WHITE BOOK

Proposals for improvement of the business environment in Serbia

2010

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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FOREWORD

Having endured a steep economic decline, governments and businesses are now repositioning for lower growth from a lower base. During 2009 and 2010, we saw a slew of anti-crisis measures, increased unemployment and a tougher business environment. In such times, it is easy to end up with a very short-term mindset, forgetting that sustainable growth and economic success is always the result of making the right longer-term decisions opening up for structural change and better asset allocation. When publishing the White Book, the members of the FIC seek to take a special responsibility for sharing their collective experience and give concrete recommendations that will promote growth and a level playing field for all businesses in Serbia, whether they are foreign-owned or Serbian.

Serbia is still a country in transition and it is particularly difficult to handle sharply deteriorating public finances when you are moving from one social contract to another. The population may easily feel that the change is long on vision and short on tangible improvement. Obviously, this is very challenging in a democracy. Luckily for Serbia, there seems to be a broad consensus about the direction of the country. Most politicians and a vast majority of the population seem to back the government's objective of becoming a full member of the European Union. The FIC will not and should not advise Serbia about its foreign policy objectives and it is natural to question the merits of the EU itself and the benefits of a future Serbian membership. Even those European countries that have opted to stay outside the EU have chosen to align their legal and regulatory frameworks with those of the EU, in order to be able to participate in a pan-European market on equal terms. One way or another, Serbia has to participate in this market, as most Serbian exports will be going to EU members also in the future. The White Book of the FIC gives recommendations that will move Serbia towards the requirements of investors and consumers alike.

From a business perspective, it is clear that predictability is a crucial element of any investment decision. Many countries make the mistake of thinking that attracting investors is a question of tax breaks, glossy advertisements and lofty statements. The reality is that most investors will look beyond tax rates and statements to evaluate the sustainability of a favourable tax system and the sincerity of upbeat statements. The verdict comes through a binary decision, yes or no! In times of international crisis, the race to attract and keep investments heats up and what was deemed a good framework for investors pre-crisis, can be seen as not good enough in the blink of an eye. Governments that try to manage their country also for the medium to longer-term are well advised to intensify their dialogue with business, as honest advice from sincere business organisations will trump internally generated opinions 99 out a 100 times, simply because you have to be a part of business on the ground to really understand what is needed to generate success. To its credit, the Government of Serbia has been willing to engage with business at many levels. The Prime Minister underlined the need for working with business at the FIC's Reality Check Conference and the committees of the FIC work actively with many ministries to exchange views on rules and regulations. This unpaid commitment of the members of the FIC, often at the expense of their spare time, represents a wealth of information and experience made available to promote growth and a level playing field. Being the President of the FIC makes me proud when I see this level of commitment! All of this would have very limited value without the active engagement of the Government of Serbia. The FIC is very pleased that we have this constructive dialogue in place and will always press to do more, faster and better, as there is a lot of work to do!

Returning to the macro-economic environment we find ourselves in, we would like to emphasise the need to learn the lessons of this latest crisis, so that we may avoid making mistakes for the future. Many OECD countries have been living beyond their means for some time. Serbia, being a country in transition, has an even tougher burden of proof than many other countries. The Government of Serbia managed the crisis in a relatively good way and earned credibility for that. However, it is crucial that the limited growth we now witness is not seen as an opportunity to increase spending in the public sector. If this financial recovery is handled well, Serbia can establish a platform for sustainable growth that will give more predictability and confidence to investors, as well as a better foundation for serving the needs of the Serbian population throughout future business cycles. To that end, the FIC strongly supports all efforts by the Government of Serbia to promote fiscal responsibility and lay down specific parameters that are known and can be measured.

Turning to the business-specific issues, the FIC has been increasingly worried about a proliferation of various earmarked and industry-specific taxes. While it is easy to understand the motivation for collecting more taxes when the budget is underfunded, the cost of collecting such taxes and the dynamic effects they have on the perception of Serbia may be substantially underestimated and extend well beyond the benefits these taxes give per se. The FIC strongly recommends a consistent tax framework throughout the business cycle.

When it comes to the progress on reducing red tape and making the business environment easier to navigate for businesses, we have to conclude that there is a lot left to do. The FIC acknowledges that there are cultural end habitual issues that impede this change process. In order to ensure a better progress, there must be a better understanding within the public administration and the general public that the well-being of the population and the ability of the government to fulfil important social needs hang strongly together with the ability of legitimate businesses to grow and prosper. Only then can growth bring higher tax revenues in a sustainable way. Only then can we make sure that a greater number of the most talented citizens of Serbia choose to develop their careers in successful Serbian companies rather than seek a future outside their home country. Innovation and change are indispensable characteristics of successful nations. Often, people underestimate the importance of small and medium-sized companies when it comes to renewing the economy. Governments do so at their peril! The FIC is pleased to see that the Government of Serbia largely shares our views. We see it as our task to continue to push this agenda to the benefit of all businesses in Serbia, domestic or foreign alike. There is an urgency to achieve better progress, as many other nations are going through major challenges and will be open to revising their approach to business in a fairly fundamental way. Serbia's incremental approach is good, as long as the progress is kept up to speed.

When going through the White Book, it is our hope that the reader will get an overview of the activities and recommendations of the FIC. The different committees are the backbone of the FIC. The reports and recommendations you will find in the White Book are developed through the hard work of our committee members, both inside and outside office hours. They know the issues because they face opportunities and threats at work in their everyday life. They give recommendations based on experience of what helps and what slows down business progress. Between the public appearances of different representatives of the FIC, the committees are working directly with relevant ministries and other government bodies in a continuous two-way dialogue that involves both listening and explaining. Only through the hard work of the committees and the dialogue with the government and other relevant parties, can the FIC continue to be relevant and serve as a partner aiming to improve the business environment in Serbia! In fact, the White Book represents a toolbox that the government and other interested parties can dip into when working to improve the business environment and lift the overall growth potential of the Serbian economy. In pursuing these objectives, the FIC will continue its approach of constructive criticism.

In closing, I would like to point out that Serbia is at an important crossroads. Moving in the direction of open markets, transparent regulations, consistent tax and legal frameworks and an efficient and fair judiciary, brings the realistic hope of a much more vibrant economy and a substantial improvement in living standards for the population. It is not easy to get there, but some of the ground-work has already been done. Going forward, it is important to stay the course and avoid easy, short-term solutions. The FIC is ready to continue being a constructive and reliable partner in this process, as we share the same goals.

Kjell-Morten Johnsen
FIC President

FIC OVERVIEW

Eight years ago, 14 major foreign investors in Serbia, with the support of the OECD, gathered around the common idea of contributing to the improvement of the investment environment in Serbia.

Throughout past years, the Foreign Investors Council has proven to be a powerful, constructive and therefore respected reference tool on matters related to the development of the overall business climate. Today, the FIC counts around 120 members with representatives from more than 20 different countries. Involved in a wide range of industries, the FIC members account for more than three-quarters of total foreign direct investments in Serbia and employ a significant number of the local labour force. The organization is alive and continually growing.

Following its mission and striving to fulfil its aims, the Council has always worked in close partnership with the relevant government authorities, international organizations and institutions. Its main purpose is to share positive international business practices with local authorities and support their reform activities. Therefore, the FIC is constantly involved in both formal and informal dialogue between willing stakeholders. Activities in the past year included the launching of a number of advocacy initiatives and organization of several presentations; partnerships in organization of various round tables, panel discussions and conferences; participation in and support to many non-FIC events; ongoing and continuous servicing of the membership and, of course, dedicated work on the White Book.

The most notable FIC activity in the past year was the organization of the first Reality Check Conference – a new yearly forum for discussion between chief executives of FIC member companies and high Government officials concerning the issues that hamper doing business conditions.

During 2010, the FIC continued to participate in a number of different consultative bodies set up by the Government, with a view to constantly communicating standpoints and suggestions of the foreign investors' community. To that end, as a member of the National Council for Competitiveness – an advisory body to the Government, the FIC actively engaged in the Council's working groups and participated in creation of Measures for improving the competitiveness of Serbia. Looking back to the immense engagement and concrete contribution of the FIC Committees made in the Comprehensive Regulatory Reform (aka Regulatory Guillotine) during 2009, the year 2010 was marked with efforts invested in the follow up of this process. In addition, the FIC took on the engagement in the area of innovations and became a member of the National Council for Science and Technological Development, formed in spring 2010. Bearing in mind the significance that research and development (R&D) have as engines of growth and economic prosperity, the FIC involved its highest representatives in this important governmental body. Recognizing the interest of its membership for this topic, the presentation of the Government R&D Programme was organized jointly with the Ministry of Science and Technological Development in June 2010. Beside this and also responding to its members' interest, the presentation of the Draft Trade Law was organized jointly with the Ministry of Trade and Services in April 2010.

Majority of the FIC activities are initiated by the members themselves and developed through the work of specialized committees that cover dominant interests and needs of the members. The FIC has established crosssectoral committees - Human Resources, Legal and Taxation, as well as sectoral committees Food & Agriculture Committee, Real Estate, Telecommunications & IT Committee. This year was marked by the formation of a new sectoral Food & Agriculture Committee, as well as expansion of the portfolio of the Telecommunications Committee to include the IT sector. On the other side, the FIC nurtured a new business association, as the Association of Detergent and Cosmetics Producers and Importers (ADCPI) Committee has transformed into the independent association Kozmodet.

In parallel, throughout the year the FIC launched a number of advocacy activities in relation to the formulation and execution of Serbia's fiscal policy. In an attempt to support a sustainable business framework and to attain improved doing business conditions, the FIC developed a number of policy recommendations and communicated them to the state authorities and all relevant stakeholders, in particular the Bretton Woods Institutions.

Committed to the improvement of established partnerships, the FIC actively pursued opportunities to engage in constructive dialogue with various state institutions and to work together on increasing the competitiveness of the Serbian market. Also, in the past year, the FIC reconfirmed its readiness to closely cooperate with similar associations, like American Chamber of Commerce and other organizations, with the idea to increase leverage of the various advocacy initiatives stemming from membership interest. In the future period, the FIC is ready to continue to build solid relationships with the authorities and all willing stakeholders, in order to actively support the improvement of the business framework in Serbia.

CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

In the last few decades, the business community worldwide has been showing more and more initiative to get actively involved in the process of creating and implementing social development policies. Having in mind the positive influence that these initiatives have both on social environment and business results themselves, business leaders from all sectors today integrate principles of corporate social responsibility (CSR) into their business strategies. After the first CSR practices arrived in Serbia with foreign investors almost a decade ago, awareness of the importance of these principles also gained momentum. Drawing on the experiences and best practices from abroad, companies operating in Serbia began to seek efficient solutions to address the ever more complex social and environmental challenges, cooperating in that process with other relevant social actors, business peers and public and civic sector representatives.

With great pleasure, today we can witness a growing number of CSR initiatives, both from foreign and local companies. More importantly, the Government has made some significant steps forward in creating an enabling environment for the development of social corporate responsibility. The National CSR Strategy, which was adopted in July, gives an overall framework for fostering and developing corporate social responsibility and represents the first official state document in this area, which by itself is a milestone. Of course, the full purpose of the Strategy will be fulfilled only by its adequate and timely implementation, which we will follow closely and be a constructive partner throughout the process which will require the participation of all involved parties: large businesses, small and medium enterprises, civil society organisations, consumer associations, unions, universities and media.

Another aspect in the development of corporate social responsibility that deserves to be emphasized is the growing importance of networking and synergic action. CSR is high on the agenda of all business associations in Serbia and business networks with CSR as their core mission, such as United Nations Global Compact and Business Leaders Forum are the best examples of how joint action allows strategic approach to CSR and implementation of large-scale projects, tackling current most urgent social issues, such as youth unemployment or inclusion of vulnerable groups.

The year behind us also raised the issue of transparency of charitable projects, which needs to be addressed clearly and with determination both by companies and civil society organizations, passing the message that only long-term strategic partnerships with well defined aims and means to achieve those aims, can bring benefit to the community and contribute to business development of the companies involved in such projects.

Although projects targeting the local community by far make up most of the best practices in corporate social responsibility, we appeal that other CSR pillars be approached with equal attention, by caring about the work-life balance of our employees, fostering and developing their professional and personal skills, encouraging local economic development by supporting SMEs in our supply chains, promoting good corporate governance and of course by assuming responsibility and taking active steps with regard to the most acute current global issue – climate change.

As a part of the business community in Serbia, we believe that the only way to obtain long-term business development is the one that includes the development of the surrounding environment as well: communities in which we operate, our employees and their skills, the local market and environment. Although the financial crisis brought us many challenges and obstacles to be hurdled, it also made us more determined in our commitment to improve existing practices and introduce new ones and to contribute to continuous positive changes in business and social environment, hoping to inspire and motivate other actors from all sectors to join forces with us in building a more responsible future.

WE BELIEVE IN

- Creating a multi-stakeholder platform, consisting of representatives of the Government, businesses, civil society organizations, universities and media, in order to successfully promote the principles of corporate social responsibility;
- Proposing an adequate legal framework, which will enhance and stimulate socially responsible behavior of corporate citizens;
- Promoting measurement of concrete impacts and outputs, and reporting on CSR activities;
- Improving and fostering multi-stakeholder dialogue in addressing the most acute social and environmental issues;
- Advocating good corporate governance and transparency in all aspects of doing business;
- Encouraging active role of the media in promoting the concept of corporate social responsibility;
- Introducing CSR courses in university curricula, especially in business and management schools, with the aim of educating future generations of business leaders that will incorporate CSR principles in their day-to-day business operations.

INVESTMENT AND BUSINESS CLIMATE

The investment and business climate in 2009 was heavily influenced by the global economic and financial crisis. Though Serbia performed better than most countries in the region, with a lesser decline in gross domestic product, the fact that it fell by around 3,1 percent could not but have negative effects on other segments of the economy, primarily the rise in unemployment (currently around 20 percent), and fall in standard of living (the average income remained unchanged in 2009, while pensions fell by almost 4 percent).

Inflation in 2009, standing at 6.6 percent, was the lowest in almost 20 years. Exports grew faster than imports, thus slightly reducing the enormous trade deficit that characterises the Serbian economy. The dinar has slid considerably in value against the euro and the dollar, and could continue to slide in the next year.

In 2009, the business climate in Serbia did not undergo any major changes, in spite of the Government's desire to cut the red tape and shorten administrative procedures through the Comprehensive Regulatory Reform. Reforms are continuing, but at a slow pace.

From the standpoint of legal security, slow and lingering procedures for court cases still remain an obstacle; the arbitration procedure is still not sufficiently developed. The breaking positive news is the possibility to acquire property rights for construction land development. In some areas, administrative procedures are still complicated and hardly understandable to foreign investors. The existence of numerous and complicated procedures for obtaining a licence for the construction of different facilities and the long time needed for their approval, increase the risk of corruption in this field, decrease predictability and represent significant obstacles for investments in Serbia.

Serbia made progress in the EU integration process. As of this year, citizens of Serbia can travel throughout the Schengen Zone without a visa. The Interim Trade Agreement related to the Stabilisation and Association Agreement is in force and Serbia has officially submitted its application for EU membership. The EU Council is presently deciding whether to submit the application to the European Commission for review. The road to the EU remains slow and involves hard work but there is progress, which encourages the Government and the people of Serbia to work harder on necessary reforms.

The privatisation process is in its final stage, and for a long time now. In White Book 2008, we informed that the Law on Amendments to the Law on Privatisation stipulates that privatisation in the remaining 750 socially-owned enterprises will be completed by the end of 2008. Two years later, the privatisation process is still not over. In the meantime, NIS was bought by Gazprom (Russia). Zastava and Fiat are working hard to start a production of a new type of Fiat in 2011. A tender has been announced for the sale of 51 percent of Telekom Srbija. The privatisation could be finalised as early as the beginning of 2011. However, some of the other companies slated for privatisation (JAT Airways, Nikola Tesla airport, Galenika pharmaceutical company, to name a few) are still some distance away from privatisation. In the past year, the number of enterprises which underwent failed privatisation processes has increased and a number of them are back in Government hands in one form or another.

There were no changes in the investment incentives system in the previous year. The existing tax and customs incentives are still in force, as well as incentives in the form of employment subsidies for new jobs created in the course of realisation of investment projects. Investment incentives in the form of financial grants have been especially promoted.

Serbia's position in the international market has deteriorated during the course of the last year. According to the latest Global Competitiveness Report, Serbia has slipped from 93rd to 96th place in competitive ranking. What is particularly worrying for foreign investors is the fact that the low ranking is greatly owed, to some parameters that are particularly significant from an investor's point of view, such as: property rights (122nd place), burden of Government regulation (131st), efficiency of the judiciary system in settling disputes (132nd), efficacy of corporate boards (134th), effectiveness of anti-monopoly policy (137th), cooperation in labour-employment relations (135th), reliance on professional management (128th), and so on.

Improving these parameters does not require major investments, as is the case with the other pillar – infrastructure – where Serbia also ranks poorly. All it requires is political will, determination and a plan of action to introduce and uphold European standards applicable in these areas.

Despite the Government's oral commitment to decrease all unnecessary business barriers and further liberalise the market, it has been evident that the number of non-tax financial burdens has multiplied and the amounts of existing fees and taxes have increased in the last few months. The Serbian economy has been hit hard by the financial crisis whose roots are not just driven by the global economic crisis but more by the clumsy economic policy that Serbia has led in the last decade and continues to do so even today. Years of heavy borrowing on the national and international market and the lack of systematic reforms which would direct these borrowings towards modernisation and improvement of the economy, (and ultimately to new foreign investments and economic growth), resulted in increased public debt requiring regular servicing. In order to provide the lacking finances for debt servicing and day-to-day management while at the same time avoiding taking unpopular measures such as increasing VAT and corporate profit tax, the Government is either introducing new fees and taxes or increasing existing ones. By their legal nature, these burdens are predominantly various administrative fees and taxes, with few ones being payable as a cost for the use of certain public goods.

The main macro-economic risk that the Serbian economy will be facing in the forthcoming years is an abrupt and significant decrease in foreign capital inflow and a balance of payments crisis. For several years now, the Serbian economy has been recording a high and ever-growing deficit in the current payment balance that has been covered by foreign investments and loans. In such circumstances, an abrupt and significant decrease of foreign capital inflow would trigger a payment balance crisis (decrease of foreign currency exchange reserves, depreciation of national currency, difficulties in maintaining foreign liquidity) resulting in disturbances in macro-economic stability (inflation, etc.) and probably in a decreased economic activity as well.

In addition to the aforementioned systemic risk, the economy is facing some other risks, such as the slower growth of the global economy, (which translates into smaller FDI, slower growth of exports), financial crisis in the world (high interest rates), rise in oil and other raw material prices in the world market, (aggravated balance of payment, inflation), smaller export demand and worsening of trade balance (about two fifths of Serbian exports consist of metals and agricultural and food products).

FIC RECOMMENDATIONS

Sustainable economic development of Serbia in the forthcoming period will continue to depend greatly on foreign resources inflow. Therefore, expected gradual decrease in resources inflow as a result of privatisation, requires the creation of a stimulating climate for growth in greenfield investments. In this respect, it is necessary to speed up the process of harmonisation of Serbia's legislation with EU regulations, in order to upgrade legal security for business operation and investments.

Particular importance should be attached to;

- Regulation of property rights, especially in relation to building land and facilities construction;
- Introduction of competition on the market for the infrastructure and utility sector and start of privatisation process (partial or full) for public enterprises operating in this sector;

- Creation of conditions for market competition in a regulated market, by providing equal rights for all competitors, and proper regulation of monopolies;
- Reform of the educational system in Serbia and its harmonisation with requirements of the economy;
- Stimulation of applied sciences development through appropriate financial support and stronger ties with R&D institutions from abroad.

For an even development it is necessary to achieve higher efficiency of local self-managed community in building of regional infrastructure, which is important for attracting investors.

It is expected that the Government of the Republic of Serbia will continue to simplify its legislation by applying the Comprehensive Regulatory Reform. This method has already been successfully used in other countries and it aims to increase competitiveness by decreasing administrative barriers to doing business.

Regarding the issue of non-tax financial burden, FIC recommends:

- Increase transparency and create an orderly procedure in which these fees and taxes are introduced.
- Prepare and enact a legislative act at the central government level setting ceiling fees to be charged by local authorities.
- Abolishment of all unnecessary barriers to business such as woods use and conservation tax and water use, which are set forth as general obligations for all legal entities regardless of the area of business in which they operate.
- Amend the Decree on Amount of Fee for Use of Land Registry Data and Services Provided by the Cadastral Registry in a manner to set fixed fees for services provided by the Land Registry which reflect the actual cost of the service provided;
- Clearly define criteria for determining environmental fees for the use of natural resources by local self-government.

PILLARS OF DEVELOPMENT

Improvements in the sectors designated as pillars of development continue to be slow and uneven. Improvements also continue to fall short of what they could have been.

Investments in infrastructure have picked up over the last year, partly as a way of stimulating aggregate demand, to offset the effects of the crisis. Thus, Corridor 10 in Vojvodina, together with the bridge over the Danube, as well as the new bridge in Belgrade, show evident progress. There is also progress in opening and equipping industrial parks in some Serbian towns. In addition, during the last year there has been some improvement in reducing the time needed for issuing urban and cadastre documentation.

Regarding real estate, a new Law on Construction was adopted in September 2009. The Law has brought several important changes whose definite effects after only one year of application still remain to be seen. The law is very complex since it makes an impact on five very important fields: spatial planning, construction, urban construction land, restitution and legalisation, which could cause problems in law implementation and acting practice. One of the most important innovations of this law is the conversion of land use rights into ownership (freehold) rights over construction land. Generally speaking, this law could provide a major breakthrough but a lot still remains to be done.

In order to help this process, we offer a list of issues remaining to be addressed and a set of 12 recommendations on how to move forward.

The human capital, i.e. the labour force is often cited as a comparative advantage of Serbia when it comes to attracting new investment. Generally, we share that view. A recent comparative report on labour in Europe shows that Serbia is almost at the bottom of the list when it comes to the percentage of highly educated workers in the total labour force. When attracting foreign investment we tend to claim that we have a cheap and highly skilled work force. To move to a higher stage of development, Serbia should invest more into education, particularly into providing skilled workers and highly educated professionals. At the same time, Serbia should devise policies to stop the brain drain and create adequate jobs at home. According to the latest Global Competitiveness Report, Serbia is next to last on the list of 139 countries when it comes to brain drain. Talent is educated here and then left to lead a productive life elsewhere in the world.

We feel that this comparative advantage could be easily and relatively quickly enhanced both in terms of the quality of human capital - knowledge and skills that would meet the needs of the changing business situation – and in terms of the normative framework that companies face when employing labour. Once again, the list of remaining issues and the list of recommendations with respect to labour related legislation is rather long, suggesting that the international business community would welcome more rapid changes.

INFRASTRUCTURE

TRANSPORT

CURRENT SITUATION

There are major deficiencies as well as opportunities in the transport sector in Serbia. Unsustainable tariff and financial policies and inadequate use of existing funds have resulted in a significant de-capitalisation of the sector and deterioration of the quality of infrastructure and equipment. The institutional capacity has also much weakened, as systems and procedures for planning, monitoring and managing transport activities have been neglected or even misused.

Over the past few years, institutions have had to focus on coping with emergencies, leaving little room for developing and implementing long-term plans. This has resulted in inefficiencies and bottlenecks which are bound to slow down economic recovery if not addressed soon.

The current economic crisis in particular hit the construction sector, including the construction of major infrastructure. The Government is facing a higher-than-expected budget deficit, hence the budget funding of infrastructure works will not be (completely) feasible in 2010.

POSITIVE DEVELOPMENTS

The Government announced a Transport Master Plan for Serbia which envisages projects worth EUR 22.18 billion to be invested in infrastructure in the next 17 years; this funding will be provided through the budget, Public Private Partnership (PPP) projects and loans. The realisation of this plan remains for the future. For the moment that plan includes 4 major projects planned for completion between 2008 and 2015.

In 2010 construction works finally begun on Corridor 10, Corridor 11, (connecting Serbia with Montenegrin highway Bar-Boljare), bridge over Ada Ciganlija and Beska in Novi Sad. In April 2010 Serbia signed an agreement on the construction of the bridge over the Danube with the Chinese Government. The construction work for this bridge is scheduled to begin in late 2010.

REMAINING ISSUES

Even though the Government allocated significant funds for the reparation of existing and construction of new infrastructure, the lack of funding for comprehensive infrastructure reform is still a burning issue. Due to insufficient budgetary revenues in 2010, it is likely that some of the envisaged projects will not be implemented.

This raises another issue, that of insufficient participation of the private sector (PPP projects) in the development and realisation of infrastructure projects. The concession granted to Alpine-Poor consortium for the construction of the Horgos-Pozega highway was terminated due to lack of funding and that was the first PPP project in Serbia. The absence of more investors who would engage in this kind of projects may be explained by deficient legal and regulatory framework, among other reasons. At this point, the Government will not have options other than borrowing for funding construction works. However, experts are warning that Serbia should avoid heavy borrowing for funding construction works and instead should provide all necessary preconditions for partnership with the private sector in the realisation of these fundamental endeavours. The Government announced the enactment of the PPP law in July 2010, although there was lack of consensus whether that law should be enacted as one separate law or in the form of amendments of several specific laws, such as the Concession Law, Law on Public Procurement and Law on Public Utilities.

Another reason is the very high road tolls which deterred freight transport from Serbian routes. Although road tolls are now equal for domestic and foreign vehicles, they are still significantly higher than in neighbouring countries which resulted in a decrease of transit tourism revenues since the bulk of the (primarily) freight transport moved to Romania and Bulgaria where road tolls are lower. The investors who would participate in PPP projects have to count on steady revenues from the road tolls for a return on their investment. Serbia also failed to introduce a cheaper and more efficient system of vinjeta stickers implemented throughout Europe instead of road tolls.

In 2006 the Government of the Republic of Serbia enacted the Regulation on the Determination of Property and Per-

sons that can be Insured by a Foreign Insurance Company (hereinafter: Regulation). Amendments and supplements to the Regulation were enacted and published in the Official Gazette of the Republic of Serbia No. 111/2009 on 29 December 2009, and came into force on 6 January 2010, but with implementation date as of accession of the Republic of Serbia to the World Trade Organization. Therefore, the amendments and supplements to the Regulation represent a step forward in the process of the accession to the WTO, by introducing the provision that domestic companies and persons may be insured with a foreign insurance company against risks relating to: (i) shipment of goods, the transport vehicle and corresponding liabilities (all or individually) in nautical navigation, commercial aviation and space launch and (ii) goods in international transit. However, the process of WTO accession requires further liberalisation in that specific services sector and thus the positive effects of legislative harmonisation with WTO rules and principles and implementation of WTO compliant laws and by-laws can be measured only after the Republic of Serbia's admission to the WTO.

