



Foreign Investors Council

**FOREIGN INVESTORS COUNCIL
REALITY CHECK CONFERENCE 2015
POSITION PAPER**

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Foreign Investors Council

INTRODUCTION

The Foreign Investors Council (FIC) is the business association established in 2002 by 14 foreign companies operating in Serbia. Its formation was initiated by OECD, with a view to engage foreign companies which operate in SEE to provide active support to reform processes. Similar associations exist throughout SEE (including Bulgaria and Romania). FIC mission is *"To actively promote sustainable business environment through open dialogue with the Authorities and other relevant stakeholders"*. The main goal of the association is to influence the improvement of business climate in Serbia by making concrete reform proposals and building a business portal for communication with the authorities in Serbia. FIC is also focusing on promoting solid business ethics and high corporate governance principles within the organization and towards local companies, Government, and other external stakeholders.

Currently, FIC gathers over 130 foreign companies, which have invested more than €22 billion, directly contributed to 18.0% of GDP in 2013 and employ more than 96,000 people in Serbia. FIC gathers companies from around the globe - from the European Union and the United States of America to the Russian Federation and National Republic of China. Most members come from EU market, reflecting the general trend of FDI inflow to the Serbian market. FIC members are domestic companies which are established by foreign capital. In addition, membership in FIC is open for domestic companies which represent foreign business interests, regardless of the form of their establishment.

The key characteristic of FIC is that it defines its standpoints through active debate between the members so that to promote reforms which are in the interest of the wider business community, rather than specific company or a business group. The main project of the association is production of the White Book, yearly edition which gives a blueprint of Serbia regulatory framework, along with tangible recommendations on how to overcome the obstacles for doing business. These recommendations are defined through the experience of FIC member companies and their knowledge of both multinational practices and insight into mother and Serbia markets.

The Reality Check Conference is regularly organized to enable exchange of views between highest state officials and chief executives of FIC member companies on means for creating a sustainable macroeconomic and regulatory framework. Recognizing the importance of global integrative processes, the FIC also extends the invitation to a selected audience from diplomatic corps and international financial organizations.

Conference is organized half a year after the White Book launch and tracks the record of realization of White Book recommendations.

Goal of the conference is to reach the agreement on a few concrete issues which are important for improving competitiveness of the Serbian market. In order to facilitate this goal, the FIC prepares the RCC Position Paper which identifies key regulatory topics and provides relevant recommendations, but also highlights positive developments in specific areas.

The Conference is divided into 2 parts: parallel working sessions with state administration, followed by a plenary session with highest GoV officials. Conclusions from the working sessions are presented at the opening of the plenary session and serve as basis for further dialogue.



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KEY FIC SUGGESTIONS

In the past 6 months, Serbian government continued with significant improvements of the business climate through changes of 2 important laws – **construction and inspections**.

- First results show that the changes of **Construction Law** are well implemented and they have led to shortening of deadlines in issuing construction permits
- New **Inspections Law** brought some improvements aimed at ensuring better coordination of the inspection services
- Successful implementation of **Labour Law** that was changed in summer 2014

Main FIC expectation from the Government is to **continue harmonizing laws with EU Acquis**. FIC highlights following laws that should be adopted/ improved:

1. *Law on Foreign Exchange Operations*: to enable cash-pooling and expand possibility for issuing guarantees of non-residents
2. *Law on Charges*: to safeguard from new para-fiscal charges
3. *Law on Land Conversion*: to enable ownership over land
4. *Law on Personal Data Protection*: to be harmonized with EU Directive 95/96/46/EC
5. *Regulation of Staff Leasing*: currently non regulated

The key challenge still is **enforcement of laws** and FIC expects tangible progress in this regard. **Better law implementation** across all fields **should be imperative**, to be achieved through public administration reform and increasing administrative capacity in the ministries and other state institutions, with special focus on Tax Administration and inspections. FIC draws attention to specific issues in implementation:

1. *Privatization*: Process needs to be significantly accelerated and organized in transparent manner. After receiving letter of interest in September 2014, Government is slowly executing privatization process. Out of 502 companies, only 12 were put on tender, while 76 companies initiated bankruptcy procedure.
2. *Law on Inspections*: prompt creation of Coordination body to enable efficient and consistent implementation of the new Law.
3. *Tax*: Tax Administration does not always apply binding opinions of the Ministry of Finance, which is mandatory by Law.
4. *Foreign Exchange Operations*: rigidly interpreted by NBS and prevents all transactions/ actions which are not explicitly allowed by the Law.
5. *Law on Employment of Foreigners*: differently interpreted by relevant institutions (Ministry of Labour, National Employment Service, Labour Inspection) i.e. list of supporting documentation.

