REMITTANCES TO SERBIA**

There are various methods of bringing (Physical Transfers) and/or sending (Family Transfers) money into Serbia, in the context of the legislation currently in force in Serbia.

In particular the following methods are analyzed in this chapter:

- sending money through Serbian banks (chapter 2.1.1);
- sending money through Western Union (chapter 2.1.2);
- carrying funds personally into Serbia (chapter 2.1.3);
- sending money through informal methods (chapter 2.2.1);
- sending money through the postal service (chapter 2.2.2).

As specified above, under the Forex Law, Family Transfers must be made through Serbian banks, due to the monopoly prescribed under the Forex Law in favor of Serbian banks on processing of any cross border payment operations.\(^{21}\)

The Forex Law refers to the rules to be adopted by the NBS to regulate the manner of bringing in the funds making up the Physical Transfer. Under the NBS Unilateral Transfers Decision, such funds may be brought into the country without limitations (except for CSD) other than certain reporting duties.

When detailing the methods for sending Remittances in Serbia, a distinction should be made between Remittances’ transfer avenues authorized under the Forex Law and those which are not authorized under that Law, which include (i) schemes deployed in practice for defying the statutory requirements (informal methods, notably bus lines), and (ii) schemes that are envisaged under laws other than the Forex Law, but which are not deployed due to discrepancies with the Forex Law (namely postal shipments).

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20 Family Law, inter alia, Article 8.
21 idem, Article 32. That Article prescribes that the only exception is when such payments involve state agencies, when the carrier is the NBS directly.
Remittances are in practice transferred through four major channels – Serbian banks, Western Union using Serbian banks as agents, physical transfer by a traveler, informal method (notably bus lines). The fourth avenue is defiant, while the first three are accordant, to the law.

2.1 Authorized Remittances’ Channels

2.1.1 Banks licensed for cross-border operations

According to the NBS website[^22], Remittances channeled through banks amounted to USD 780 million in 2003. The previous Forex Law had required that the banks are licensed for cross-border operations to be able to process Remittances. The current and effective Forex Law requires only that the banks are generally licensed with the NBS. We note that the vast majority of Serbian banks (37 out of 39 licensed banks) were licensed for cross-border operations[^23]. The NBS was competent to issue cross-border operations licenses and maintain the register of issued licenses[^24].

The NBS instructs the banks to abide by good international banking practice and deploy contemporary telecommunication systems, including SWIFT[^25]. Transfer charges are generally modest, and are at times offered free of charge if the recipient does not withdraw funds for a fortnight or a month. Some banks do not levy any fees for transfers below certain thresholds[^26].

On receipt of funds, banks must notify the recipient thereof on the following business day at the latest[^27] and record recipients’ information necessary to make the payment[^28].

[^23]: The Law on Banks and other Financial Organizations which ceased to be effective on October 01, 2006 had envisaged various bank-like organizations, but neither of such organizations has been issued a license to carry out cross border operations. The effective Banking Law has abandoned the concept of “other financial organizations” (while introducing the concept of financial sector participants for limited purposes not relevant for the present matter).
[^25]: Decision on Conditions for and Manner of Payment, Collection and Transfer per Current and Capital Affairs in Foreign Currency and Dinars, Article 14. However, the accompanying NBS Decision Implementing Rules prescribe that the banks are obliged to record the time of receipt of orders in the event that SWIFT was not used, thereby setting a lenient repercussion for incompliance.
[^26]: The NBS website ([www.nbs.yu](http://www.nbs.yu)). The threshold is approx. 100 EUR. Please note that the NBS is in the process of collecting of information on terms offered by all of the banks engaged in cross-border operations.
[^27]: idem, Article 4.
[^28]: idem, Article 4.
Generally, the banks collect the information on a transaction from the transferee. When the transferee is an individual however (as it is always the case with Family Transfers), the data on the transfer can also be collected from the transferor, as per the exception prescribed by the NBS\(^{29}\). From the interviews with bank representatives it resulted that the banks routinely avail of such possibility.

When the required data on the transfer are disclosed and recorded by the bank (or the bank is otherwise satisfied with the data provided, as in the case of transfers between individuals), the payment can be made.

The payment is made on the same business day in the event that data are disclosed before 10 AM, otherwise on the following business day\(^{30}\).

The payment is made by crediting the recipient’s foreign currency account. Physical persons may thereafter withdraw cash in foreign currency\(^{31}\).

Foreign currency accounts can only be credited with those currencies admitted to the Serbian foreign currency market (i.e. AUD, CAD, DKK, EUR, JPY, KWD, NOK, SEK, CHF, GBP, USD)\(^{32}\). The Remittances carriers located in other countries must require previous conversion of the currencies to a foreign currency admitted to the Serbian currency market (commonly EUR).

We note that in addition to currencies admitted to the foreign currency market, some currencies may be traded with on the exchange market (HRK, SKK, CZK, HUF, SIT, BAM, PLN). As some of the countries where such currencies are legal tender host Serbian migrants, it would be sensible to permit that foreign currency accounts are credited with such currencies.

\begin{quote}
We have not identified any regulatory bottlenecks if Remittances are sent through Serbian banks. The process involves setting up (or deploying a previously setup) foreign currency bank account, which is a simple and inexpensive process (as further presented in chapter 3.1 hereof).

The only circumstance increasing the price of the transfer is previous conversion to a Serbian foreign currency market admitted currency if a Remittance is not
\end{quote}

\(^{29}\) idem, Article 7.  
\(^{30}\) idem, Article 4.  
\(^{31}\) idem, Article 5. Unlike legal entities and entrepreneurs which can withdraw ready cash in foreign currency only in limited cases.  
\(^{32}\) Decision on Manner of Maintenance of Foreign Currency Savings Carnet and Foreign Currency Account of Individuals – Residents and Nonresidents in Banks, Article 9.
12. A policy should be implemented that liberalizes the admittance of currencies to the foreign currency market. The Forex Law in itself does not provide for restrictions of any such liberalization. The NBS could contemplate bilateral agreements with foreign countries that could permit the reciprocal admittance of CSD and the foreign currency on respective foreign exchange markets.

2.1.2 **Money Transfer Service Provider: Western Union**

The only money transfer service provider presently operating in Serbia is Western Union. Due to the mentioned requirements of the Forex Law that Remittances must be either channeled through Serbian banks or physically brought into the country by the transferor personally, Western Union cannot operate directly in Serbia.

Rather, Western Union deploys a network comprising:

- two commercial banks, and
- a commercial agent registered for the activity not related to banking or postal services, which in turn deploys a network of subagents consisting exclusively of Serbian banks.

One of the mentioned commercial banks is the Postal Savings Bank. In processing Remittances, it utilizes the network of post offices of the bank’s shareholder, the Serbian Post.

Therefore, Western Union transfers are paid out at desks of Serbian banks. Transferees do not need to set up bank accounts prior to the payment.

It ought to be noted that Western Union backed transfers are paid out to the transferee in EUR, irrespective of the currency used by the transferor. Per the data we collected during the survey of market participants, this is a matter of the business policy of Western Union.

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33 Under the Western Union system, when an agent collects money from a customer, it must register it immediately in a global database which is accessible on-line to all other agents around the world. The collecting agent gives its customer a confirmation code, who communicates it to the beneficiary, usually through a phone call. As soon as the beneficiary receives the confirmation code, he can go to any Western Union agent to receive his funds. The payment agent will verify the transaction in the global database and proceed to make the payment usually with its own resources. After a few days, the collecting and payment agents will settle all their transactions with Western Union. This system, thus, allows the rapid payment of money transfers to customers despite the fact that the settlement of transactions may take place some days later (from WB Paper no. 80 – the Germany-Serbia Remittance Corridor).

34 Postanska stedionica [http://www.posted.co.yu](http://www.posted.co.yu).
A commercial downside of the presently deployed system of resorting to banks as subagents is the increase in the cost of transfers of Remittances which presumably results (i.e. additional exchange rate fees and costs). The mandatory conversion to EUR in the process also increases the costs.

Otherwise, we have not identified any regulatory bottlenecks if Remittances are sent through Western Union whereby a Serbian bank is used as an agent.

### 2.1.3 Carrying funds personally into Serbia

#### (a) Carrying Serbian dinar (CSD) personally into Serbia

The NBS Unilateral Transfers Decision prescribes that individuals (residents or nonresidents alike) may bring into Serbia national currency up to the counter-value of 5,000 EUR per person\(^\text{35}\). In the event that any such individual has purchased CSD amount that exceeds such counter-value from a foreign bank, any so purchased amount may be brought into Serbia with a disclosure to customs authorities of such certificate of a foreign bank\(^\text{36}\).

In the absence of a certificate of the foreign bank, the Forex Law authorizes the customs authorities to seize - against issuance of a certificate - any CSD amount exceeding the mentioned amounts. Further, Serbian residents and nonresidents alike are subject to fines of up to CSD 50,000 for misdemeanors of taking CSD into or out of Serbia in contravention of the NBS Unilateral Transfers Decision.

#### (b) Carrying foreign currency personally into Serbia

The previous Forex Law had prescribed that the inflow of foreign cash, credit card payments and foreign currency cheques is not subject to limitations, whereby the amounts in excess of those determined under the Money Laundering Prevention Law\(^\text{37}\) (AML Law) needed to be reported to the customs authorities (see chapter 2.1.3.c).

The effective Forex Law merely refers to the NBS Unilateral Transfers Decision to regulate the reporting duties. Under the NBS Unilateral Transfers Decision, duties of reporting vary depending on the residency of the transferor.

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35 NBS Unilateral Transfers Decision, Article 4.
36 idem, Article 4.
37 As specified under chapter 3.3 (a) hereof.
Nonresidents

The duty of reporting by nonresidents is limited to such instances when the nonresidents are interested in subsequently taking the foreign cash out of the country. Namely, nonresidents are not asked to disclose the amount of foreign cash when entering the country, but a failure to disclose it would preclude them from taking out of the country the excess of EUR 5,000. The forms certifying the amount of foreign cash brought into the country are handed out at the Serbian entry points, and, once filled out, are certified by the customs authorities. Based on such certificate, the nonresident is entitled to take out of Serbia any unspent amount of the declared foreign cash at the first occasion of leaving the country (when the form will be cancelled by the customs authorities)\(^\text{38}\).

The NBS Unilateral Transfers Decision surprisingly does not require that the nonresidents report to the customs authorities the amounts of foreign cash brought into the country in excess of the amounts prescribed under the AML Law. We reiterate that the effective Forex Law does not require that either. The previous redaction of the Forex Law required such reporting both for residents and nonresidents, and further the previous redaction of the NBS Unilateral Transfers Decision required that the nonresidents fill out a form certifying the amount of foreign cash brought into the country in any case (whereby in practice such provision was not implemented duly).

The removal of the duty that the nonresidents report the foreign cash brought into the country in excess of the amounts prescribed under the AML Law could be accounted to the benefits to the economic policy expected with such liberalization, but can prove prejudicial to the country’s strive to combat money laundering and terrorism financing.

The NBS has however posted at its website\(^\text{39}\) the page Information to Nonresidents. This web page interprets the NBS Unilateral Transfers Decision somewhat differently than the above presentation.

Namely, the “Information to Nonresidents” web page states that the nonresidents may freely bring into Serbia only EUR 5,000, and that they shall be obliged to fill out forms certifying the amount of foreign cash brought into the country in case of bringing in the foreign cash in excess of such amounts. Further, the “Information to Nonresidents” page states that the amount of foreign cash will be added to the amount of CSD brought into Serbia, and that the combined value will be used when the forms are filled out.

\(^{38}\)NBS Unilateral Transfers Decision, Article 12

This standpoint might imply imminent changes of the NBS Unilateral Transfers Decision.