FIC RECOMMENDATIONS

- Increase funding of maintenance and rehabilitation of major roads in order to stop the long term deterioration of the road network;
- Increase efforts in boosting institutional reform and capacity building in the area of infrastructure, with accent on transport;
- Reinstate the quality of the national road administration in order to enable it to provide an adequate institutional framework in this area;
- Increase efforts in private sector development and increase of private sector participation in the construction of major roads and railways in Serbia;
- Increase efforts to minimize public costs of the reforms by charging users wherever reasonable and through increased private sector participation wherever there is a sufficient scope for competition;
- Set up an efficient road user toll system in Serbia and decrease road tolls in order to bring back transit tourists (passenger and cargo vehicles) to Serbian roads, or introduce the vinjeta sticker system instead of toll-road system.

ENERGY SECTOR

CURRENT SITUATION

The new Law on Energy adopted in 2004 is almost fully harmonized with respective EU regulations. In line with the European practice, the Energy Agency, an independent regulatory body, has been established in 2005.

The Law introduces a stimulative regulatory regime for so-called privileged energy producers. The term incorporates energy producers using renewable resources or waste for energy production and producers from small power plants. The Law provides for various tax, customs and other benefits for privileged energy producers. However, the general provisions of the Law are not followed with adequate by-laws which would enable the implementation of this privileged legal regime.

POSITIVE DEVELOPMENTS

In 2006, Serbia ratified the Energy Treaty which establishes a unified legal framework for trading in energy and natural gas in South East Europe and EU. Ratification of this Treaty requires adequate amendments to the Energy Law introducing provisions on internal energy market and on access to electric transmission network for cross-border exchange of electric power. There is also a need for incorporation of rules to promote energy produced by the privileged producers on the internal energy market; conditions for access to natural gas transmission networks; measures for securing continued supply of natural gas and measures for securing supply of electric energy and investments in infrastructure. In that regard, the Ministry for Energy and Mining prepared amendments to the Energy Law incorporating all of the above changes.

In 2009, Serbia signed the agreement on construction of the so-called "Juzni tok" pipeline with the Russian company Gazprom and established a joint venture company with Gazprom to run the construction and operation of the pipeline and storage facility for the natural gas. It is expected that this gas arrangement will improve gas supply at the Serbian market and increase generation capacity, albeit the problems with the gas heating are expected to continue in the years to come.

The Government envisaged numerous other projects for the improvement of energy supply in Serbia. Among other, the construction of a pan-European oil pipeline is planned in the agreement signed by Serbia. The Government plans to organise an investors' conference devoted to the construction of this pipeline.

Also, in 2009 the Government of Serbia called for a tender for the construction of a thermal power plant, the so-called Kolubara B, for which some of the leading companies in the energy sector have expressed interest.

In 2010, the Government signed the pre-agreement with Chinese partners for the reconstruction of the thermal power plant Kostolac B, worth USD 1,251 billion. Also in 2010, negotiations were launched with the European Bank for Reconstruction and Development on loans in the energy sector. The total sum will include loans worth EUR 80 million, to be disbursed to companies for increasing their energy efficiency; a EUR 40 million loan to be disbursed to Public Enterprise Electric Power Industry of Serbia (EPS) for purchase of equipment, as well and loans intended for construction and operation of small hydro-power plants.

REMAINING ISSUES

The major problems in the energy sector are insufficient electric power generation capacity and energy import dependency. Also, insufficient generation capacity for natural gas used in households for heating and in the industry is a burning issue every winter. The Government recognizes these problems and is investing significant efforts to override them. The numerous projects, some of which are outlined above, are envisaged to improve the energy supply on the Serbian market. However, the low price of electricity and present monopoly of Oil Industry of Serbia (NIS), now majority owned by Gazprom, disables further investments and improvements in the energy sector which are direly needed. As it stands now, NIS monopoly will end on 1 January 2011, despite requests for extension of this deadline.

Regarding the electricity price increase, EPS's plan includes two price increases in 2010: one in March (already realized) and the second one in the fall of 2010. The total planned increase in the year 2010 should not exceed approx. 38 percent. Due to the unfavorable economic situation and for the maintenance of social peace it is likely that the second planned price increase in 2010 will not take place.

Further reforms in this area have been put on hold due to the delay in the enactment of by-laws for the Energy Law and lack of consensus over the form of the legislation which will govern energy efficiency issues. The amendments to the Energy Law incorporating the required changes are expected to be passed by the end of 2010.

The energy sector is not benefiting from the current financial situation either, due to freeze of the credit market which is, normally, the major source of funding for energy projects.

Regarding the trade in compressed natural gas or CNG: the

trade with this specific product (usually through cisterns) is not covered either by a law or by-law and there is no specifically prescribed obligation to obtain a license for trade in CNG. There are differing opinions between the regulatory body and the line Ministry, as to whether the license should be obtained i.e. if energy entities should apply for the issuance of the currently defined licenses ``trade with natural gas on free market``, or whether the law refers only to the ``traditional`` trade with natural gas through pipelines and not to the form of CNG in cisterns.

FIC RECOMMENDATIONS

- Amend the Energy Law incorporating requirements from the Energy Treaty and implement provisions which provide incentives for privileged energy producers;
- Increasing public awareness about efficient usage of electricity and need for price increase;
- Terminate the monopoly of Oil Industry of Serbia as soon as possible in order to attract potential investors;
- Enact the energy efficiency legislation, either as a part of the Energy Law, or as separate piece of legislation and incorporate energy efficiency requirements in sector-specific legislation governing the construction and production of construction materials;
- Prepare and offer defined and furbished locations to investors including the entire necessary infrastructure.

TELECOMMUNICATIONS

CURRENT SITUATION

- The new Law on Electronic Communications was adopted in July 2010, and the corresponding by-laws should be adopted latest within a year. In the meanwhile, the existing regulations are still in place;
- Mandates of all RATEL MB members have expired and the election of the new MB should be finished in autumn 2010;
- The prospective sale of Telekom Srbija has been announced again;
- Tax on mobile communication services is still in application. Although it was announced that the tax will be abolished by the end of the summer, still not clear if and when this will happen;
- New Construction Law adopted in autumn 2009, but the implementation process in telecommunication domain runs very slowly. Practical results of the simplification of procedures for building base stations and other fix telecommunications infrastructure show that these procedures are sometimes even more complicated than before, due to poor application of some provisions of the Law;
- Implementation of Mobile Number Portability service should be in place as of January 2011;
- Internet liberalisation began by adopting new rules for national and international interconnection, VoIP technology and wholesale business;
- Increase in the number of Internet services and broadband connections have been recorded in 2009 comparing to 2008. The greatest growth was recorded by using ADSL Internet access, than by using mobile 3G access and less by using Internet access via cable modems;

- Due to the effects of financial crisis and the abovementioned tax on mobile communications, the mobile market faces a significant decrease in voice revenues.

POSITIVE DEVELOPMENTS

- The Law on Electronic Communications has been adopted by the Parliament, introducing general authorisation for electronic communications business and the technology neutrality in spectrum regulation;

- The Government of Serbia has adopted the Strategy for Broadband Development 2012, Strategy for Information Society 2020, Strategy for e-Government 2013, Strategy for Development of Domestic Industry in Telecommunications, Action Plan for Efficient Usage of Telecommunication Infrastructure;

- The Ministry of Telecommunications and Information Society initiated public consultations on the Strategy for Electronic Communications 2020, which will be adopted in autumn 2010. Together with the Information Society Strategy 2020, this Strategy will create the Digital Agenda Serbia 2020;

- The e-Government portal has been launched in mid-2010;

- The third Licence for the fixed network and services has been awarded to Telenor in February 2010;

- RATEL adopted the decision on prices for interconnection, LLU, collocation and the use of transport capacities between fixed licence holders;

- Universal services are being defined in line with the principle of technology neutrality and Telekom Srbija, Telenor, Vip mobile and Orion Telekom have been appointed as universal service operators. Regulatory elaboration and implementing provisions are planned up to the end of 2010;

- The Ministry for Telecommunications and Information Society allocated more than EUR 6 million for the "Digital School" programme in order to provide computers for more than 1,100 schools in Serbia. Funds have been provided out of operators' fees for 2009, and collected by the Agency for Telecommunications.

REMAINING ISSUES

- Law on Electronic Communication to be fully implemented in practice with enacting all the necessary bylaws needed for its full implementation;

- Regulatory body to fulfil its obligations related to adoption of new by-laws, market analysis and SMP operators[1] arising from the Law on Electronic Communications;

- Election of new RATEL MB;

- Full and consistent implementation of the Construction Law;

- More efficient cooperation of operators with the Regulatory Agency and the Telecommunications Ministry in respect of Construction Law, Law on Electronic Communications and related sub-regulation;

- Preparation of the new Action Plan for Telecommunications for the next 4 years;

- Fulfilment of remaining activities from the Action plan 2006–2010 and the Broadband Strategy;

- Full liberalisation of fixed telephony in practice;

- Regulatory development and establishing full investor protection against sudden regulatory risks;

- Ensure cooperation of RATEL and Commission for Competition protection;

- Adoption of new Frequency Allocation Plan considering technology neutrality;

- Successful switchover from analogue to digital broadcasting no later than 4 April 2012. Decision on allocation of digital dividend to be adopted as soon possible.

[1] Operators with Significant Market Power.

FIC RECOMMENDATIONS

- Abolishing the 10 percent mobile tax;
- It is necessary to have a regulatory body capable of implementing the new Law on Electronic Communications and undertake proper market analyses determined by the Law;
- Issuing missing by-laws and adjusting existing ones in compliance with the EU regulatory standards, requirements and procedures;
- End the bureaucratic procedure surrounding the telecommunication business (certifications of telecom equipment and network design, technical controls of telecom equipment installation and their operation, requirements of detailed product and network design documentation, technical control of compliance with international standards, etc);
- Stimulating broadband services;
- Encourage the development of new telecommunication infrastructure and enable usage of existing alternative infrastructure by all kinds of electronic services;
- Rebalance fixed telephony tariffs on a cost-based price structure;
- Efficient implementation of the Construction Law;
- Decision on Allocation of Digital Dividend and adoption of new Frequency Allocation Plan based on technology neutrality.

REAL ESTATE AND CONSTRUCTION

CURRENT SITUATION

The new Law on Construction adopted in September 2009 remains the main object of interest for the FIC. Namely, this Law has brought several important changes whose definite effects after only one year of application are still to be seen.

This Law is very complex since it makes an impact on five very important fields: spatial planning, construction, urban construction land, restitution and legalisation, which could cause problems in the Law implementation and acting practice.

One of the most important innovations of this Law is the transformation of land usage rights into ownership (freehold) rights over construction land. The companies that gained land in the past (under privatisation, bankruptcy or execution procedures, or based on previous construction land regulations in effect prior to 13 May 2003) will be able to transform the usage rights into ownership rights by paying a fee representing the difference between the market value of construction land and the costs of acquiring the land rights. The new Law should also enable the introduction of ownership over construction land after 60 years.

An important change is that the construction permit will be transferable, which means that an investor is entitled to concede the construction land and/or object under construction together with construction permit to somebody else through a simple administrative procedure.

The law foresees the establishment of a Registry of Investors as a database of all investors with the goal to prevent manipulations in the real estate and construction market.

The competencies of civil inspections have been widened allowing them rights to immediately stop construction in case of incomplete documentation or possible danger to public safety.

The Construction Law foresees the legalisation of property built without permits till the moment of Law adoption with certain exceptions listed in the Law (for example: property built on protected natural and cultural lands or property built on public area etc.). The final term for submitting the applications for legalisation was 11 March 2010.

All municipalities will have to adopt Urban and Spatial Municipality Plans within a time frame of 18 months, where the dismissal of municipal parliament is provided as a penalty for municipality's omission to do so. The plans have to be digitalised and available to citizens.

Land Ownership and Real Estate

The current economic situation with its constant pressure to the companies' liquidity as a consequence of a growing numbers of non-collectable claims, account blockades and illiquidity of companies, as well as neglected obligations towards small entities by the state, trading chains and other large and powerful entities, influenced the real estate sector. Even though the first impact of the global economic crisis was overcome owing to the high market dependability on local and specialised real estate investors and developers and highly capitalised banking sector, complete market recovery can only be expected as a result of an entrance of prime investors that could supply large-scale projects to the market which should be highly stimulated with the changes in the real estate regulations.

Urban construction land that was to remain the sole property of the Republic of Serbia can now be transformed into ownership under the terms prescribed by the new Construction Law. However, it seems that the transformation process is very slow and will not be finished within the terms prescribed by the Law.

A large number of real estate properties in prime locations in Belgrade and in other cities remain under municipal ownership and are leased, but not according to prevailing market conditions. This discourages quality retailers from entering the market. It also contributes largely to the grey economy and reduces revenues to the budget. There is also a large number of other real estate properties which could be taken over through the privatisation process of the companies in possession.

The management and maintenance of residential property has kept the same status from 1995 when the existing Law was adopted. Since then, no significant changes have been

made. The Law on Management and Maintenance of Residential Property foresees models of residential management with no professional management (voluntary service on amateur basis performed by the president of house counsel) but does not obligate residential owners to implement them. The general way to organise is still the cooperation with public utility companies with possibilities to engage privately-owned enterprises for specific works.

Construction

The process of acquiring construction permits is still non-transparent, long and bureaucratic. The major problem in respect to the procedure of construction permits is the fact that the greatest part of construction land is not covered by adopted urban plans which allows the issuance of location and subsequently construction permits. The new Law should improve this.

A great problem with the construction process is poor infrastructure and bureaucratic procedures in public utility companies involved in this process. The reform of this sector is crucial for the entire procedure.

An additional problem in respect to the procedure of construction permits is the fact that the right of ownership over the location is to be acquired prior to applying for the construction permit. In most cases this means that the conversion procedure should be executed prior to obtaining the construction permit, which significantly prolongs the procedure and may cause additional costs.

Current legal framework defining relationship between an Investor and the main Contractor is not in accordance with the internationally recognised best practice.

Land Registries

The new Law on Cadastre was adopted in August 2009, which should enable more efficient state measurement and creation and maintenance of real estate cadastre. The Law defined the basic principles of cadastre based on the European model of land books and other real estate cadastres with the goal of increasing transparency and accuracy of real estate cadastre records.

The Cadastre Project in Serbia is still not finished. Several municipalities in Belgrade (Novi Beograd, Stari Grad, Vracar) have finished their cadastral land registry system, but this process needs to be completed as soon as possible. At this moment it is clear that the deadline announced for the completion of the cadastre -– the end of 2010, is not a realistic one.

Incomplete land books and other land-related records are indisputably the key problem in this area, contributing to the existence of irregularities in the process of obtaining property rights.

Restitution

The Law on Restitution has still not been drafted, and at this point it is completely uncertain when and if this draft will be prepared.

The priority of restitution is grounded in its tremendous potential for promoting security of property rights in a symbolic and exemplary manner, since it most clearly shows that the State is returning what it unjustly took away.

Real Estate Leasing

For the time being, there is no legal framework for real estate leasing in Serbia. Serbia is the only country in the region with an existing Financial Leasing Law, but limited only to movables. One of the advantages of financial leasing of real estate is long term financing, therefore expanding of the current law on Financial Leasing and execution of all necessary changes in the current tax system in Serbia would lead to a significant investment growth.

Throughout the entire CEE region, real estate leasing has proved to be a flexible and attractive tool for financing office, retail and industrial real estate investments.

Both operating and finance lease structures are suitable to finance new investments or refinance existing real estate, thus providing liquidity to companies. As such, real estate leasing is supportive in creating new dynamics in real estate investments whilst ensuring good security to financial institutions.

A good sign may be that certain state officials in their public appearances have stressed that they understand the need for the enactment of relevant regulations in this field; however, thus far, no official draft has been presented to the public.

POSITIVE DEVELOPMENTS

The main positive development remains the adoption of the new set of laws which took place in September 2009 (Law on Planning and Construction, Law on Cadastre and State Survey, Law on Social Housing). Even though it is too early to analyze its future influence, which depending on its implementation and acting in practice, the new set of laws could be a major breakthrough in the real estate market. This area is very sensitive, especially regarding the restitution and its comprehensive regulations in line with the current international legislation and practices is essential for the continuing creation of a favourable and attractive investment and business environment.

Land Ownership and Real estate

A new reformed law has been adopted, and the process of land acquisition allows several possibilities.

The by-laws adopted in 2010 provide a clearer interpretation of converting rights of use into rights of ownership in a case where payment of the conversion fee is necessary, as well as of the contents of the construction documents (information on location, location permit and construction permit).

Four years ago, the Mortgage Law has introduced the possibility that a construction permit be re-issued following the foreclosure of a mortgage on a semi-finished structure to the name of its acquirer. However, such a possibility diverged from the previous Construction Law, which insisted that the identity of the investor must be maintained throughout the construction venture which is now changed by the new Law, allowing transfer possibility. The new Law on Cadastre is adopted with a very important clause that every property entering the cadastre should also be appraised. This opens the possibility to regulate and organise this process through the State's adoption of rules and procedures with the methodology of mass and individual evaluations.

Instead of the presently preferred type of land rights – lease of construction land, the new Construction Law introduces the possibility for an investor to gain ownership rights under the terms prescribed in the Law.

Construction

The overall provisions for acquiring permits according to the new Law on Construction simplify this process but this has yet to be proven in practice.

The new Law on Construction prescribes that a construction permit can be transferred, meaning that an investor may cede the permit to somebody else in case the investor withdraws from the commenced construction.

The construction industry (construction companies) is slowly shifting from the previously predominantly state-owned to privately-owned.

Several Municipalities have established "one-stop" information offices for foreign investors which improved the earlier issue of inaccessibility to the needed data due to a lack of information and/or unskilled staff.

Restitution

The new Law on Construction also influences restitution issues. The main idea behind it is that the owners of the property should gain ownership over land. Previous owners of the land upon which no property has been built, will obtain ownership rights and in case where the property exists, the owners should probably be compensated from the Restitution Fund.

REMAINING ISSUES

Land Ownership and Real Estate

After a several month long, successful public consultations at the end of 2008 and beginning of 2009 with a number of ratified suggestions from interested parties, the Government adopted the modified proposal of the new Law which was to implement several completely new legislative solutions on which the interested parties did not have possibilities to give any feedback. This new draft of the Law on Construction was submitted to the Parliament through an urgent procedure without any proper public consultations and with no systematic evaluation of its effects on citizens and companies and actual possibilities for its implementation and enforcement.

The implementation of the Law on Planning and Construction is not providing the expected results. The reason for this is the fact that the provisions pertaining to the conversion do not contain precise instructions for such steps, especially in the cases of undeveloped construction land when the conversion is to be executed without fee payment. The land registries avoid resolving positively in cases where conversion is requested, and even in the cases of requests with positive resolution, the public defenders appeal such resolution. This means that the respective state bodies are not prepared to recognise the right of ownership over the construction land and avoid giving up the ownership right which is currently inscribed in favour of the Republic of Serbia.

In addition, the procedure of issuing construction permits remains too time-consuming.

Municipalities failed to deprive investors of state-owned construction land in cases where users have not constructed a building within the arranged period of time. Pursuant to the new Law on Planning and Construction depriving of the state-owned construction land in such cases will be possible after 11 September 2010.

Minimum prices of the majority of urban land remain determined through and by Governmental ordinances instead by the market. Moreover, prices differ among municipalities as a consequence of the fact that local regulations are vague with imprecise procedures for determining fees for leasehold and site permits. The Government adopted the respective by-law regulating the cases where leasehold may be assigned for a price less than the market price, but which does not regulate the methods of determining the market value.

A clearly defined penalty policy is still not provided for competent local authorities regarding the cases of non-performance or untimely performance of their authorities (obligations).

No significant improvements have occurred in the previous years regarding the residential property management and maintenance. The Law on Management and Maintenance of Residential Property from 1995 foresees the adoption of by-laws further regulating this field, but none of those have even been drafted until today (the legal act on residential property maintenance from 1993 is still in power).

Financing residential property maintenance consider relates to contracts with public utility companies regarding corrective maintenance and emergency services and arranged organised money collection for investment maintenance, which is often impossible to put in practice.

Construction

The overall process of acquiring permits remains in 2010 non-transparent, long and bureaucratic, primarily as a consequence of difficult and time-consuming process of collecting all application documents needed. According to the publicly available data, in June 2010, the number of issued construction permits was 25.9% less than a year ago (June 2009) and for the first semester of 2010, it was 30.9% less than the first semester of 2009.

On the other hand, the possibility of transferring the construction permit is related only to the cases where construction permit is rendered, which means that the potential investor has already drafted the main design for the location development. In this respect the Mortgage Law is not in line with the Law on Planning and Construction due to the fact that the property for development is not suitable collateral for financing the drafting of the main design.

Majority of the undeveloped construction land with the right of use registered in favour of the former owners is not legally prepared for potential construction due to the fact that such usage right (except in some cases) is not the title suitable for obtaining construction permits. The Law on Planning and Construction does not provide for the possibility of conversion of such usage right to ownership right and therefore it is not possible to obtain legal title over the land which is suitable for obtaining construction permit.

Land Registries

The Cadastre Project, funded by the World Bank has still not been completed in Serbia. The project should be finished in 2010, but the deadlines will most probably be breached.

The cadastral land registry system for several municipali-

ties in Belgrade (Novi Beograd, Stari Grad, Vracar) is almost finished and available, but the overall process needs to be completed as soon as possible since incomplete land books and other land-related records are indisputably the key problem in this area, contributing to the existence of irregularities in the process of obtaining property rights.

Even though several Municipalities have established "one-stop" information offices for foreign investors, the problem with inaccessibility of needed data due to lack of information and/or unskilled staff still exists.

Restitution

No significant improvements have occurred in the previous year, having in mind substantial achievements made in previous years (Mortgage Law, Church Property Restitution Law, etc.).

The Restitution Law should be prepared and adopted as soon as possible. The State government promised to draft the Law no later than by the end of 2009 but no draft has been presented to the public and no new dates have been determined.

The previous projects of the new Law on Privatisation of Construction Land, presented during 2007, were giving priority to restitution in kind over sales, but the new Construction Law foresees practically all compensation to be monetary.

Restitution processes of land titles in the past have shown a significant level of inconsistencies and irregularities across the nation, with many situations in which recognition of the right is either unreasonably delayed or, even granted to the present owners of structures instead to former owners.

Real Estate Leasing

Leasing legislation still does not provide the possibility of finance lease and off-balance operating lease, favourable for companies' debt/equity ratios and does not allow for restriction of the minimum duration of a leasing contract.

FIC RECOMMENDATIONS

- New Construction Law makes an impact in five very important fields: spatial planning, construction, urban construction land, restitution and legalisation. All these fields should be separately regulated through systematic by-laws as soon as possible;
- The state government and relevant Ministries drafted and adopted few necessary by-laws and clearly defined instruction to the local authorities regarding the implementation of the new Construction Law but not in all fields. The problem of conversion without a fee remains, as does the problem of registration of the ownership right over the construction land through rigid interpretation of the Law on Planning and Construction by the Land Registries. The by-laws should provide more precise interpretation of the provisions of the Law on Planning and Construction or at least a common practice should be formed;
- Authorities should be called to introduce transparency and consistency in work on all levels and to conduct higher level of monitoring and work of all relevant institutions;
- The permits issuing process should be further simplified and land development fee, together with other construction start-up costs, should reflect the possibility to decrease existing and subsequent operational costs with the goal of further market expansion and speeding up and bringing more investments into this market;
- The penalty policy in the Construction Law should be re-designed.

- The legal framework defining the relationship between Investors and the main Contractor should be upgraded to the internationally recognised best practice by amending the Law on Obligations and Torts and some Rulebooks defining the construction process;

- The Restitution Law should be drafted and adopted after a public debate as soon as possible. The extent of reforms made in other sectors demands putting in place a Law delineating a clear and transparent restitution process for construction land, which would lead to a just and efficient system of land titles and add up to the market predictability;

- The Law on Cadastre is adopted and its implementation should speed up the project of Cadastre completion and make the Real Estate market more transparent.;

- The new Law on Managing and Maintaining Property should also be drafted no later than the beginning of 2010 and adopted after a public debate. It is necessary to have complete legislative regulations and by-laws for the definition of residential owner rights and obligations regarding management and maintenance which are indispensable in proper functioning of residential property management and maintenance;

- The State should draft the Law on Real Estate Leasing harmonising it with other Laws being closely connected with Real Estate business. The amendments of the Tax Law provision regarding the company profit tax should bring in line leasing investments with other kinds of investments. A transparent tax treatment of operational leasing/rent should be defined. The Law on Value Added Tax should be amended, so that interest rates are treated as financial services;

- The Mortgage Law should be changed in full. The existing Mortgage Law does not correspond to the new Law on Planning and Construction. Having in mind that the subject law has too many omissions and uncertain provisions, the Mortgage Law should be changed in full;

- Dialogue, communication and long-term cooperation should be built between the state, relevant ministries, local authorities and all other important institutions on one side and the FIC with its Real Estate Committee and other organisations dealing with real estate on the other side, with respect to strategic issues with the goal of improving Real Estate market in the best interest of all.

LABOUR

THE LABOUR RELATED REGULATIONS

CURRENT SITUATION

In 2010 a number of new regulations came into force: the Law on Volunteering, the Law on the Prevention of Abuse at the Workplace, the Law on the Central Registry of Compulsory Social Insurance. The Law on Volunteering came into force on 5 June 2010 and shall be implemented upon the expiration of the period of six months following its coming into force (i.e. on 5 December 2010). The Law on the Prevention of Abuse at the Workplace came into force also on 5 June 2010 and is applicable starting from 4 September 2010. The Law on the Central Registry of Mandatory Social Insurance came into force on 15 May 2010. The provisions of the Law on Professional Rehabilitation and Employment of Persons with Disabilities oblige employers to employ a certain number of persons with disabilities is effective from 23 May 2010. We reiterate that each employer having at least 20 employees is obliged to employ a certain number of persons with disabilities from 23 May 2010 (if it has between 20 – 49 employees – 1 person with disability; with 50 or more employees - 2 persons with disability and one additional person with disability for each next 50 employees). If the employer fails to do so, it will be obliged to pay penal amount of triple minimum salary for each person with disability the employer failed to employ. Certain categories of employers are exempted from the obligation of employing persons with disabilities (recently established employers, employers participating in financing the salaries of persons with disabilities and employers that fulfill financial obligations arising from certain agreements they have concluded with this company).

A series of by-laws on implementation of the Law on Foreigners and the Law on Professional Rehabilitation and Employment of Persons with Disabilities were passed.