Government should fully utilize EU accession negotiations and consultations with the private sector in order to ensure sustainable reforms.



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ANTI-ILLCIT TRADE COMMITTEE

POSITIVE DEVELOPMENTS:

- Fight against grey economy and illicit trade being positioned among the top priorities on the Government's agenda;
- Law on Inspection surveillance that regulates overall work of inspection bodies has been enacted;
- Increased number of in field controls and recorded seizures. However, although extremely important, this trend is still insufficient to result in suitable business environment and to cover the budget's losses created by illicit trade;
- The reduction of level of grey economy is cited as one of the main reasons for increasing VAT charges and excise tax, which consequently led to more than double amount of public revenues in the first quarter of this year, according to Ministry of Finance;
- Ministry of interior formed Department for combating illegal trade of excise goods within the Crime Police Department and thereby formally established permanent team for dealing with illicit trade in this area.

REMAINING ISSUES:

1. Topic One: Timely and effective implementation of the Law on Inspection surveillance

- The adoption of by-laws on the Law on Inspection surveillance in predicted time;
- The deployment of appropriate material and financial resources for the implementation of the Law.

Issues Addressed:

- Until the Law on Inspection surveillance is fully enforced and sectorial laws aligned the process of inspection surveillance is regulated by the Law on Public Administration, and over 1000, mostly unaligned, sectorial regulations - laws, instructions, guidelines, opinions and interpretations;
- Until the sectorial laws are unaligned with the Law on Inspection surveillance the Inspections will have issues with a lack a clear division of responsibilities and coordinated engagement due to absence of an appropriate legal framework in this matter;
- Transitional regulatory framework on inspection surveillance contains numerous restrictions on the conduct of inspectors in the field of combating gray economy, particularly in terms of competence on taking action against unregistered subjects and being able to timely react and prevent further activities in the gray economy;
- Until sectorial laws are aligned with the Law on Inspection surveillance the problem of overlapping jurisdictions and lack in clarity of who is in charge of inspections in the concrete case will have a negative impact on the work of inspection and the control subjects.

Recommendations:

- Timely and efficient implementation of the Law on Inspection surveillance, including the establishment of the body with the appropriate professional capacity and permanent employees in the services for professional, administrative and technical support, which would on continuous and regular basis deal with the improvement of work and coordination of inspections;
- The adoption of a Decision on the establishment of the body predicted by the Law on Inspection surveillance, as well as rules of its work, which would regulate that the structure of the body, for expertise reasons, would be formed mostly by heads of internal units responsible for the inspection activities and that the regular meeting of that body would be organized at least once per month;
- Preparation and enforcement of amendments of sectorial with the aim of their harmonization with the framework envisaged by the Law on Inspection surveillance;
- To adopt the inspection plan based on risk analysis;
- Increase the capacity of inspections i.e. the number of inspectors by analyzing each inspector individually, in proportion with the volume of work that inspectors perform;
- Enable efficient implementation of the regulation that refers to engagement of the inspections toward grey

economy subjects in their areas – unregistered entities, entities that operate without a license and entities that engage unregistered workers, as well as conduct of the inspections towards illegal activities within the jurisdiction of other inspections.

Competence: Prime minister, Ministry of Finance, Trade, Tourism and Telecommunication, Mining and energy Agriculture and Environmental Protection, Interior, Justice, Public Administration, Tax Administration, Customs Directorate, Coordinating Body for directing the activities in combating gray economy.