The different standpoint of the NBS under the “Information to Nonresidents” page and the wording of the NBS Unilateral Transfers Decision requires harmonization. If the nonresidents are asked to fill out forms when carrying into Serbia the excess of EUR 5,000 irrespective of whether they wish to avail on the opportunity to subsequently take any unspent portion out of Serbia, the customs authorities would be bestowed an instrument which would enable them to report for money laundering prevention purpose in all cases when such excess of cash exceeds also the threshold under the AML Law, namely EUR 15,000.

Residents

The NBS Unilateral Transfers Decision requires residents to report foreign cash brought into the country in excess of the amounts prescribed under the AML Law. Otherwise, the foreign cash may be brought into the country freely and the NBS Unilateral Transfers Decision does not require residents to fill out forms certifying the amount of foreign cash brought into the country.

(c) Reporting for money laundering prevention purposes

Under the previous Forex Law, both residents and nonresidents were obliged to report to the Customs Authorities any movement of cash exceeding the thresholds set under the AML Law. Under the effective NBS Unilateral Transfers Decision, such duty is imposed to residents only.

Failure to report so is a misdemeanor punishable with a fine of up to CSD 50,000.\footnote{The misdemeanor is to act in contravention of the NBS Unilateral Transfers Decision in general, and not specifically to refrain from reporting for money laundering purposes.}

We note that referring to the thresholds set under the AML Law was a sensible approach at the time of coming into force of the Forex Law. Namely, the AML Law enacted in 2001\footnote{The Yugoslav Federal Assembly adopted an AML Law in September 2001; it came into effect in July 2002. This law effectively created Serbia’s Financial Intelligence Unit (FIU), the Administration for the Prevention of Money Laundering. In September 2005, Serbia criminalized terrorist financing and codified an expanded definition of money laundering into the Penal Code. On November 28, 2005, Serbia adopted a revised money laundering law that elevates the status of the FIU to that of an administrative body under the Ministry of Finance from its previous position of “sector” in that Ministry. The law also expands the number of entities required to collect certain information on all transactions over 15,000 Euros, or the dinar equivalent, and to} had required that any cross-border movement of cash in excess of
CSD 30,000 - an amount moderate even in 2001 - had to be reported to the competent governmental body.\textsuperscript{42}

The 2005 AML Law however imposes different thresholds for different transactions and other events. The AML Law does not expressly state what the threshold is when transferring money under a Physical Transfer, i.e. when the customs authorities are obliged to report to the Money Laundering Prevention Administration cross-border cash movements.

Instead, the AML Law refers for determination of such threshold to the regulations “related to carrying CSD, foreign currency ready cash, cheques, into and out of the country”\textsuperscript{43}. Although this provision does not expressly refer to the Forex Law, such reference is unequivocal.

We reiterate that the Forex Law, as effective, does not set any thresholds for money laundering prevention purposes. The NBS Unilateral Transfers Decision provides only the cap amount for bringing in the CSD. Otherwise, the NBS Unilateral Transfers Decision refers to the amounts set forth under the AML Law, which results in a cross-reference.

Presently, neither the AML Law nor the Forex Law clearly state what amount, when transferred cross the Serbian border in a Physical Transfer, triggers reporting duties of customs authorities to Money Laundering Prevention Administration.

Rather than taking the opportunity to set such amount under the Forex Law bestowed with the reference under the AML Law, the legislator has opted to confer to the NBS the authority to set such amount under the NBS Unilateral Transfers Decision. Such situation inherently brings the problem that no law sets the amount. Another problem, remediable more easily, is that the NBS Unilateral Transfers Decision also omitted to state such amount.

Customs authorities face a challenge in interpreting their duties under the AML Law, namely whether to report of any instance when the excess of CSD in counter value of EUR 5,000 is brought into Serbia (cap amount found under the NBS Unilateral Transfers Decision for both residents and nonresidents) or to report only instances report all cash transactions exceeding this threshold to the FIU. Suspicious transactions in any amount must be reported to the FIU. Other significant changes include the authority of the FIU to freeze transactions for up to 72 hours and to require covered entities and individuals to monitor customers’ accounts where money laundering is suspected. Serbia signed a Memorandum of understanding (MOU) on the exchange of information with the National Bank of Serbia in 2004 and is negotiating MOUs with the Customs and Tax Administrations.

\textsuperscript{42} AML Law, Article 13.
\textsuperscript{43} AML Law, Article 9.
when the excess of EUR 15,000 is brought into the country by residents (the amount that triggers reporting duties under the AML Law with a general reference to transactions in this value).

If the above examined Information to Nonresidents by the NBS is considered by the customs authorities as well, they ought to report also on the instances when the excess of EUR 15,000 is brought into the country by nonresidents (as it is the amount that triggers reporting duties under the AML Law with a general reference to transactions in this value).

(d) **Note on practice**

It is reasonable to assume that the use of the funds carried personally into Serbia by migrants can, among other, be the transfer to such migrant’s family member, for sustenance of the family they comprise. As stated above, contributions to sustenance of families fall under the category of Family Transfers. In turn, Family Transfers fall within the category of current payments and must be made via Serbian banks. There are no practical impediments that nonresidents include in a Physical Transfer what would be a Family Transfer had they not personally traveled to Serbia (or had a third party entrusted by a nonresident not personally traveled to Serbia. Namely, (i) the form to be completed when bringing foreign cash into Serbia does not have a column specifying the use of such cash and the persons involved in a transfer therefore do not designate it as a Family Transfer, and (ii) nonresident individuals are not subject to misdemeanors for not complying with the provisions regulating payment based on current affairs.

Bringing the funds into Serbia is rather liberal. Formalities a traveler could encounter exhaust in instances of (i) having an excess of CSD counter value of EUR 5,000, and (ii) having an excess of EUR 15,000 worth cash altogether.

It is not clear whether such liberalness is the true intention of the legislator or a repercussion of inadequate wording of the relevant provisions of the Forex Law and NBS Unilateral Transfers Decision. Although not in variance with the AML Law, these two texts have not availed of the decisiveness the AML Law (Article 9 thereof) intended to bestow to them when it comes to qualifying the amounts of cash that may freely be taken cross the Serbian border without any reporting duties.

Such state is easily remediable with the enactment of the new text of the NBS Unilateral Transfers Decision. Nonetheless, the ultimate remedy ought to be looked

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Please refer to below Chapter 4 for presentation of the statutory definition of families.
in the change of the text of either of the AML Law or the Forex Law to set such amounts. The AML Law seems perhaps more suited, as it contains clearer references to EUR amounts than the Forex Law. Such references are less prone to CSD depreciations or appreciations and can aid to contemporariness of the provision they contain.

2.2 Unauthorized Remittances’ transfer providers

2.2.1 Informal methods

From the data published by the NBS, it appears that Remittances channeled through the Serbian banks amounted to USD 780 million in 2003, while at least twice as much had been channeled through other carriers.

Channeling of Remittances in an organized informal manner encountered in practice in other countries does not seem to be a common practice in Serbia (or at least such practice is not notorious).

Remittances are primarily channeled through the bus lines. Towns situated in rural parts of Serbia maintain surprisingly developed transport linkages with large EU cities, in terms of volume and frequency of departures. Such practice is most noticeable in east of Serbia.

Bus lines are used to remit moneys mainly in a semi-institutionalized fashion, namely the moneys are sent through drivers and trip attendants - which in practice can not be linked to the companies or entrepreneurs carrying out the transport operations.

Although this Report does not examine the geographical dispersion of Serbian migrants, it is safe to note that many are domiciled in countries not reachable by bus lines. For such remote countries, aircraft staff is far less accessible to the Remittances senders, and Remittances can only be sent through other passengers the Remittances senders are acquainted with. Therefore, it seems less plausible that the companies involved in air transportation are involved in informal Remittance transfers than the bus companies.

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45 Local shops, foreign exchange bureaus, etc. as examined by the Committee on Payment and Settlement Systems of the World Bank in the document “General Principles for International Remittance Services” [http://www.bis.org/publ/cpss73.pdf](http://www.bis.org/publ/cpss73.pdf)
Buses therefore seem to be a well organized channel of Remittances, even though the bus companies are arguably not organized into a network and not involved in the process.

In the scheme of sending Remittances through bus drivers and trip attendants, the manner of sending out and receiving shipments is well known or at least intuitive to all the persons involved. The mechanism involves that the monies are entrusted to drivers or trip attendants, usually Serbian residents.

Until the coming into effect of the Forex Law, Serbian residents could have benefited from the provision of the previous Forex Law which prescribed that the inflow of foreign cash, credit card payments and foreign currency cheques is not subject to limitations. As such, the exception that was introduced by the NBS under the previous Forex Law, according to which nonresidents had to fill out forms certifying the amount of foreign cash brought into the country had to be narrowly interpreted and could not have been extended to residents.

Physical Transfers are subject to Foreign Currency Control enforced by Foreign Currency Inspectorate\textsuperscript{46} as presented in more details under chapter 2.2 - and the Inspectorate is entitled to provisionally seize cash from its carrier if suspecting a breach of regulations\textsuperscript{47}.

The trip organizers, even in their capacities of individuals (physical persons) are listed among the persons required by law to prevent money laundering\textsuperscript{48}. In practice however, the bus drivers and trip attendants may sometimes not disclose Remittances to customs authorities, thereby defying to their duties under (i) the NBS Unilateral Transfers Decision, and (ii) the AML Law. As a consideration for the risks they run, such persons charge a commission to the senders of Recipients (or / (possibly) and the recipients).

The informal method of transferring Remittances through bus drivers or trip attendants could prove resistant to the recent changes of the Forex Law, since the persons involved have unambiguous reporting duties only for CSD amounts exceeding the counter value of EUR 5,000, and foreign cash in the amount being the balance of EUR 15,000 and CSD brought into the country in the same instance.

Further, under the rigid interpretation of the NBS Unilateral Transfers Decision, nonresidents are presently not required to disclose the amounts in excess of those

\textsuperscript{46} Forex Law, Article 44.
\textsuperscript{47} idem, Article 48.
\textsuperscript{48} AML Law, Article 4.
imposed by the AML Law. As argued above, the bus drivers and trip attendants are usually Serbian residents.

However, the bus lines destined further, and only transiting through Serbia could become an avenue for transferring Remittances, as they make stops in major Serbian cities. Such trips are presumably attended by Serbian nonresidents, and they could benefit from the mentioned impreciseness of their reporting duties for money laundering prevention purposes.

2.2.2 Postal services

It is not unprecedented that a piece of Serbian legislation provides for a potential of a legal scheme or action, and that such a potential is blocked by another piece of legislation. Sometimes that is an intentional discrepancy aimed to acknowledge that a legal action or a scheme is desirable, albeit not being possible at the time. In such a case, the legislator opts to have a ready Law that needs not be changed when the pertinent circumstances change. We note that the Forex Law is a text that the Serbian legislator adopts with previous consultations with the International Monetary Fund. The below text ought to be viewed in observance of that.

The Postal Law contains provisions regulating postal services as an avenue to carry documents entitling the recipient to receive a sum of money - such as cheques, postal orders, etc. (hereinafter generally referred as “Money Instruments”).

The Serbian public postal company is the only postal carrier that is entitled to handle Money Instruments, while other postal service carriers, such as courier companies, are not permitted to do so. The Postal Law stipulates that Money Instruments may be carried in both local and cross-border postal traffic. Such provision must be viewed in relation with the Forex Law principle stating that cross-border payment operations must be made exclusively through Serbian banks.

The Forex Law claims to be the only law regulating cross-border transfers and it seems that the authority of the Forex Law to regulate cross-border payments is not contested, even by the only beneficiary of an opposite interpretation (i.e. the Serbian public postal company).

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49 Postal Law, Article 13.
50 idem, Article 15.
51 Here conflicting provisions could be reconciled in application of two interpretive rules: lex specialis derogat legi generali (in which case the Forex Law would prevail), and lex posteriori derogat legi priori (in which case the Forex Law would also prevail).
In fact, the subsidiary of the Serbian public postal company, the Postal Savings Bank is licensed for cross-border operations and further acts as an agent of Western Union, and in these two capacities utilizes the network of post offices.