The application of the General Collective Agreement (the "GCA") extended to all employers in the Republic of Serbia as of 11 February 2009 - is still in force.

Certain provisions of the anti-discriminatory Law on Gender Equality which was passed on 24 December 2009 that relates to the duty of employers to data and information on the gender structure of employees process and records as a statistic; the obligation to adopt a plan of measures to remedy or mitigate uneven gender ratio – shall come into force on 25 December 2010. However, no bylaw containing the content and manner in which employers will provide a plan and report to the competent authority has been enacted yet.

We reiterate that certain companies use the services of staff leasing agencies although the concept of staff leasing is not regulated, but is tolerated in practice.

The Law on Employment and Insurance in case of Unemployment came into force on 23 May 2009 (Official Gazette of the Republic of Serbia, No. 36/2009).

The Law on the Central Registry of Compulsory Social Insurance has been enacted in the course of 2010 (Official Gazette of the Republic of Serbia, No. 30/2010). Article 38, paragraph 2 of the Law, stipulates the by-laws which should be adopted within 60 days from the effective date of the Law on the Central Registry of Compulsory Social Insurance. The by-laws shall regulate the content and form of a unique application, the method of submission thereof, evidence to be submitted with the application, as well as the unique methodological principles and the unique code book for data entry into a single database. The provisions of the current Law on Employment and Insurance in case of Unemployment, which regulate the application of compulsory social insurance shall cease to apply.

The Law on the Protection of the Citizens of the Federal Republic of Yugoslavia Working Abroad (Official Gazette of the Federal Republic of Yugoslavia, No. 24/98, Official Gazette of the Republic of Serbia, No. 101/2005 and 36/2009) has been in effect since 23 May 1998 with certain amendments and/or the latest amended version has been effective as of 23 May 2009. Insufficient attention has been paid to this regulation, yet it is going to become more relevant with business development and an inflow of new foreign investments.

POSITIVE DEVELOPMENTS

According to the official notification of the Press Service of the Government of the Republic of Serbia, the Serbian Ministry of Labour, Employment and Social Affairs has announced an intensive preparation of amendments to the Labour Law for the purpose of harmonization of the same with EU standards and the needs of business.

We reiterate that the Law on Professional Rehabilitation and Employment of Persons with Disabilities (effective as of 23 May 2009) was adopted to improve the employment status of persons with disabilities, considering that the vast majority of these individuals are not working and it prescribes the measures and activities intended to integrate these individuals into the working environment. Employers – FIC members strongly support the inclusion of persons with disabilities in the work environment. In such a manner, the differences of each individual are respected and it provides the possibility of inclusion of the people with disabilities in social life. Persons with disabilities have the equal right to the exercise of fundamental human rights, and society is therefore required to enable them to be powerful force of its own development and development of society as a whole.

On the basis of the new Law on the Central Registry of Compulsory Social Insurance, reporting of insurance of employees is to be performed by filing an application in a specific database of the Central Registry; until the technical requirements for the establishment and maintenance of the database are fullfiled, a unique application form shall be filled to the Republic Fund for Pension and Disability or the Republic Fund for Health Insurance. Accordingly, instead of several forms - a brand new application form (form M) will start to apply from 1 October 2010, which will in future (after the technical adjustment of the competent authorities, most likely in 2011) will be submitted electronically.

The new Law on Volunteering governs the basic concepts regarding volunteering and the principles of volunteering, agreement on volunteering as well as the rights and liabilities of volunteers and the organizers of volunteering. Volunteering is performed without any monetary compensation or any other remuneration. A volunteer is entitled only to reimbursement of certain prescribed costs associated with volunteering. In the case of long-term volunteering, a volunteer is entitled to a payment of pocket money - under the conditions and in the manner prescribed by this law.

The new Law on the Prevention of Abuse at the Workplace governs the prohibition of abuse at work and related to work; measures to prevent abuse and improve relations at work; the procedure for protection of persons exposed to abuse at work and related to work and other issues of importance for the prevention and protection from abuse at work and related to work. This law, inter alia, provides that an employer is obliged to implement measures which will inform and train employees and their representatives to identify the causes, forms and consequences of abuse. Given that the rule of conduct of employers and employees regarding the prevention of and protection from abuse at workplace are to be prescribed by the minister in charge of labour, at the moment is not yet clear how employers can implement the above measures. The Law on the Prevention of Abuse at the Workplace was adopted on the basis of the Constitution of the Republic of Serbia guaranteed human rights and freedoms and for the legal protection from physical and mental abuse at the workplace.

The current Law on Employment and Insurance in case of Unemployment sets forth the role of the Government in defining employment policies on an annual basis, their financial framework, as well as categories of the population given priority in seeking employment. A part of the subject matter regulated by this Law will apply as of December 2010 in compliance with the Law on the Central Registry of Compulsory Social Insurance (Official Gazette of the Republic of Serbia, No 30/2010) and relating by-laws, which will represent an advantage for companies since all applications for all types of social security can be filed in one place and even in electronic form.

REMAINING ISSUES

Given that at the moment there has been no progress in relation to regulations listed in the section below, and because they are considered particularly important for attracting and maintaining foreign investments, the FIC still notes the following:

The Labour Law

Since there was no progress with respect to the issues previously detected by the FIC as most problematic, our comments given in the previous editions of the White Book remain and we reiterate them below, and at the same time we emphasize a number of other issues that the FIC considers the most prominent, as follows:

- Issues in relation to employment of foreigners: temporary employment limited to one year is mandatory which can be insufficient in practice;
- Pursuant to the current law and the GCA, the calculation of salary is more complex than the previous calculation and the payroll list has to be signed by the employee which can be very technically complicated in practice;
- Due to extremely broad interpretation of the concept of salary, there is a situation regarding some other benefits that are not related to the salary (use of the company's car and housing costs);
- Salary compensation for absence during sick leave, national holidays, annual leave, annual vacation, paid leave etc. is calculated on the basis which represents the average salary in the three preceding months (Articles 114, 115, 116). In the case of high one-off payments in one month (such as annual bonuses) such salary compensation could be substantially higher than the salary itself if the employee had not been absent. Additionally, this results in the employers' failure to plan their budget;
- Generally, the employment related paperwork and records that should be kept with each employer are overly voluminous;
- An employee whose employment contract is terminated due to unsatisfactory work performance and/or lack of required knowledge/abilities is entitled to a notice period of between 1 to 3 months, depending on the total number of years of insurance. The GCA makes this termination even more complicated by mandating formation of a committee competent to decide on the alleged lack of working skills and work results;
- An employer is obliged to issue a decision regarding annual leave at least 15 days prior to the date the requested annual leave would begin which is usually not possible in practice;
- It is not possible for persons on maternity leave to return to work on a part-time basis during the leave and achieve proportional maternity benefits;
- The level of contributions to the regional chambers of commerce which are calculated on the gross salary level varies throughout Serbia which complicates the introduction of a unified payroll calculation system for companies employing individuals throughout Serbia;
- Certain categories of employees cannot be unilaterally terminated as redundant by the employer even if they consent to the termination (pregnant woman, woman on maternity leave, childcare leave or special childcare leave, trade union representatives);
- A business trip within the country is not defined by the law;
- Employers are obliged to pay compensation of costs for the time spent on business trip abroad at least in the amount determined by special regulations;
- The law allows employers to offer an annex to the employment contract only in cases listed in Article 171 which does not encompass all practical cases when it is necessary to sign the annex;
- Definite term employment is limited to 12 months as well as with the restrictive conditions when it can be arranged;
- The time limit of 7 days for the notification on change in the work-time schedule is too short;
- Rescheduling working hours is at the moment limited to 6 months within one calendar year;
- Under the current law and the GCA, the criteria for increasing the length of annual vacation are determined cumulatively, which creates an additional obligation for employers to establish criteria that are often not applicable in practice;
- The currently stipulated minimum of 3 working weeks of the annual vacation (if used in parts) is not in compliance with ILO Convention no. 132 (ratified by the law published in the SFRY Official Gazette No 52/73), which stipulates that „Unless otherwise provided in an agreement applicable to the employer and the employed person concerned, one of the parts shall consist of at least two uninterrupted working weeks" (Article 8). Since in practice the employer usually supports the employees to take their days off according

to their needs, this compels employers to keep parallel unofficial records of annual vacations, while the employees are not allowed to use their annual vacation according to their needs;

- The provisions of the current Labour Law stipulate that severance payment in the case of redundancy is based on the employee's total years of employment service. This means that a current employer that terminates an employment contract by way of redundancy is required to make a severance payment not only for the length employment under the most recent employment contract but also for the period of the employee's service with previous employer(s). Such provisions, inter alia, encourage potential employment discrimination against older people, i.e. people with long work experience;
- When an employee has its contract terminated, in certain instances it is normal that such contract stipulates that the employee cannot work for a competitor of the employer for a specified period of time (this is called a ban of competition). For this period of time that the employees cannot work, they are to receive remuneration. In certain instances, such remuneration can be paid during the course of the employee's employment (as opposed to a lump sum at the end), so that when the employment contract is terminated, a substantial amount of the ban on competition remuneration has already been paid. However, where the employer agrees to release an employee from this ban of competition, there is no mechanism under the law that obliges the employee to repay this remuneration. The employer can only rely on the employee acting in good faith;
- The length of the suspension which measure up to 3 working days (Article 170 of the Labour Law) is very short and inefficient in most cases;
- Statutory limitation periods from Article 184 paragraph 1 of the Labour Law are specified within the term which often does not allow employers to take timely action, protect their business interests and prevent the occurrence of further damage;
- The amount of compensation of 36 salaries from Article 191 paragraph 5 of the Labour Law that the court may award to be paid to the employee by the employer in the event that the employer requests that the employee shall not be readmitted to work is too high and unfair;
- The time limit from Article 195 of the Labour Law for instituting the court proceedings by the employee (i.e. by an authorized representative of the employee's trade union) that is currently determined within duration of 90 days is very long, unlike some neighboring countries where this period is much shorter;
- If an employee commits work duty violation or disrespects work discipline and the employer believes that in a given case the employment contract should not be terminated (unless the employee commits the same or similar violation), the Labour Law provides the obligation for the employer and employee to go through the exact same procedure to that provided for the termination of employment contract (warning);
- The employer is obliged to offer the employee an annex to the employment contract even if that employee is temporarily transferred to another appropriate job position – as required by the needs of the work with that employer (e.g. when performance is necessary to carry out the work of employee who is on vacation, short time sick-leave, etc.);
- The only "disciplinary" measure stipulated by the Labour Law is the temporary removal of an employee from work;
- Provisions of the applicable Labour Law (Article 192) that stipulate that decision-making with respect to the rights, duties and responsibilities deriving from employment shall be in the competence, in a legal entity - of the general manager (or an employee authorized by him) - are fully inapplicable to all existing legal i.e. commercial entities. For example, the management of the banks is a board of directors and executive board, while a limited liability company may have either a general manager or a board of directors. The same also refers to all other provisions of the Labour Law that inadequately regulates the competent body with the employer;
- Provisions of the existing Labour Law reduce the possibility of engagement (of both the employees and unemployed persons) through the restriction, inter alia, in the form of conclusion of service agreements for jobs which are outside the scope of business of the

employer. Further, by legal regulation of agreements on additional work, engagement of one (already employed) person shall be limited to a maximum of 1/3 of a full-time job. The given examples indicate that the provisions of the existing Labour Law reduce the flexibility in special forms of business engagement, which has a negative impact on the employment rate and the increase in gray market.

The GCA

The extended application of the GCA is still subject of serious criticism by employers who are not members of the Association of Employers that signed the agreement, due to (we reiterate) the following reasons: (i) the agreement of two parties can be extended to a third party which did not participate in it which creates additional legal uncertainty in an already unstable Serbian market; (ii) such extended application gave the GCA the legal status of a law without undergoing the regular parliamentary procedure for adopting a new law; (iii) the decision on extended application is of a political nature, and it is questionable if the legal requirements for its adoption have been met; (iv) the content of the GCA which is not in line with the principles of modern market economy (e.g. determining base salary based on coefficient and minimum price of work etc.).

The GCA provides more favorable rights to employees in comparison with those set out in the Labour Law on several issues, as well as the duties of employer that do not relate to protection of employees' rights, such as:

- The GCA mandates calculation of base salary by using the coefficient for the specific work (obsolete method which existed under the old law), as well as restrictions in respect to the term of application of the negotiated base salary for the most simple work (six-month period at the maximum) and its amount (the newly negotiated amount cannot be lower than the previously agreed amount). Such provisions can create problems in practice for the employers who do not have collective agreements or a union, and it seems that based on these provisions, the employers are not allowed to offer annexes to employment contracts to employees regarding reduction of the base salary (even if the employer faces financial difficulties);
- The obligation of the employer to inform the trade union on various issues, such as: annual report on the business operations of the company, on the profit and distribution of profit, information on paid salaries, etc. that have no connection with protection of employees' rights;
- The employer may offer minimum wage only in case of difficulties in business operation and for only up to 6 months during the calendar year, whereby it has to pay back to employees the difference up to the full salary (within 9 months);
- In the case of redundant employees, the minimum severance payment is 1/3 of the employee's salary, or 50% of the average salary in the Republic for each full year of service, whichever is more favorable for the employee (please note that this specific provision is rather unclear and different interpretations are possible). Also, the GCA provides for detailed criteria for determination of the employees whose employment shall be terminated in case of redundancy;
- Termination of employment due to lack of working skills and work results is much more complicated and time consuming and entails forming an employees' committee competent to decide on the alleged lack of working skills and work results;
- Employers are obliged to provide 0.15% of the payroll costs per month for prevention of disability and recreational holiday of their employees (application of this financial provisions has been postponed for unknown period of time);
- The GCA sets out an extensive list of events which may trigger the employee's right to paid leave, as well as additional criteria for increase of annual leave duration;
- Certain salary items are paid at an increased rate compared to the rates set out in the Labour Law: work on a non-working day - 120% of the base salary; night work - 30% of the base salary; allowance for previous years of service - 0.5% for each full year of service, etc. The application of these financial provisions has been postponed for unknown period of time;
- Food allowance is set at a minimum amount of 15% of the average salary in the Republic; allowance for annual leave in the amount of 75% of the average salary in the Republic; field work daily allowance

in the amount of 3% of the average salary in the Republic (application of these financial provisions has been postponed for unknown period of time); food allowance during business trips in the country in the amount of 5% of the average salary in the Republic etc.; daily allowance for business trip in the country in the amount of 5% average salary in the Republic;
- The GCA mandates reporting of vacant job position to NES although such obligation does not exist under the new Law on Employment and Insurance in Case of Unemployment;
- The GCA provides for the employers' obligation to insure employees for the case of death, work related injury and decrease or loss of work capacity. It is not clear how to apply this provision, bearing in mind relevant provisions of the Law on Occupational Safety and Health and past interpretation of this law by the competent bodies that this obligation shall not be applicable until this type of insurance is regulated by a separate law.

The GCA was concluded for the period of three years and shall cease to be valid on May 17 2011 - unless the parties to this agreement otherwise agree within the maximum of 30 days prior to its expiry.

The Law on Employment and Insurance in case of Unemployment

In general, the provisions of the Law regulating employee's rights and compensation amount in case of unemployment are set more restrictively than by the previous law, in particular the pecuniary rights in case of terminating the employment without the guilt of the employee. As was the case with the previous law, this Law too does not envisage the right to pecuniary compensation in case of consensual termination of employment. This reflects on the slowdown and difficulties in the implementation of social programmes, where social programmes are in progress, particularly for people who are within a few years of retirement age.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities

With respect to issues concerning the Law on Professional Rehabilitation and Employment of Persons with Disabilities previously detected by the FIC as problematic, we further emphasize the following:

- The most important by-laws adopted for implementation of the law have been passed and/or have entered into force almost a year after entry into force of this law;
- Committees responsible for evaluation of the working ability of persons with disabilities were established and have started to work in July 2010;
- The difficulty for employers is a lack of sufficient staff, while on the other hand, there are business activities for which it is practically impossible to employ a person with disability (construction etc.).

The Law on Foreigners

Obtaining business visas and temporary residence permits is an excessively complicated and time consuming process. Each transfer of funds abroad by foreigners entails the gathering of a large number of documents and evidence that need to be submitted to the bank. In addition, due to the amendments to the Law on Personal Income Tax made in 2010, all resident foreigners (except those who are exempted) are annual income tax payers if their income is higher than three times the average annual salary of an employee paid in the Republic of Serbia in the given tax year. The data on the average annual salary in the Republic of Serbia is provided by the authority responsible for statistics.

The Law on the Protection of Citizens of the Federal Republic of Yugoslavia Working Abroad

- The latest amendments enacted in 2009 did not contribute to an improvement of this Law, and even the outdated terminology was not changed and adapted to contemporary terminology. According to the title, the Law applies to the citizens of a state which no longer exists;
- The terminology of the Law is not consistent with the terminology of the Labour Law and other positive regulations, which raises dilemmas as to which instrument or instruments an employer is obliged to use in order to regulate the matter of sending the employees to temporary work abroad;
- The obligation of the employer to regulate certain issues concerning the sending of employees abroad to

work temporarily, in their official documents or some other instrument, including way of selecting an employee for work abroad, is defined as too complicated, vague and maladjusted to the contemporary concept of work and labour relations;

- The obligation of the employer to inform the competent Ministry of Labour and Social Policy that conditions are met to send the employee abroad to work temporarily 30 days before the posting, as well as to deliver complete documentation to the Ministry including evidence on paid taxes and contributions, significantly slows down all the activities of the employer and practically impedes the performance of work which should be performed fast in a short and/or appropriate period of time. Further, the Ministry is entitled to demand additional documentation thus prolonging the period of time. The procedure thus takes 60 days on average. Without any evidence that information has been rendered to the competent Ministry and that the Ministry has ascertained that conditions are met, health insurance for employees which is valid abroad cannot be provided through the Health Insurance Fund of the Republic of Serbia in accordance with the regulations of the Republic of Serbia.

FIC RECOMMENDATIONS

Because the regulations listed in the above text are considered particularly important and vital for attracting and maintaining foreign investments, the FIC has a number of suggestions on how to improve the situation.

The Labour Law

- We believe that additional decreases in labour expenses are necessary in order to boost the employment rate and reduce the so-called "moonlighting." This can be accomplished through either further reductions of the income tax rate and the income amount exempt from taxation, or by a reduction in social security contributions;

- The changes in the area of employment for foreign citizens must contribute to a positive environment for foreign investments, such as the temporary work permit time limits which should be extended to 3 years, the procedure for obtaining business visas and temporary residence permits which should be made far less complicated and time consuming and the procedure for transfer of funds abroad by employed foreigners which should be simplified;

- Most international companies have a system of calculation of salaries which is applied throughout the world. Forcing these companies to accept a completely different system just for Serbia creates an additional barrier to foreign investments and increases investment costs. For example, with a view to elimination of the legal uncertainty in the part currently regulating the work performance (we also propose that work performance shall not be mandatory, but discretional), it could be proposed to amend the text of the law so as to clearly establish the following: (i) the part of the salary referring to the performance (in case the employer determines work performance) shall not be determined on a monthly level, and (ii) the salary based on the contribution of the employee to the business results of the employer (Article 105) is not a special additional and mandatory salary category. Awards and bonuses represent the award for the performance, and it is clear that such performance has contributed to the business results realized by the employer. In this regard, the possibility of free agreement between the employees and employers about the structure of salary and additional benefits and establishment of the salary system that will stimulate the work of employees is the basis of functioning of the labour market;

- We suggest that Article 120 of the Labour Law be amended by new items that will determine the right to use the company car and the right to reimbursement of housing costs, and also to amend Article 105 of the Labour Law which will determine that the benefits mentioned in Article 120 of the Labour Law are also not considered as salary;
- We suggest that salary compensation during absence due to sick leave, national holidays, annual leave, paid leave etc. is due in the amount of base salary (in fact: no less than the basic salary) increased by seniority;
- Employment related paperwork should be simplified by introducing electronic delivery of documents and electronic databases and implementation of the electronic signatures rules. In relation to that paragraph 5 of Article 122 of the law should be deleted;
- In the case of professional inadequacy there should be no need to form a committee but the employer can evidence the reason for termination in another suitable manner. The dismissal period should not be longer than 15 days;
- Amend the Law to reduce the deadline for issuing the decision on annual leave to 5 days prior to the commencement of annual leave and even less if the said decision is going to be issued at employee's request. In this case, it should be determined that the decision on annual vacation may be issued to the employee electronically. In dynamic, fast-changing work environments, such as foreign companies, annual leave is often agreed upon on short notice, especially when it comes to management;
- The employment regulations should provide for the possibility of persons on maternity leave to start working on a part time basis during the leave and achieve maternity benefits on a pro rata basis;
- The contributions to regional chambers of commerce should be unified throughout Serbia;
- Employees protected from termination based on redundancy should have the right to consent to such termination, in which case they would be entitled to unemployment benefits;
- A business trip in the country should be defined;
- We propose that the provision of the existing Labour Law which stipulates that an employee is entitled to compensation of costs for the time spent on business trip abroad at least in the amount determined by special regulations changes in the way that the compensation of these costs be also regulated by the general act of the employer solely;
- Stipulate that outside the cases listed in Article 171, an annex to the employment contract can be signed also in other cases, based on mutual agreement between the employer and employee;
- We propose that the duration of 12 months for definite term employment contract in the law shall be extended to 36 months. In addition, we propose that such an employment contract should not be conditional on the existence of a handful of predetermined reasons (such as: work on a specific project, increase of volume of work,

seasonal jobs, etc.) – which is currently the case. We propose that there should be no such limitations and that the parties should be free to contract for whatever purpose they deem sufficient;

- We propose to enable the employers to notify the employee about the change in the work-time schedule no later than 3 days prior to such change;
- We propose that the duration regarding rescheduling of working hours shall be based on the calendar year;
- We propose that the extensive criteria (as described earlier) governing the increasing of the length of an employee's annual vacation should be established in a manner that would enable employers to apply only specific criteria that corresponds with their practical business needs. This way, employers would not be required to apply all the current criteria, as is currently required by the provisions of the Labour Law;
- The currently stipulated minimum 3 working weeks annual vacation (if used in parts) should be amended in order to provide full compliance with ILO Convention no. 132. In the same spirit, we propose that the possibility of a different agreement between the employer and employee should be also stipulated;
- It is extremely important to completely change the method of calculation of severance payment by basing the amount of severance payment in the case of the employer's declaring an employee redundant, solely on years of service of such employee with that actual employer, and that as a last alternative - the rest of the amount of severance pay (and for the remaining number of years of employment with previous employers) shall be borne by the state, at its own expense;
- We propose that the existing Labour Law should be amended in a manner to allow the employer to be fully compensated by the employee (in the amount paid to the employee) in the following instance: where the employer agrees to release an employee from the contractual ban of competition that continues following the date of the termination of employment;
- We propose to establish not only a longer duration of suspension measure under paragraph 2 of Article 170 of the existing Labour Law, but also the possibility that the suspension may be determined in a period longer than the established period in cases provided by other law;
- The statutory limitation periods that are laid out in Article 184 paragraph 1 should be extended;
- We suggest that the amount of damage compensation from Article 191 paragraph 5 of the Labour Law that the court may award to be paid to the employee by the employer should be limited to a maximum of 18 salaries that would have been effected by the employee if he/she was employed, and depending on the period of employment and employee's years of age, as well as on the number of members of family supported by him/her;
- The time limit for instituting the court proceedings by the employee (i.e. by authorized representative of employee's trade union) should be determined within a shorter period of time; and it should be reduced from the current 90 days to 30 days;

- Given that the only "disciplinary" measure stipulated by the Labour Law is the temporary removal of an employee from work, and considering that deduction of a portion of salary is an effective disciplinary measure and as such determined by laws of some surrounding countries, we propose that the said deduction of a portion of salary should be explicitly stated in the Labour Law as a possible measure and the amount of such deduction would not exceed 20% of the contracted monthly base salary of the employee;

- We suggest the paragraph 3 of Article 180 of the Labour Law to be set aside in a separate (new) Article "180a" which should provide that if an employee commits work duty violation or disrespects work discipline, the employer may impose a reprimand and within the same inform the employee the he will terminate his/her employment contract should he/she commits the same or similar violation, without warning;

- We propose that the employer has the right to temporarily (up to 30 working days) transfer the employee to another appropriate job position (with the same employer) with no obligation of concluding an annex to the employment contract (e.g. when performance is necessary to carry out the work of employee who is on vacation, short time sick-leave, etc.) - where so required by the needs of the work with the employer;

- The provisions of the Labour Law should be completely revised in order to adapt them to the existing management structure of all legal entities. Accordingly we propose that labour relation issues should be decided by the competent authorities within the employing company that are authorized to do so under the law applicable to that kind of company or by an authorised general act of the employer;

- The number and type of jobs carried out by one person and the agreement that the same has reached in that respect with one, two or more employers, should not be subject to legal regulation, as they depends on personal choice (work out of the scope of employment).

The GCA

- The extended application of the GCA should be nullified for reasons listed above, while the relevant law provisions that regulate the extended applicability of the GCA should be deleted in full. Otherwise, our recommendations given in the previous editions of the White Book remain – whereby they under no circumstances mean that employers – members of the FIC agree with the GCA.

The Law on Employment and Insurance in case of Unemployment

- Consider the possibility to widen the circle of employees or the period of use of pecuniary rights in the case of termination of the employment without their guilt.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities

- The law should be terminologically coordinated with special laws in the area;

- The work ability assessment and issuance of a resolution on assessed work ability should be performed by the same body in order to shorten the procedure. We suggest assigning the procedure to a competent body other than PSF considering that the PSF already has significant volume of work;

- We believe that a more efficient manner for achieving a higher employment rate of persons with disabilities would be stimulating employers to employ such persons by way of beneficial measures rather than punishing them for non-compliance. In addition, there are business activities for which performance it is practically impossible to employ a person with disability (construction etc.).

The Law on Foreigners

- Obtaining business visas and temporary residence permits is an excessively complicated and time consuming process. Enhance practical application of the law.

Protection of Citizens of the Republic of Serbia Working Abroad

- The Law should be modernised, harmonised with the terminology of the Labour Law and other relevant regulations and adjusted to new business terms. Since new possibilities are opened up for localised companies to perform a series of jobs abroad through their employees, fast mobility of labour should be provided, together with a reduction of administrative obstacles and needlessly long procedures. An alternative would be to suspend this Law and regulate the essential issues relating to the protection of Serbian employees working abroad by the Labour Law.