2. Topic Two: Improving coordination and scope of joint activities of authorities responsible for controlling the law enforcement in the area of illegal trade (integrated control)

Issues Addressed:

- Lack of authority of the competent bodies disables effective control of certain forms of illegal trade (e.g. internet sales, unable to confiscate illegally traded goods);
- The necessity of improving cooperation between inspection authorities, police, tax police, customs, on the one side and the prosecution and the courts on the other side, which results in disproportion between the number of applications filed and the number of indictments or ended misdemeanor proceedings;
- Current legislation does not provide enough possibilities for engaged personnel to be incentivized for its performance in fighting illicit trade and protecting public revenues;
- A large and important source of gray economy is the illegal entry of goods across the border into the territory of Serbia and its further distribution through illegal channels, where it is necessary to introduce an integrated control of crossings by all relevant bodies.

Recommendations:

- Allocation of adequate resources and funds to bodies responsible for controlling the implementation of regulations;
- Improving the capacity of the public administration by moving excess of administrative staff in the authorities responsible for controlling the implementation of legislation and further professional specialization of that staff;
- Regulating the system of performance measurement and incentives for officials engaged in fighting illicit trade;
- Regulating the use of preventive measures and actions in cases foreseen in advance, as a means of reducing the potential for the development of the gray economy, including professional and advisory support to entrepreneurs;
- The introduction of integrated control of border crossings by all relevant bodies, in order to prevent illegal crossing of goods across the border into the territory of Serbia and its further distribution through illegal channels.

Competence: Prime Minister, Ministry of Finance, Trade, Tourism and Telecommunication, Mining and energy Agriculture and Environmental Protection, Interior, Justice, Public Administration, Tax Administration, Customs Directorate, Coordinating Body for directing the activities in combating gray economy.

3. Topic Three: Strengthening the penalty policy, including effective prosecution of misdemeanor and criminal charges in connection with the illegal trade and increasing the amount of (monetary) penalties

Issues Addressed:

- There is a huge disproportion between the number of filed charges and the number of resolved cases before misdemeanor or regular courts;
- There is no harmonization of databases between authorities filling the charges and the courts and prosecutors, so the process nor its efficiency cannot be monitored adequately;
- Lack of verdicts occurring due to inefficient processing of the cases leads to legal system collapse and discourages law abiding subjects in the market to stay in legal channels.

Recommendations:

- Consistent implementation of regulation, increasing the efficiency of prosecution proceedings in regards of illegal trade and the imposition of penalties prescribed by the laws for entities involved in the illicit trade, which achieves the purpose of preventive action to other market participants;
- Recognizing the severe forms of illicit trade as organized crime and introduction of specialization for prosecutors for economic/financial criminal charges which would be responsible for the prosecution of cases involving illicit trade;
- Align methods of keeping database between authorities filling the charges and the courts and prosecutors' offices, in order to adequately monitor the efficiency of charges' processing;
- Increase the amount of monetary fines in the Trade Law and the Law on Technical Requirements for Products and Conformity Assessment;
- The above activities should continuously be implemented in order to achieve long-term results.

Competence: Prime Minister, the competent Prosecutor's Office, Ministry of Justice, competent courts.



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FOOD & AGRICULTURE COMMITTEE

POSITIVE DEVELOPMENTS:

- Law on Inspections is adopted with aim, among other, to reduce overlapping and grey economy.

REMAINING ISSUES:

1. Topic One: Inspections

Issues Addressed:

- Overlapping of jurisdiction of inspections;
- No defined procedure in case of activity between different inspections (communal, trade, tax etc);
- Enforcement of sanitary and phytosanitary border measures applying to food and beverage industry is inconsistent and unpredictable. Sanitary and phytosanitary border inspection and validation processes for imported food and beverage goods vary significantly in terms of costs, timeframes, and mechanisms implemented on the ground;
- Number of samples taken, sampling procedures and costs of laboratory analysis vary significantly not only between sanitary and phytosanitary border inspection services, but also within the inspection service itself, depending on the specific inspector on duty who often has discretion to decide on the abovementioned issues arbitrarily;
- Even though the costs of laboratory analysis are covered by the importer, sanitary or phytosanitary border inspection officials have the discretion to determine the laboratory processing the samples. In addition, costs of analysis vary significantly across different laboratories;
- The timeframe needed for border inspection and the validation process is not stipulated and varies based on factors unknown to the importer.