To our knowledge, the Serbian public postal company does not offer any other service related to Remittances.

Forex Law and Postal Law are in variance on the issue of permissibility that the Postal Company operates transfer of Remittances. The interested parties presently adhere to the provisions of the Forex Law, and the Postal Company does not operate transfer of Remittances. The theoretical scheme is presented for sake of comprehensive presentation of the Serbian legislation relevant to possible Remittance channels. It does not seem to be presently used.

3. **PROCESSING OF REMITTANCES**

Under this chapter we examine:
- accessibility of the Remittance transfer services to the general public;
- control of cross-border operations;
- risks of misuse of Remittances for illegal causes – money laundering prevention rules;
- reporting by the Remittance recipients or banks to the NBS.

3.1 **Accessibility of the Remittance transfer services to general public**

Given that the Family Transfers are processed exclusively by Serbian banks, processing of Family Transfers is carried out in a fairly uniform manner.

The fees charged by banks vary, and the NBS reportedly\(^\text{52}\) is in the process of collecting information which will be disclosed to the general public on terms offered by all of the banks engaged in cross-border operations.

Fees charged for service of Western Union are higher than those charged by banks, due to the value added service of prompt transfer.

\(^{52}\) Per the data published on its website in June 2006.
Chapter 3.1.1 examines opening of bank accounts, which are necessary for receipt of Remittances when the transfer is made by a Serbian bank. Chapter 3.1.2 examines consumer protection rules for bank accounts.

### 3.1.1 Opening of bank accounts

(a) **Requirements to open an account**

Residents can open bank accounts in Serbia, both in CSD and in foreign currency.

The Decision on Conditions for Opening and Manner of Maintaining Foreign Currency Accounts of Residents regulates foreign currency accounts of residents. The NBS is obliged to adopt a decision that will pertain to accounts of nonresidents within six months as of the coming into the effect of the Forex Law, i.e. by 27 January 2007.

Foreign currency accounts are maintained in the individuals' name. Anonymous accounts are not permitted in Serbia in accordance with the NBS Decision on Minimal Content of Know Your Client Procedure. Such accounts may be opened as demand or term accounts, with or without the designation of the purpose. A written agreement on opening and maintaining of accounts shall set out mutual rights and obligations of banks and clients. The opening of an account must be demanded by the client in writing.

An agreement must stipulate the duty of the client to inform the bank about the changes of its residential status. An agreement on opening and maintaining of special purpose account requires disclosure of the kind and purpose of the deposit as well as the information on depositor.

The identity and residential status of individuals are determined per appropriate personal documents. An account may also be opened on the basis of a power of attorney notarized by the competent body provided it is not older than six months.

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53. Which is not necessary under a Western Union backed transfer.
55. as detailed under Chapter 3.1.1 (c)
56. Decision on Conditions for Opening and Manner of Maintaining Foreign Currency Accounts of Residents, Article 2.
57. idem, Article 3.
58. idem, Article 8.
At occasions of opening of accounts, the account holding banks must deploy actions set under the AML Law. When the client is an individual, the banks must record general data of such individual, as evidenced by his/her personal identity documents, data on his/her employment, reasons for opening of the account, reasons for changing the bank (if applicable and if possible), note on activities of the client and date of opening of account. If a risk factor is found to be attached to a client, banks must keep such data. Risk factors are determined under “know your client” rules, presented in chapter 3.1.1 (c) below.

Foreign currency accounts can only be denominated in foreign currencies admitted to Serbian foreign currency market (i.e. AUD, CAD, DKK, EUR, JPY, KWD, NOK, SEK, CHF, GBP and USD)\(^{59}\). In the event that the client deposits more than one foreign currency in the account the bank shall segregate each type of foreign currency. In practice, the opening and maintenance of current accounts are usually free of charge and often accompanied with various other banking service offerings.

(b) Disposal with funds

Under the Forex Law, withdrawals from accounts by a nonresident are not permitted before all tax, customs and other duties owed to the state had been settled and substantiated to the account holding bank, while the withdrawals from savings account are made freely\(^{60}\). The nonresident must furnish the bank with the data that evidence the payment of taxes and other duties and in many cases the appointment of a tax proxy is necessary. The account holding bank will decline to make a payment abroad prior to receiving such information under a form rendered by the competent tax administration.

Agreements on opening of accounts shall stipulate the currency of withdrawals and the interest. There are no impediments that such an agreement stipulates that the withdrawals are in CSD upon conversion at a rate favorable for the client. As a note, the previous pertinent NBS decision had regulated that the account holding bank’s buy rate shall apply in such cases. The banks autonomously form the exchange rates they apply (with the obligation to inform the NBS)\(^{61}\). In practice, such exchange rates are at times higher than the official exchange rate formed at inter-bank foreign currency market. Given that the proceeds of a Remittance transfer are usually spent for goods and services payable in CSD\(^{62}\), the Remittances recipients could offset

\(^{59}\) Decision on Conditions for Opening and Manner of Maintaining Foreign Currency Accounts of Residents, Article 3.

\(^{60}\) Forex Law Article 29.

\(^{61}\) Decision on Conditions and Manner of Operations of Foreign Currency Market, Article 18.

\(^{62}\) In accordance with the Forex Law, most local operations must be made in CSD. Exceptions are laid out in exhaustive manner, and include transactions related to real estate and certain other transactions that by nature involve foreign currency (such as trade with securities or repayment of a loan denominated in a foreign currency or collection of insurance payouts from a nonresident). Resultantly, withdrawals are often made in CSD.
some of the costs they (or the senders) incurred for the transfer if the conversion rate applied is favorable.

Interest rates are usually variable and depend on the currency and amount of deposit as well as the deposit term. Serbian banks sometimes offer very attractive interest rates. The banks are induced into such practice with the NBS measures that encourage lending out of domestic saving (whereby high lending margins are obtainable in Serbia).

(c) **Know your customer rule**

The NBS has adopted the Decision on Minimal Content of Know Your Client Procedure (“Know Your Client Decision”). The Know Your Client Decision prescribes rules on determination of acceptability of the client, the manner of identification of the client, supervision over the accounts and transactions of the client, the risk management, and employees’ education.

The Know Your Client Decision refers to the FATF list of uncooperative countries and such list of risk factors that may be made by the Serbian Money Laundering Prevention Committee. Banks are in liberty to determine for internal use other countries which have a risk factor attached. The fact that a prospective client is a nonresident calls for precaution in any event. Other risk factors include:

- instances when it appears that the client is acting as an intermediary in a transaction chain;
- instances when a transaction takes an unusual course;
- instances when the client is a publicly exposed person and when he/she holds a public post.

The Know Your Client Decision refers to the AML Law for prescribing the manner of identification of a client. Anonymous accounts are expressly prohibited. When a proxy holder purports to set up an account in the name of a third party, the closeness of the relations between the proxy holder and the third party must be scrutinized.

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63 e.g. under the Decision on Mandatory Reserves with the National Bank of Serbia.
64 The requirement that the banks have in place procedures that require more extensive due diligence for higher risk customers is an action that was recommended by the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (Moneyval). For further information see:
65 The requirement that the banks create special policies for handling banking facilities with politically exposed persons is an action that was recommended by the Moneyval (ref. footnote 64 above).
It ought to be noted that the banks are obliged to adopt in-house procedures in accordance with the Know Your Client Decision by 1 November 2006.

In accordance with the Decision on “Conditions and Manner of Opening, Maintaining and Closing of Bank Accounts”, banks are obliged to keep safe data on daily turnover and statement in bookkeeping records for ten years, and analytical records and bookkeeping documents used for entries into these records for five years after the end of the relevant year. Similarly, the Decision on Conditions for Opening and Manner of Maintaining Foreign Currency Accounts of Residents requires that the banks keep safe the documentation on opening of accounts for ten years.

The NBS Know Your Client Decision is a novelty under Serbian Law. Previously to its adoption, banks were encouraged to develop in-house procedures, however no clear guidelines were set.

The NBS Know Your Client Decision seems to be a coherent framework addressing AML issues in the banking sector. At the time of this Report, the banks are still creating their in-house procedures, thus it is too early to assess the implementation of this frame in practice. It is reasonable to expect that the NBS will scrutinize such implementation in due course.

3.1.2 Consumer Protection Rules

The Consumer Protection Law and the Code of Obligations provide certain general consumers’ rights applicable to the processing of Remittances. Such consumers’ rights include the right to have access to information necessary for making a proper choice, the right to be acquainted with the price in advance of the transaction, the right to be acquainted with the terms and conditions the service provider purports to apply to the transaction, the right to be offered services on equal terms upon notification on the current price of services, the right to benefit in interpretation of ambiguous terms of predetermined contracts, etc.

The NBS has assisted consumer protection by imposing duties to the banks to reveal effective interest rates on loans and deposits alongside nominal rates, and duties on the banks and exchange offices to distinctively announce the exchange rate they apply and the commission, if any, and to further disclose to the client the exact amount of a transaction prior to its closing.

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66 Decision on Conditions and Manner of Opening, Maintaining and Closing of Bank Accounts, Article 22.
67 Decision on Unified Manner of Calculation and Publication of Effective Interest Rate on Loans and Deposits, Article 6.
Save from the inability to setup a bank account denominated in a currency not admitted to the Serbian foreign currency market, we have not identified any bottlenecks regarding the accessibility of Remittances services to their intended recipients.

A possible bottleneck in parts of Serbia is the low number of bank outlets and especially the ATMs. The situation is improving slightly with the penetration of the foreign banks into the Serbian banking market.

The low number of bank outlets and ATMs partially results from the fact that the ratio between fixed assets and banks’ capital is capped. However, the cap is not set at a low amount, rather the banks in Serbia have, on average, moderate equity capital.

3.2 **Control of cross-border operations**

The foreign exchange control is enforced by the Foreign Currency Inspectorate created within the Serbian Ministry of Finance\(^{68}\).

Legal entities and entrepreneurs are subject to far greater scrutiny than individuals. The Decree on “Manner of Performance of Control of Foreign Currency Operations of Residents and Nonresidents” does not require individuals to submit documentation to the Foreign Currency Inspectorate. Nonetheless, the Foreign Currency Inspectorate has the authority to temporarily seize the financial assets when suspecting a misdemeanor\(^{69}\) and the authority to process misdemeanors prescribed under the Forex Law and the examined Decree\(^{70}\).

3.3 **Risks of misuse of Remittances for illegal causes – money laundering prevention rules**

(a) **Obligations under money laundering prevention measures**

Service providers subject to the AML Law include, inter alia, banks and other financial organizations - i.e. savings banks, savings and credit organizations and savings and credit cooperatives - exchange offices, postal and telecommunication enterprises, as well as other enterprises and cooperatives\(^{71}\). Most of these financial

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\(^{68}\) Decree on Manner of Performance of Control of Foreign Currency Operations of Residents and Nonresidents, Article 2.

\(^{69}\) idem, Article 6.

\(^{70}\) Idem, Article 6. Please note that the Decree does not envisage any misdemeanors of the individuals.

\(^{71}\) Money Laundering Prevention Law, Article 4.
institutions are subject to regulation and supervision of the NBS which ensures their regulatory compliance.

Individuals carrying out organizations of trips are included among persons required to undertake measures preventing money laundering, but the AML Law does not prescribe any misdemeanors in case of breach to physical persons, hence these individuals are not running serious risks for possible incompliance.

The 2005 AML Law has substantially enhanced the list of the persons required to take measures preventing money laundering. Such list now includes also individuals. This extension to the list will be complete when such individuals are made subject to penalty provision of the AML Law.

The AML Law creates a general obligation on service providers to:
- identify their clients, their client's proxy or representative;
- collect other data which are relevant for the detection and prevention of money laundering.