Staff Leasing

- The concept of staff leasing should be regulated by a separate regulation which would govern all important issues in respect to this (relation of employer and individual, employer and service user, employee and service user, occupational health and safety etc.);

- The concept of staff leasing should be regulated in a manner in which the relationship between the leased staff and the users of staff leasing services should not result in the creation of an employment relationship;

- The conditions for the issuance of work permits and the content of general business conditions for staff leasing agencies (including the fee for the issuance of a license for staff lease agencies) should be also regulated by the law. This way the law would create legal certainty which would therefore remove the possibility of discretionary decisions being handed down (e.g. by ministries) with regard to these important issues.

HUMAN CAPITAL

CURRENT SITUATION

The global economic crisis has continued to influence significantly the labour market in 2010.

Reduced economic activity and consumption in the world have brought about a reduction in exports and economic activity in Serbia and the reduction in income of the Serbian population resulted in a decline in demand for domestic and imported goods. Such trends in the real sector inevitably lead to reduced demand for labour, as a measure which derives from the economic activity. Reduced demand leads to a decline in employment in market economy, or to a reduction of wages, a reduction in the number of hours of work or a combination thereof.

The unemployment rate in Serbia in April this year was 3.6 percent higher than in April 2009 and amounted to 19.2 percent, according to the Republic Statistical Office.

Labour market in Serbia is showing the same trend as the

rest of the economy - a shrinking tendency. In order to reduce expenses, many companies have decided to reduce their headcount. That trend continues in 2010 to reduce costs, and therefore to reduce labour force by employers.

The Government had to balance between growing budgetary deficit and companies' needs to receive support through salary tax incentives to slow down the downsizing processes. However, comparing to previous years, the number of unemployed citizens has increased by more than 3.6 percent.

In such circumstances, unlike in previous years and only due to a decreased demand, the supply of qualified workforce has improved, in particular fresh college graduates.

In times of economic crisis human capital becomes increasingly important. Although the demand on the labour market has been reduced, wherefore there are fewer job opportunities, the retention of key personnel is in the focus of HR professionals more than ever, as this is vital to survive the crisis. Therefore, mature companies tend to defend their high-potentials even more, and it is still difficult to find both suitable and immediately ready candidates to take over important strategic positions in companies.

The mindset of young people, entrants to the Serbian labour market, is changing with time. They pay more and more attention to the companies which will provide them with up-to-date functional knowledge and trainings, which they were not able to get during their formal education. Also, the mobility of young people is increasing, slowly but surely. There are many companies with very good business practice and solid reputation outside Belgrade, and young people are increasingly ready to move in order to work therein. However, Belgrade remains the most attractive location for young people to live in. There is also a risk for "brain-drain", as many young people wish to leave and work outside the country. This attitude change is increasing young people's opportunities.

There are certain changes in the education system. Most universities and colleges are aware that they are in a competitive market. They have started with changes in order to position themselves as well as possible comparing to competition. Serbia has introduced the Bologna Process which will surely bring positive changes to the education system. Still, not many faculties are able to provide practical knowledge, which obliges the companies to invest significant funds in the education and training of hired fresh graduates.

POSITIVE DEVELOPMENTS

Although burdened by serious problems, Government of Serbia has undertaken some proactive measures in the times of crisis. When it comes to human capital, the Ministry of Economy and Regional Development again in this year like last year has continued the initiative to sponsor employment of 10.000 apprentices, which was very well accepted by the business community and young graduates. The Ministry of Economy and Regional Development has opened door to investors to apply for financial support through direct investment. Thus, there were 17,194 new jobs opened during the year according to their data.

The Ministry of Economy and Regional Development has also supported the Competitiveness and Innovation Programme (CIP).

The Ministry of Youth and Sports drafted the National Youth Strategy, which was adopted by the Government. The goal of the strategy is youth activism and their participation in all social processes. The Young Talents Fund granted a number of scholarships. The goal of all these activities is to raise the employment capacities of young people and to motivate them to stay in Serbia.

The Ministry of Science has provided significant contribution in 2010 towards creating opportunities and programs that include, among other things, the training of staff for research. Activities are implemented through several programmes for the development of scientific personnel.

As part of the Programme to encourage young people, endowed with capacities for scientific research, through grants, the Ministry of Science, above all, encourages and guides young people who have opted to continue education after the completion of basic studies, now graduate academic studies, who have graduated with great success, or have showed excellent results in international knowledge competitions as

secondary school students. The Ministry provides scholarships, directs and encourages them to promptly complete postgraduate studies and also ensures their involvement in projects of the Ministry and/or introduces them to scientific research. The involvement of young researchers - scholars is done through the implementation of research topics within the projects at universities and institutes, with continuing guidance and support of mentors, as well as through many other forms of professional development.

Other activities of the Ministry of Science aimed at supporting and training young people are:

- Support for young researcher's conferences;
- Study visits abroad;
- One-off assistance to young researchers for training;
- Help in finishing master thesis and doctoral dissertations;
- Participation in the International Olympics of Knowledge;
- Donation to the Republic Foundation for the Development of Scientific and Artistic Youth;
- Postdoctoral training of young researchers;
- International exchange of students and student associations;
- Support of scientific and professional societies and other organisations that contribute with their activities to the promotion and popularisation of scientific and technological creativity of young people.

The Department of Occupational Health and Safety of the Ministry of Labour and Social Policy has continued their efforts to promote safe and healthy working environment, by facilitating different activities, such as campaigns, seminars, trainings, meetings etc. The work of transposition and implementation of European occupational health and safety standards has continued in 2010.

The Government of Serbia adopted the Strategy on the Development and Promotion of Corporate Social Responsibility for the period from 2010 to 2015 which regulates the situation in this field comprehensively.

The Ministry of Labour and Social Policy, as the initiator of the Strategy, expects that this document will create a basis conducive to a more effective functioning of corporate social responsibility, inter alia, through the elimination of social exclusion and discrimination and through the promotion of social justice, protection of employees and consumers, with more responsible attitude towards the local community and environment.

Electronic registration of employees to health insurance:

The Republic Fund for Health Insurance has enabled employers to file applications, applications of change and/or notices of withdrawal for compulsory health insurance electronically as of 1 June 2010. This is a positive step in simplifying and reducing administration related to the legal regulations of application and withdrawal of employees at the specified fund.

REMAINING ISSUES

The Government should stop the extension of the GCA to all employers who are not members of the Serbian Association of Employers. This extension has two major implications. Firstly, values that are promoted in the GCA are obsolete, and many segments of the Agreement do not refer to employees' rights at all and they are still imposed on all companies in Serbia. Secondly, the GCA creates additional burden to all employers in Serbia, which could be counterproductive in the time of crisis and could lead to either a reduction of salaries, or even headcount reduction in those companies which are not able to spend more money on labour costs. This extension has been rated quite negatively by the business community, both in Serbia and abroad, because it decreases the predictability of the legal framework in Serbia, which can discourage potential investors.

Due to the impact of the economic crisis, an increase in grey market labour force can be expected. Since there are a number of companies which fail to pay their obligations to the state, the Government occasionally announces new taxes on wages in order to cover budgetary deficit. This measure would affect those employees whose companies settle their obligations regularly. Instead of additionally burdening them, it would be more effective to reduce grey and black labour market by increasing the Labour Inspection activities in the field.

The development of human capital is one of the most important tasks, which has a very broad impact on the country's progress, and therefore all stakeholders should be committed to it. Nowadays, the quality and structure of work force on the market could make a difference in a company's decision to invest in a certain country.

The Education system still has to be improved and better connected to business community. By doing so, the gap between education and competency requirements of companies would be reduced, and image of Serbia as potential investment location would be improved.

Negative demographic trends should also be mentioned. The population of Serbia is getting older, and Serbia is ranked 6th among countries with the oldest population in the world. Also, population is getting more and more grouped in the northern part of the country. The Government has recognised these trends, but the situation has not improved. This situation will further reduce chances of certain parts of Serbia to attract new investments.

FIC RECOMMENDATIONS

- Positive measures which stimulate employment should be continued;
- Education system should be improved. Regular contact between the FIC and the Government, ministries of education and youth, as well as with the universities, is crucial. The business community and FIC members are ready to provide support and expertise;
- Continue joint proactive engagement of the FIC and the Ministry of Diaspora in order to motivate highly skilled and educated workforce currently abroad to return to Serbia;
- Improving the workforce is a key component of economic competitiveness, in that sense, we must continuously promote the development of human resources as the main driver of development of society and state.

LEGAL FRAMEWORK

In comparison with the Legal Framework covered in White Book 2009, some improvements are notable, i.e. a number of new laws have been enacted and certain rules have been changed. Still, a number of issues addressed in previous editions remain pending. Also, some new issues have been recognised in this 2010 edition.

Like in 2009, legislative activity in 2010 was mainly related to the further harmonisation of the national legislation with international and particularly with EU standards. Several laws that are essential for Serbia's membership in the European Union have been enacted by the Serbian Parliament. For example, five new laws dealing with the particular form of intellectual property rights, which are, to a large extent, harmonised with relevant international conventions and EU standards, have been adopted. Apart from new laws, the Serbian Government and other competent bodies also engaged in drafting respective secondary legislation necessary for the implementation of the laws adopted during 2009, namely various by-laws and guidelines related to the Law on Foreign Trade, Customs Law and Law on Protection of Competition.

The matter of court proceedings efficiency and, particularly, the matter of enforcing court decisions are for the first time treated separately in this White Book edition. The same applies to the public procurement process. Considering the total value of goods and services procured by the public authorities and enterprises, it is obvious that public procurements affect not only the efficiency of public spending, but they also ultimately influence the operations of foreign investors participating in the public procurement processes.

However, the incorporation of the Community Acquis into the Serbian legal system presumes effective implementation of such new rules. Thus, the capacity-building and further specialisation of the public administration and judiciary remains crucial for the achievement of these goals. In addition, further implementation of the regulatory 'Guillotine' and institutionalisation of the Regulatory Review Unit, currently established as a temporary body of the Serbian Government, are among the most important preconditions for creating a business friendly environment.

COMPANY LAW

CURRENT SITUATION

The Company Law that is in effect today was enacted in 2004. Adjustments with the old law were completed in 2005, except for the few provisions dealing with socially owned companies entering the privatisation process. The Company Law applies to company registration and governance in general and special laws are in effect for banking, insurance, financial leasing and stock exchange listing. In that sense, the Company Law applies only as a supplement or where those laws specifically refer to it.

The current Company Law needs to be adjusted with other legislation and market developments in the country. Namely, the conflict of laws between the Company Law and the Securities Law threatens to slow down the companies and market development in Serbia. The Government formed a working group in 2008 with the task to amend the Company Law in line with EU and international best practices and adjust its provisions to provisions of other laws, including Law on Securities and Other Financial Instruments Market and Foreign Investments Law.

The Company Law defines four forms in which a company may be established. Those are:

- Partnership;
- Limited Partnership;
- Limited Liability Company, or
- Joint Stock Company.

No minimal requirement is set by the Law in terms of the share capital for partnership and limited partnership. Partners/ founders in those companies bear full personal liability for the obligations of the company. Limited Partnerships hardly exist in practice, while Partnerships are a bit more frequent. The Law prescribes that at least two persons are required to be the founders of such a company. According to the Company Law, legal entities can also be founders and owners of such a company. Due to its characteristics, based on the ease of functioning, and on the fact that a relatively small founding amount is required (EUR 500), the Limited Liability Company is by far the most common form established in Serbia. The Law prescribes the minimum of one, and the maximum of fifty persons who may be shareholders. For more than fifty shareholders the company would have to be transformed from a Limited Liability Company into a Joint Stock Company. As far as liability is concerned, the Limited Liability Company is liable to its creditors only with its assets, and not with the property of its owners. The only exception is in the case when owners damage the company for unlawful or deceptive purposes ("lifting the veil").

Joint Stock Companies can be founded as close-end (share capital must be at least EUR 10,000) or those open to the public (where significantly higher share capital is required, EUR 25,000). Closed Joint Stock Companies are defined as companies whose shares are issued only to its founders or to a limited number of persons in accordance with the law. Open Joint Stock Companies are defined as those that have had at least one public share issue. Both domestic and foreign persons can be founders of a Joint Stock Company.

Foreign entities are permitted to open representative offices in Serbia. Representative offices are registered with the Business Registration Agency. They are not legal entities and cannot be engaged in commercial activities within Serbia, but they can be used for marketing purposes and for providing assistance to the company they represent in closing the deals inside Serbia. On the other hand, branches can also be established by the foreign entities, and they are permitted to do business in Serbia.

POSITIVE DEVELOPMENTS

Ongoing work on amendments and modifications of the Company Law as explained above is the true positive development since the last edition of the White Book. During years of implementation, a number of practitioners and academics noted that the Law has certain loopholes and inconsistencies, hence, the Government of Serbia initiated work on its improvement. The Government presented first draft of the amendments in September 2010 and opened public debate about proposals. It is expected for the public debate to last at least 6 months in order to enable interested public to comment proposed provisions.

REMAINING ISSUES

- The Company Law does not provide the possibility of having limited liability for the partners in a partnership. We believe that such a provision should be inserted in the Company Law;

- In case of disputes, the Company Law provides for the exclusive jurisdiction of the commercial court of the seat of incorporation which is not in line with the Foreign Investments Law which provides the possibility for disputes arising out of foreign investments to be settled before Serbian courts or before foreign or Serbian arbitration;

- The Company Law regulates open and close-end joint stock companies, and makes a reference to procedures in the Law on Securities and Other Financial Instruments Market, which do not exist. The Company Law does not clearly define the procedure for transforming an open Joint-Stock company into a closed one, which makes the transformation of an open joint stock company into a closed joint stock company impossible for the time being;

- The shares of a closed Joint Stock company are not recognised as securities by the Law on Securities and Other Financial Instruments Market, even though they are subject to recording on the securities account held with the Central Registry of Securities. Absence of rules applicable to shares of a closed Joint Stock company resulted in discretionary powers of the Central Registry of Securities and inconsistency of practice related to trading in such shares, including creation of pledge and pledge enforcement mechanisms. This loophole is misused in practice by the Securities Commission which uses it to support its point of view about the impossibility to change publicly quoted companies into privately owned companies;

- The provisions on legal consequences of the decrease in the value of charter capital are impossible to implement. These provisions provide for the beginning of the liquidation in case the value of charter capital doesn't reach the required minimum value within 6 months. At the same time, the liquidation provisions of the Company Law do not provide for the liquidation in case the value of the charter capital has been decreased;

- The provisions of the Company Law are inconsistent with the provisions of the Law on the Take Over of Joint Stock Companies regarding the squeeze out procedure (the right of a shareholder who has acquired 95 percent of total shares in an open joint stock company to buy out the remaining shares in the company). However both laws provide that this right can be exercised only if the threshold of 95 percent is reached by way of a public takeover bid in accordance with the Law on Takeover of Joint Stock Companies, and only within a certain short period from the launching of the takeover bid. Hence, a shareholder who reached this threshold other than through a public take over bid, (for example through capital increase or acquisition on the stock exchange), is not allowed to launch a squeeze out procedure;

- There are several provisions in the Company Law relating to open Joint Stock companies that should be amended because they unnecessarily require deference to the Law on Securities and Other Financial Instruments and decision-making by the Securities Commission in matters that are essentially company law matters;

- In order to bring the Company Law into harmony with modern corporate governance principles, a number of changes are necessary. Because of the different structures and functions of a supervisory board, audit committee, and internal audit function in modern corporate governance practice, the law should clearly distinguish between these bodies;

- The provisions of the Company Law on the limitations of the powers of the officers to represent the company are not entirely clear and are inconsistent with the provisions of the Law on Contracts and Torts. It is not clear what kind of limitations to the authority of the company's representatives is effective towards third parties, especially whether the limitations as per the type or value of the agreement are effective towards third parties;

- Although there is a general rule providing for contractual freedom of the shareholders in a limited liability company to arrange their relations as they deem fit, the legal nature of the number of provisions of the Company Law relating to a limited liability company is not clear, i.e. for several provision it is not clear whether they are mandatory, or whether a particular matter can be subject to different agreement of

the parties. This results in legal uncertainty with regard to multi shareholder limited liability companies;

- There are no clear and explicit rules on additional payments of shareholders in a limited liability company, although these payments are currently present in the day to day practise of Serbian companies. Additional payments of shareholders, which do not increase the share capital, were explicitly regulated in the previous Company Law of 1996. The lack of proper regulation in the current regulation gives ground to legal uncertainty.

FIC RECOMMENDATIONS

- The legal regime for partnership should be changed to allow for the limited liability of partners in a partnership;
- It is necessary for the provisions on exclusive jurisdiction in case of dispute resolution to be harmonised with the Foreign Investment Law;
- The concept of a closed Joint Stock company should be either further developed by providing clear rules applicable to this corporate form, including a general rule of applicability of provisions related to the Limited Liability company in the absence of specific provisions for a closed Joint Stock company or the concept of so-called closed and open Joint Stock companies should be abandoned in the Company Law;
- It is necessary to adjust the provisions on maintenance of the charter capital value with the provisions on liquidation of the companies;
- The provisions on squeeze-out should be amended so that squeeze-out procedure can be carried out when the relevant threshold is reached and should not depend on the successful public take over bid aiming at reaching the threshold of 95 percent of total shares. There should also be no time limitation to exercise this right.
- In order to address the problems regarding harmonisation of the Law on Securities and Other Financial Instruments Market and the Company Law, among other, there should be following changes:
  - with respect to listed and unlisted companies there should be comprehensive coverage of this matter in the Law on Securities and Other Financial Instruments Market;
  - with respect to introduction of stock-exchange trade and open stock-exchange trade, a difference should be made between the stock-exchange market and open stock-exchange market;
  - the Securities Commission shall be removed from the unnecessary process of approving an increase in capital after shareholders have already made an investment decision to provide the additional capital.
- The provisions on limitations to the authority of the representatives of a company should be regulated in a legally certain manner, determining clearly the types of limitations which are permissible and effective towards third parties. Also, the provisions on the Law on Contracts and Torts in this matter should be aligned with the Company Law;
- With respect to corporate governance, the Law should be amended in a following manner:
  - the concept of the supervisory board, as currently constituted, should be revised and amended so that there is only one shareholder-elected board, called either the "supervisory board" or the "board of direc-

tors" responsible for overseeing the management and business affairs of the company;
- the Law should provide for an audit committee in most companies as optional, and should require as mandatory an audit committee in listed companies which should consist of independent members of the board who has functions pertaining primarily to overseeing the internal audit function, the external audit process, and financial reporting;
- the Company Law should require an internal audit function in all listed companies. The internal audit function should consist of full-time staff members and the head of the internal audit function should report to the board, either directly or through the board's audit committee..

- With respect to limited liability companies, the Law should precisely state what provisions of the Company Law are mandatory, and which can be subject to a different agreement of the shareholders;

- The Law should clearly provide for the method of financing whereby a limited liability company receives additional finance from its shareholders in the form of "additional payments" which do not increase the share capital of the company.

SERBIAN BUSINESS REGISTERS AGENCY

CURRENT SITUATION

The Business Registers Agency was established according to the Law on the Business Registers Agency with the aim to implement regulations of the Business Registration Law and the new Company Law, as well as the Law on Financial Leasing and the Law on Pledge of Movable Assets and Rights in the Pledge Registry.

All these laws have been adopted in order to initiate the reform which would enable investors to quickly start their business operations in Serbia. It was clear from the very beginning that this was only a part of the reform, since starting business operations is connected with many other judicial and administrative institutions determining the establishment of a commercial entity.

The core activity of the Agency is to incorporate data in respective registers, to form them as centralised, electronic and public databases, and to act as a supervisory body. In order to decrease the grey economy and corruption, all data registered with the Agency are available online on the Agency's website, free of charge.

The Business Registers Agency is an example of a successful reform, with the following registers:

Companies Register

Since its commencement on 1 January 2005, the Agency has succeeded to re-register from court registers all active and inactive existing companies (73,000 active and 160,000 inactive), without causing any delays in incorporating new companies, and deleting and registering changes regarding the existing ones. All kinds of registrations, incorporations, changes and excerpt and certificate issues from the Register were always executed within the legal deadline of 10 days in the beginning, and then within 5 days, while today almost all registrations are carried out within 1-3 days. Currently, there are 112,917 active companies.

Register of Entrepreneurs

Since the beginning, on 1 January 2006, the Agency has managed to re-register 165,000 active entrepreneurs from registers of 164 municipal administrative bodies which had been keeping those registers until that day. At the time when this Register was established, the legal deadline for incorporation was only 5 days. Today, the registration of entrepreneurs is carried out in most cases within a day, and 4 days at most. Foreign investors are interested in entrepreneurs only in terms of cooperation, and not as investment opportunities, as explained below. Currently, there are 222,181 registered entrepreneurs.

Sub-register of Financial Statements and Solvency

The Agency conducts the segment of registered data regarding financial statements in a very simple way, within the company database. The Agency maintains data on the business standing of all companies and for those entrepreneurs as prescribed by the Law on Accounting and Auditing for the years 2005, 2006, 2007 and 2008. In May 2010, data for 2009 were also published.

Financial Leasing Register

From the very beginning on 1 January 2005, the Financial Leasing Register has been a very successful Register of all leasing agreements entered not only in the period following its establishment, but of those entered in the year before, as well. Apart from ensuring legal certainty, it has excellent statistical data on countries where goods bought through leasing came from, as well as on the leasing structure, showing that every year more and more machines for production are being imported from abroad, while the number of luxury and expendable goods is decreasing. Currently, there are 62,108 registered financial leasing agreements.

Register of Pledges on Movable Property and Rights

This Register is operational since August 2005. It has completely adopted the novelty provided by electronic registers regarding pledges – now taking effect not upon the delivery of property, but upon registration into the public register. A high level of safety has been provided to creditors this way, mostly banks and other financial institutions. As is the case with other registers, all data are available, including data on creditor, debtor, owner of property, amount of debt, duration of pledge as well as sequence of pledge creditors. Both legal and contractual pledges are registered. Currently, there are 61,941 pledge agreements.

Registers of Tourism, Public Media, Associations and Foreign Associations

The Register of Tourism which was established in accordance with the new Law on Tourism is operational since January 2010 and it incorporates the register of tourist agencies and tour operators. The Register also has records of other tourism related entities/places, such as sightseeing, tourist guides, providers of nautical services, etc. Currently there are 976 tourist agencies registered.

The Register of Public Media was established in October 2009. The Register includes data about the media, its founders, year of establishment, etc. Currently, there are 894 registered public media.

The Register of Associations and the Register of Foreign Associations are operational since October 2009. The Register of Associations currently has 3,021 registered associations and offers comprehensive data about them. Due to the short implementation period, there have been no registered foreign associations yet.

Register of Bankruptcy Estates

The new Insolvency Law which entered into force in January 2010 envisaged the establishment of a register of bankruptcy estates of all companies undergoing bankruptcy procedure. Ambitious in its goals, it should provide extremely useful data to all persons interested in the entities undergoing bankruptcy and their bankruptcy estates. This Register will provide all potential creditors an insight into claims of other creditors vis-à-vis particular bankruptcy estate, and it will provide the necessary transparency, lacking in this area for years. Given that the Insolvency Law entered into force in early 2010 there is no relevant experience allowing us to draw any conclusions about its implementation. Consequently, there are no registered bankruptcy estates yet.

POSITIVE DEVELOPMENTS

In the assessment of international organisations, the Business Registers Agency remained the only part of administrative system involved in the establishment of business operations that has undergone reform with a successful outcome. The Agency is also trying to prompt reform in other government institutions.

During 2007, a new, much better and user friendly website was launched, part of which is available in English.

In May 2009, the Agency registered the first company in a shortened procedure in the so-called One-Stop-Shop system in which as many activities as possible needed to start business operations are initiated within the Agency. This includes activities such as: obtaining the tax identification number and application for pension and social insurance. Instead of going to 4 separate authorities for registration, the applicant submits all registration documents to the Business Registers Agency which then proceeds with the registration of the applicant with the Tax Administration, Pension and Social Insurance Fund and Health Insurance Fund. This facilitated and shortened the registration procedure by at least 3-4 working days.

The Agency also participates, as much as it can, in drafting the amendments to legislation referring to it directly or indirectly. The Agency keeps track of all irregularities which it encounters through its activities and tries to correct them. Currently, the Agency is involved in comprehensive legal reform in Serbia which should result in the abolishment of all unnecessary regulations.

REMAINING ISSUES

The main remaining problem is essentially in the lack of good will in the rigid administrative system to dispose of unnecessary paperwork, forms in which the same data are repeatedly entered, numerous signatures and endless stamps. A particularly big problem is the refusal of all administrative bodies to eliminate its complicated, unreliable and always different numbers and allow these numbers to be replaced by a singular identification number of a company, which in our opinion should be the ID number generated by the Statistics Administration which has the least, almost accidental error percentage. The Business Registers Agency accepted this number as its own registration number and thus it has eliminated at least one company number from the system.

Finally, we believe that the biggest problem is that an entrepreneur, as a form of business organisation in Serbia, still exists as a natural person individually performing its

activity which is registered and has some specifics otherwise found in legal entities. This confuses foreign investors because all property of an entrepreneur is actually personal property of a natural person registered as an entrepreneur, either used for business purposes or not.

FIC RECOMMENDATIONS

- The Agency should participate in legislative activities regarding the complete abolishment of the Law on Entrepreneurs;
- Participation of the Agency in regulating the status of an entrepreneur, as well as in the introduction of micro companies, which are not foreseen by the law at present;
- Providing the Agency with the capacities needed for further improvement of the One-Stop-Shop system by enabling the Agency to accept even the requests for opening bank accounts within the registration procedure;
- Further centralisation of registries about other entities within the Agency, such as the Register of Institutions currently kept within the Commercial Court.

SECURITIES MARKET TRENDS

CURRENT SITUATION

There have been no significant developments in relation to the securities market regulations in Serbia from the date of publication of the White Book 2009. However it seems that the Government is considering proposing new Securities Law intended to replace in its entirety the existing Law on the Market of Securities and Other Financial Instruments. Hopefully in next-year's edition of the White Book we will provide our views on the new law or at least an official draft of the new securities law.

At present we may only notice that the Proposal of the Law on Amendments and Supplements to the Law on Market of Securities and Other Financial Instruments, which we have commented in the previous two editions is no longer in Parliament procedure, while the Draft Law on Securitisation is now ancient history. On the other hand, the Securities Commission and the Ministry of Finance continue to provide interpretation of the applicable regulations and "filling regulatory gaps" in this field.

The general conclusion is still the same - Serbia needs significant changes of the securities market regulations in order to attract more foreign investors, these changes should in particular provide for a clear legal basis for the initial public offerings (IPOs).

POSITIVE DEVELOPMENTS

In relation to the securities market there are not many things which may be characterised as positive developments during the last year. Nevertheless we noticed that at its official website the Securities Commission has posted a draft of the completely new securities law prepared by USAID/Bearing Point. Beside the mentioned draft, related memorandum and presentation of its crucial novelties are posted at the website as well.