Recommendations:

- Adoption of the new Law on Inspections;
- Providing one point of contact between trade/ business and government/ inspection in order to coordinate and increase usage of workforce on field;
- Introduction the **Expert Council for the Risk Analysis** whose establishment is defined by the Law on Food Safety, article 23. and defining the criteria for risk analysis;
- The establishment of uniform rules of sanitary and phytosanitary border inspection procedures for the food, beverage and tobacco industry, with regard to the number of samples taken per each shipment of goods, as well as the costs of laboratory analysis and a detailed timeframe for the completion of border inspection procedures, based on risk analysis framework;
- The consistent implementation of the uniform rules on sanitary and phytosanitary border inspection procedures for the food and beverage industry, excluding the possibility for arbitrary decision-making by specific inspectors.

Competence: Ministries competent for Trade/Finance/Health/Agriculture

2. Topic Two: Changes of the Rulebook of labelling

Issues Addressed:

- Newly adopted Rulebook on labelling (Official Gazette 85/2013) is a step towards EU harmonization, however, the differing understanding of the transition period of 18 months between Ministry and industry (who asked for the transition period of 18 months in the first place), gives room for possible grey zones in terms of inspectors' understanding of compliance;

- Additionally, differences in defining of the collective/ transport package among inspectors have led to a serious disruption in trade and import procedures beginning of this year, showcasing the susceptibility of the entire system to individual understanding of the regulation provisions, i.e. lack of clarity and uniformness of implementation.

Recommendations:

- A clarification of the Rulebook on Labelling is needed, so as to define the 18 months transition period as that, during which it is still allowed to use the labels according to the old Rulebook, until their full compliance, no later than 18 months after the adoption of the Rulebook;
- Changes of the Rulebook on labelling in order to clearly define transport/ collective package;
- Introduction of risk analysis as per Food Safety Law provisions, which would facilitate resolution of current problems in the area of labelling.

Competence: Ministry of Agriculture and Environmental Protection

3. Topic Three: Law on Plant Protection Products: Harmonization with EU regulation

Issues Addressed:

- The current Law on Plant Protection Products, adopted on 2 June 2009 (Official Gazette of the Republic of Serbia No 41/09) under the responsibility of the Ministry of Agriculture, Trade, Forestry and Water Management (hereinafter: the “Ministry”) does not ensure food safety and poses an unknown risk to consumers. Although the law itself has been largely harmonized with relevant EU regulation, certain amendments (Articles 86 – 90) in the law refer back to the previous Law on Plant Protection (Official Journal of the FRY No 26/98), passed in 1998. Even after the deadline of the transitional articles, the validity of the old law provisions had been reconfirmed by Ministry’s guide in 2013. leading to parallel implementation of the old law and the new, easy registration of potentially risky PPPs, non-compliance with EU regulations and possible risk to human and animal health and environment;
- Newly registered PPPs may contain one or more technical actives along with impurities of uncertain (eco) toxicological consequences, since they may have never have been tested in order to be proven safe for human health and the environment. The majority of the pesticides registered in Serbia at the moment would not be granted registration in the European Union and other destination markets for Serbian food exports.

Recommendations:

- Full harmonisation with EU standards and proper implementation of the PPPs registration process in the Republic of Serbia in order to ensure food safety for consumers and fair competition between international and domestic companies, whilst simultaneously creating favourable market conditions for foreign investments by bringing into force all the articles of the new Law on PPPs immediately and starting a revision of the existing registrations;
- New by-laws in line with the new Law on PPPs that would enable efficient registration, inspection, sales, import and use of pesticides in agriculture and forestry.

Competence: Ministry of Agriculture and Environmental Protection



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HUMAN RESOURCES COMMITTEE

POSITIVE DEVELOPMENTS:

- Successful implementation of Labour Law which was adopted in July 2014 and brought a significant improvement in labor legislation in Serbia by adopting 70% of FIC recommendations. We believe that there is space for further improvement of labor legislation in order to introduce bigger flexibility and approaching to the market environment.