Data must be collected at occasions of:
- opening of an account or establishing other forms of business cooperation with the customer;
- performance of any transaction (cash or non-cash) or several connected transactions with the total sum amounting to or exceeding EUR 15,000 in CSD counter value;
- performance of transactions based on life insurances (when the premium rates exceed EUR 1,000 annually or EUR 2,500 in case of once-off payments);
- performance of transactions based on games of chance (payments and withdrawals exceeding EUR 1,000);
- performance of any transaction (cash or non-cash) regardless of the value of transaction if there are reasons to suspect money laundering with regard to a transaction or a client.

Beyond such extent, the AML Law does not introduce obligations on service providers to pay special attention or to trace small wire transfers or the originators of the same.

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72 idem, Article 4.
73 idem, Article 6.
74 The requirement that the service providers report suspicious transactions is an action that was recommended by the Moneyval (ref. footnote 64 above).
If any sign of money laundering arises, service providers are obliged to report the Money Laundering Committee about the transactions at the latest within three days after the transaction - or even before the transaction is effected, in case of transactions (both cash and non-cash) or persons suspected to be related to money laundering\(^75\).

The AML Law instructs service providers to keep safe all necessary records on clients\(^76\), transactions made and other documentation related to the opening of accounts, establishing business cooperation, as well as of effecting a transaction or of a customer for at least five years after the transaction is effected or business cooperation terminated\(^77\).

In addition, the data on cross border transfer of cash, foreign currency, cheques and securities and movement of precious metals and precious stones should be kept by the competent customs authority for at least five years after the cross-border transfer\(^78\).

(b) **Methodology for performance of AML duties**

In July 2006, The Ministry of Finance of Republic of Serbia has adopted the Rules on Methodology, Obligations and Actions for Implementing Tasks in accordance with Money Laundering Prevention Law. These Rules, inter alia:

- require service providers subject to money laundering prevention measures to render annual reports on measures taken;
- require service providers to submit to the Money Laundering Prevention Committee the persons charged with deploying of measures;
- list the countries that do not comply with the money laundering prevention standards which include African countries (save for Egypt, South African Republic and Mauritius), Asian countries (save for Israel, Japan, Republic of Korea, Singapore, Thailand, Georgia, Indonesia, Bahrain, Lebanon, Malaysia, Turkey, Qatar, and UAE) and Moldavia\(^79\).

\(^{75}\) idem, Article 10.

\(^{76}\) The requirement that the service providers keep safe the data on both the parties making a transaction and the transaction is an action that was recommended by the Moneyval (ref. footnote 64 above).

\(^{77}\) idem, Article 28.

\(^{78}\) idem, Article 33.

\(^{79}\) The requirement that the service providers are provided with information on countries that should be considered non-cooperative in an AML/CFT context is an action that was recommended by the Moneyval (ref. footnote 64 above). It remains to be seen how regularly the list will be updated.
(c) **Duties imposed on persons making cross border transfers**

The Forex Law does not contain provisions prescribing the thresholds for reporting to the Money Laundering Prevention Committee.

The NBS Unilateral Transfers Decision requires that the residents report the excess of foreign currency cash brought into the country over the amounts prescribed under the AML Law. At the same time, the residents and nonresidents must abide by the maximum amount of CSD they can bring into the country (the counter value of EUR 5,000). The NBS appears to interpret the NBS Unilateral Transfers Decision in the manner requiring the nonresidents to report to the customs authorities the amount of the foreign cash in excess of EUR 5,000. In turn, the customs authorities should report to the Money Laundering Prevention Committee when such amount exceeds EUR 15,000, the amount set under the AML Law.

The AML Law refers back to the Forex Law for the determination of cash permitted to be carried into and taken out of Serbia. The amount of EUR 15,000 appears as an amount unreservedly triggering reporting duties under the AML Law. Chapter 3.1.3 examines the ambiguities when lesser amounts are involved.

The Forex Law and the Antimonopoly Law contain cross references for determination of certain reporting duties. In such circumstances, only EUR 15,000 appears as an amount unreservedly triggering reporting duties under the AML Law, while such duty as it concerns lesser amounts is not clearly set.

(d) **Cooperation between the customs authorities and the Money Laundering Prevention Committee**

The competent customs authorities are obliged, no later than three days after such transfers, the Money Laundering Prevention Committee with the data on each cross-border transfer of cash, foreign currency, cheques, securities, exceeding the threshold as prescribed by regulations on cross-border physical transfer of CSD, foreign currency, cheques and securities.\(^{80}\)

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\(^{80}\) idem, Article 8.
(e) **Fines for in compliance**

The AML Law prescribes sanctions against service providers—both legal entities and entrepreneurs—for breach of the duties imposed by the law. The Law does not prescribe misdemeanors against the individuals however.

Some misdemeanors found under the Forex Law\(^81\) prescribe sanctions against individuals for breach of anti-money laundering related duties, but the threatened fines do not seem commensurate with the seriousness of the misdemeanor.

Finally, money laundering is a criminal act under the Penal Code\(^82\), punishable with up to 10 years imprisonment.

(f) **Recourses in criminal procedures**

Both the money laundering and terrorism financing\(^83\) are criminal acts punishable by the Serbian Penal Code with imprisonment up to 10 years.

Under the Serbian Law, it is possible to seize instruments used for a crime or the proceeds thereof. However, provisions regulating such seizure were criticized as too vague\(^84\). The Law on Criminal Procedure, effective as of July 1, 2007, expressly states that money, be it cash or money deposited on bank accounts can be seized on suspect that a criminal act involving such money is underway.

(g) **FATF compliance**

The AML Law was proclaimed by its promoter to be accordant with the Forty Recommendations of the Financial Action Task Force and Eight Special Recommendations on financing terrorism\(^85\).

When examined against them, the Money Laundering Prevention Law appears broadly consistent with the most relevant FATF recommendations for Remittance providers that concern customer due diligence, including identifying and verifying

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\(^81\) please refer to Chapter 2.1.3 for more details.

\(^82\) Penal Code, Article 231.

\(^83\) The requirement that terrorism financing is prescribed as a criminal act is an action that was recommended by the Moneyval (ref. footnote 64 above).

\(^84\) The requirement that a law permits that bank accounts are seized is an action that was recommended by the Moneyval (ref. footnote 64 above).

\(^85\) This assertion was made in the text of the law when passed to the Parliament. The accompanying texts are not published in the Official Herald alongside the law, and this assertion does not have authority of a law.
the identity of their customers using reliable source documents or information, identifying the beneficial owner of each transaction, obtaining information on the purpose and intended nature of the business relationship and record keeping and the reporting of suspicious transactions.

<table>
<thead>
<tr>
<th>Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (Moneyval) of European Committee on Crime Problems has audited the Serbian legal system to observe the standards and codes for the FATF Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing of Terrorism.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under a report of January 2005, a number of issues were raised and specific recommendations were made by the Moneyval. Subsequent to Moneyval report, Serbian Law has changed substantially. The recommendations of the Moneyval were largely complied with.</td>
</tr>
</tbody>
</table>

(h) **Note on the state of financial sector in relation to AML issues**

Until May 2006, Serbia formed a part of the State Union of Serbia and Montenegro. The member states have drafted an action plan towards harmonization of their respective economical systems with the ultimate objection of facilitation of EU accession talks. Some of the now standalone objectives of Serbia may be deduced from the mentioned action plan:

- in banking sector to comply with the Basel Committee and EU principles;
- in insurance sector to comply with the regulations and principles reigning in EU;
- in payment operations to be regulated within the frame of Article 8 of the Statutes of the International Monetary Fund.

Serbia has covenanted to accord its legal system with the standards of the EU. Serbian parliament has adopted the Resolution on Accession to EU. As a result, new Serbian regulations undergo a two-tier process of verification of their conformity with that of EU, namely:

- The Rules of Operations of the Government of the Republic of Serbia\(^{86}\) prescribe that the entity preparing the draft of a law must obtain the opinion of the European Union Accession Bureau, when the subject matter requires accordance with the regulations of the European Union;
- The Rules of Operations of the National Assembly of Republic of Serbia\(^{87}\) which prescribe that the promoter of a law shall, as a rule, be obliged to state

\(^{87}\) (“Official Herald of RoS” no. 56/2005)
under the rationale of the text of the law the basis thereof under the European Union legislative and that the Board for European Integrations formed with the Parliament shall examine the proposal of a law vis-à-vis its accordance with the rules of the European Union and the Council of Europe.

A number of laws that tackle the matter examined hereunder have been adopted in the process that adhered to the mentioned process of verification of their conformity with that of EU, such as the Forex Law, the Banking Law, the Insurance Law, the AML Law, the Penal Code, the Law on Criminal Procedure, etc.

With that in mind, it seems that the full implementation of the AML Law should be made possible with such recent changes of the Serbian legislation. In a broader sense, Serbia awaits the effectiveness of the new Capital Markets Law, which will further the reform of the financial sector.

Even in the early days of the applicability of the mentioned legislation, it could be noted that the public awareness of the issues specific to money laundering combat is on the rise. As an example, the evidence of clean record of AML Law compliance is a part of the fit and proper test for managers of financial institutions.

Further, the supervision of the most important financial sector participants (banks, insurance companies, financial leasing companies) has in the recent past been conferred to the NBS. In view of the absence of possibilities to introduce alternative Remittance providers, it appears that the NBS scrutinizes the operations of all participants engaged in the sector examined hereunder.

3.4 **Reporting by the Remittance recipients or banks to the NBS**

A number of provisions of the Forex Law and the accompanying regulations prescribe reporting duties to the Remittance recipients or Remittance processing services.

3.4.1 **Reporting for balance of payments forecasts**

Pursuant to Article 37 of the Forex Law, the NBS may require residents and nonresidents to report on cross border operations they are involved in.

In accordance with this provision, the NBS has adopted the Decision on “Duty of Reporting of Cross Border Operations”. Under this Decision, the NBS prescribes
reporting duties about specified current and capital payments, and “other affairs when that is necessary for creation of balance of payments”.  

The Decision’s Implementing Rules presently state a number of other cross border affairs subject to reporting to the NBS, but not Remittances. The NBS has the authority and discretion to include at any time Remittances to the scrutinized categories of current payments, upon assessing that it is necessary for the creation of balance of payments forecasts.

According to the Forex Law, the NBS uses the information collected on the basis of Article 37 of the Forex Law for the creation of forecasts on the balance of payments and to underpin and monitor the monetary policy of Serbia.

3.4.2 **Reporting for statistical purposes**

The Decision on “Conditions for and Manner of Payment, Collection and Transfer per Current and Capital Affairs in Foreign Currency and Dinars” prescribes that banks are required to provide to the NBS the data on processed payments, collections and transfers per current and capital payments.

It is apparent that this Decision pertains to current and capital payments without exceptions, and therefore includes Remittances as well.

The Decision’s Implementing Rules prescribe that issuers of orders and beneficiaries of payments must provide banks with information on orders and payments and that banks must disclose it to the NBS. In particular, banks are required to submit regularly to the NBS information on the processed collection orders. The examined Rules prescribe benchmarks which ought to add to the accuracy of reporting. Banks must separately deliver to the NBS the statement of balance and transactions by currencies for each account, in original currencies and on daily basis for the accounts where daily reporting is required.

Information on the processed collection orders must include, *inter alia*, the bank’s name, its identification number, the beneficiary name and address, its identification number.

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88 Decision on Duty of Reporting of Cross Border Operations, Article 1.
89 Forex Law, Article 37.
90 Banks are required to report within five days after the expiry of the first and second ten-day-period of a month, and within twelve days after the expiry of the third ten day period of a month
91 e.g. the balance of specified accounts as at the last day of a month must match the data shown in the banks’ accounting reports.
92 Decision on Conditions for and Manner of Payment, Collection and Transfer per Current and Capital Affairs in Foreign Currency and Dinars Implementing Rules, Article 33
number, the payment instrument (as specified in the payment instrument code list), the order number (as recorded by the bank), the SWIFT message sender bank name and/or SWIFT address ordering party name and address country, the currency code, the amount in foreign currency, the value date of the received cover, the entries to the debit of account and to the credit of account, the place and the date of the issued order, the reference ordinal number, the reference code as specified code list, etc.  