Why is this important? Namely, in our opinion the above-mentioned draft of the new Securities Law is good and may serve as a great starting point for serious discussions and preparation of an official proposal of the new law on securities by authorised proposers. Irrespective of the fact that the draft law was prepared based on the request of the Ministry of Finance, up until now it has not become the official proposal of the new Securities Law.

As the status of this draft is still uncertain, at this point we do not want to comment further on the positive novelties contained therein, however we can only note that it generally seems suitable to fulfill its two main objectives: (1) to harmonise Serbian securities regulations with the relevant EU Directives, as much as possible under the current circumstances, and (2) to harmonise Serbian securities regulations with IOSCO Objectives and Principles of Securities Regulation and other international best practices in regulating securities.

We want to believe that the fact that the draft of the new securities law has been published on the Securities Commission's website 6 months after it was presented to the Ministry of Finance signifies the readiness of the Government to finally resolve the issue of the substantial conceptual shortcomings preventing the development of the Serbian securities market.

REMAINING ISSUES

Numerous serious issues still remain in relation to the securities market regulations and the following issues, which have been present for a very long period of time, represent the main obstacles for the further development of the securities market in Serbia:

- Proposed Law on Amendments and Supplements to the Law on Market of Securities and Other Financial Instruments has not been adopted and has been withdrawn from Parliamentary procedure while the new official proposal has not been presented yet.

- Existing regulatory framework is not favourable for the implementation of IPOs.

- Company Law provisions on pricing rules and conversion of the closed joint stock company to open joint stock company are not favourable for securities market growth.

- Lack of regulations on securitisation.

- Opinions of the Ministry of Finance and the Securities Commission interpreting takeover bid rules issued in 2009 significantly influenced the so far established practice in Serbia (related to the indirect acquisition of shares and moment of acquisition of shares). Partially, these interpretations could be seen as contradictory to the basic principles of the Serbian contract law and the Law on the Market of Securities and Other Financial Instruments in regard to the provisions dealing with the moment of acquisition of shares.

FIC RECOMMENDATIONS

- Harmonise all regulations related to securities with EU and other international standards, in order to increase trust of foreign investors. In that sense, the draft law on securities prepared by USAID and published on the official website of the Securities Commission may be a very good starting point;
- Pricing rules for share issuance should not be defined by the Company Law, or exemptions in case of IPOs should be introduced;
- With respect to the conversion of closed joint stock companies to open joint stock companies, the Company Law should be amended to require only amendments to its Articles of Association for a closed joint stock company to convert to an open joint stock company. The Commission would not be involved until the converted open company proposed to make a public offering, sought admission to trading, or otherwise fell within the definition of a public company;
- Draft Law on Securitisation should be introduced into Parliamentary procedure and adopted as soon as possible;
- The opinions of the Ministry of Finance and the Securities Commission regarding takeover bids should be further clarified in order to ensure a firm and stable legal framework that will enable further structuring of future transactions in the Serbian market.

JUDICIAL PROCEEDINGS

CURRENT SITUATION

In general judicial proceedings are governed by the Law on Civil Procedure (Official Gazette of the Republic of Serbia, No. 125/2004) and Enforcement Law (Official Gazette of the Republic of Serbia, No. 125/2004).

The Law on Civil Procedure stipulates the rules of procedure of court protection in civil law disputes regarding personal, family, business, economic and ownership rights and other civil law relations, except in cases where a specific law prescribes a different type of procedure.

The Enforcement Law governs the court procedure for enforcement of claims embodied in executive titles or authentic documents and procedure for securing of claims unless provided otherwise by a specific law.

Naturally, depending on the type of the dispute, when deciding on the merits of the case, courts apply different laws such as Companies Law, Law of Contracts and Torts, Criminal Code, Bankruptcy Law etc.

At the end of 2009 and beginning of 2010, reforms in the judicial system were made by enacting the Law on Court Organisation (Official Gazette of the Republic of Serbia, No. 116/2008 and 104/2009). This Law brought changes in the organisation of the courts. Namely, instead of five, Serbia now has nine categories of courts (Basic Court, Higher Court, Court of Appeal, Commercial Court, Commercial Court of Appeal, Misdemeanour Court, High Misdemeanour Court, Administrative Court and Supreme Court of Cassation). In addition, the territorial structure of the courts in Belgrade has been changed by the new Law.

During these reforms, most of the novelties were made in civil procedure.

POSITIVE DEVELOPMENTS

The Law on Amendments to the Law on Civil Procedure (hereinafter: the Law) has introduced changes and harmonised the terminology such as "commercial court" and "basic court".

Furthermore, Article 96 of the Law introduces the right of blind, deaf and other participants with special needs to have an interpreter free of charge, and by doing so enables them to follow the procedure with fewer problems.

Article 7 of the Law introduces a new principle of judicial truth which implies that courts need not determine all facts important for the merits of the case but only those that the parties themselves have proposed and which are presented during the proceedings. This change has been made in order to accelerate the procedure and make it more efficient.

Changes with regard to remedies have been made by adding a new paragraph to Article 373, according to which a decision of a court of first instance that was quashed may not be quashed again and returned to the court of first instance for a retrial.

All provisions that stipulate maximum monetary values, e.g. for determining court composition, have been changed so that amounts are now stipulated in euros in dinar equivalent calculated at the median exchange rate of the National Bank of Serbia (NBS) effective on the day of submission of the complaint.

Furthermore, the threshold for revision has been increased. Hence, the revision will be allowed only in the proceedings where the value of the claim exceeds EUR 100,000. For commercial cases this threshold is now EUR 300,000. This presents a significant novelty since the former thresholds for revision were RSD 500,000 (approx. EUR 5,000) and RSD 2,500,000 (approx. EUR 25,000) in commercial cases. The intention of the legislators was to reduce the number of cases submitted to the highest courts.

REMAINING ISSUES

Reforms of the judicial system have been made in accordance with the European Union standards, but there are still some drawbacks. Also, a number of cases regarding violation of human rights have been raised before European Court of Human Rights.

Moreover, the reforms have reduced the number of judges so the remaining judges have more cases to process, which may lead to delays. This system has created more difficulties

for the efficiency of the judges, but these problems should be overcome by employing more court staff.

The citizens are confused with the new judicial system, therefore the state authorities should promote the positive developments of this system, help the citizens become more acquainted with the relevant changes and facilitate their access to justice.

One of the biggest remaining problems of our legal system is enforcement or, more precisely, successfulness of enforcement.

FIC RECOMMENDATIONS

- To enact the Law on Amendments to the Enforcement Law;
- Education of the parties regarding the advantages of mediation over regular court proceedings;
- Increase the number of court staff and/or improve allocation of work;
- Develop programmes to improve public awareness of the changes in the judicial system;
- New changes should be enacted to the Enforcement Law in order to introduce the institution of private executors, which would improve court and out of court enforcement;
- Develop a better and more efficient notification system and enhance responsibility of legal entities regarding reception of notifications.

INSOLVENCY LAW

CURRENT SITUATION

The new Insolvency Law was enacted by the Serbian Parliament on December 11th 2009 and started to be applicable as of January 23rd 2010. This Law constitutes the basic legal framework for insolvency (compulsory winding-up) of legal entities in the forms of bankruptcy or reorganisation, and it replaces the previous Law on Insolvency Proceedings (2004). The initiation of the insolvency proceedings against an entrepreneur is not envisaged by this Law, though it was by the previous Law.

The new Law should encourage the creditors to settle the difficulties in business operations with the debtors through the initiation of bankruptcy proceedings or even to develop and suggest a proper plan to reorganise the debtor and to help it to continue to exist, instead of being liquidated. On the other hand, it is evident that the legal entities that are over-indebted are unwilling to admit the fact that they are facing serious problems - "death of the legal entity", i.e. they do not want to initiate the bankruptcy proceedings on their own. By the time the creditors decide to do so, it is usually too late and the debtor is left with no assets, i.e. its value is so small that the creditors cannot be protected.

In the new Law, the court proceedings have been simplified by elimination of the bankruptcy panel, leaving only a bankruptcy judge, a receiver and creditors' bodies (the previous Law provided for a three-judge panel and a special bankruptcy judge). The significant novelties include the selection of receivers and precise definition of their competences, as well as an increase of receiver's liability and supervision over receiver's performance, and also receiver's obligation to take out compulsory professional indemnity insurance amounting to EUR 30,000.

Starting from July 1st 2010, receivers are chosen by random selection from the list of active receivers for the territory of the competent Court. An active receiver is the one that has the license, mandatory insurance and that is registered as entrepreneur.

The new Law also specifies that the receiver manages the business operations and represents the debtor in bankruptcy. The receiver is appointed by the bankruptcy judge under the decision to initiate bankruptcy proceedings. The regulatory body (Bankruptcy Supervision Agency) continues to issue and revoke the licenses, but now with wider competences in "professional supervision" of receivers through, for example, issuing warnings and fines against the receivers who perform their activities in an unprofessional manner.

The nature and manner of payment of the advanced costs for initiation of bankruptcy proceedings, the costs of bankruptcy proceedings in the course of bankruptcy proceedings and the obligations regarding the bankruptcy estate are precisely defined.

Probably the most intriguing novelty is initiation ex officio of the bankruptcy proceedings by bankruptcy judge, on the basis of information received by the Enforced Collection Department of the National bank of Serbia i.e. the bankruptcy proceedings are initiated automatically for all companies whose accounts have been blocked for three years continuously (for companies that fulfil this condition until the end of 2010), for all companies whose accounts have been blocked for two years continuously (for companies that meet this condition in 2010 until the end of 2011) and also for all companies whose accounts have been blocked for one year continuously. The Department is obliged to provide the courts on a monthly basis with the reports on the companies whose accounts have been blocked for the prescribed number of years, so that bankruptcy proceedings can be initiated.

Another novelty introduced by the Law is the reorganisation plan, which is prepared in advance and submitted together with the proposal for initiation of the bankruptcy proceedings.

The institution of "silent creditors" has introduced a solution for the situation when the creditors' committee is inactive and fails to respond to the receiver's proposals, and now the proposal is to be accepted should the committee fail to respond within the specified period. The Law has reintroduced the statute of limitations for reporting the creditors' claims. The limitation period is now specified by the bankruptcy judge, subject to the circumstances of the case, within the legally defined period of 30 to 120 days from the day of initiation of the bankruptcy proceedings.

The envisaged penalties for violation of the provisions of the Law are imprisonment from one to five years and fines ranging between RSD 500,000 and RSD 10 million .

With regard to the procedure for the sale of a bankruptcy debtor as a legal entity, when the legal entity has retained its legal subjectivity (i.e. its capacity of the legal entity), while the founder or the owner of the company has changed, the buyer of the company (the bankruptcy debtor) is registered as the founder, i.e. a shareholder or stakeholder, and acquires ownership rights in line with the Companies Law. One of the most important characteristics of the bankruptcy debtor, following the sale of the debtor as the legal entity, is that the bankruptcy proceedings in relation to the debtor are terminated; however, the proceedings continue in relation to the bankruptcy estate represented by the receiver, for the purpose of settlement of the creditors, while the proceeds from the sale of the debtor are included in the bankruptcy estate. In accordance with the Business Registration Law, the Register of Bankruptcy Estate has been formed and can be found on the official website of the Serbian Business Registers Agency.

POSITIVE DEVELOPMENTS

The new Law will ensure a more professional and cost efficient insolvency procedure, which should lead to a more efficient settlement of creditors (i.e. higher percentage of creditors settled). One of the principal intentions of the new Law has been to precisely define the regulations in order to prevent, as successfully as possible, various kinds of abuse by creditors and bankruptcy debtors as well. The receiver will be strongly supervised by the regulatory body and now, with the precise legal provisions and ethics of conduct in insolvency proceedings, receivers can be expected to reach a maximum level of professionalism, satisfying all parties in the proceedings.

REMAINING ISSUES

At the moment, unlike in the European Union (EU) (and probably unlike anywhere else in the world when it comes to of insolvency proceedings), attorneys at law are not allowed to be active receivers, since they cannot be registered as entrepreneurs without breaching the current local regulations regarding lawyers' practice.

One of the most important reasons for adoption of the new Law was to speed up insolvency proceedings (which still last much longer in Serbia compared to the EU countries). The results of the novelties introduced by the new Law in this respect are yet to be seen. However, in order to have efficient bankruptcy proceedings, it is of essential importance to introduce and constantly train highly qualified bankruptcy judges and receivers. While responsibilities of receivers under the new Law have been defined and increased, responsibilities of insolvency judges have not been defined at all (for example, for failing to act within the statute of limitations prescribed by the Law).

The provisions of the new Law regulating ex officio bankruptcy proceedings are controversial, to say the least. Namely, if none of the creditors pays in advance the costs of the proceedings determined by the bankruptcy judge, it is deemed that creditors have no legal interest in conducting the insolvency proceedings and the ownership rights over the property of the bankruptcy debtor are transferred to the Republic of Serbia, which is not liable for obligations of the debtor. This means that in such an event all claims of unsecured creditors remain completely unsettled and the Republic of Serbia acquires the assets with no obligation toward the unsecured creditors.

FIC RECOMMENDATIONS

- Encouragement of the bankruptcy debtor to initiate the bankruptcy proceedings together with the submission of the reorganisation plan, giving the opportunity for more companies "to survive" instead of being definitely closed;
- Closure of the companies that have been over-indebted for a long period of time and their ultimate erasure from the Serbian legal system using the mechanism of "ex officio bankruptcy", which will reveal the real picture of the liquid and stable companies that actually operate in the Serbian market;
- Enhancement of receivers' professionalism to the highest level and revocation of receiver's license from those that cannot contribute to development of insolvency practice either by their lack of knowledge or breach of the code of ethics or, in the worst case, by abuse of office and various criminal offenses.

INTELLECTUAL PROPERTY

CURRENT SITUATION

Intellectual property refers to the inventions, literary and artistic works, computer programmes, symbols, names and images used in commerce, and it is divided into two categories: Industrial Property and Copyright and Related Rights.

The Parliament of the Republic of Serbia enacted five new laws, each one dealing with a particular form of intellectual property rights, which are harmonised to a large extent with relevant international conventions, as well as with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and EU standards:

- The Law on Trademarks (2009);
- The Law on Indications of Geographical Origin (2010);
- The Law on Copyright and Related Rights (2009);
- The Law on the Protections of Topographies of Integrated Circuits (2009);
- The Law on Legal Protection of Industrial Design (2009);

The Law on Trademarks governs the manner of acquisition and the protection of rights with respect to marks used in trade of goods and/or services. A trademark is defined as the right that protects a mark used in the course of trade to distinguish goods and/or services of one natural or legal person from identical or similar goods and/or services of another natural or legal person. The text of the Law is in accordance with the Protocol to the Madrid Agreement Concerning the International Registration of Trademarks.

The Law on Indications of Geographical Origin regulates manner of acquisition and legal protection of indications of geographical origin (appellations of origin and geographical indications), in accordance with the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The Law on Copyright and Related Rights stipulates the rights of the authors of literary, scientific and artistic works, computer programmes, as well as the rights of performers, producers of phonograms, videograms, broadcasts and databases, rights of the first publisher of a free work, and rights of the publisher of printed editions, as the rights related to the copyright.

The Law on the Protection of Topographies of Integrated Circuits regulates subject matter, requirements for the protection of topographies of integrated circuits, rights of creators and ways to achieve them, their limitations in exercising such rights, as well as the rights of companies and other legal entities where the topography was created.

The Law on Legal Protection of Industrial Design governs the method of acquiring the rights to the external appearance of an industrial or handicrafts product (defined as the overall visual impression that the product makes on an informed consumer or user) and the protection of those rights.

Finally, the Law on Patents (2004) regulates legal protection of inventions in field of technology, which are new, involve an inventive step and are subject to industrial application.

The institutions that protect intellectual property rights are the Intellectual Property Office (hereinafter: The Office), as well as the line ministries and other State bodies.

POSITIVE DEVELOPMENTS

Many changes have been implemented in connection with the protection of intellectual property rights. Novelties concerning protection of trademarks are that the Office examining the application for recognition of a trademark may take into consideration objections by interested parties that the trademark does not meet the protection requirements; the Law governs the penalty policy for trademark infringement (previously the penalties were prescribed in a separate law); the assignment of a trademark and/or rights arising from the application may be the consequence of an assignment agreement, a change of status of the trademark holder and/or the applicant, or a court or administrative decision (Article 50); a trademark and/or the right in an application may be the subject of a pledge on the basis of a pledge agreement, court decision or decision by other state authorities in respect of all or some of the goods or services (Article 53), etc.

The Law on Copyright and Related Rights defines an infringement of copyright or related rights as any unauthorised exploitation of any of the protected rights of the holder of copyright or related rights, and failure to pay the fees prescribed by the law. Also, Article 12 of the Law on the Legal protection of Industrial Design determines that the decision of the competent Office may be appealed to the Government of the Republic of Serbia within a term of 15 days from the date of receipt of the decision. The Law also details the penalties for the violation of rights defined in an application. Finally, the new Law on Indications of Geographical Origin contains provisions which are in compliance with the European Union Council Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuff from 2006.

Based on the above, the adoption of new laws has made a better distinction between the various intellectual property rights. In the field of implementation of these rights, major progress has been made in the judicial system by establishing special departments within the courts specialised in dealing with intellectual property rights. Of particular relevance is the adoption of provisions introducing the possibility of second instance in the administrative procedure before the relevant bodies.

Moreover, the Intellectual Property Office in cooperation with the European Union, established the Education and Information Centre for training various groups of users such as companies, courts, the media, police and other state authorities and natural and legal persons.

Finally, the Office has its official site (www.zis.gov.rs), with a national database on patents and a national database on trademarks and industrial design, as the only centralised database of intellectual property in Serbia.

REMAINING ISSUES

Despite the adoption of new laws that are in accordance with the European Union and international standards, it is necessary to improve the field of their enforcement. The experts of the Office should rely more on the media for informing the public about the protection of intellectual property rights and any violation and abuse thereof, especially after the adoption of the new laws.

The state authorities should work on the adoption of a new Patent Law, with particular emphasis on the by-laws that concern petty patents, to bring them in harmony with EU legislation.

FIC RECOMMENDATIONS

- State authorities should increase efforts in combating copyright infringements on the internet, especially with respect to software, music and film industries;
- Inspections of software copyright legality in companies, which the Tax Administration has been conducting for several years with significant results, should be continued and intensified;
- Adopt the National Strategy on intellectual property rights and their protection;
- More efficient and prompt implementation of regulations for the protection of IP rights;
- State authorities should offer more incentives to intellectual property owners in their creative sphere.

PROTECTION OF COMPETITION

COMPETITION LAW

CURRENT SITUATION

Overview

The new Competition Law, which became applicable on 1 November 2009, unquestionably brought about certain developments in the field of competition protection in the Republic of Serbia. The enforcement tools available to the Serbian Commission for the Protection of Competition (hereinafter referred to as: "the Commission") have been enhanced and the merger notification thresholds have been decreased. As a result, the Commission is no longer overwhelmed with "concentration cases" and is focusing more on more traditional antitrust issues, such as cartel agreements and abuse of dominant position. However, bearing this in mind, the anticipated progress in the implementation of the competition rules has still been insufficient.

Rules Applicable When Investigating Competition Law Infringements and Imposing Sanctions

Administrative proceedings for investigating Competition Law infringements may only be initiated *ex officio*, where the Commission reasonably assumes the existence of anti-competitive conduct. The decision to initiate proceedings is at the sole discretion of the Commission's Chairperson.

The new Competition Law has introduced a leniency program. The general conditions providing for immunity from fines which would otherwise have been imposed for conduct deemed to distort competition are similar to those conditions applicable in the EU (only the first applicant may be exempt, and such an applicant must provide proof that is strong enough to allow the Commission to make a ruling on an infringement. The party that initiated the execution of the offending agreement cannot be exempted from the resulting penalties). In the event that an undertaking does not fulfil the conditions for full immunity, the fine may be reduced if it can provide the Commission with proof that was not previously available, but that assists the Commission with its decision on the violation. However, the relevant Regulation on the Conditions for Immunity from Fines which was enacted by the Serbian Government at the end of July 2010 does not provide sufficiently detailed rules on the form and content of the leniency application, nor does it contain any guidelines concerning the leniency procedure. This increases the level of discretion which the Commission may employ and adds to the level of uncertainty, contrary to the present trends in the EU.

From the 1 November 2009, the Commission can conduct an on-site investigation of premises, vehicles, land and other sites where undertakings or third parties are engaged in their business activities. This can be done without the Commission having to obtain a prior court decision. Unannounced investigations are to be performed in order to reduce the risk of evidence being removed or altered. In addition, if an undertaking unjustifiably opposes the Commission's entry to their premises, a forced entry, with police assistance and without a court order is possible. When conducting the investigations, the Commission's officials have the right to seal the premises, examine any books, documents or records and to ask questions, etc.

Finally, the Commission is now empowered to impose fines on undertakings once it has established the existence of an infringement. It can also impose a variety of procedural penalties. Concerning the measures aimed at remedying distortions of competition, apart from behavioural remedies, the Commission is also entitled to order de-mergers and other structural measures. In July 2010 the Government enacted a regulation which provides criteria for the setting of fines and the conditions for payment. The regulations transpire from common sense and similar regulations that exist in the EU. Their purpose is to oblige the Commission to impose fines in a balanced and equitable manner and also to provide some flexibility for terms of payment, so that companies are not subjected to unreasonable burden which may leave them bankrupt.

Merger Control Regime

In line with the Competition Law, the following turnover thresholds (linked to the turnover achieved in the preceding business year) are applicable:

- The worldwide turnover of all undertakings concerned exceeds EUR 100 million of total worldwide turnover, and the Serbian turnover of at least one of the undertakings concerned exceeds EUR 10 million; or

- The Serbian turnover of at least two undertakings concerned exceeds EUR 20 million, under the presumption that each of the two undertakings concerned have a Serbian turnover that exceeds EUR 1 million within the same time period.

As an exemption to the above mentioned regime, a concentration that is to be realised in line with the takeover bid rules should be notified to the Commission in all cases, regardless of the turnovers acquired. The deadline for notifying a concentration is 15 days and there is a standstill obligation that binds all of the applicants. Pursuant to the Law, a takeover bid can be implemented before a clearance is given, provided that specific conditions are met. However, in interpreting the deadlines for the filling of a merger notification form, the Commission in its opinion dated 11 November 2009 took the position that, in line with the Law, a bidder in a takeover bid procedure may opt to file (i) within 15 days from the date of its announcement, or (ii) within 15 days of the date upon which the takeover bid closed.

The new law makes clear the distinction between Phase I and Phase II review. Thus, within one calendar month as of submission of a correct filing, the Commission may either clear the merger or initiate Phase II review. If it fails to make a decision, upon the lapse of this period the concentration is deemed to be approved. The Phase II review period can last up to three months; if the Commission fails to make a decision within this period, the concentration will again be deemed to be approved. Further, in the event of "problematic" concentrations, the parties will have the right to propose commitments/merger remedies. Finally, if the concentration has been implemented before clearance is given or if merger remedies that were imposed by the Commission have been violated, the Commission is explicitly entitled to order a de-merger.

Block Exemption Regulations

In line with the provisions of the Competition Law, the Serbian Government enacted block exemption regulations for both vertical and horizontal agreements in March 2010, leaving companies with a period of three months to comply with them.

The Vertical Agreements Block Exemption Regulation is mainly based on the EC Regulation 2790/199 and the EC Guidelines on Vertical Restraints. Under the condition that the market share of both the supplier and the buyer are individually below 25%, a number of vertical agreements are considered lawful per se. In addition, the Regulation does not apply to certain hardcore restrictions. Moreover, it does not cover all of the issues that its European counterpart does. Accordingly, the Regulation should be read as a standalone document.

Furthermore, one of the two horizontal block exemption regulations is the Research and Development (R&D) Block Exemption Regulation which provides for the automatic exemption of certain types of horizontal R&D agreements that would otherwise be prohibited under domestic competition legislation. In essence, the R&D Regulation is modelled after EC Regulation 2659/00. The Specialisation Block Exemption Regulation confers block exemption to horizontal specialisation agreements. It has been drafted based on the EC Regulation 2658/00.

Finally, in December 2009 the Government passed the Regulation on the Content of Individual Exemption Requests. Restrictive agreements falling outside the Block Exemption Regulations could be exempted from prohibition if an individual exemption is granted by the Commission. The Regulation prescribes the requisite contents of such individual exemption requests.

POSITIVE DEVELOPMENTS

Generally, by enacting new competition rules, Serbia has made considerable efforts to align its competition legislation with that of the EU. The broader competence of the Commission combined with an increase in the merger notification thresholds should bring about more efficiency in the area of competition protection. The enactment of the long-awaited secondary legislation is also a positive development. In addition, the increased thresholds that were introduced with regard to the mandatory notification of a concentration have resulted in a decrease in the Commissions workload in this area. Accordingly, during 2010 the Commission was able to dedicate more time to the promotion of competition law principles, and it organised several seminars and professional gatherings, which is certainly a positive development.

REMAINING ISSUES

The Commission does not have a good track record when it comes to more complicated cases. Based on public knowledge, whenever its decision has been challenged before the Supreme Court of Serbia (the Serbian Administrative Court is now the competent court), the court has sided with the claimant and annulled the Commission's decision. To date, the grounds for annulment have mostly been of a formal nature and have been mainly related to procedural issues.

However, since the new law bestows a great deal of new powers on the Commission, market participants may face a whole new era of uncertainty. Most obviously, the Commission is now able to penalise market participants directly (up to 10% of their global turnover), collect fines in a swift tax collection procedure and bankrupt companies. All of these actions could be founded on a potentially flawed decision. On the other hand, judges of the Serbian Administrative Court will need a comprehensive knowledge in the areas of competition law and economics in order to be able to properly interpret the Commission's arguments and decisions.

New members of the Commission's Council were elected on October 12th 2010, and it remains to be seen whether good results will be achieved when it comes to the correct implementation of competition law and practice.

FIC RECOMMENDATIONS

- When implementing its new powers, the Commission should take into account constitutional provisions, particularly the provisions related to the protection of the right to privacy and the right to a fair defence;
- The Commission should apply European guidelines when assessing competition issues to avoid inconsistencies in its application of the law;
- In order to enhance transparency and legal certainty, clear guidelines and notices interpreting the Commission's understanding of certain terms should be drafted by the Commission. This applies to the necessity to providing guidelines and notices relating to the leniency procedure, notifying obligations and the concept of the 'implementation of a concentration', etc;
- Judges of the Serbian Administrative Court should have advanced training in both competition law and economics;
- The Commission should make its practice consistent towards all undertakings;
- The regulation on tariffs before the Commission has to be decreased to a reasonable level in line with comparable jurisdictions such as Croatia, Slovenia, Romania, Slovakia, Bosnia and Herzegovina, and Montenegro.