REMAINING ISSUES:

1. Topic One: Employment of foreigners

Issues Addressed:

- The new Law on Employment of foreigners enacted by the end of 2014 regulated on significantly different area of foreigners' employment. Although this law with its solutions approached more closely to the EU and other regional countries, it is necessary to simplify and accelerate the process of obtaining work permits. Due to imprecise and incomplete legal provisions numerous problems appeared in law implementation, where the competent authorities differently interpret law and bylaws. Also, certain provisions of the Act have proved as impractical in obtaining work permits for directors and other company's representatives.

Recommendations:

- More precisely regulate the process of issuing work permits and the list of supporting documentation that needs to be provided, in order to avoid problems in practice and different interpretation of competent bodies;
- Exclude directors and other company's representatives from process of obtaining work permits if not to introduce a simplified procedure for obtaining work permits for foreigners on these positions;
- Introduce one stop shop to obtain residing and work permits, in order to simplify process for obtaining these permits.

Competence: Ministry of Labour, Employment, Veteran and Social Affairs

2. Topic Two: Staff leasing

Issues Addressed:

- Although in practice often applied, staff leasing is still not regulated by law, which creates significant legal uncertainty in this area: the risk of punishing employers for not having contract leased employees, the risk that leased employees claim that they are employed in the company where they perform its working activities, even though they do not have contract with that company.

Recommendations:

- The concept of staff leasing should be regulated by a special regulation or possible amendments to the Labour Law;
- The relation between leased staff and the users of leased staff should not lead to the creation of employment status;
- The conditions for the issuance of work permits and requirements for staff leasing agencies (including a fee for issuing working permits for staff leasing agencies) should be regulated by the law.

Competence: Ministry of Labour, Employment, Veteran and Social Affairs



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LEASING & INSURANCE COMMITTEE

POSITIVE DEVELOPMENTS:

- New Insurance Law is drawing a more clear landscape and will bring improvements for the industry and convergence towards EU regulations;
- The significance of the changes will have to be confirmed after the full set of by-laws is published.

REMAINING ISSUES:

1. Topic One: Insurance Law

Issues Addressed:

- Discrimination between composite/ non composite companies was only partially resolved by Insurance Law;
- The NBS regulates the market with severe measures supervising the general insurance requirements and tariffs, which is not the case in the majority of the EU countries where technical reserves are the focus of supervision and the general requirements and tariffs are completely in the authority of the company.

Recommendations:

- To allow an efficient and fruitful discussion during the by-laws period;
- To minimize as much as possible the discrimination between composite players through an extensive and tax neutral interpretation of the “Shared services”, mentioned in the new Law, and players that are obliged to have separate companies (with the same shareholders and/ or shareholders owning the controlling block of shares in both companies);
- To extend the “Shared services” for Reinsurance companies (with the same shareholders and/ or shareholders owning the controlling block of shares in both companies);
- Transition from tariff system on the underwriting model for the Corporate and Engineer Insurance with the different focus on technical reserve;
- Amendments to the set of laws (the Insurance Law regarding future Public debate, the Law on Compulsory Insurance in Traffic and related by-laws, as well as the Law on Road Safety, Rules of examination of the technical state of vehicles and other related by-laws).

Competence: National Bank of Serbia, Ministry of Finance, Ministry competent for transport, Ministry of Interior

2. Topic Two: Taxation and legal framework of leasing

Issues Addressed:

- Setting the business rules of Operating leasing in Serbia;
- Compliance of Insurance Law and Law on Financial Leasing regarding the Guarantee Fund.

Recommendations:

- Amendment to the Law on Financial Leasing, especially regarding possibility of operations of Financial Lease and Operate Lease in a single company;
- Definition through by-law of the conditions for leasing companies to act as intermediary of insurance companies;
- Amendment to the respective Law in order to take leasing companies as owners out of responsibility for damages caused by drivers of uninsured vehicles.

Competence: Ministry of Finance, National Bank of Serbia



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LEGAL COMMITTEE

POSITIVE DEVELOPMENTS:

- Government formed separate working groups on Company Law and Bankruptcy Law, thus initiating changes of these two important pieces of legislation.

REMAINING ISSUES:

1. Topic One: Foreign Exchange Operations

Issues Addressed:

- Current interpretation of the existing the FOREX rules is conservative and rigid and needs to be liberalized; The issuance of guarantees based on the order of a non-resident in transactions between two non-residents in all non-credit operations is not possible;
- Cash-pooling between companies is not allowed;
- Subordinated loans are allowed only in case of direct investments;
- Permissibility of set-off between residents and non-residents is narrow (not to relate only to export-import).