Banks have to report separately on each processed cross border order. Only exceptionally, banks may report to the NBS the aggregate state of certain accounts. 

According to the Decision on “Conditions for and Manner of Payment, Collection and Transfer per Current and Capital Affairs in Foreign Currency and Dinars”, the data on processed payments, collections and transfers per current and capital payments are used by the NBS for statistical purposes.

3.4.3 Use of information collected

As mentioned above – see chapters 3.4.1 and 3.4.2 - the data collected by the NBS is used for statistic purposes or purposes of creation of balance of payments forecasts.

However the NBS must abide by a number of other provisions, which refer to information.

Article 45 of the Forex Law provides that the NBS is competent to perform control of foreign currency operations of Serbian banks and other market participants. As a controlling authority, the NBS must cooperate with other controlling authorities, namely to share available data, findings and information. Such duty of cooperation benefits to the Foreign Currency Inspectorate, the authority competent to process misdemeanors prescribed under the Forex Law.

Under Article 65 of the Law on National Bank, the NBS cooperates with foreign institutions responsible for banking supervision and domestic bodies and institutions responsible for supervision in the field of financial transactions, with the aim of improvement of the supervisory functions of the NBS. The NBS may exchange data so gathered with foreign and domestic bodies and institutions.

93 idem, Article 32.
94 idem, Articles 32 and 33.
95 Decision on Conditions for and Manner of Payment, Collection and Transfer per Current and Capital Affairs in Foreign Currency and Dinars, Article 12.
96 Forex Law, Article 49.
Under Article 30 of the AML Law, submission of data to the Money Laundering Prevention Committee does not constitute a breach of preservation of an official secret.

Under Article 7 the Law on Tax Procedure and Tax Administration, disclosure of a document, fact or data during the course of a tax procedure, examination of a misdemeanor or a judicial process does not constitute breach of duty of preservation of tax related secrecy. Any person, including the NBS, is obliged to disclose to the Tax Administration all information available to it necessary for the determination of relevant facts.

We conclude that the regulations clearly prescribe to the NBS the scope of examination of the data disclosed to it. However, the NBS must observe its duties of cooperation with other state authorities. It seems however more plausible that the NBS would be approached to disclose data on cross border operations of legal entities and entrepreneurs, given that such entities run risk to face more misdemeanors (and more severe fines) than individuals do.

| No strict mechanisms securing that the information collected in respect of Remittances will be used only for statistical and forecasting purposes are set. |
| Such situation is however not likely to be perceived as an open issue by the Serbian authorities. |

97 Law on Tax Procedure and Tax Administration, Article 45. The following may be used as evidence in the tax procedure: tax returns, tax balance sheets, business books and records, bookkeeping statements, business documentation and other documents, information at the disposal of the Tax Administration, gathered from the taxpayer or third parties, witness’ statements, expert findings, investigations and any other means by which the facts can be established.
4. **TAX TREATMENT OF REMITTANCES**

The two categories recognized in the definition of Remittances (i.e. Physical Transfers and Family Transfers), due to their different legal nature, have different tax treatments.

4.1 **Physical Transfers**

Gratuitous payments and payments based on inheritance are subject to the inheritance and gift tax under the Property Tax Law.

(a) **Tax Liability**

The tax liability for gifts is triggered on the date of the execution of an agreement (if applicable) or on the date on which the gift is made\(^98\). In case of inheritance tax, the tax liability runs from the effective date of the inheritance ruling.

The taxable assets when granted as a gift or when inherited include cash, savings accounts, demand deposits as well as some highly liquid assets (pecuniary receivables, securities, shares in companies, IP rights, etc.)\(^99\).

(b) **Tax Incidence**

The person liable to pay the tax on inheritance or a gift is the recipient thereof\(^100\).

(c) **Taxable amount**

The taxable amount is the aggregate of the fair market values of all gifts made by the same benefactor to the same beneficiary. From the tax liability determined by reference to such taxable amount, any tax previously paid on the basis of the gifts used for computation of the tax base is then deducted\(^101\).

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\(^{98}\) Property Tax Law, Article 17.  
\(^{99}\) idem, Article 14.  
\(^{100}\) idem, Article 15.  
\(^{101}\) idem, Article 22.
(d) **Tax exemptions**

The Property Tax Law provides for numerous exemptions from tax duties on gifts and inheritances.

The beneficiaries comprising the first heritage order of the donor/benefactor and the spouse of the donor/benefactor are fully exempted from the tax on gifts and inheritances\(^\text{102}\). The first heritage order comprises the donor/benefactor’s descendants (primarily his/her sons and daughters, who may however be represented by their respective sons and daughters if unable to be made heirs), and his/her spouse\(^\text{103}\). The Property Tax Law nonetheless expressly lists the spouse among the exempted benefactors because the spouse can under certain conditions be moved to the second heritage order. The beneficiaries comprising the second heritage order of the donor/benefactor (his/her parents and their respective descendants) are subject to tax on gifts and inheritances, but are levied the tax at a lesser rate than the other non-exempted beneficiaries, as shown below\(^\text{104}\).

Another tax exemption is prescribed in the event that the object of a gift bestowal is an asset (inclusive of cash) valued less than CSD 9,000 (approx. EUR 105)\(^\text{105}\). It is imaginable that one might grant a sequence of gifts below the mentioned threshold in order to avoid payment of tax. In itself, the Property Tax Law does not contain provision which prevent such attempts. However the Law on Tax Procedure and Tax Administration prescribes that the tax incidences are viewed in their economical essence, and that the actual affair contemplated by parties shall serve as the taxable event\(^\text{106}\). Therefore, a sequence of gifts falling below the mentioned threshold could be viewed as one and the same gift and be made liable to taxes.

(e) **Tax rates**

The rates of inheritance and gift tax are progressive. The general rate for gift and inheritance tax is 5\%\(^\text{107}\). The beneficiaries making up the second heritage order owe tax at the rate of 3\% for the gift or inherited asset value of up to CSD 300,000 (approx. EUR 3,450), and 5\% for the excess value of the asset.

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\(^{102}\) idem, Article 21.

\(^{103}\) Inheritance Law, Article 9.

\(^{104}\) idem, Article 21.

\(^{105}\) idem, Article 19.

\(^{106}\) Law on Tax Procedure and Tax Administration, Article 9.

\(^{107}\) Property Tax Law, Article 19.
(f) **Tax reporting**

The Property Tax Law prescribes that the bestowal of a gift or other taxable event is to be reported within 10 days as of its occurrence\(^{108}\).

Tax reporting is required also in cases where the conditions for tax exemption are met, however no clear repercussions of a failure to act so exist. Fines under misdemeanors are imposed in relation with the tax owed\(^{109}\), and in practice a failure to report on a tax exempted event would not yield any fine. Similarly, tax evasion is a criminal offence under the Penal Code\(^{110}\), but it presupposes that some tax duties were intended to be circumvented.

Reporting when no tax is due is nonetheless sensible even in the cases where the conditions for tax exemption are met, for the following reasons:

- the recipient will be able to justify its enrichment\(^{111}\) in order to enhance his/her creditworthiness;
- the recipient will be able to substantiate that the enrichment is not generated by an event taxable at higher rate\(^{112}\).

In Serbia creditworthiness is expressed in computation of his/her net incomes and prescribed ratios.

Remittances aid their recipients’ incomes. However, since the Remittances can also be subject to taxation, it appears necessary to examine the relations between the transferor and the recipient thereof in each specific case to determine whether a Remittance or a Remittance after taxes enhances creditworthiness.

Nonetheless, in practice it seems safe to assume that most Remittances are transferred between persons that are related in the manner exempting them, at least partially, from taxes on gifts.

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\(^{108}\) *idem*, Article 35.

\(^{109}\) Law on Tax Administration and the Tax Procedure, Article 180.

\(^{110}\) Penal Code, Article 229.

\(^{111}\) In some events, the confirmation from the tax office is a prerequisite for further actions (e.g. change of ownership in the land registry when an immovable asset is bestowed as a gift)

\(^{112}\) In July 2006, the Ministry of Finance has passed the Rules on Manner and Procedure of Cross Assessment Determination of Individual Income Tax Base on Unreported Incomes
4.2 **Family Transfers**

(a) **Tax Liability**

This chapter examines the tax regime of payments made by nonresident individuals to resident family members and made towards their livelihood. Family Law states that contributing towards a family’s livelihood is the duty of family members.

Payments made towards livelihood of a family are not listed as taxable income under the Incomes Tax Law, as they are not received by the individual but rather by the family. It appears as necessary that the recipient accepting such funds intends to them to the benefit of the household he/she shares with the transferor. In such a case, the accruals so generated belong to the household and not the recipient and could not be considered as the recipient’s income by nature; triggering tax liabilities.

(b) **Qualification of family relations**

The qualification of family relations between residents and nonresidents included in Family Transfers must be examined in order to assess whether the above assessment applies (namely whether the recipients can claim that the Remittances benefit to the household they share with the transferors, rather than to themselves personally).

The Family Law defines “family members” as cognates, in-law relatives and adopted relatives of spouses who live together. The Family Law further requires that the spouses form a “unity of life”. Finally, the Incomes Tax Law defines a household as a unity of life, entrepreneurship and expenditure of accrued incomes.

There is a discrepancy between the requirement of “unity of life” for sake of definition of family members and the provision of the Forex Law defining residents and nonresidents Namely, the Forex Law considers individuals having place of residence in Serbia, but staying temporarily abroad, as residents provided that the temporary stay abroad lasts for less than one year. The transfers examined under this Report - made by a nonresident individual to a resident individual - are therefore those made by individuals residing abroad for more than one year. This period can prejudice the sustainability of concepts of “unity of life” required by the Family Law and the Incomes Tax Law.

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The Incomes Tax Law has a residual category of the payment that is taxable under that law: “discharge of moneys that can be considered by its nature as an income of its recipient”.

Family Law, Article 195.

idem, Article 16.

Incomes Tax Law, Article 10.

Forex Law, Article 2, definition 1.
The Family Law however prescribes in certain events contribution obligations exist even without a unity of life (e.g. when a marriage is dissolved). In such instances, the mentioned discrepancy between the Family Law and the Forex Law is not a problem.

When a Family Transfer is made between the individuals that are related in the manner exempting them, at least partially, from the taxes on gifts (i.e., as examined above, children, spouse, etc.), the above discrepancy does not pose a problem, since the gift, as a residual tax incidence (the tax incidence the tax authorities could claim has occurred) is exempted.

However, the tax authorities could invoke the definition of families under the Family Law and the Incomes Tax Law to rebut that a “unity of life” condition is met, and hence levy taxes when, e.g. one receives Family Transfers from his/her sibling, a transfer that would be liable to taxes (albeit in discounted if made as a gift).

(c) Relevance of volume of Remittances

Finally, the wording used by the Forex Law to describe the examined cross border payments, namely “amounts paid towards livelihood of one’s family” implies a standard has to be set in practice. To that end, it is important that the Family Law prescribes certain frames for determination of such amounts\(^{118}\) (percentages of the contributor’s earnings, benchmarking of contributor’s standard of living, etc.). In addition, the NBS Unilateral Transfers Decision states that the personal transfers to foreign countries\(^{119}\) made by a resident to contribute to sustenance of his/her family abroad must not exceed EUR 8,000 a month. Such amount could be used for setting the standard for the examined payments, taking into account the costs of life in Serbia and, if applicable, special needs of the particular household to which the payments are directed.

Family Transfers are cumbered with discrepant definitions of decisive elements of the transfers under applicable laws.

To avoid different interpretations and, possibly, equivocal views on liability to taxes, the Forex Law could define the term “family” for the sole purpose of interpretation of that law.

\(^{118}\) Family Law, inter alia Article 162.