STATE AID LAW

CURRENT SITUATION

In July 2009, the Parliament enacted the first piece of legislation regulating state aid, the Law on State Aid Control, which took effect on 1 January 2010. The law emerged from the provisions of Articles 85 and 86 of the Treaty establishing the European Communities (the Rome Treaty). In a nutshell, it is aimed at applying competition rules to state aid granted by the state to market participants, with the aim of preventing the distortion of competition. Members of the new State Aid Commission were appointed in late December of 2009. This was followed by the enactment of two new regulations in this area of law, the Regulation on the method and procedure regarding applications for state aid and the Regulation on the rules for the granting of state aid.

POSITIVE DEVELOPMENTS

The adoption of the Law on State Aid Control is a positive development in itself. Namely, one of the prerequisites for the continuation of the European integration process is the establishment of the free market, which will further sustain competitiveness. This will start with the liberalisation of trade with EU member states. State subsidies and other forms of state aid will now face scrutiny by the authority designed to ensure a level-playing field amongst beneficiaries of state aid and their competitors. The new law is designed to put an end to a practice which has become traditional in Serbia over the past 60 years - the propping up of insolvent companies, whilst at the same time paying little or no regard as to how efficient or viable they are.

REMAINING ISSUES

The new State Aid Commission does not have enough practical experience, especially when it comes to conforming its practice with the European Union standards and practice of the European Commission. Also, its status as a governmental body which is formed and funded directly by the Serbian Government, instead of being an independent agency might undermine the Commission's independence when it comes to decision-making.

Finally, there might be a potential conflict of jurisdiction between the Competition Commission and the new State Aid Commission as the jurisdictional boundaries with respect to the enforcement of general competition law between the two institutions have not been clearly regulated.

FIC RECOMMENDATIONS

- The development of a sound practice by the new State Aid Commission and more efficient and prompt harmonisation with EU standards and established practice of the European Commission in the field of state aid control;
- The adoption of necessary secondary legislation by the Government of Serbia, especially with respect to the potential jurisdictional conflict with the Competition Commission;
- Amending the law so as to ensure the status of the Commission as an independent agency. Thus, ensuring that the future performance of the Commission is not undermined by a lack of independence when it comes to decision-making;
- Establishing ongoing communication with the European Commission in order to most effectively adopt and implement the EC's established practice in the field of state aid control;
- Facilitate the organisation of training and education seminars for members and technical staff of the Commission which will be held by the European Commission.

CONSUMER PROTECTION

CURRENT SITUATION

This Chapter of the White Book 2010, dealing with Consumer Protection, may be opened with the remark that the new Law on Consumer Protection has been urgently passed before the Parliament on October 12th 2010. Thus, the final content and the effects of this legislative act are still to be seen. It is not encouraging that the Ministry of Trade and Services has re-drafted the new version of the Consumer Protection without involving all market participants, not only consumers, in the consultative process. This `urgent` situation could results in the lack of full acknowledgement of all market participants and provide partial legal protection.

POSITIVE DEVELOPMENTS

A rare example of progress in the area of consumer protection is the establishment of the Consumer Protection Centre in March 2010 by the Ministry of Trade and Services.

REMAINING ISSUES

In the case of the standard agreements, formulated in advance, without any participation of the consumers, the consumers are not in the position to assess which of the requirements may be unfair. Although the legal grounds have been created in the field of public services, no tangible improvement of consumer interest protection has occurred yet.

Financial services offered to the consumers, (banking services, loans, insurance, pension, savings and payment services), are a problem for the consumer from the aspect of information and protection. Especially since these services are offered in the form of standard agreements with predefined conditions, which are unfavourable for the consumer's interests (costs of the services, annual interest rate, conditions upon termination of the agreement, etc.).

In effect, extrajudicial protection consists of either administrative inspection or court inspection for damage compensation. In practice, the lawsuit calls for high costs. The alternative protection envisaged by the Law on Consumer Protection is arbitration, but it still lacks the well-functioning enforcement mechanisms.

FIC RECOMMENDATIONS

- The aforementioned Law should be consistent with all sectoral laws and regulations dealing with consumer rights.

PUBLIC PROCUREMENT

Although intensively discussed in the past between the members of the Foreign Investors Council, the issue of public procurements was not treated separately in the previous edition of the White Book. However, the economic developments and trends during the last period have resulted in significant interest of foreign investors in the public procurement regulation and practice in Serbia. Regulation on public procurements affects not only the efficiency of public spending, but ultimately also influences operations of the companies that produce goods and services procured by public authorities and enterprises and also strongly affects the competition on the market due to the total value of goods and services procured by the public authorities and enterprises. In addition, the public procurement regulation could be an effective tool in the proclaimed state anticorruption policy, too.

CURRENT SITUATION

The Law on Public Procurement effective as of January 2009, presents the current legal framework for public procurement procedures. Although incorporating to a large extent provisions from the respective EU directives, the legislator omitted to extend the application of stipulated procedures to public works and service concession, thus limiting the scope of the Law only to the procurement of the goods, services and construction works.

The efficiency and transparency of public procurements, equal and non-discriminatory treatment of bidders, as well as the obligation of procuring entities not to distort or prevent competition between bidders have been set as the basic principles of the Law.

Basically, the Law envisages four types of the procedures applied, depending on the nature of the procured goods and services and other relevant circumstances of the procurement in question – open, restricted and negotiated (with or without prior public announcement) procedure. The reason why the legislator failed to incorporate competitive dialogue as one of possible procedures for awarding procurement contract remains unknown. Compared to the previous Law, the new Law regulates the issues of tender documentation and technical specification more precisely, and also stipulates additional rights of the bidders enabling the greater transparency of the procedures.

The establishment of the Commission for the Protection of Bidders' Rights, as an entity deciding upon the request of a bidder claiming the violation of the procedure by the procuring entity, represents an important step forward toward efficiency and transparency of public procurement. The intention of the legislator to achieve greater efficiency of public procurement can be seen in the stipulated obligation of procuring entities to appoint a procurement officer within such entity.

Introduction of a web portal on which the relevant information with regard to procurement procedure are to be published is also to be seen as a step forward.

It is to conclude that the Law on Public Procurement represents a solid basis for further positive developments. However, although driven by the motives stipulated through basic principles of the Law, it is questionable to what extent the legislator has succeeded in implementing these principles in practice.

POSITIVE DEVELOPMENTS

The enactment of the Law on Public Procurement and the related public's discussions seem to have increased the general and business public awareness of the importance of the public procurement for further economic development. In addition, the remaining members of the Commission for the Protection of the Rights were elected on October 12th 2010. Up to that point, the Commission used to operate in non-complete capacity. Therefore, these elections could be seen as a good signal. On the other hand, the announced amendments to the Law by government officials, resulting from public criticism of certain solutions contained in the Law and its enforcement in practice, show that the authorities have also become aware of the significance of the subject.

REMAINING ISSUES

Transparency and efficiency of public procurement

The figures from the available reports of the Public Procurement Agency do not show any major effects of the Law on the efficiency and transparency in the spending of

public funds. According to these official statistics, 24% of all procurements in Serbia in the first six months of 2009 took place in the form of negotiated procedure without prior publication of a contract notice. Having in mind that this type of procurement procedure is the least transparent one, it leaves a relatively wide space for corruption. In particular, procuring entities often opt for negotiated procedure without prior publication of a contract notice based on the provisions of Article 24, paragraph 1, items 3 and 4, justifying this procedure, inter alia, by reason of extreme urgency brought about by events unforeseeable by the procuring entity, while in fact such reasons do not exist. In that regard, the use of negotiated procedure should be closely monitored by the Procurement Agency and the Commission for the Protection of Rights and any abuse should be punished. Additionally, the reasons justifying the choice of a negotiated procedure should be further elaborated by appropriate by-laws, as well as by the jurisprudence of the Commission for the Protection of Rights.

In that regard it should be pointed out that although Article 27 of the Law stipulates that a procuring entity may initiate a public procurement procedure only if such procurement has been envisaged by the annual procurement plan and funds for that particular procurement have been set aside in the budget of the public entity, it seems in practice that officers of procuring entities do not comply with the best standards in planning the procurement needs nor do they act as prudent businessmen. In order to avoid a procurement which does not follow a rational policy or an existing need of the procuring entity, but rather stems from the desire to create benefits for an individual or organisation, we suggest that the following obligations be imposed on procuring entities:

- Elaboration of a need for obtaining particular uncommon (falling out of the day-to-day operations) goods/services encompassed by the annual procurement plan prior to its approval by the competent authority together with the financial plan. An elaboration of the need for such uncommon contracting should also contain the manner of provision of the good/service in question (type of procurement procedure);
- Publication of the annual procurement plan (on the website of the procuring entity or on the website of the public entity that finances the operations of the procuring entity).

Monitoring contract implementation

In practice, it is noticeable that procurement contracts are subject to amendments and renegotiations after being awarded, whereby such amendments change the substance of the contract itself so that the implemented contract and its essential elements often extremely differ from those offered during the bidding procedure. Additionally, there is not any control whether the awarded contracts are in fact implemented as agreed.

The extension of the competences of the Public Procurement Agency in that regard could be useful. Under the Law on Public Procurement, the Agency is entitled to monitor the procedure of public procurement (Article 99, paragraph 1, item 3), however this provision could be reviewed to ascertain whether the Agency is authorised to monitor the implementation of the public contracts or not. With broadening of the Agency's competences, so that it becomes authorised to monitor whether public contracts are implemented under the terms under which they have been awarded, possibilities of misuse could be essentially limited. It is to be noted that some legislations, such as Italian, have special agencies for monitoring the implementation of public contracts so that suggested change to the Law could be observed from that point of view as well.

Penal provisions and punitive measures

The penal provisions and measures are questionable for at least two reasons and changes with regard to these provisions could result in suppressing the corruption within public procurement.

Firstly, and having in mind the general prevention as the aim of penal provisions, the sanction for noncompliance for responsible officer within procuring entity is a fine that ranges between RSD 20,000 and RSD 50,000. This seems to be inadequate because the damage that could be done to the public budget does not correspond with such sanction. These must be more severe in order to be an instrument of general prevention of corruption in public procurement. In addition, the sanction for the responsible officer should

not only be a pecuniary fine, but should also trigger other safeguards such as prohibition of performing duties of a responsible officer within any other public entity.

Secondly, the fine for the procuring entity seems to be pointless; the procuring entity is the one primarily damaged by noncompliance with the public procurement legislation, i.e. corruption impacts the funds of the procuring entity as it gets less value for more money. Imposition of the fine amounting up to RSD 1,000,000 on such entity results in doubling the "damage" done to its funds. Having in mind that the liability of responsible officers within procuring entities for the commercial performance of these entities practically does not exist, such sanction indeed seems to be without any effect.

Thirdly, the statute of limitations for prosecuting the misdemeanours envisaged by the Law on Public Procurement is one year. Having in mind that a particular noncompliance with the Law could be verified only upon the audit of the business operations of procuring entity by a competent state auditor, or upon the completion of the procedure for protection of bidders' rights, it is most likely that until that moment the misdemeanour in question could not be prosecuted. Therefore it seems that a longer period for statutory limitation has to be envisaged.

FIC RECOMMENDATIONS

- Introduction of the obligation of procuring entities to reasonably plan procurements and to advertise its procurement plans;
- Preventing the abuse of the negotiating procedures, which are the least transparent, through enacting appropriate amendments to the Law or through appropriate by-laws;
- Introduction of the authorisation of the Public Procurement Agency to monitor the implementation of the awarded public contracts;
- Changes and amendments to the penal provisions – introduction of more severe pecuniary fines and other safeguards, longer statute of limitation, etc.

PRIVATE-PUBLIC PARTNERSHIP

CURRENT SITUATION

There have been no substantial improvements in relation to the Public Private Partnership regulations in Serbia as of the day of publishing the previous edition. However, it is encouraging that as it appears, the Ministry of Economy and Regional Development in cooperation with EBRD has started a project named "Development of the Modern Concession and Public Private Partnership Legislation in Serbia", which should provide for a clear legal framework for the PPP projects in Serbia.

As we already stated in the White Book 2009 edition, Serbian legislation does not lay down general rules covering the phenomenon of PPPs. With the exception of the Law on Concessions and, to a certain extent, the Law on Communal Activities, the issue of PPP is rather indirectly regulated and governed by various acts. Thus, most of those acts are not covering PPP matters primarily, but envisage the possibility of applying PPP in the fields of activities traditionally performed by the public sector. The most important laws are:

- Law on Concessions;
- Law on Public Companies and Performing Activities of Public Interest;
- Law on Communal Activities;
- Public Procurement Law, and
- Energy Law, Law on Mining, Law on Gaming Activities, and other laws and by-laws.

Under the mentioned laws, an activity of public interest can be assigned to a private partner, entirely or partially. The PPP may include the design, funding, execution, renovation or exploitation of a work or service. An institutionalized PPP, also possible under Serbian legislation, involves the establishment of a company held jointly by the public partner and the private partner. The joint entity thus has the task of ensuring the delivery of a work or service for the benefit of the public.

Although not stipulated by each of the mentioned laws, by entering into the PPP the following guidelines are to be considered:

- the principle of equal and fair treatment, free market games and autonomous approach of contracting parties (within the concession granting procedure);
- the principle of economy and efficiency based use of public funds;
- the principle of ensuring competition among the bidders;
- the principle of transparency of public funds utilization;
- the principle of equality of the bidders and
- the best bid election criteria.

It is also to be noted that regulations often overlap, in the sense that it is not clear which of the abovementioned laws should be primarily applied for a certain activity subject to a PPP. Namely, it is not clear whether one law has primacy over other laws, or if such laws should be applied cumulatively. This refers to the procedure under which a PPP is developed, as well as to substantial issues.

POSITIVE DEVELOPMENTS

Steps taken by the Serbian Government, namely by the Ministry of Economy and Regional Development regarding development of a modern concession and PPP policy and legal framework in Serbia presents good signals.

REMAINING ISSUES

The coexistence of the various laws and by-laws regulating PPP often provides uncertainty under which of those laws a PPP is to be implemented. A variety of diverse laws regulating the same issues in a different manner (especially in regard to the procedure of the entrustment of a certain activity, or obtaining an operating licence) results in lack of certainty when planning or initiating a PPP.

Furthermore, activity areas which could be within the scope of a PPP are in the competence of the Republic of Serbia and the local authorities, so the PPP practice is often substantially different on the national and local level, which leads to a variety of applied untypical models, neither directly envisaged by the law nor recognised in the PPPs' practice in more developed systems. To such *sui generis* PPP models it is inherent that the possible risks that might oc-

cur during the cooperation fall out of the existing regulation thus resulting in the legal uncertainty.

It is highly questionable, as well, whether the principles of the Law on Public Procurement are applicable in the cases where the PPP is to be established under a law which does not provide a clear procedure when choosing a private partner, i.e. Law on Public Companies and Performing Activities of Public Interest.

It is very common that a public authority entering into a certain PPP provides the assets (such as real estate) as its contribution to the PPP . The incoherency and dubiousity of the legislation regarding state property, i.e. the local public authority's property, in many cases prevent further development in this field. The positive budgetary legislation also hinders further progress in this field; the incapability of local public authorities to contract debts for the purposes of the PPP is an example of that.

In practice, very often, different political, even personal, interests of the governing political structures, both on the level of the state and on the local level, inhibit a much faster implementation of PPP in Serbia.

FIC RECOMMENDATIONS

- The existing legal framework should be systematised with the clear overview of all possibilities offered to foreign investors who are considering to enter into a PPP, either as a way of entering the Serbian market, or as a way of further expansion of their activities in Serbia. In that sense, enforcing a PPP umbrella law is recommended. Other relevant laws should be harmonised accordingly;
- Improved communication between the central and local authorities on the potential of the PPP concept and the implementation of intended projects would be most welcomed;
- The possibility of establishing a special governmental body, with the authority to initiate and support pilot schemes, standardise the PPP process and operate as a clearing house for know-how and serve as a central contact point for the private and public sectors, especially local public authorities interested in PPP solutions, could further emphasize and improve the PPP practice in Serbia;
- Also, some amendments to existing legislation are required; adjustments and amendments to the public procurement, budgetary, taxation law, recognising the specific needs of the PPP, would doubtless lead to broader interest of the foreign investors for this concept in the Republic of Serbia.

TRADE LAW

CURRENT SITUATION

Overview

A new Trade Law has been enacted by the Serbian Parliament on 29 July 2010. For traders, the Law will be applicable as of 1 January 2011. Supervisory bodies – market and communal inspections – shall be obligated to comply with the requirements of the new Trade Law by the end of 2011, i.e. those provisions will be applicable as of 1 January 2012. This Law constitutes the basic legal framework for trading and the respective inspection supervision, replacing the previous Trade Law (1993), the Law on Prices (2005) and the Law on Requirements for Trade of Goods, Services in Trade of Goods and Inspection Supervision (1996).

The Ministry in charge of trade and services will remain the regulatory governmental body with jurisdiction over market inspection. Communal inspections will be established at local self-government level for each specific supervision activity (trade outside licensed sales outlets - except remote retail sale, business hours and corporate name). From a formal perspective, the Law consists of 81 sections – the first 52 sections govern the conditions and terms of trade (provisions on services are meagre); the remaining sections cover monitoring the implementation of the law and the wide range of penalty provisions (misdemeanours only, without commercial offenses). From the perspective of substantive law, the new Trade Law is more detailed and practice-oriented, introducing new institutes and significant changes.

The practical issue that most concerns traders is whether they will have time to adopt and implement the new rights and obligations, with higher liabilities, and possibly alter their business activities, with the application of the Law in the period of only six months from the date of adoption.

New Principles and Definitions of Trade and Traders

The main principles of trade that were only listed in the previous Trade Law (free trade, equality, single market, fair competition, stability), are now set forth in detail and supplemented by new principles on discrimination prohibition, proportionality in state limitation actions against traders and cooperation among state bodies. Trade is defined as business activities relating to the trade of goods and/or services with the main goal of gaining profit, as well as achieving of other socioeconomic goals.

One of the main novelties is that traders are no longer defined as entities registered for trade and service activities, but as legal entities and entrepreneurs that perform trade in accordance with the said Law. The definition of trader also includes certain natural persons such as:

- farmers, registered in accordance with the regulations that govern agriculture, in the case of agricultural products subject to registration;

- persons that trade in wild game, fish, mushrooms, wild flora and fauna and other forest products, in accordance with special regulations on hunting, fishing, veterinary, nature protection and forestry;

- persons that perform freelance professions in accordance with special regulations;

- other natural persons in terms of selling their personal used property.

Classification of Trade and Special Market Institutions

As in the previous Trade Law, trade is divided into wholesale and retail sale, but Serbian legislation for the first time classifies trade according to the format of the trade (sales) outlet, and the ministry will adopt a by-law providing detailed classification of said formats (without specifying the legal time limit for this).

Outside licensed sales outlets, trade can be conducted in the form of remote retail sale, by consumer order but without his actual presence (e-trade, sale by catalogue or mail order, TV, phone etc.) or without the prior order (or consent) of the consumer, by way of direct offer (door-to-door salesmen etc.), In the latter case, the new Law introduces agents (authorised representatives) in sale by direct offer. Other sale outside outlets are defined as trade from portable or mobile objects (kiosk, counter, bench, vehicle, etc.)

For the first time in Serbian Trade Law, one legislation defines special market institutions, such as: commodities mar-

kets, fairs and other industry trade events and traditional manifestations, green markets and wholesale markets, auction houses and tendering.

Services

In comparison with the previous Law on Requirements for Trade of Goods, Services in Trade of Goods and Inspection Supervision, services relating to trade and primarily serving trading are defined only in Section 29, which could be interpreted to mean that all other provisions of the new Trade Law are to be applied by analogy with regard to "services". The list of the services is standard and customary for trade support (mediation, representation, agency and commission services, quality and quantity control, food and agriculture produce safety, insurance, advertising, promotional campaigns etc.)

Terms of Trading

The terms of trading are divided into general terms (for traders, goods, prices, trade evidence, trade with agricultural produce and domestic animals) and terms relating to retail sale.

The terms for traders include the requirement of possessing proof of "capacity of trader" and "fulfilment of minimal technical requirements" such as interior and exterior space, equipment, storage, manner of trade and nature of goods and services as well as "special requirements" i.e. hygiene and sanitary requirements, general safety and health requirements, environmental protection requirements, technical requirements etc. Furthermore, traders are obliged to keep all such proof in the sales outlets, even in case of trading outside sales outlets. All this could lead to various interpretations on the part of supervisory bodies and practical problems for traders – what is to be presented to the inspection, and where and when, in order to comply with these regulations, as such proof could constitute a number of different documents. Minimal requirements are now also set for employees, where the Ministry of Trade and Services will render a by-law for detailed classification of said requirements.

The terms for goods and services include the requirement of possessing documents on production, transport, warehousing and sale of goods (invoice, customs documents, warehouse receipt, etc.) as well as documents that confirm compliance with requirements regarding the characteristics of the goods, if so required by special regulations. Obviously, one practical problem for traders could be to fulfil the obligation of keeping the necessary documents in the sales outlets and specifically "with the trader" when the trade takes place outside sales outlets.

For providing services, the new law requires possessing documents on sale of services, as well as documents required for providing specific services. This can also be subject to various interpretations on the part of the inspections, since the ministry will not render additional regulations more closely defining the required "documents".

The new Trade Law introduces "special labels" that indicate particular characteristics of goods and services based on independent testing. These can be labels such as "excellent", "first class product" and other., intended to distinguish these goods and services from other goods and services of the same kind. Such labels do not include labels of recognised standards (ISO, ECO, etc.) and geographical origin. Advertisements claiming specific characteristics of goods and services, but without prior independent testing, also cannot be considered "special labels". Traders are not permitted to issue special labels, i.e. label their own goods and services with special characteristics; this is done by an independent entity. This entity prepares a study i.e. conducts independent testing of the trader's goods and services, in accordance with determined criteria for issuing the special label. The criteria for obtaining a special label in the abovementioned manner must be verifiable by independent control; the new Law does not specify by whom.

The new Trade Law has significantly increased the number of requirements for retail sale in Serbia which are already recognised in the instruments of the Advertising Law, the Law on Consumer Protection and other regulations (declaration, pricing, business name, working hours, incentives etc.) causing confusion with other current regulation and overall multiplication of requirements.

Requirements regarding declaration are defined in detail, with the introduction of equity of Cyrillic and Latin script on declarations, "EU" to mark the country of origin and

the possibility of data in a foreign language, but limited to trade mark, bar code and "other data that closely define the goods and the nature thereof".

Requirements regarding pricing refer to the selling and unit price of goods and services. A selling price is the total, final price per unit, including taxes. A unit price is the selling price per unit (kilogram, litre or other metric unit) that is generally used in trading in specific goods.

For specific formats of sales outlets the local self-government will be authorised to define the approximate working hours, by specifying the total working hours and the time schedule (daily, weekly, monthly and yearly), as well as to determine the obligation of keeping certain sales outlets open during holidays and other non-business days, and the obligation to be on call during such days. One novelty is that retailers are allowed to work overtime, unless otherwise prescribed by the special regulations adopted in accordance with the new Law.

To "stabilise" the selling incentives and introduce order among traders, and to avoid misleading and unfair conduct towards competitors and consumers, the following requirements for discount, sale, promotion, etc., together with current requirements under the Advertising Law, will be introduced:

- adequate duration and frequency, as compared to the regular offer of the same trader;
- appropriate quantity of goods sufficient to meet the buyers' needs;
- determining the type of incentive (discount, gift, participation in a prize-winning game);
- precise and clear distinction as to which goods the incentive refers to;
- validity period of the incentive, with the starting date set forth;
- all special requirements relating to acquiring the right to an incentive;
- total costs of acquiring or taking over the goods, including delivery and all costs for the buyers;
- comparison of the selling price with the previous (regular) price and the period in which the previous price was valid.

Other Relevant Changes

From the perspective of substantive law, the new Trade Law brings major changes and establishes new powers of the ministry or public agency (introduction of a Market Structure Impact Study and a Trade Advancement Centre). The new Law also introduces a new prohibition, namely prohibition of pyramidal trade.

One of the notable changes refers to the market Inspection's competences and the level of education the market inspectors will be required to have in order to monitor implementation of the new Trade law. The Law provides a more precise definition of who is eligible for the position of market inspector.

POSITIVE DEVELOPMENTS

Generally, by enacting new trading rules and replacing those under which the Serbian market was closed for competition, Serbia has taken one step forward in harmonising its legislation with the EU legislation. The considerable number of requirements imposed on traders will give rise to further obligations, but hopefully this will assert rather than hinder their position on the Serbian market and will encourage new traders to conduct one of the most important business activities.

REMAINING ISSUES

Pursuant to the Law, a Trade Advancement Centre is to be established. However, it is questionable whether the introduction of such a centre is appropriate and indeed necessary, as its competences are very similar to Serbian Statistical Office. In addition, in our opinion its work may intrude on or even jeopardise the confidential information of the trader.

Regarding the Market Structure Impact Study which will be re-

quired for trade formats larger than 2000m^2, it is not clear what benefit this study will bring, particularly taking into account the complex procedure for the realisation of investments in Serbia. It is also unclear whether an undertaking will be able to apply this study without ownership over the site and whether the preparation of this study will be paid for (and how much it would cost) and furthermore, how it would be initiated.

Since the deadlines for rendering by-laws are not defined by the new Trade Law, it is most important that the Ministry not wait too long to draft and render those regulations, since some provisions of the new Trade Law do not really make sense without sub-regulations, i.e. they leave too much room for interpretation by traders and inspections.

FIC RECOMMENDATIONS

- The concept of "trade with services" should be defined separately from "specialised services", with a clear explanation as to which requirements, If any, specified for trade in products shall also be applied to "trade in services";
- Necessity to establish a Trade Advancement Centre is to be reconsidered, or its competences prescribed by the new Law are to be reduced. Anyhow, traders should be invited to take active part in the work of this Centre through their representatives, or at least to be informed in detail about the measures that will be undertaken for protection of confidential data;
- The Market Structure Impact Study prescribed by the new Trade Law should be reconsidered;
- Compliance with EU legislation on direct trade, since trade by direct offer actually refers to "direct sale", as the concept commonly defined as sale through direct offer made by the trader or trader's representative to someone present in person.

LAW ON FOREIGN TRADE

CURRENT SITUATION

The Law on Foreign Trade from 2009 regulates foreign trade in a rather liberal way, especially in comparison with the previous one. Generally, it deals with the export/import of goods, national treatment, quantitative limitations and permits, safeguards, countervailing and antidumping duty issues, temporary regimes and related measures.