Recommendations:

- Law on Foreign Exchange Operations is to be changed in order to enable the issuance of guarantees based on the order of a non-resident in transactions between two non-residents in all non-credit operations;
- Specific legal framework relating to cash pooling is to be enacted;
- Changes to the by law regulating set-off between residents and non-residents;
- NBS's bylaws and practice regarding subordinated loans should be changed and lending subordinated credit is to be considered as direct investment as it is defined by the Law on Foreign Exchange Operations;
- Interpreting the law and by-laws by NBS and other authorities to be in line with regular interpretation of other laws and regulations, i.e. enabling all transactions and actions which are not forbidden/ prohibited by the law and by-laws (unlike current interpretation being that everything not explicitly allowed/ permitted is considered prohibited).

Competence: Ministry of Finance and National Bank of Serbia

2. Topic Two: Law on Personal Data Protection

Issues Addressed:

- Generally, non-existence of adequate legal framework, harmonized with EU Data Protection Directive (Directive 95/46/EC) and with the Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);
- Inconsistency of the sectorial laws with the personal data protection legislation;
- Non adoption of by-laws which adoption is envisaged by the currently valid Law on Personal Data Protection;
- Poor communication and cooperation between the Commissioner for Information of Public Importance and Personal Data Protection and other public authorities and regulatory bodies;
- Generally, insufficient appliance of the legislation on personal data protection, as well as the lack of awareness of society about the rights and obligations regarding the protection of personal data.

Recommendations:

- Adoption of supplements and amendments to the existing Law on Personal Data Protection or the adoption of the new law from this area, which would be in accordance with the applicable European standards;
- It is necessary to harmonize the existing sectorial laws with the legislation on personal data protection;

- Adoption of by-laws which adoption is envisaged by the currently valid Law on Personal Data Protection;
- It is necessary to establish better communication and cooperation of the Commissioner for Information of Public Importance and Personal Data Protection with other public authorities and regulatory bodies;
- Conduct workshops and seminars in order to educate citizens and raise their awareness about the protection of their rights.

Competence: Ministry of Justice and Commissioner for Information of Public Importance and Personal Data Protection



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REAL-ESTATE COMMITTEE

POSITIVE DEVELOPMENTS:

- Adoption of amendments on the Law on planning and construction accelerated procedure for issuing construction permits;
- Adoption of amendments on the Law on planning and construction mitigated to some extent the problem of para-fiscal taxation of real estate construction but not essentially resolved.

REMAINING ISSUES:

1. Topic One: Conversion

Issues Addressed:

- This issue remains the key for the Real Estate market;
- “Right to use” cannot function any further, as it did before 2009, due to lost confidence in that specific property right. Prior investing, buying, lending, mortgaging, developing any investor/ developer/ bank/ financial institution would require unembarrassed freehold right over the land;
- Conversion of “Right of use” to ownership right is condition for further construction and absence of regulation creates “legal gap” in procedures for obtaining of the construction permits;
- Any further delay in resolving this issue would have further negative impacts on the Real Estate market, Construction industry and entire economy.

Recommendations:

- Conversion process needs to be completed as soon as possible. In that regard, new law solution should be introduced. “New solution” needs to be politically acceptable and sustainable, to avoid future postponing, questioning and doubts and acquired rights should be protected. Furthermore, “new solution” should be adopted in a way that can be implemented by public administration;
- Legal recognition of right of use as adequate title for obtaining of construction permit.

Competence: Ministry of Construction, Transport and Infrastructure

2. Topic Two: Taxing of the real estate

Issues Addressed:

- Current tax system discourages new construction and development, support inactivity, leads to non – use of the most valuable national resources and result in poor economic outlook.

Recommendations:

- Construction and development must be supported through low initial development cost (reducing Initial Development Fee). Reduced the city revenue from IDF should be compensated through property tax and, especially, through increased tax for non – used resources (properties – land & buildings). This way entire economy would become more dynamic. This process must be well planned, gradual through several years and publicly known.