\(^{119}\) Please note the comment made under Chapter 1 above, namely that only inward personal transfers are presently regulated.
Alternatively, and seemingly more sensible, would be that Family Law expressly acknowledges what appears to be a sociological phenomenon in Serbia, namely that the family links are mostly resistant to the fact that a family member moves to a foreign country and continues supporting the household he/she would otherwise share as a “unity of life”.

5. UTILIZATION OF REMITTANCES – WAYS TO DEVELOP THE ECONOMY

It appears important to examine the role played by Remittances in particular to general creditworthiness, currency risk hedging advantages, accessibility to loans offered at more favorable rates (notably the housing loans) and possibilities to pledge Remittances.

The present state of the Serbian capital market shows catch-up potential. Banks processing Remittances likely observe the commercial potential of such inflows within the context of such “catch-up” potential.

There is also the potential to securitize the Remittances.

5.1 Recognition of commercial potential of Remittances for recipient

5.1.1 Introduction

In the first half of year 2006, the Serbian economy was notably faced with a challenge of suppressing the threatened double digit inflation, whilst preserving economic growth. The ratio of loans approved nurtures the overwhelmingly increasing consumption trend\textsuperscript{120}.

\textsuperscript{120} According to the NBS website, almost 90% of applications for CSD denominated retail loans are approved: (\url{www.nbs.yu}) NBS website, data posted during May 2006.
The NBS has lately taken measures that have not been well received by commercial banks, financial leasing companies, retailers, consumers’ associations and other parties interested to benefit from or take part in the consumption trend. However, there is no reason to suppose that the approach of the NBS will change. We note that in the NBS has recently:

- introduced\textsuperscript{121} risk weighting of 100% to retail loans other than mortgage backed housing loans, which avail a 50% risk weighting (conversely to the previous 50% risk weighting of any mortgage backed retail loan). This change was \textit{mutatis mutandis} reflected in the NBS Provisioning Decision which regulates provisioning for exposure categories\textsuperscript{122};

- increased\textsuperscript{123} the commercial banks’ mandatory reserves to 40% (from the hitherto 38%\textsuperscript{124}) calculated on the base of average daily bookkeeping state of foreign currency assets, and 60% calculated on the base of average daily bookkeeping state of foreign currency liabilities on the basis of the cross border loans\textsuperscript{125};

- introduced\textsuperscript{126} the maximum ratio between the retail loans (with the exception of State backed agriculture expenditure and subsidized housing loans) and the basic capital of the bank at 200%.

The NBS encourages commercial banks to further collateralize their respective exposures towards the retail sector on the basis of the housing loans and in turn approve more of such loans. To this end, the Government has established the National Corporation for Insurance of Housing Loans. In computing its mandatory prudential reserves, commercial banks are entitled to deduct any housing loans on their books that are insured by this Corporation\textsuperscript{127}.

\textsuperscript{121} Under the Decision on Closer Conditions of Application of Articles 26 and 27 of the Law on Banks and other Financial Organizations which solution was maintained under the Decision on Adequacy of Banks’ Capital.
\textsuperscript{122} Please note that the local GAAP is not fully IAS/IFRS compliant.
\textsuperscript{123} Under the Decision on Mandatory Reserves with the National Bank of Serbia.
\textsuperscript{124} Whereby such mandatory reserves amounted to 29% in June 2005.
\textsuperscript{125} Usually taken from their headquarters.
\textsuperscript{126} Under the Decision on According of State of Gross CSD Retail Sector Exposure with Basic Capital of Banks.
\textsuperscript{127} Under the Decision on Mandatory Reserves with the National Bank of Serbia.
5.1.2 Analysis of the legislation

(a) Presentation of provisioning rules

The NBS Decision on “Decision on Classification of Balance Sheet Assets and Off Balance Sheet Items of Banks” (the “Provisioning Decision”) prescribes five categories for classification of banks’ receivables\(^\text{128}\).

The wording of the Provisioning Decision seems somewhat rigid. In particular, the wording does not seem to permit that the receivables from individuals are categorized on the basis of the quality of a loan, but rather instructs the banks to categorize such receivables only on the basis of the creditworthiness of the borrower.

The Provisioning Decision instructs banks\(^\text{129}\) to categorize directly in “E category” (i.e. in practice not eligible)\(^\text{130}\) - 100% provisioned for - all loans granted to individuals (with the exception of housing loans), in the event that either of the following applies:

- the amount of all installments under loans, foreclosed collaterals, 50% of unforeclosed collaterals, financial leasing installments, extended to an individual, falling due in a month (inclusive of interests), surpasses 30% of such individual’s regular net monthly incomes; or

- the amount an individual has paid as a down payment or as a deposit is less than 20% of the approved loan.

The condition under the examined clause is laid out alternatively, which means that either of the conditions trigger E categorization\(^\text{131}\).

Therefore, although the amounts a potential borrower receives as Remittances can be used as down payment or as security deposit, in order to assess such borrower’s creditworthiness on the basis of such Remittances, reference must be made to the

\(^{128}\) With some types of receivables exempted from the categorization. The categories range from A to D, and the provisioning applied ranges between 2% (for A, in some cases only 1%) to 100% (for D).

\(^{129}\) Provisioning Decision, Article 6.

\(^{130}\) In Serbian: D category (as D is the fifth letter of Serbian Alphabet). Prospective categorization in D category in practice renders a borrower as ineligible for a loan. Namely, the banks attempt categorizing individuals in A category in an attempt to improve their lending portfolios often cumbered with poor categorization (on average) of corporate borrowers.

\(^{131}\) We note that a high deposit cannot help a better categorization in the event that one’s monthly earnings are insufficient, but could mitigate the provisioning amount. Namely, if a cash deposit maturing concurrently with the loan repayment date and securing such loan is stipulated, the provisioning base will be reduced by the amount of such deposit.
borrower’s “regular net monthly incomes”, namely to the circumstance whether Remittances can stand as constituents of this category.

The fact that the Provisioning Decision is somewhat ambiguous might encourage some banks to interpret it in the manner enabling lending in border cases. However, many banks seem to be reluctant to liberally interpret the Provisioning Decision as the audit reports could show reservations to border case items.

It seems that the banks approach this matter restrictively. Chapter 6.1.4 assesses the observed practice.

In accordance with the Provisioning Decision, if not categorized as E category pursuant to the above requirement, a receivable from an individual is categorized on the basis of the criteria of (i) “timely settlement of obligations in the previous 12 months” and (ii) “bank’s assessment of capabilities of the debtor or the surety to duly perform its obligations”, which assessment is to be based on specified documentation. Such documentation includes the report of the Credit Bureau, employment record, data on average incomes in the previous 12 months, and appraisal of economical state of the borrower\textsuperscript{132}.

(b) **Currency risk hedging**

The inflation trends have caused that loan agreements usually contain a “currency clause” denoting such loans in a hard currency (usually EUR or CHF), while the installments are payable in CSD. Further, under the Forex Law, housing loans can be granted in a foreign currency as well.

The NBS Provisioning Decision requires that loans denominated in foreign currency and those containing “currency clauses” are categorized in the next less favorable category than the category which would be given to comparable CSD denominated loans in the event that the currency risk the debtor is exposed to is not hedged\textsuperscript{133}. Namely, the dossier of such debtor must include the (implicitly positive) assessment on the impact of inflation risks to such debtor. Remittances, if received recurrently by a borrower are eligible to hedge inflation risks. The ratio between Remittances and CSD denominated incomes of such borrower determine the extent of such benefit.

As an example, salaries in Serbia tend to rise as the inflation devalues the nominal amounts of salaries. As it concerns lower salaries, this is usually a result of

\textsuperscript{132} Provisioning Decision, Articles 6 and 9.
\textsuperscript{133} idem, Article 11.
negotiating the minimum price of work on state or branch level. As it concerns higher salaries, employment contracts sometimes explicitly contain clauses tying salaries to the rise of prices or a hard currency. Persons not having explicit provisions in their employment agreements could use Remittances not only to contribute to the sum of their overall income but also to obtain a positive currency risk assessment.

(c) Rules on financial leasing

The NBS Decision on “Minimum Conditions for Execution of Financial Leasing Contracts and on Manner of Expression of Leasing Consideration and Other Costs Incurred by Execution of a Financial Leasing Contract” contains a provision similar to that presented above: combined monthly costs perceived by an individual lessee under a financial lease agreement may not exceed 30% of “combined regular incomes” of such individual

A recurring trait of one’s incomes is therefore asked also from the applicant for a financial lease financing.

The applicable regulations do not require that Remittances are treated as constituent to creditworthiness of potential borrowers. In such circumstances, banks autonomously decide on whether to take Remittances into consideration, and many banks are reluctant to.

5.1.3 Analysis of the market

We present certain examples of banking services related to the Remittances provided by the surveyed banks or researched the banks’ offerings.

(i) National Corporation for Insurance of Housing Loans

The National Corporation for Insurance of Housing Loans in principle recognizes Remittances in assessing creditworthiness of a prospective housing loan borrower. We note that the loan applications referred to consideration of the Corporation are pre-screened by the commercial bank involved. Hence, the policy of such commercial bank has decisive influence.

The Corporation requires that the Remittances are received on recurrent basis.

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134 Decision on Minimum Conditions for Execution of Financial Leasing Contracts and on Manner of Expression of Leasing Consideration and Other Costs Incurred by Execution of a Financial Leasing Contract, Article 3.
(ii) **HVB banka Srbija i Crna Gora a.d. Beograd**

HVB banka Srbija i Crna Gora a.d. Beograd has launched packages for nonresidents which include opening of a CSD account, a foreign currency account, a foreign currency savings account, issuing authorizations to Serbian residents to draw funds from such accounts.

(iii) **ProCredit Bank a.d. Beograd**

ProCredit Bank a.d. Beograd offers a service of quick Remittances processing involving payment before the coverage of the funds is confirmed.

The process must be made intra group, i.e. the sender must place the order at the desks of specified foreign banks associated with ProCredit Bank a.d. Beograd.

(iv) **Raiffeisen banka a.d. Beograd**

Raiffeisen banka a.d. Beograd offers its lending services with a simplified procedure to all regular recipients of cross border payments.

(v) **Other banks**

A number of surveyed banks decline to merit creditworthiness of recipients of cross border payments.

**Note on the above market examples**

(i) **Creditworthiness**

The above examples illustrate that the creditworthiness of recipients of cross border payments is not uniformly merited.

While some banks regard individuals as their target clients’ groups, other banks are reluctant to lend them funds. The reasons lie in business policies of each bank.

What is common to all banks is the view that Remittances alone can hardly render their recipient an eligible borrower for a large portfolio of lending products due to, on average, high interest rates.

It could be concluded that the Remittances generated incomes have to be recurrent and rather substantial to render their recipients’ respective creditworthiness as sufficient for loans demanded on Serbian market.
(ii) Combined creditworthiness of the Remittance transferor and the Remittance recipient

Many Serbian banks accept that family members (say spouses) take a loan as joint and several debtors.

However, when the spouses include a resident and a nonresident, the banks could decline such requests, due to inability to collect the information required by the NBS for assessing individuals’ creditworthiness for a nonresident (such as the report of the Credit Bureau – see above chapter 5.1.2 (a)).

(iii) Variants of the common processing of Remittances

As seen from the example of HVB banka Srbija i Crna Gora a.d. Beograd above, different approaches to processing of Remittances are sometimes offered.

Namely, a nonresident may set up a foreign currency account in this Serbian bank and authorize a resident to draw funds deposited thereto. Such option further simplifies the Remittance transfers in the sense that the recipient does not need to open a foreign currency account him/herself.

This option is presumably subject to viability under Remittances sender’s jurisdiction (namely whether the opening of accounts abroad is possible). The restrictions for withdrawals from nonresidents’ accounts under the Forex Law - see above chapter 3.1.1 - need to be observed as well.

