

JANUARY 2017, NEW RULES IN FINANCIAL BUSINESS ACTIVITIES

The law on financial business activities in FBiH (law) aims at protecting and improving the position of small and medium-sized enterprises acting as creditors in financial transactions.

The Law, which entered into force on 30 December 2016, regulates the rules of financial business activities and the responsibilities of the management and supervisory board in relation to business activities of the entrepreneur. It further provides measures that ensure liquidity, deadlines to perform pecuniary obligations between entrepreneurs, as well as between entrepreneurs and public law entities, the consequences of missing deadlines to carry out pecuniary obligations, the nullity of specific provisions in business transaction contracts, and the duties of entrepreneurs in the event of lack of liquidity. Under the Law, an entrepreneur is a legal entity established in accordance with the Law on Companies of FBiH, as well as a natural person, which independently performs commercial activity in accordance with the Law on Entrepreneurship and Related Activities of FBiH.

The Law is not applicable to consumer contracts or to financial institutions, banks, investment funds management companies, pension funds management companies, insurance and reinsurance companies, leasing companies and microcredit organisations.

Here are some important points:

DEADLINES FOR PERFORMING PECUNIARY OBLIGATIONS

The agreed period of time to carry out pecuniary obligations may not be longer than 60 days, unless the debtor issues a security instrument with the capacity of an execution deed, but even then the period of time may not be longer than 360 days. The following are considered as security instruments: bank guarantees with the "irrevocable", "unconditional", or "without a right to protest" clause, as well as guaranteed bills of exchange. Every provision of the contract regarding the maturity date which is contrary to the above, is considered null and void. In the event that the maturity date is not stipulated, the pecuniary obligation must be performed within 30 days, without the need of any specific notification by the creditor.

DUTIES OF ENTREPRENEUR WHEN INCURRING LACK OF ILLIQUIDITY

Illiquidity incurs in the event that: (i) the entrepreneur is more than 60 days late in performing one or more short-term obligations, which amounts to over 20% of the amount of his/her short-term obligations published in the last annual financial report; or (ii) the entrepreneur is more than 30 days late in paying salaries and pertaining taxes

and contributions.

The Law forbids payments of any kind to the illiquid entrepreneur, except for those that are necessary for regular business activities, as well as undertaking actions which could cause harm or lead to the unequal treatment of creditors.

INADEQUACY OF CAPITAL

The capital of a company is considered inadequate if, on the day of the drafting of the financial report, the loss in the current year, together with the transferred losses, amounted to half of the company's share capital. In such event, the management of the company is obliged to undertake necessary measures, as follows: (i) to analyse the causes of inadequacy of capital and to suggest measures for achieving adequacy of the capital to the supervisory board; (ii) to implement approved measures within its competence; and (iii) to convene a general meeting of the company and suggest measures within its competence.

APPLICATION OF THE LAW

The Law applies to contracts concluded after the Law enters into force and to the business transactions concluded before 30 June 2016 yet whose realization has not begun by 30 December 2016. Therefore, in the event that stipulated deadlines for performance of pecuniary obligations in such contracts are longer than those provided by the Law, it would be necessary to harmonise these provisions with the Law.

SUPERVISION OF THE ENFORCEMENT

Supervision of the enforcement of the Law will be conducted by the Tax Authority of FBiH, and the Federal Ministry of Finance through budgetary inspection, within their competences.

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