Competence: Ministry of Finance, City of Belgrade



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TAXATION COMMITTEE

POSITIVE DEVELOPMENTS:

- Continuing work on the implementation of the project for introducing electronic filing of tax returns;
- Tax offences are only covered by the Law on Tax Procedure and Tax Administration, which will improve the legal security of taxpayers, avoiding the situation in which two different penalties are specified by two different regulations for the same offence.

REMAINING ISSUES:

1. Topic One: Application of regulations

Issues Addressed:

- Inconsistent application of the same tax rules by different organizational parts of the Tax Authority remain a key problem for doing business in Serbia;
- Services for taxpayers in the Tax Administration are not sufficiently developed, they do not provide sufficient security in terms of whether what is said will be observed in the future, whether all organizational parts of the Tax Authority will act in the same way, and how potential change in practice in this respect will affect the taxpayer;
- In practice it happens that the Tax Authority, in its audits, is not applying binding Ministry of Finance opinions, while on the other hand certain opinions are unclear as to which specific situation they relate to;
- Activities of the Ministry of Finance on issuing binding opinions have been significantly reduced compared to previous years;
- Necessity for publicly available instructions and procedures from the Tax Authorities.

Recommendations:

- Strengthening coordination between different organizational parts of the Tax Authority and the Tax Authority and the Ministry of Finance;
- Necessity for a single, detailed, comprehensive by-law (rulebook) on the application of each individual tax law, which is established practice in other countries, instead of numerous rulebooks related to one and the same law which deal only with individual articles of that law;
- Issuing of clear, binding instructions for all organizational parts of the Tax Authority by issues disputed in practice, in coordination with the Ministry of Finance, based on which rulebooks on the application of each individual tax law would be harmonized;
- For all of the above stated, the key precondition is capacity building in the Tax Authority and the Ministry of Finance.

Competence: Ministry of Finance and Tax Authority

2. Topic Two: Regulatory changes and predictability of doing business

Issues Addressed:

- Regulations are adopted and amended without the participation or without adequate participation of the public, without public discussion which would include taxpayers or where very little time is granted for public discussion;
- Amendments to regulations are adopted with very short deadlines, without notifying taxpayers, with very short deadlines for application, all of which does not allow sufficient time for taxpayers to adapt to new business conditions (harmonizing information systems of taxpayers, procedures that are applied, budgets, etc.);

- The Law on Charges has still not been adopted, while in practice there are still attempts at introducing new charges and fees (an example of a charge for environmental protection and improvements, as related to the use of residential and commercial buildings, apartments and commercial properties for residential or business purposes which was introduced by the City of Belgrade).

Recommendations:

- Secure the participation of the public in the adoption of regulations through public discussion and ensure that the process of public discussion lasts long enough and is sufficiently transparent in order for the business public to be able to state its position;
- Announce changes in tax regulations sufficiently ahead of time and leave a sufficient period of time for application of regulations, in order for taxpayers to be able to adapt adequately to new rules of doing business;
- Adoption of the Law on Charges, while ensuring public participation in the process of adoption of the Law;
- Ensure that all public discussions include representatives of the Tax Authority, keeping in mind that regulations are applied by the Tax Authority, all with a view to understanding the business operations of taxpayers and effects of certain regulations on the taxpayer's business.

Competence: Ministry of Finance



Foreign Investors Council

TELECOM & IT COMMITTEE

POSITIVE DEVELOPMENTS:

- Sale and allocation of available spectrum at 1800 MHz happened in February and March 2015 and we can state this is a major milestone so far in frequency distribution in past several years. This sale directly enabled introducing the latest 4G LTE technology standard in the country by the local mobile operators;
- Implementation of technology neutrality at all spectrum bands by Decisions of RATEL from December 2014 and March 2015 respectively is another milestone that enabled free use of technologies according to needs of operators.

REMAINING ISSUES:

1. Topic One: Spectrum management in Serbia

Issues Addressed:

- Military presence within part of 900 MHz band places additional spectrum assignment on hold until the Government adopts decision of reallocation of Military services from this band. In regards to this, what is the timeline for adopting decision on reallocation of Military services?
- Digital switch over should happen in June 2015. Telecommunication operators believe that sales of spectrum to be released upon digitalisation (800 MHz spectrum) should happen in H2 of 2015. Can we still rely on specified time slot? Is this the only band to be auctioned during this year?
- Predictability of the frequency distribution should stay very high on the Government and RATEL Agenda, since this is of critical importance for the market development.