5.1.4 Conclusions

The phrases “regular net monthly incomes” and “combined regular incomes” – see chapters 5.1.2 above – are somewhat ambiguous, as they do not expressly include Remittances. Nonetheless, their two decisive elements are “net” and “regular”.

As detailed above under chapter 4 Physical Transfer are often characterized with tax exemptions, while Family Transfers are not liable to taxes if used by households.
Therefore, Physical Transfers and Family Transfers could be often accepted by the banks as enrichments in their par values.

Regarding the recurrence, the Family Transfers are likely to have such trait in more cases than the Physical Transfers.

To respond to the above divergent practice, the NBS could either clarify the text of the Provisioning Decision or enact a new text thereof that would permit that the Remittances are used for appraisal of individuals’ creditworthiness in a more explicit fashion. The likelihood of such action does not seem high however, in the context of the policy of restricting of the consumption.

5.2 Other use of Remittances by Remittances’ recipient – pledging the Remittances

Pledging the bank accounts has been made possible recently with the Law on Registered Pledges on Movable Assets. The important trait of this new Law is that the tax administration is not vested anymore with the statutory pledge on a bank account, thus the ranking the parties purport to institute in favor of the creditor can be respected.

A pledge is created by a security agreement between a creditor and a debtor (and possibly third party pledgor) and by registration of such security in the Registry of Pledges.\(^\text{138}\).

A Remittance recipient may use the bank account to collateralize a loan. The NBS Provisioning Decision prescribes that cash deposits securing a loan and maturing concurrently therewith favorably affect the provisioning amount. The NBS Provisioning Decision does not require that banks petition to the Registry of Pledges.

Once deposited on an account, Remittances can be pledged. The process entails registration with the Registry of Pledges which is an inexpensive and swift process.

\(^{138}\) Law on Registered Pledges on Movable Assets, Article 4


5.3 Utilization of Remittances inflow by the banks – possibilities of securitization of Remittances

5.3.1 Introduction

As yet there have been no securitization has occurred in Serbia - not surprising for a country whose capital markets are at an early stage of development. For example, the only bonds listed on the Belgrade Stock Exchange are state issued and the number of unlisted bonds traded on the Belgrade Stock Exchange is in single figures.

5.3.2 Analysis of the legislation

There is no specific legislation on securitization in Serbia and as yet none is planned. The focus of the legislature is on a new capital markets law, a law on investment funds and, possibly, a reform of the Code of Obligations.

This Report considers the possibility of securitization of inward remittances by a bank, which could be understood for the sole purpose of this Report as such sequence of actions taken by a bank to utilize the volume of remittances such bank forecasts will process (pay out to the recipients) during a future period and thus acquire receivables from the corresponding banks processing the receipt of remittances abroad, in the manner enabling such bank to attract, via a special purpose vehicle (the “SPV”) it establishes, external finance against the transfer of the forecasted receivables from the corresponding banks.

There are a number of reasons why as yet there has been no remittance backed securitization deals in Serbia. Some of these are conceptual, while others are more practical. This chapter will tackle some of the major issues, which relate to what are commonly regarded as the fundamentals for a securitization deal, namely a bankruptcy remote SPV, the issue of securities by the SPV (at least in the domestic market) and the possibility of the securitization of future receivables.

(a) Creation of an SPV and Bankruptcy Remoteness

In Serbia it is not possible to create a bankruptcy remote entity. It is possible to use an offshore vehicle, but care must be taken that it does not fall within the category of "other organizational banking forms abroad", for which the prior approval of the NBS has to be sought\(^{139}\). Non-petition covenants in contractual agreements are not enforceable in Serbia. In any event, contractual creditors are not the only entity who can institute insolvency proceedings against an insolvent company. Furthermore

\(^{139}\) Banking Law, Article 90
Serbian insolvency legislation permits creditors and insolvency officers to contest legal actions of an insolvent entity taken within certain periods prior to the insolvency (depending on whether the entity is a bank or a company). These suspect periods could affect the transfer of assets to the SPV.

The Banking Law prescribes limitations on banks’ exposure to equity in other companies. Financial sector companies are exempted, however, and the exposure is capped at a relatively high level.

(b) Issue of bonds

*Domestic issue of bonds.* There are a number of conditions for listing securities on the Belgrade Stock Exchange:140:

- the aggregate amount of the issue should be at least EUR 570,000;
- the issuer must have a minimum paid up share capital of EUR 4,000,000;
- the issuer must have at least 3 years trading records, with accounts audited in accordance with IAS with no negative reservations;
- the securities must have the benefit of a guarantee from a prime bank or an eligible entity unrelated to the issuer itself;
- the securities must have at least 2 years' trading history, or the issuer must have successfully placed three previous issues of the securities; and
- the securities must be sufficiently liquid.

In view of the above, it is likely that asset backed securities will be traded but not listed on the Belgrade Stock Exchange. Private placements are exceptionally permitted, but the Securities’ Committee has announced its intention to subject private placements to increased scrutiny where the purchasers do not accept responsibility for the financial information of the issuer. The Forex Law prescribes restrictions for Serbian nonresidents to acquire Serbian debt.

*Offshore issue of securities.* The Forex Law prescribes restrictions for Serbian residents to acquire foreign debt.

(c) Disposal with assets

It is unclear whether future and contingent receivables can be assigned under Serbian Law. Under the Code of Obligations, a future asset can be the object of a sale.141 The

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140 Rulebook on Listing and Quotation of the Belgrade Stock Exchange (approved by the Securities’ Committee). The conditions are presented for the Second Listing at the Belgrade Stock Exchange, whereby the conditions for the First Listing are more stringent
141 Code of Obligations, Article 458
assignor of a claim, however, if the assignment is made for consideration, is responsible for the existence of the claim at the time of the assignment. The most recent legislation regulating specific types of security interests (such as pledge on movable assets and mortgage) permits that a future asset is used as security. Sales of future receivables are therefore largely dependant on the characterization of such sale (and in particular its object), and require thorough examination. The Forex Law has introduced another restrictive provision that could, if widely interpreted, impede the possibility of securitization of Remittances. Namely, a resident may make payment to, or collect a payment from, a third party (and not the respective claimant or debtor) under a current or a capital affair only on the basis of an agreement executed by all the parties involved.

Despite the mentioned difficulties, remittance backed deals are undoubtedly appealing. Serbia has a large expatriate population resident in the wealthy countries of the EU, Scandinavia, USA, Switzerland, Canada and Australia. These expatriates are almost all regular remittance transferors. It is reasonable to assume that the correspondent banks processing remittances in such countries have, on average, higher credit ratings than the Serbian banks which receive them, making these claims ideal for securitization. This would enable Serbian originators to access a lower cost of funds than is usually available to them, whilst retaining the valuable asset of hard currency denominated cash. However it seems more likely that other flows with more certain future volumes, where the prospective transferees have more leverage against the transferors (such as exporters who must collect the pertinent payments within certain timeframes), may be the first Serbian asset class related to cross border transfers to be securitized.

6. **RECOMMENDATIONS**

This chapter lists the recommendations for change of legislation / introduction of new legislation that could clarify the ambiguous issues highlighted in this Report and create a more efficient commercial utilization of Remittances.

The recommendations are divided according to the time necessary for their implementation. In particular we take into account the enactment process necessary.

\[\text{idem, Article 442}\]
6.1 Recommendations deployable in the short term

6.1.1 Increasing awareness

The Serbian Government and the NBS could organize series of meetings or roundtables gathering the international institutions studying Remittances in Serbia on the one hand, and the Serbian commercial banks and other persons with an interest on the other hand.

6.1.2 Removing ambiguities in regime of “personal transfers”

As mentioned under chapter 1 of this Report, the NBS Unilateral Transfers Decision regulates only outward “personal transfers”. There is a liberalness of the inward “personal transfers”. Nonetheless, since the Forex Law regulates both inward and outward “personal transfers”, the NBS Unilateral Transfers Decision ought to expressly acknowledge that the inward “personal transfers” are only liberal if performed in the permitted manner of transfer, i.e. through a Serbian bank.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>Amendments to the NBS Unilateral Transfers Decision to expressly acknowledge that the inward “personal transfers” only liberal if performed in the permitted manner of transfer, i.e. through a Serbian bank.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Short term – note: in terms of complexity attached to changes of Serbian regulations, the central bank (NBS) decisions rate as the least cumbersome and time consuming processes. Such process requires an in-house procedure in the NBS. There are no impediments that an NBS Decision assumes legal effect on the date of its publication.</td>
</tr>
</tbody>
</table>

6.1.3 Rectifying the problem of ambiguous reporting duties imposed on nonresidents

As mentioned under chapter 2.1.3 (b) of this Report, the NBS Unilateral Transfers Decision does not require that the nonresidents report to the customs authorities the amounts of foreign cash brought into the country in excess of the amounts prescribed under the AML Law. In contrast, the “Information to Nonresidents” web page found on the NBS website states that the nonresidents may freely bring into Serbia only EUR 5,000.
Recommendation: Amendments to the NBS Unilateral Transfers Decision to state that the nonresidents must report to the Customs Authorities amounts exceeding certain thresholds.

Term for implementation: Short term.

### 6.1.4 Rectifying the lack of sanction towards individuals under the AML Law

As mentioned under chapter 3.3 e of this Report, the AML Law prescribes sanctions against service providers – both legal entities and entrepreneurs – for breach of the duties imposed by the law. However, the Law does not prescribe misdemeanors against the individuals. As an interim measure, Serbian authorities could consider licensing the international bus companies, and imposing stricter money laundering combating duties on their respective employees.

Recommendation: Enacting bylaws under sector specific (international public transportation) legislation.

Term for implementation: Short term to mid term.

The process entails mainly governmental actions towards enacting secondary legislation to sector specific laws. The decrees, regulations and other bylaws do not need to be discussed in Parliament. There are no impediments that any such bylaw assumes legal effect at the eight day following its publication.

### 6.1.5 Acknowledging that Remittances as a constituent of creditworthiness

As mentioned under chapter 5.1.2 of this Report, Remittances generated incomes have to be recurrent and rather substantial to render their recipients’ respective creditworthiness. Currently, banks do not have to accept Remittances as a constitute of generated incomes; even though Remittances are hard currency incomes which should improve the recipients’ chances to obtain financing.

Recommendation: Amendments to the NBS Provisioning Decision to expressly permit that receipt of Remittances, at least if recurrent, do contribute towards one’s creditworthiness, and that such receipts are merited for assessment of one’s exposure to Serbian dinar depreciation risks.

Term for implementation: Short term.