However, after the White Book 2009 was published, the Serbian Government has adopted a number of by-laws regulating in detail the field of foreign trade. The last by-law was adopted in July 2010, hence all the by-laws that the government was obligated to adopt in accordance with the Law on Foreign Trade have been adopted. The list of the new by-laws is as follows:

- Regulation on Closer Conditions for Issuance, Use and Cancellation of Export, Import and Transit of Goods Permits and Allotment of Quotas;
- Regulation on Import of Motor Vehicles;
- Regulation on the Manner of Issuance of Certificates and Verification of Documents that Accompany Exported and Imported Goods for Whose Issuance a Competent Authority has not been Defined;
- Regulation on Closer Conditions for Application of Antidumping Measures;
- Regulation on Closer Conditions for Application of Countervailing Measures;
- Regulation on Closer Conditions for Application of Measures for Protection from Excessive Import;
- Decision on Determining the Goods for whose Import, Export or Transit Acquisition of Certain Documents is Prescribed;
- Decision on Export and Import of Goods and Services without Charge or Payment;
- Decision on Establishment of the Investment and Export Promotion Agency;
- Decision on Export of Sugar to European Union (EU) countries;
- Decision on Closer Conditions for Payment or Collection in Goods or Services;
- Order on Determining the Date of Service Provision in Foreign Trade.

Some of the newly adopted by-laws do not contain substantial differences relative to the same by-laws adopted in accordance with the previous law on foreign trade. These by-laws are:

- Order on Determining the Date of Service Provision in Foreign Trade;
- Decision on Export of Sugar to EU Countries;
- Decision on Export and Import of Goods and Services without Charge or Payment;
- Regulation on Import of Motor Vehicles.

Other by-laws contain important changes, mostly in the sense of bringing the by-law into conformity with the new Law on Foreign Trade, but the new by-laws are now more clear and detailed.

In that sense, the Regulation on Closer Conditions for Application of Antidumping Measures clearly defines the conditions for application of antidumping measures, the meaning and manner of determining the existence of dumping, damage, domestic industry, similar product, risk of damage and the existence of connection between the dumping and damage. It also defines in detail the procedure for introduction of antidumping measures.

The same applies to the Regulation Closer Conditions for Application of Countervailing Measures (definitions and the manner of determining the existence of subvention, damage, domestic industry, similar product, risk of damage and existence of connection between the subvention and damage, as well as detailed procedural rules) and the Regulation on Closer Conditions for Application of Measures for

Protection from Excessive Import (excessive import, existence of connection between the excessive import and damage, serious damage, risk of damage, domestic industry, similar product and directly competitive product, as well as detailed procedural rules).

POSITIVE DEVELOPMENTS

Having in mind all these facts, adoption of the new Law on Foreign Trade and the related new by-laws represent the way forward for the Republic of Serbia toward the World Trade Organization and the European Union.

REMAINING ISSUES

After the adoption of the new by-laws, the question remains how the authorities will implement them. In that sense, since the most important of the adopted by-laws regulate the conditions for introducing obstacles to free trade between the Republic of Serbia and Third World countries, the Serbian Government and other administrative authorities that are competent for introducing and implementing the measures should apply the measures strictly and narrowly, always favouring the trade without obstacles and using obstacles only as the last resort.

FIC RECOMMENDATIONS

Serbian authorities need to continue to track the development of the rules of these trade organisations and to continuously improve Serbian foreign trade regulations until the Republic of Serbia fulfils all the conditions for application for membership of both the World Trade Organization and the European Union.

LAW ON GENERAL PRODUCT SAFETY

CURRENT SITUATION

In late spring of 2009, Serbian Lawmakers passed the new Law on General Safety of Goods. However, the commencement of its application was postponed for mid-December 2009. The Law systematically regulates for the first time ever the duties and obligations of manufacturers and distributors in relation to safety of goods. In essence, the Law is a transposition of relevant European Union (EU) legislation and standards. Following the Law, the Regulation on the Establishment and Functioning of the Rapid Alert System for Dangerous Products as well as the Rulebook on Form and Content of the Notification on Dangerous Products have been enacted.

POSITIVE DEVELOPMENTS

The enactment of the Law is a positive development in its own right. Its adoption was one of the conditions ranking highest on the list for further EU accession of the country. The Law introduces EU standards and rules regulating free trade of goods on the market. It is drafted up in the image of its older European counterparts. It regulates the future relationship between Serbia and the EU, by introducing, for example, provisions regarding the EU rapid alert system for all dangerous consumer products (RAPEX). Furthermore, it stipulates significant duties of manufacturers and distributors alike, relating to safety of goods, provision of information, supervisory control by state authorities, customs issues and public disclosure of information. Breach of its major provisions is sanctioned by pecuniary fines.

Interestingly, in accordance with further EU integration, the new Law provides for the enforcement of decisions issued by the European Commission.

REMAINING ISSUES

It remains to be seen how the provisions of the Law will be applied and enforced in the future. Furthermore, positive enforcement of the Law highly depends on the pace at which the relevant state authorities will become familiar with this new legal framework and the accompanying standards.

Regarding the enforcement, it is especially important that a good practice be established, particularly in relation to rapid warning of consumers under threat, public disclosure, and introduction of measures and pecuniary fines against proven offenders.

Finally, the full scope of the Law will come into effect only upon Serbia's accession to the EU.

FIC RECOMMENDATIONS

- Enactment, as soon as possible, of the secondary legislation necessary for the Law to become fully operational;
- Training and preparation of state enforcers, in cooperation with the EU, for the application of the Law in order to ensure effective results;
- Speeding up the process of harmonisation of Serbian standards with those of the EU;
- Timely performance of duties within prescribed deadlines by the Serbian Government;
- Campaigning in order to raise the level of general public awareness of consumer rights under the new Law.

E-COMMERCE REGULATIONS

CURRENT SITUATION

In May 2009, the Parliament enacted two significant pieces of legislation regulating e-commerce: the Law on E-Commerce and the Electronic Document Law. Therefore, the process of regulating e-commerce, which started in 2004 with the adoption of the Electronic Signature Law, has finally been concluded. All of the said acts are pioneering projects setting up the first ever legal framework for doing e-commerce in Serbia.

POSITIVE DEVELOPMENTS

Adoption of these laws is a major development in its own right. Namely, this is the first time that electronic contracting has been given legal validity in Serbian legislation. The same goes for all other electronic documents. Previously, all of the said documents had little or no legal effect in Serbia, particularly before a court of law.

Furthermore, the new laws introduce some of the best practice and solutions developed by the United Nations Commission on International Trade Law (UNCITRAL) and other notable legal institutions and jurisdictions. This is especially true with regards to the rules for electronic contracting; sending and receiving a contract offer and the respective response; the moment of contracting; spam liability etc.

The Ministry of Internal Affairs has been designated for the issuance of qualified electronic certificates. All citizens applying for new ID cards may choose between standard "plastic" and smart cards containing, for example, the bearer's address, biometric data and the operational information necessary for a qualified signature.

Following all these changes, it is now legally possible, in Serbia, to shop online, sign an e-contract, issue an e-invoice and execute most business transactions electronically. In this regard, e-commerce has been fully regulated. Additionally, technical prerequisites are already in place, as more homes in Serbia receive access to high-speed internet.

REMAINING ISSUES

However, for e-commerce to really come to life, it is essential that the newly envisaged rules are fully applied and enforced. Some companies are hesitant about phasing out the old-fashioned pen-and-paper style contracts. There is great anticipation for the first court rulings regarding the legal validity of e-documents, e-contracts and all plausible accompanying issues deriving from these relationships.

At the same time, Serbia still lacks the necessary infrastructure for effective e-commerce processing and trade margins are still significantly higher in comparison to those in the region or the European Union (EU).

As Serbia moves closer to the EU and World Trade Organization, its name will appear more and more on the country lists of renowned e-commerce web sites, and new local entrants will be able to take advantage of this new trade channel to maintain their overall market position and their leverage in more traditional forms of trading.

FIC RECOMMENDATIONS

- Adoption, as soon as possible, of the envisaged secondary legislation that is required for full implementation of the new laws;
- Organising in-depth trainings of relevant state authorities and the judiciary in order to ensure proper enforcement;
- Organising public campaigns, endorsed by the Government, targeted at general public awareness of e-commerce legislation and promoting legal security and public trust;

- Full liberalisation of the e-commerce market, and promotion of the new laws inside the business community;
- Encouraging the increase in the number of processing centres in Serbia.

CUSTOMS

The Customs Law ("Official Gazette of the RS", No. 18/2010), the Customs Tariff Law ("Official Gazette of the RS" No. 62/2005, 61/2007 and 5/2009), and applicable Free Trade Agreements constitute the legal framework for the regulation of customs procedures in Serbia.

CURRENT SITUATION

The Customs Law

The new Customs Law was enacted in March 2010 and started to apply as of May 2010. This law follows the principle that customs procedures on one hand, and organisation of the Customs Administration on the other, should be governed by two separate laws. Therefore, the new Customs Law regulates only the first area, whilst the latter is still regulated by the provisions of the old Customs Law.

The New Customs Law is basically a translation of the EU Community Customs Code (Council Regulation (EEC) No 2913/92, as amended). It improves the content of the previous Customs Law (which was also based on earlier EU legislation), and introduces some new institutes. For example, novelties include Authorised Economic Operator, Summary Declaration, customs broker as the indirect representative will now be the declarant and the customs debtor, incurrence of the customs debt is more clearly defined as well as compensatory interest. Customs valuation of carrier media bearing software, based on the Decision 4.1 of the WCO Customs Valuation Committee, allowing value of the software to be excluded from the customs value, appears to have been abolished.

The new Customs Law is yet to be elaborated by decrees, rulebooks and decisions. It is expected that these will follow the logic of EU Implementing Regulations, especially in the area of Authorised Economic Operator and customs valuation, as well as other important areas. Until then, old decrees, rulebooks and decisions apply to the extent they do not oppose new Customs Law. In those areas which are specific for Serbia, the Government already enacted some implementing regulations, such as those relating to duty exemptions for certain imports.

The Customs Tariff

The Serbian Customs Tariff is being annually harmonised with the EU Combined Nomenclature. This is done up until November of the current year for the next year. This exercise was also performed in November 2009, and it is valid until 2010.

Decisions on tariff classification published in the Official Journal of the EU, as well as those issued by the World Customs Organisation (WCO), are binding for Serbia. Respective translations are regularly published in the Official Gazette of the Republic of Serbia. Binding Tariff Information can also be requested from the Serbian Customs Administration regarding classification of certain goods, in case of doubt (e.g. when respective classification is not considered in the EU or by the WCO).

Free Trade Agreements

Apart from the Free Trade Agreements already in force in Serbia, such as CEFTA (regional Free Trade Agreement between Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldavia, Montenegro, Serbia and UNMIK Kosovo), with Russia, Belarus, as well as with the EU (the Interim Agreement on Trade and Trade Related Matters serves for this purpose), in 2009 Serbia also signed Free Trade Agreements with Turkey and EFTA (the latter is a trade union consisting of Iceland, Liechtenstein, Norway and Switzerland).

The Free Trade Agreement with Turkey came into force on 1 September 2010. The EFTA Free Trade Agreement between Serbia, on one, and Liechtenstein and Switzerland on the other side started to apply as of 1 October 2010 , while the ratification by Iceland and Norway is expected at the beginning of 2011.

Nevertheless, the import of agricultural and food products into Serbia from the EU and other countries which are parties to the Free Trade Agreements acceded or concluded by Serbia remains subject to special charges based on Government decisions, including seasonal customs duties.

POSITIVE DEVELOPMENTS

The Customs Law

Further alignment of the Serbian customs regulations with the EU regulations, in the form of the new Customs Law, is a positive development per se. However, elaboration of institutes through by-laws, and proper application and interpretation is a much more important and demanding task for the Serbian Customs Administration, therefore, it remains to be seen how they will tackle this.

The new Customs Law also introduces a somewhat new customs incentive – the exemption from customs duties on import of new production equipment under certain conditions. The incentive is primarily aimed to stimulate investments in production and new technologies. To qualify for customs exemption, the equipment has to be new, it cannot be produced in Serbia and it has to be used in production, to increase and/or modernise existing production facilities. Previously, import of new equipment free of customs duties, or by applying lower customs duties rates, was possible under very restrictive conditions, including minimum value of equipment and subject to decisions of the relevant authorities.

The customs exemption on import of equipment as foreign investor's contribution in kind in the share capital of a legal entity, in line with the Law on Foreign Investment, remains applicable. This customs incentive is regulated by the by-law, i.e. the Decision on goods exempted from customs duties. The rules on controlled end-use of such equipment and loss of incentive in the case of disposal of such equipment before expiry of three years, is maintained. The Decision will apply until end of 2012.

The Customs Tariff

When harmonising tariff codes, the Customs Tariff was also updated with customs duty rates applicable in 2010 for import of goods on the basis of free trade agreements acceded by Serbia, providing by that a comprehensive and transparent overview of currently applicable customs duty rates in Serbia.

Although from time to time we are witnessing issues with tariff classification, this occurs to a lesser extent than before, as Serbian Customs Administration appears to more seriously follow the practice of international bodies in this area (as that of the EU Commission and the WCO).

Free Trade Agreements

The agreements signed with Turkey and EFTA will enable Serbia to apply rules on diagonal cumulation of origin, which effectively serve for creating a single market for the goods which have undergone processing in Serbia (as part of CEFTA), in the EU, EFTA or Turkey.

REMAINING ISSUES

The Customs Law

After previous Customs Law came into force back in 2004, which introduced the EU customs rules for the first time in Serbia, the main issue was that it took quite a while to change the strongly rooted practice based on earlier legislation, as well as to properly elaborate certain institutes by the by-laws. This process was not even completely finalised before this new Customs Law came into force. Hopefully, respective implementation of the new Customs Law will have better efficiency.

The Customs Tariff

Although it generally implements the EU Combined Nomenclature, Serbian Customs Tariff contains some specific divisions of certain tariff codes. Sometimes, this triggers issues on imports, especially when imported goods are accompanied with invoices containing tariff codes which do not fully correspond to Serbian tariff divisions.

Free Trade Agreements

Although application of Free Trade Agreements generally works well in practice, with occasional problems, nevertheless, we are aware of some strange interpretations of rules of origin issued by the Serbian Customs, especially concerning the use of domestically grown goods.

More precisely, the Customs tends to protect domestic producers by these interpretations, although it should strictly follow the rules of origin defined by Free Trade Agreements. However, as time passes, these practices appear to pale in comparison to the benefits achieved by the application of the Free Trade Agreements.

FIC RECOMMENDATIONS

Generally, we would have to note that FIC suggestions, in regard to customs regulations, were neither welcomed nor accepted in the course of the Comprehensive Regulatory Reform, which took place in Serbia in 2009 and in which FIC actively participated.

In respect of customs regulations we would like to make the following recommendations, in principle applicable to all customs areas:

- Increased efficiency and quality in enacting customs by-laws;
- Better education of customs officers in terms of updating them with latest customs rules and especially training them in respect of their application;
- Learning that administration should focus on laws and not on items developed in practice;
- Strict adherence to the laws without adjusting to political demands to which the Customs are occasionally subjected.

QUALITY INFRASTRUCTURE

CURRENT SITUATION

Enactment of the Law on Technical Requirements for Products and Conformity Assessment, the Law on Standardisation and the Law on General Safety of Products in 2009 and the Law on Metrology in 2010 is identified as progress in the process of harmonisation of the infrastructure of quality (metrology, standardisation, accreditation and conformity assessment) and market surveillance with the EU and international rules.

The Law on Technical Requirements for Products and Conformity Assessment and the Law on Standardisation are harmonised with the World Trade Organization (WTO) and European Union (EU) rules. Serbian technical regulations and standards enacted in accordance with these two laws will essentially transpose EU directives (in case of Serbian technical regulations) and EU standards (in case of Serbian standards) into domestic legislation. Once EU directives requirements are transposed into Serbian technical regulations and EU standards are replaced by appropriate Serbian standards, goods produced in Serbia in accordance with these technical regulations and standards will consequently comply with EU requirements as well.

The Law on Metrology which was enacted in May 2010 regulates issues related to measures and measuring requirements in a manner compliant with EU rules, in particular with the so-called "New Package of Regulations for Free Movement of Goods" enacted by the European Commission in August 2008. This Law will resolve the existing conflict of competences with regard to enactment of metrological regulations, authorisation of metrological laboratories and surveillance of their work.

Market Inspection Department within the Ministry of Trade (in charge of carrying out market surveillance) has finalised preparations for full and adequate implementation of the new Law on General Safety of Goods. The Law incorporates rules set out in the European Directive on General Product Safety 2005/95/EC. This Law entered into force in December 2009; two by-laws necessary for the implementation of the Law have been prepared: Rulebook on Notification of Competent Authority about Dangerous Product or Suspected Serious Risk Imposed by Industrial Product Placed on the Market and the Regulation on the Establishment and Functioning of the National Rapid Alert System for Dangerous Products on the Serbian market.

The enactment of the new Law on Accreditation is underway; the draft Law, which should be compliant with the WTO and EU rules and with the requirements set in the standard SRPS ISO IEC 17011, has been passed by the Government and is pending adoption by the Parliament. The Accreditation Body of Serbia (ABS) is preparing itself for the fulfilment of requirements related to accreditation set by the European Directive 2008/765/EC included in the so-called "new good's package of regulations" (see above). In 2009, the ABS applied to the European co-operation for Accreditation (EA) for peer evaluation of ABS for the purpose of signing mutual cooperation agreements with EU member states. The new Law on Accreditation will define the role of the ABS in line with the European practices, enabling in that manner its full membership in European accreditation organisations. It is expected that the enactment of this Law will complete harmonisation of Serbian accreditation schemes with those applied in the EU.

Enactment of the Law on Accreditation will complete the legal framework required for full functioning of the system of technical regulations and standards in Serbia. It is also crucial to launch an aggressive public awareness campaign by which the public will be acquainted with the benefits coming from accreditation process. Currently, the number of conformity assessment bodies that are accredited in Serbia is still modest. Due to this situation, it is frequently necessary to hire foreign accredited conformity assessment bodies whose services present unnecessary cost to the economy when the domestic conformity assessment bodies could perform the same services for less.

POSITIVE DEVELOPMENTS

With the enactment of technical regulations, standardisation and metrology laws that are fully compliant with the EU and WTO rules, Serbia has been given a comprehensive legal system in this area similar to those existing in European countries. Enactment of the new Law on Accreditation will complete this process.

Several important by-laws have been enacted recently in this area. In late 2009 and early 2010 the Government enacted the following by-laws envisaged by the Law on Technical Requirements for Products and Conformity Assessment:

- Regulation on the Manner of Performance of the Conformity Assessment, Content of the Conformity Certificate, and on the Form, Appearance and Content of the Conformity Mark;
- Regulation on the Manner of Appointment and Authorisation of Conformity Assessment Bodies;
- Regulation on the Manner of Recognition of Foreign Conformity Certificates and Conformity Marks;
- Rulebook on the Manner of Marking of Products with the Conformity Mark and the Usage of Marks;
- Rulebook on the Defining a List of Serbian Standards in the Area of General Safety of Goods.

In March 2010, the Government enacted three rulebooks by which New Approach Directives of the EU are transposed into Serbian legislation:

- Rulebook on Machines Safety;
- Rulebook on Electrical Equipment Designed for Use within Certain Voltage Limits, and
- Rulebook on Electromagnetic Compatibility.

In line with the Law on Standardisation, standards are no longer mandatory except in the situation when the appropriate technical regulation incorporates a particular standard (in which case its application becomes mandatory). The Law abolished around 8,000 standards which were mandatory and transferred them into the area of voluntary implementation. The Quality Infrastructure Department within the Ministry of Economy and Regional Development coordinated this process in line with the Action Plan for Enactment of Technical Regulations. Only 6% of previous mandatory standards were incorporated in the appropriate technical regulations. The Law on Standardisation defined the role of the Institute for Standardisation of Serbia (ISS) in line with the European practices, thus enabling its full membership in European standardisation organisations.

Serbia is also en route to fulfil its obligations arising from the WTO Technical Barriers to Trade Agreement (TBT) which are also incorporated in the Law on Technical Requirements for Products and Conformity Assessment. The TBT requires all WTO candidate countries to establish a so-called "Enquiry Point" which will serve as a point for distribution of all information relating to standards and technical regulations to WTO members, WTO bodies, other international organisations and any other stakeholders in this area. The Law on Technical Requirements for Products and Conformity Assessment also envisages establishment of the Register of Technical Regulations which is a precondition for full functioning of the Enquiry Point. It is expected for the Enquiry Point and the Register of Technical Regulations to become fully operational by the end of 2010. Both the Enquiry Point and the Register of Technical Regulations should be placed within the Ministry of Economy and Regional Development.

REMAINING ISSUES

Human resources needed for the transposition of standards represent a special problem. Existing manpower in ISS are inadequate, both in number and professional qualifications, to carry out the forthcoming enormous work of transposing 80% of the 19,000 harmonised European standards into Serbian standards. The completion of this process is a precondition for Serbia's membership in the EU. The ISS still lacks highly qualified staff and adequate financial support.

Response of industry specialists to the invitation for voluntary work on the preparation of Serbian standards through translation of EU "EN" standards remains low. Due to lack of finances for translation of EU standards by the professional translators the ISS resorts to taking over the harmonised EU standards in English, translating into Serbian only the cover page and the foreword. Implementation of such Serbian standards whose substance is in English may pose a serious problem for most Serbian companies.

Lack of public awareness about the need for accreditation remains a problem which will not be eliminated with the enactment of the new Law on Accreditation since it does not prescribe mandatory accreditation.

Due to the fact that technical regulations are enacted by line ministries, their insufficient involvement and reluctance to speed up the process of enactment of necessary technical regulations remains a problem.

FIC RECOMMENDATIONS

- Enactment of the Law on Accreditation and organisation of a public campaign about economic significance of accreditation;
- Improve activities on enactment/amendment of the remaining required technical regulations within the line ministries;
- Completion of the IT system required for full operation of the Enquiry Point and the Register of Technical Regulations within the Quality Infrastructure Department;
- Increase participation of business representatives in preparation of Serbian standards;
- Improve the capacities of the Institute for Standardisation by increasing the number of employees and increasing their qualifications;
- Raising public awareness about economic reasons justifying compliance with standards as a step which facilitates putting the goods into circulation/on the market.

FOREIGN EXCHANGE OPERATIONS

CURRENT SITUATION

The Law on Foreign Exchange Operations ("RS Official Gazette", No. 62/2006 of 19 July 2006) came into force on 26 July 2006 and since that day there have been no amendments and supplements thereto. The Draft Law Amending the Law on Foreign Exchange Operations was published in June 2009, but it has not been introduced to the Parliament yet. FIC has actively participated in public consultations, its members proposing certain amendments to the draft law, but it is yet to be seen which of the amendments will be accepted in the final version of the draft law that will be introduced to the Parliament.

POSITIVE DEVELOPMENTS

A certain number of foreign exchange by-laws has been either amended or introduced, and the overall effect is a slow but gradual relaxation of the legal regime governing foreign exchange operations. Namely, the following are the major positive developments in the area of the foreign exchange operations:

- In line with the Decision on Temporary Measures for Preserving Financial Stability in the Republic of Serbia (the Temporary Measures) which was initially adopted in late 2008 but amended several times during 2009, local banks and other residents are allowed to transact in:
  - financial derivatives traded on the organised market abroad; and
  - non-standardised (OTC) financial derivatives;

but only for hedging purposes (speculative purpose transactions are not allowed) and with respect to: interest rates, FX currencies, stock prices, commodities prices and stock exchange indices. Temporary Measures have been adopted for an indefinite period of time.

- Exceptionally, foreign payment transactions may be performed without enclosing the document which serves as a basis for the payment to the bank (provided that certain straightforward conditions are met);

- Residents are relieved from duty to deliver to the Foreign Exchange Inspectorate invoices relating to their export /import transactions;

- New Law on Insolvency ("RS Official Gazette", No. 104/2009) has introduced significant novelties regarding the netting, especially on the basis of the framework financial agreements. Having in mind that most of the framework financial agreements are concluded with foreign entities, and that the transactions carried out on the basis of such agreements involve significant cross-border payments, foreign exchange regulations would have to follow solutions recently introduced by the Law on Insolvency.

REMAINING ISSUES

The Law on Foreign Exchange Operations, in principle, allows non-residents to purchase receivables originating from the foreign trade and international credit transactions from residents under the conditions prescribed by the Government. The Government has not yet adopted these by-laws.

The Law on Foreign Exchange Operations provides that residents - legal entities may compensate the realised export of goods and services with the realised import of goods and services only in exceptional circumstances and under the terms and conditions prescribed by the Government. Apart from not clearly defining whether these transactions require approval of the Ministry of Finance; in practice this procedure has proved to be completely unnecessary. In particular, it refers to multinational corporations that are allowed, according to the foreign legislations, to set-off liabilities between connected parties – residents through their founders, i.e. legal entities – non-residents (for cost-saving purposes, etc.).

Set-off of mutual claims in the international payment operations is not possible under the current foreign exchange regime. Set-off of claims is not forbidden under Law on Foreign Exchange Operations or any other applicable by-law while Serbian Law on Contracts and Torts explicitly recognises and allows this legal institute. Nevertheless, the regulator stands firm that set-off of mutual claims is not possible at the moment.

The Law on Foreign Exchange Operations stipulates that non-resident, as well as resident – branch of a foreign legal entity, that perform business transaction through a non-

resident account shall effect transfer from such an account to abroad, provided that its tax liabilities towards the Republic arising from its business activities have been settled. This provision imposes additional liabilities and costs to non-resident legal entities – investors based on the obligation to present certificates on tax settlement, issued by the tax authorities, whereas the tax on revenues from securities shall be paid by the domestic legal entity that is obliged to calculate and pay all taxes in connection with securities transactions and revenues arising from securities.

FIC RECOMMENDATIONS

- Terms and conditions under which non-residents may purchase receivables originating from the foreign trade and international credit transactions should be enacted by the Government;
- Approval of the Ministry of Finance for compensation of the realised export of goods and services with the realised import of goods and services should be abandoned;
- Enable setting-off of mutual claims in the international payment operations;
- Provisions of the Law on Insolvency on netting, including the reference to the framework financial agreements, as well as the different modalities of such agreements (e.g. those related to the repo transactions or securities lending) should be properly recognised by the foreign exchange regulations;
- Obligation of non-residents – legal entities to present certificates on tax settlement, issued by the tax authorities in case of transfer of funds earned from the securities transactions and revenues arising from securities, from non-resident accounts to foreign accounts abroad, should be excluded in order to reduce costs of investors – non-residents and to achieve higher efficiency in international funds transfers.