Recommendations:

- Make decision on freeing up 900 MHz bands and allocating digital dividend on 800 MHz to mobile operators, after successful sale;
- Continue with improvement of predictability in frequency management.

Competence: Ministry of Trade, Tourism and Telecommunications and RATEL

2. Topic Two: Development of New Services

Issues Addressed:

- Development of new services- current legislative framework in Serbia does not allow offering direct operator billing service to its customers for content downloaded from Google Play and Windows Store. The main barriers are non-alignment between law on Foreign Exchange, VAT law and Corporate Income Tax Law (Withholding Tax issue).
- Local foreign exchange regulations allow foreign payments, collections and transfers to be made only under current and capital transactions. According to the opinion of Ministry of Finance that foreign payment under the direct operator billing cannot be considered as current or capital transaction. Furthermore, an institute of 'collection agent' is not comprised specifically by the local foreign exchange rules and as such it is not allowed.
- According to current legislation these transactions are not subject to VAT and withholding tax meaning that mobile operator is not obliged to calculate and pay the VAT and withholding tax. According to the law, end users are tax payers, however they are not VAT registered so there is no possibility to collect and control the VAT by the state. That is why the ministry is not accepting the proposed model which functions everywhere in the EU where mobile operator acts as a collection agent but proposes that mobile operator acts as a reseller, so operators would be obliged to invoice VAT to the customers and to pay withholding tax. This proposed model does not make the transaction profitable for mobile operators.

Recommendations:

- Further development of e-Government;
- Decrease of VAT for IT Equipment on previous level;
- To amend Law on Foreign Exchange Operations and Decision on Terms and Conditions of Performing Foreign Payment Transactions to support the following amendment in the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions (inserting appropriate item into Annex 2, section Telecommunication Services, code 245) to be made;
- Payments to foreign vendors on behalf of telecom customers with respect to downloaded internet applications.

Competence: Ministry of Finance and Ministry of Trade, Tourism and Telecommunications and RATEL, National Bank of Serbia

3. Topic Three: Predictability of business environment in telecom area**Issues Addressed:**

- Roaming regulation – sudden and unpredictable reduction of roaming prices has been introduced by RATEL's decision in December 2014. The decision is based on the regional Agreement signed by the governments of Serbia, Macedonia, Bosnia and Herzegovina and Montenegro. The agreement has neither been ratified in Serbia nor has the Law of Electronic Communications been changed in order to provide legal ground for RATEL's decision. The roaming glide path is to be gradually applied as of July 1, 2015. Mobile operators have not been involved in the decision making process and public consultations have not been organized. Market condition and development has not been taken into account, given that Serbian market has not reached European level of development. Therefore applying European benchmarks for roaming prices reduction does not fit Serbian market size and prevents further development of this high potential sector;
- Implementation of 112 emergency number – the Ministry of Interior of the Republic of Serbia proposed, in the draft Law on Modifications and Amendments to the Law on Emergency Situations, the levying of special, permanent charge of 10 RSD through bills of users of electronic communication services. The charge thus collected would be used for the implementation of the emergency number 112, i.e. for further maintenance of that system.

Recommendations:

- Proposed introduction of the para-fiscal charge to the telecommunications industry is serious threat to the level-playing field in Serbia and undermines the trust of foreign investors in the predictability of business environment. Therefore, finance implementation of 112 from another source, follow practices of the EU other countries where emergency number 112 is free of charge for citizens;
- Recommendation – postpone roaming prices reduction/ align implementation of regulation on regional level in order to maintain reciprocity/ enable use of regulated prices as additional tariff, not as the only one;
- Competent state authorities RATEL and Ministry of trade, tourism and telecommunications to closely monitor and prevent all governmental initiatives leading to telecom market erosion and introducing para-fiscal charges.

Competence: Ministry of Trade, Tourism and Telecommunications and RATEL, Ministry of Finance, Ministry of Interior