### 6.2 Recommendations deployable in medium term
6.2.1  **Rectifying the problem of ambiguous reporting duties imposed to nonresidents**

As mentioned under chapter 2.1.3 of this Report, the Forex Law does not require that the nonresidents report to the customs authorities the amounts of foreign cash brought into the country in excess of the amounts prescribed under the AML Law.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>Amendments to the Forex Law to state that the nonresidents must report to the Customs Authorities amounts exceeding certain thresholds.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Mid term – note: changes of Serbian laws entail governmental and parliamentary actions, study of accordance with EU legislation, and, possibly, public debate. In practice, that presupposes the endorsement by the relevant political parties. Generally, the changes to Forex Law follow previous discussions with the International Monetary Fund. A change not conflicting with the Statutes of the International Monetary Fund could be exempted from such regime.</td>
</tr>
</tbody>
</table>

6.2.2  **Rectifying the lack of sanction towards individuals under the AML Law**

As mentioned under chapter 3.3 e of this Report, the AML Law prescribes sanctions against service providers – both legal entities and entrepreneurs – for breach of the duties imposed by the law. However, the Law does not prescribe misdemeanors against the individuals. This should be rectified.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>Amendments to the AML Law to introduce fines against individuals.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Mid term – note: changes of Serbian laws entail governmental and parliamentary actions, study of accordance with EU legislation, and, possibly, public debate. In practice, that presupposes the endorsement by the relevant political parties.</td>
</tr>
</tbody>
</table>
6.2.3 **Rectifying ambiguous reporting duties on border crossings**

As mentioned under chapter 2.1.3 of this Report, the AML Law and the Forex Law do not clearly state the amount triggering reporting duties for money laundering prevention purposes.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>Amendments to either the Forex Law or the AML Law to state that the nonresidents must report to the Customs Authorities amounts exceeding certain thresholds.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Mid term – note: changes of Serbian laws entail governmental and parliamentary actions, study of accordance with EU legislation, and, possibly, public debate. In practice, that presupposes the endorsement by the relevant political parties. Generally, the changes to Forex Law follow previous discussions with the International Monetary Fund. A change not conflicting with the Statutes of the International Monetary Fund could be exempted from such regime. Nonetheless, it seems more sensible to introduce the changes to the AML Law which contains clearer references to EUR amounts than the Forex Law. Such references are less prone to CSD depreciations or appreciations and can aid the contemporariness of the provision in which they are contained.</td>
</tr>
</tbody>
</table>

6.2.4 **Measure to rectify the problem of currency of Remittances**

As mentioned under chapter 2.1.1 of this Report, foreign currency accounts can only be credited with those currencies admitted to the Serbian foreign currency market (AUD, CAD, DKK, EUR, JPY, KWD, NOK, SEK, CHF, GBP and USD), and transfer of Remittances though Serbian banks may be made only in such currencies.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>Amendments to the NBS decision regulating foreign exchange market to admit other currencies, possibly starting with HRK, SKK, CZK, HUF, SIT, BAM, PLN.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Short term to mid (long) term – note: NBS Decisions could be changed in short term. However, the NBS might feel that other currencies ought to be admitted on reciprocal basis, and therefore bilateral sovereign agreements could prove necessary.</td>
</tr>
</tbody>
</table>
6.2.5  **Improving the number of bank outlets**

As mentioned under chapter 3.1 of this Report, the number of bank outlets, inclusive of ATMs appears unsatisfactory. Following the contemplated consolidation of the banking and more general financial market, Serbian authorities should encourage the expansion of number of bank outlets in Serbia. The process could entail adopting a tax policy that would encourage investments in bank and ATM networks. This could be implemented in the context of the changes of the Foreign Investment Law that is expected early next year (which will, inter alia, provide for customs exoneration for investments into basic assets even with the reinvested profits, which could be used to enhance presently unsatisfactory network of ATMs and POS terminals).

<table>
<thead>
<tr>
<th>Recommendation # 1:</th>
<th>Amendments to the NBS decision on capital adequacy to provide for a less cumbersome classification of ATMs (or a similar remedy).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Short term</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recommendation # 2:</th>
<th>Introducing tax incentives for investment in certain fixed and operative assets (i.e. property and ATM machines).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Mid term – note: changes of Serbian laws entail governmental and parliamentary actions, study of accordance with EU legislation, and, possibly, public debate. In practice, that presupposes the endorsement by the relevant political parties.</td>
</tr>
</tbody>
</table>

6.2.6  **Introducing non-banking sector Remittance carriers**

As mentioned under chapter 2 of this Report, Serbian banks enjoy the monopoly on processing of any cross border payment operations.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>Amendments to Foreign Exchange Law to abandon the exclusive competence of Serbian banks to handle the transfers of Remittances.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Mid term to long term – note: changes of Serbian laws entail governmental and parliamentary actions, study of accordance with EU legislation, and, possibly, public debate. In practice, that presupposes the endorsement by the relevant political parties. Additionally, the changes to Forex Law follow previous discussions with the International Monetary Fund.</td>
</tr>
</tbody>
</table>
6.2.7 **Acknowledging Remittances as a constituent of creditworthiness**

A demographic research could help identify regions that have high concentrations of Remittance recipients. On such basis, state subsidized loans and other support could be offered for local investment. The process could entail changes to the tax legislation, and/or of NBS decisions.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>Introducing tax incentives for investment in regions with a high concentration of Remittance recipients.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Mid term – note: changes of Serbian laws entail governmental and parliamentary actions, study of accordance with EU legislation, and, possibly, public debate. In practice, that presupposes the endorsement by the relevant political parties.</td>
</tr>
</tbody>
</table>

6.2.8 **Harmonizing definitions of “families” in Serbian Law**

As mentioned under chapter 4.2 (b) of this Report, the Family Law defines families in a manner permitting re-qualification of contributions to sustenance thereof, if made by nonresidents.

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>Amending the Forex Law to define the term “family” for the sole purpose of interpretation of that law. Alternatively amending the Family Law to permit the interpretation that residents and nonresidents form a “unity of life”.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term for implementation:</td>
<td>Mid term – note: changes of Serbian laws entail governmental and parliamentary actions, study of accordance with EU legislation, and, possibly, public debate. In practice, that presupposes the endorsement by the relevant political parties.</td>
</tr>
</tbody>
</table>

6.2.9 **Measure to permit securitization of Remittances**

As mentioned under chapter 5.3 of this Report, Serbian legislation needs to be changed to permit securitization of future receivables. In that respect, the financial market must be prepared to facilitate the securitization of the Remittances flow. In experience of foreign countries with developed capital markets, it seems that the specific legislation to underpin this possibility (French model which introduced *fonds commun de créances* under legislation dated 1988) is more desirable than pursuing solutions through the existing legislation (UK model).
Recommendation: Enacting a law that underpins securitization schemes.
Term for implementation: Mid term. – note: adopting of Serbian laws entail governmental and parliamentary actions, study of accordance with EU legislation, and, possibly, public debate. In practice, that presupposes the endorsement by the relevant political parties

6.3 Recommendations deployable in long term

6.3.1 Taking an active role in international institutions Remittances

Serbian authorities could consider a more active role in FATF organization. The process entails various diplomatic and political actions. These actions are directly commensurate with Serbia’s endeavor to access international organizations and clubs.
ANNEX I – REFERENCES TO REGULATIONS

- Law on Foreign Currency Operations\textsuperscript{143}, with the accompanying:
  - Decree on Manner of Performance of Control of Foreign Currency Operations of Residents and Nonresidents\textsuperscript{144};
  - Decision on Reporting Duties in Operations with Foreign Countries\textsuperscript{145};
  - Decision on Duty of Reporting of Cross Border Operations\textsuperscript{146};
  - Decision on Duty of Reporting of Cross Border Operations Implementing Rules\textsuperscript{147};
  - Decision on Conditions for and Manner of Payment, Collection and Transfer per Current and Capital Affairs in Foreign Currency and Dinars\textsuperscript{148};
  - Instructions to Implement Decision on Conditions for and Manner of Payment, Collection and Transfer per Current and Capital Affairs in Foreign Currency and Dinars\textsuperscript{149};

- Law on Foreign Currency Operations\textsuperscript{150} with the accompanying:
  - Decision on Conditions for and Manner of Personal and Physical Transfers of Means of Payment to and from Foreign Countries\textsuperscript{151};
  - Decision on Conditions for Opening and Manner of Maintaining Foreign Currency Accounts of Residents\textsuperscript{152}
  - Decision on Conditions and Manner of Operations of Foreign Currency Market\textsuperscript{153}
  - Decision on Types of Foreign Exchange and Foreign Cash Bought and Sold on Foreign Exchange Market\textsuperscript{154}

- Law on Banks\textsuperscript{155}, with the accompanying:
  - Decision on Unified Manner of Calculation and Publication of Effective Interest Rate on Loans and Deposits\textsuperscript{156};
  - Decision on Closer Conditions for and Manner of Control of Banks by National Bank of Serbia\textsuperscript{157};

\textsuperscript{144} “Official Herald of RoS” 63/2004
\textsuperscript{145} “Official Gazette of FRY” no. 25/2002, 34/2002
\textsuperscript{146} “Official Gazette of FRY” nos. 25/2002 and 34/2002
\textsuperscript{147} “Official Herald of RoS” no. 55/2202
\textsuperscript{148} “Official Gazette of FRY” no. 25/2002
\textsuperscript{149} “Official Herald of RoS” no. 94/2004
\textsuperscript{150} “Official Herald of RoS” no. 94/2004
\textsuperscript{151} “Official Herald of RoS” no. 62/2006
\textsuperscript{152} “Official Herald of RoS” no. 67/2006
\textsuperscript{153} “Official Herald of RoS” no. 67/2006
\textsuperscript{154} “Official Herald of RoS” nos. 67/2006 and 71/2006
\textsuperscript{155} “Official Herald of RoS” no. 67/2006
\textsuperscript{156} “Official Herald of RoS” no. 107/2005
\textsuperscript{157} “Official Herald of RoS” no. 57/2006
- Decision on Minimal Content of Know Your Client Procedure\textsuperscript{158};
- Decision on Adequacy of Banks’ Capital\textsuperscript{159};
- Decision on Classification of Balance Sheet Assets and Off Balance Sheet Items of Banks\textsuperscript{160};
- Law on National Bank of Serbia\textsuperscript{161}, with the accompanying:
  - Decision on According of State of Gross Retail Sector Exposure with Basic Capital of Banks\textsuperscript{162};
  - Decision on Mandatory Reserves with the National Bank of Serbia\textsuperscript{163};
  - Decision on Conditions for Granting Authority to Banks to Carry Out Cross Border Operations and Conditions for Revocation of Such Authorities\textsuperscript{164};
- Financial Leasing Law\textsuperscript{165}, with the accompanying:
  - Decision on Minimum Conditions for Execution of Financial Leasing Contracts and on Manner of Expression of Leasing Consideration and Other Costs Incurred by Execution of a Financial Leasing Contract\textsuperscript{166};
- Law on Payment Operations\textsuperscript{167}, with the accompanying:
  - Decision on Conditions and Manner of Opening, Maintaining and Closing of Bank Accounts\textsuperscript{168};
- Family Law\textsuperscript{169}
- Code of Obligations\textsuperscript{170}
- Postal Law\textsuperscript{171}
- Law on Individuals’ Incomes’ Tax\textsuperscript{172}
- Law on Tax Procedure and Tax Administration\textsuperscript{173}, with the accompanying:

\textsuperscript{157}“Official Herald of RoS” no. 51/2006
\textsuperscript{158}“Official Herald of RoS” no. 57/2006
\textsuperscript{159}“Official Herald of RoS” no. 57/2006
\textsuperscript{160}“Official Herald of RoS” no. 57/2006
\textsuperscript{161}“Official Herald of RoS” no. 72/2003, 55/2004 i 85/2005
\textsuperscript{164}“Official Herald of RoS” 76/2004
\textsuperscript{165}“Official Herald of RoS” nos. 55/2003 and 61/2005
\textsuperscript{166}“Official Herald of RoS” nos. 4/2006 and 64/2006
\textsuperscript{168}“Official Herald of RoS” no. 33/2005
\textsuperscript{169}“Official Herald of RoS” no. 18/2005
\textsuperscript{170}“Official Gazette of SFRY” no. 29/78, 39/85, 45/89 - Decision of the Federal Constitutional Court, 57/89 and “Official Gazette of FRY” no. 31/93
\textsuperscript{171}“Official Herald of RoS” no. 18/2005
- Rules on Manner and Procedure of Cross Assessment Determination of Individual Income Tax Base on Unreported Incomes
- Property Tax Law
- Inheritance Law
- Customs Law
- Law on Mortgages
- Law on Registered Pledge on Movable Assets
- Money Laundering Prevention Law, with the accompanying:
  - Rules on Methodology, Obligations and Actions for Implementing Tasks in accordance with Money Laundering Prevention Law
- Law on Ratification of UN Convention against Corruption
- Penal Code
- Rulebook on Listing and Quotation

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175 “Official Herald of RoS” nos. 46/95 and 101/2003
177 “Official Herald of RoS” no. 115/2005
178 “Official Herald of RoS” no. 57/2003, 61/2005
180 “Official Gazette of FRY” – International Treaties no. 12/2005
182 adopted by the Belgrade Stock Exchange