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

CURRENT SITUATION

The Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of the Republic of Serbia No. 20/2009, 72/2009, hereinafter: the "Law") provides definition of money laundering, financing of terrorism and other key terms, establishes the responsibility of state authorities, lawyers and other legal entities to take actions and also stipulates measures that need to be taken in order to detect and prevent money laundering. Furthermore, the adopted amendments to the Law define more precisely party identification provisions, official IDs and economic offense.

This Law establishes the Office for the Prevention of Money Laundering and stipulates its jurisdiction. If it suspects money laundering in a transaction, the Office collects, analyses and submits information and documents obtained from the liable parties to relevant state authorities so that they can undertake actions and measures within their competence. Nevertheless, other state authorities are obliged to monitor application of the Law and also to notify the Office of potential money laundering.

In accordance with this Law, the Government adopted the Rulebook on Determining Methodology, Obligations and Acts in Conformity with the Law on Prevention of Money Laundering on March 1st, 2010. Article 21 of this Rulebook defines the list of countries that do not apply standards in the area of prevention of money laundering and financing of terrorism (e.g. Uzbekistan, Pakistan, and Azerbaijan). However, the fact that a country is on that list does not mean that business with clients from those countries should not be conducted, but precautionary measures should be taken. Furthermore, Article 19 stipulates that the liable parties are not under obligation to deliver information to the Office on every money transaction totalling EUR 15,000 or more in case of daily sale of goods and services.

Article 7 of the Law prescribes that the liable parties should conduct a risk analysis when taking the necessary measures. There are three risk groups:

- customer risk (e.g. transaction with no economic background, politically exposed persons, and businesses that include large cash transactions);
- service risk in connection with the business activity (possibility of money laundering in performing some business activity);
- country risk (e.g. countries with high criminal rate, countries that do not apply internationally recognised standards).

The Law establishes the responsibility of liable parties (legal entities and entrepreneurs) to undertake the actions and measures for detection and prevention of money laundering and financing of terrorism. The law-makers made a special distinction between lawyers and other liable parties due to the nature of their profession and the relationship based on confidentiality with their clients.

The Law on Legal Profession

The current Law on Legal Profession (Official Gazette of the Federal Republic of Yugoslavia, No. 24/98, 26/98 – correction, 69/2000 – Decision of the Federal Constitutional Court, 11/2002 and 72/2002 – Decision of the Federal Constitutional Court and Official Gazette of Serbia and Montenegro, No. 1/2003 – Constitutional Charter) was first adopted in 1998 and amended in 2002. It regulates a range of activities and services of lawyers, their rights and duties, conditions for carrying out their profession, professional conduct, matter of confidentiality and other issues relevant for provision of legal services. Proposal of the new Law on Legal Profession has been prepared and it regulates this matter more thoroughly, introduces new legal institutions and changes regarding lawyers' requirements, immunity and responsibilities, such as professional indemnity insurance.

POSITIVE DEVELOPMENTS

The Law on the Prevention of Money Laundering and Financing of Terrorism introduces novelties in the domestic legal system in order to be aligned with directives of the European Union and international standards and conventions. Also, the main condition for membership of the Office for the Prevention of Money Laundering in the Egmont Group of Financial Intelligence Units (FIUs) is to make provisions and obligations more specific, to expand the field of its application and to define and interpret key terms in connection with money laundering and financing of terrorism.

Beside those already stated, one of the significant novelties introduced by the amendments and changes to the Law is that responsible persons in legal entities will be punished, as well as the legal entity, for not complying with the Law and preventing money laundering.

Furthermore, the Law provides restriction in receiving cash in the amount exceeding EUR 15,000 for all persons who sell goods or perform services in the Republic of Serbia and such transactions must be executed via the institutionalised banking system. Whenever there are reasons for suspicion of money laundering or financing of terrorism, the liable parties must report to the Office any cash transaction amounting to EUR 15,000 or more, immediately or no later than three days from the day on which the reason for suspicion was first discovered.

REMAINING ISSUES

Application of the Law is primarily dependent on the actions of the Office and other bodies that are responsible for its implementation. Standards and rules established in the member states of the European Union have mostly been accepted and incorporated in the text of the Law and the next step should be to find mechanisms for their implementation.

The Office initiates over 60 suspected money laundering cases each year, but these cases often qualify as abuse of official positions and tax evasion. Since the adoption of the Law, the problems have been encountered not only in court procedures but also in the lack of cooperation between the Office and public prosecutors. Also, the liable parties should be better informed about the new ways of money laundering and financing of terrorism in order to be able to detect and notify the Office about money laundering.

Also, the Draft Law on Legal Profession thoroughly defines temporary cessation and prohibition of practicing law, execution of public powers and operations of public interest by the Bar Association of Serbia, disciplinary responsibility of lawyers, etc.

FIC RECOMMENDATIONS

- Adopt necessary by-laws in accordance with the Law that would further elaborate its application and to continuously evaluate the existing normative framework so that it would be in accordance with the international standards and rules;
- Develop a system that would enable better communication between the Office for the Prevention of Money Laundering and liable parties and also better cooperation with the Ministry of Internal Affairs, Public Prosecutor's Office and courts;
- Adopt the new Law on Legal Profession;
- Influencing the public opinion on the necessity for a more decisive and efficient action against money laundering and financing of terrorism.

PREVENTION AND STOPPING OF FRAUD

CURRENT SITUATION

The issue of fraud is regulated by a part of the Criminal Code of the Republic of Serbia (enacted in 2005 and amended in 2009) and ranks as one of the most stringent in terms of legal sanctions when compared with similar criminal legislation in the region and the member states of the European Union (EU).

Nevertheless, over the last few years, different forms of fraud have been recognised within the Serbian market. The problem has evolved in the sense that beside the usual criminal activities conducted for illegal financial or material gain, individuals or organised groups have turned to fraud as a new type of crime.

The main problem is that legislative provisions are largely unenforceable. In addition, the media is increasingly reporting on the statistics that reveal huge delays in the work of law enforcement agencies and the judiciary. Setting aside the slowness of those proceedings that are actually initiated, it would seem that the majority of criminal offense reports result in no formal charges and no criminal proceedings in the broadest sense of the word.

POSITIVE DEVELOPMENTS

The most important positive development was the establishment of Forum for the Prevention of Bank Loan Frauds, which was created within the Serbian Chamber of Commerce in 2008 by 38 banks operating within the Serbian market. Its main goal is to discuss and agree on the means of prevention of fraudulent activities.

The evidence of the efficiency of the Forum is the statistical evaluation made by its members that the frauds in the banking sector have been reduced by 90% since the Forum was established.

We would also like to point out that the creation of a legal framework for issuance of new identity documents will make the forgery of these documents much more difficult (previously it was easy to apply for a loan using a stolen ID (with only the picture changed)) and thus prevent direct damage to banks when customers apply for loans and other products offered by banks.

REMAINING ISSUES

For the purpose of better understanding of problems caused by fraud, we would like to mention only some examples that could greatly prevent occurrence of fraud and create a more stable business environment in Serbia.

The general legislative framework is based on the part of the Criminal Code of the Republic of Serbia (enacted in 2005 and amended in 2009) which sets out property crimes in Chapter 21 and economic crimes in Chapter 22.

The main problem is the lack of proper implementation of these legislative provisions and inefficiency of the enforcement agencies and the judiciary.

Property crimes, the oldest group of criminal offenses that account for a considerable share of overall crime rates and have huge practical implications in our country, include:

- the criminal offense of fraud defined in Article 208;
- the criminal offense of obtainment and use of loans and other benefits under false pretences defined in Article 209.

The main problem is that the lack of proper implementation of these legislative provisions causes the following instances of fraud in retail banking:

- Loan application based on a false employment certificate and salary certificate filed by an employee of a sham company;
- False issuance of employment certificate based on an agreement between a fictitious employee and a firm. In this case the bank disburses the whole credit amount to the fictitious employee who transfers a portion of the amount to the owner of the firm as part of their internal agreement;
- The opposite situation occurs when owners of a firm fac-

ing financial difficulties force their employees to apply for a loan and consequently surrender the entire amount to the company owners in order to solve the current financial problems. In practice, the employees often lose the job afterward, while they need to repay the loan;
- False statement and verification of income in order to meet loan requirements.

As stated above, the Criminal Code contains provisions concerning economic crimes which most frequently include the operations of commercial banks (Article 224 - counterfeit securities, Article 225 - forgery and misuse of credit cards, Article 228 - issuance of uncovered cheques and use of uncovered payment cards, Article 234 - misfeasance in business).

The main problem is that the lack of proper implementation of these legislative provisions causes the following criminal offenses in corporate banking:

- Loan application, filed by a legal entity, based on the appraisal of real estate or movable assets whose value stated in the application has been multiplied and does not reflect the real market value. After loan approval, the firm is sold to natural persons usually domiciled in Bosnia and Herzegovina, Croatia or Kosovo and thus the movables are transferred abroad. When the due loan instalment is not settled, the bank can only register that the movable property has evaporated and that the value of the mortgaged property is much lower than previously determined;
- Sale of movable assets or real estate under the mortgage without the bank's knowledge or approval;
- Submission of falsified financial statements in loan application or the use of the loan for purposes not approved by the bank.

Proper implementation of the legal provisions concerning economic crimes is aimed at protection of market-oriented economy, which is still insufficiently developed in Serbia, hence its significance for the future market development.

In addition, there are also specific parts of secondary legislation that further elaborate the provisions of this part of the Criminal Code, but are not efficiently implemented.

FIC RECOMMENDATIONS

- Ensure proper and timely implementation of legislative provisions contained in the Criminal Code;
- Initiate amendments to laws pertaining to economic operations that would imply the extension of the "criminal area" in relation to existing economic crimes and introduction of new criminal offenses in this field;
- Establish more thorough checks in the process of establishment of legal entities, primarily in situations where numerous subsidiaries are formed and where more effort is needed to determine their ownership structure;
- Improve control procedures by public authorities and ensure their timely response;
- Ensure further implementation of prevention as the most efficient form of protection of banks and their clients, legal entities and individuals from fraud and misuse in the process of loan approval and disbursement;
- Further improve the methods of prevention in accordance with various types of fraud;
- Further enhance information exchange between banks and state authorities on a daily basis.

LAW ON PROTECTION OF PERSONAL DATA

CURRENT SITUATION

The new Law on Protection of Personal Data (hereinafter: "Law") was adopted on 1 January 2009, introducing several novelties and changes, all in accordance with European Union rules and international standards. Protection of personal data guarantees protection of basic human rights, such as right to privacy and other freedoms. In line with that, Article 8 of the European Convention on Human Rights provides the right to respect one's private and family life, home and correspondence. Furthermore, the European Union enacted the Data Protection Directive (Directive 95/46/EC) to ensure the protection of the processing and free movement of personal data within the European Union.

The Law defines personal data very broadly, as any information, regardless of the form in which it is expressed and the data storage medium (paper, tape, film, electronic media, etc.) related to a natural person at whose request or on whose behalf the information is stored. There are exceptions to the Law that apply to:

- data in the public domain;
- data that are processed for family and other personal needs and are not available to third parties;
- data on members of political parties and other associations, processed by these organizations, on condition that the member provide a written statement to the effect that the provisions of the Law shall not apply to the processing of his personal data for a certain period of time not to exceed the duration of his membership;
- data that a person who is capable of protecting his own interests, has published about himself.

Pursuant to the Law, personal data related to nationality, race, language, religion, sexual orientation and other may not be collected, processed and used without the consent of the person concerned. Consent has to be given in writing, or stated verbally on the record. By way of exception, the use of personal data is allowed ,in the case of protection of overriding interests, or for purposes of enforcing the obligations under the Law.

Citizens are faced with numerous privacy violations, without first being informed of their rights. The internet brought new concerns about privacy because data is stored on the internet (photos, videos, texts and other private information such as address, telephone numbers etc.) and frequently used without any control. Thus, the ability to conduct online investigations on individuals has been enhanced with the appearance of Facebook, Twitter, YouTube and other social networking sites. Other media, such as print media and television, also contribute to the misuse of personal data, by publishing information without the consent of the person concerned.

POSITIVE DEVELOPMENTS

The objective of the Law is to enable every individual to exercise and protect their right to privacy and other rights and freedoms in connection with the processing of personal data. The target of the Law is not to protect personal data as such, but to protect the individual to whom the data relates.

Namely, the Law established the institution of Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: "Commissioner"), as the state authority in charge of matters related to personal data protection. It is in the Commissioner's authority to monitor the implementation of the Law, to give an opinion when there are doubts as to whether a set of records may be considered as a database in light of this Law, to supervise and allow data transfer from the Republic of Serbia, to maintain the Central Registry, to point out violations detected in the collection of data and similar. According to the Report of Commissioner, in 2009 there were 69 solved cases in the matter of protection of personal data.

The new Law ehnanced some of the legal mechanisms, among others supervision of data collection and processing, which did not exist hitherto in the Republic of Serbia. Now the Commissioner has greater authority and powers in protecting and preventing misuse of personal data. In addition, for the purpose of adequately enforcing the Law, the Commissioner established a Central Registry accessible to the public through the internet.

The above also applies to employee personal data. According to the Labour Law, employers are entitled to keep employee personal data, but not to disclose such data to third

parties without the consent of the employee concerned. Nowadays, there are internet databases where job seekers may store their curriculum vitae, however, very often such data can be abused by other internet users or employers.

REMAINING ISSUES

Taking into account that the Law is very abstract, the Commissioner issued a "Guidebook on the Law on Protection of Personal Data", with the aim to clarify the Law and make it more understandable to the citizens. Additional documents are required to define key terms, the role and liability of the state, supervisory and other bodies in connection with protection of personal data.

According to the Commissioner's report, the liability for violations of the provisions of the Law is not sufficiently well defined and very often state authorities are passive and inactive even when the Commissioner acts upon a complaint of the person to whom the personal data relates. Despite the fact that Article 81 of the Stabilization and Association Agreement between the European Communities and their Member States and the Republic of Serbia prescribes that the Republic of Serbia should harmonize its legislation in the field of protection of personal data with Community law and other European and international legislation on privacy and should establish an independent supervisory body with sufficient financial and human resources in order to efficiently monitor and guarantee the implementation of the Law, there are still some inconsistencies with the Community law, such as Article 13 of the Law which prescribes that public authorities can process personal data without the consent of the person concerned in the interest of national or public security and similar.

FIC RECOMMENDATIONS

- Provide the Commissioner with better working conditions, equipment and staff;
- Determine the supervisory bodies that would monitor the implementation of the Law and cooperate with the Commissioner;
- Adopt by-laws necessary to improve the implementation of the Law (particularly in relation to the coordination of existing databases);
- Establish better communication between the Commissioner and other state authorities, NGO's and International organizations;
- Raise awareness among state authorities about new ways of jeopardizing personal data, such as video surveillance, storage of biometric data and unprotected websites;
- Conduct workshops and seminars in order to educate and raise awareness among citizens about the protection of their rights.

TAX

A. CORPORATE INCOME TAX

CURRENT SITUATION

Taxation of corporations in Serbia is governed by the Law on Corporate Income Tax (the "CIT Law"). The CIT Law is supplemented by a number of by-laws governing the implementation of the CIT Law provisions.

The Serbian Parliament adopted amendments to the CIT Law on 23 March 2010. These amendments were published in the Official Gazette of the Republic of Serbia, No. 18/2010 of 26 March 2010, and are in force retroactively from 1 January 2010 and include the following changes:

- New thin-capitalisation rules have introduced pure debt/equity ratio of 4:1, and have abolished carryforward of interest expenses;

- With respect to the tax incentives, tax credit for newly-employed workers haves been abolished and the criteria for using tax credit for investment in fixed assets and the ten-year tax holiday have been tightened;

- The reduction of loses carryforward period from the previous 10 years to 5 years;

- New 20 percent withholding tax on income from entertainment, sports, artistic and other similar programmes and activities performed by non-residents in Serbia has been introduced together with new 20 percent capital gains tax on the sale of real estate, IPs and capital participations between two non-residents.

POSITIVE DEVELOPMENTS

- The provisions governing the deductibility of certain expenses have been changed (advertising and promotion expenses are deductible up to 5 percent, entertainment expenses are deductible up to 0.5 percent, severance payments are deductible in the period when they are paid out, impairments of inventories are deductible in the period they are used/sold, write-off of debts are taxable upon their cancellation from the balance sheet unless specific criteria are met).

- The amended CIT Law provides for a possibility for taxpayers to opt for a different tax year (other than a calendar year).

REMAINING ISSUES

- The provisions governing taxation of permanent establishments continue to be scarce and vague, and do not provide sufficient guidance as to what constitutes a permanent establishment, methodology for establishing the profit subject to taxation, submission and payment of CIT in situations where no legal presence of foreign business in Serbia exists, etc.

- The provisions governing transfer-pricing are too vague and are rarely implemented in practice. The lack of legislative guidance and any reliable practice in this area have caused significant uncertainties as to the way taxpayers should handle their related-party transactions;

- There is no possibility, as per the currently applicable legislation, for branches to utilise available tax incentives, especially tax credit for investment in fixed assets, which puts this legal form in a disadvantageous position as compared to the tax position of "standard" legal entities. In this respect, it should be pointed out that in accordance with almost all bilateral double taxation treaties of Serbia with other countries, discrimination of permanent establishments of foreign companies vis-à-vis domestic residents (companies) is prohibited with respect to taxation of income (CIT). This principle of non-discrimination should also be transposed in the domestic law, by ensuring that permanent establishments carrying out business in Serbia (e.g. foreign branches) may benefit from the same tax incentives as resident taxpayers;

- Neither the CIT Law, nor other relevant legislation provides a clear definition of the underdeveloped regions to which tax incentives for investment in these areas apply;

- The CIT Law does not contain a single provision governing the taxation of investment funds. The result is the distortion of the tax neutrality of investment funds, as well as the neutrality of different forms of investment funds, in particular the closed-ended and open-ended funds;

- The current version of the CIT Law still allows the tax au-

thorities to introduce three to twelve month ban on business activities as a penalty for taxpayers that prepare their tax return and tax balance sheet based on incorrect data which result in a decrease of tax liability.

FIC RECOMMENDATIONS

- Many of the existing problems in taxation of companies are related to the practical implementation of the CIT Law provisions. These problems should be dealt with in the by-laws of the Ministry of Finance and the Tax Authority, which will introduce more flexibility in this area and are expected to be changed/ brought in force by the end of the current year. Primarily, by-laws should provide guidelines with respect to transfer pricing and taxation of permanent establishments;
- The clarifications for the application and consistency in the approach of the Serbian tax authorities with respect to capital tax incentives such as 10-year tax holiday;
- The alignment of the tax balance sheet with current and proposed changes of the CIT Law, including the tax balance sheet for foreign branches that should provide for no less favourable taxation of foreign branches compared to resident companies;
- Taxation of cross-border corporate reorganisations should be addressed by the amendments of the CIT Law, as the currently applicable legislation completely lacks provisions regarding the taxation of cross-border corporate reorganisations;
- The introduction of a precise procedure for applying for different tax year (other than a calendar year);
- Revisit the currently applicable rule that only paid taxes are recognised as an expense in tax balance sheet and align the above provision with the rules outlined in IFRS which do not impose payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account;
- Formulating a longer-term tax policy with respect to recognizing marketing expenses for CIT purposes as a rule adopted during the latest changes of the CIT Law in March 2010 (i.e. recognition of marketing expenses up to 5 percent of total revenues) was opposite of the previously stated position that marketing expenses would be fully deductible which was formulated in draft changes to CIT Law which has been posted on the web site of the Ministry of Finance since December 2008. In other words, whether the currently applicable rule represents one of the anti-crisis measures of the Government of Serbia ("GoS") or long-term tax policy with respect to marketing expenses.

B. PERSONAL INCOME TAX

CURRENT SITUATION

Taxation of individuals is governed by the Personal Income Tax Law (the "PIT Law") from 2001, which was subject to two legislative adjustments in May and June 2009 and, the latest one, in March 2010. The new amendments to the PIT Law were adopted by the Serbian Parliament on 23 March 2010, published in the Official Gazette of the Republic of Serbia, No. 18/2010 of 26 March 2010, and have been in force as of 27 March 2010 and include the following changes:

- The introduction of a single (reduced) 10 percent tax rate for taxation of income from capital (e.g. dividends, interests,

employees' participation in profit, etc.) and for capital gains.

- Provisions governing the annual income tax have been changed in the manner that the amount of non-taxable income for foreign citizens was reduced and is now equal to the non-taxable amount for Serbian citizens (i.e. three times the average annual salary per employee in Serbia).

REMAINING ISSUES

- Double taxation of income received from abroad by Serbian tax residents in a situation where such income is recharged to Serbian companies. In this regard, a particular problem relates to the new guidelines of the tax authorities which are not in line with the legislation governing taxation of income from abroad and indirectly keep the concept of "actual income payer" concept (i.e. imposing the obligation upon a local company to calculate, report and pay taxes on income received by individuals from abroad despite the fact that the Law clearly imposes such obligation upon individuals themselves);

- The tax treatment of business expense compensation to natural persons (both employees, and persons engaged under service contracts) has not been dealt with adequately in the PIT Law. These expenses are routinely taxed as if they represent a personal expense of persons to whom they were compensated. In that sense, the PIT Law should make a clear distinction between the compensation of business expenses, which do not represent income of natural persons, and cannot be subject to taxation, and compensation of personal expenses, which should be taxed;

- A specific problem are compensations of expenses for business travel abroad, which are not regulated either in terms of procedure in which such expenses need to be documented by Serbian companies, or in terms of thresholds which are "exempt" from the obligation to pay tax. In the absence of relevant by-laws to regulate this matter, Serbian tax authorities continue to apply the Decree on the Compensation of Expenses and Severance Pays to Employees in State Bodies. Not only that this practice has no grounds in the applicable laws, but is also completely inappropriate, as the Decree imposes limitations on travel expenses which may be appropriate when it comes to civil servants, but are absolutely out of place in the business environment.

FIC RECOMMENDATIONS

- Clear rules with respect to taxation of foreign-source income received by Serbian tax residents with an aim to exclude double taxation (i.e. adjustment of the newly published guidelines of the tax authorities to bring them in line with the provision of the Law);

- The application of the cedular system of taxation of personal income remains the central problem of the Serbian system of taxation of individuals. This system was abandoned as unclear and unjust by many advanced tax jurisdictions, and the Serbian government should consider the introduction of a synthetic system which would require major investment into the tax authorities with respect to training, education, technology and software upgrades.

C. VALUE ADDED TAX

CURRENT SITUATION

Value Added Tax is governed by the Law on Value Added Tax from 2004 (the "VAT Law"). In 2007, the VAT Law was amended by the Law on Amendments and Supplements to the VAT Law which introduced significant changes in the existing VAT system.

POSITIVE DEVELOPMENTS

- The amendments to the VAT Law introduced in 2007 have refined and clarified many of the legislative provisions which have proven to be controversial in practice. Examples

of these include clarification with respect of the issuance of invoices for services with unlimited duration, prescribing the taxable base for contributions in kind, VAT refund to foreign companies, etc.

REMAINING ISSUES

- The major obstacle in the current VAT system relates to the absence of the possibility for foreign companies without legal presence in Serbia, to register for VAT purposes, which results in situations where foreign companies do not have any means to recover VAT paid in Serbia. Namely, the 18 percent VAT paid to their Serbian suppliers is an additional cost for any foreign company with direct operations in Serbia (without legal presence). Not only does this solution distort the neutrality of VAT, but it also discriminates foreign companies against Serbian taxpayers. Furthermore, it would be in the best interest of the state budget to increase the number of registered VAT payers as this would result in at least cash flow effect on the budget (i.e. foreign companies that are registered for VAT would start calculating output VAT instead of current situation where Serbian VAT applicable to services rendered by foreign companies is calculated by service recipients trough "reverse charge mechanism" which is cash neutral);

- In addition, the lack of possibility for foreign companies to file for refund in Serbia also exposes Serbian companies to the risk of being denied the right of refund in foreign countries on the grounds of a lack of reciprocity (e.g. Germany, Hungary);

- The rules relevant for the implementation of the VAT Law are scattered over numerous by-laws, instead of being summarised in one act;

- While the Serbian Tax Authority has adapted itself very quickly to the VAT system and become quite proficient in the application of VAT Law, due to a lack of clear legislative guidance many of the provisions of the VAT Law are still subject of considerable controversy in practice (e.g. application of "reverse charge" mechanism).

FIC RECOMMENDATIONS

- Provisions of the VAT Law dealing with the position of foreign entities within the Serbian VAT system should be revisited and amended so as to allow foreign businesses, without legal presence in Serbia, to register for VAT purposes in Serbia;
- Tax Authority should issue comprehensive guidelines for the application of provisions of VAT Law to address various issues which have repeatedly been the source of problems in the practice.

D. THE LAW ON TAX PROCEDURE AND TAX ADMINISTRATION

CURRENT SITUATION

The Law on Tax Procedure and Tax Administration (*Official Gazette of the Republic of Serbia*, Nos. 80/02…61/07; the "TPTA") regulates the general issues related to the organisation of the Tax Authority and the administrative procedure carried out before the Tax Authority. The general administrative and procedural rules of the TPTA apply to all forms of taxes applicable in Serbia, unless specific tax law contains special provisions to govern a specific issue, and, in that sense, the relationship between the TPTA and tax laws is that of the lex generalis to lex specialis. The TPTA was last amended in August 2010. The latest changes have predominately dealt with clarifying the jurisdiction and organisation of the tax administration itself.

POSITIVE DEVELOPMENTS

- Introduction of "voluntary disclosure" concept for the entire statute of limitations period, i.e. taxpayers may adjust their al-

ready submitted tax returns for the same tax period up to two times within 5 years, without being subject to tax penalties;

- Uncertainty with respect to the statute of limitation period was addressed and determined to be 5 years.

REMAINING ISSUES

- Even with the recent Law amendments, there are still considerable discretionary powers given to the tax inspectors, especially in the area of tax penalties.
- Finally, the "threshold" for existence of potential tax criminal act (in case of an intention) is just RSD 150,000. Such fixed monetary amount does not take into consideration the relative size of the taxpayer in question or the relative value of indentified non-compliance with the entity's overall tax payments throughout a calendar year.

FIC RECOMMENDATIONS

- Tightening the deadlines for the issuance of decisions of the Tax Authority;
- Clarification of the relationship of the penal provisions of the TPTA and those prescribed by the individual tax laws;
- Linking the "threshold" for the existence of potential tax criminal act to the actual business indicators of the company (e.g. as a percent of total tax liabilities, turnover, etc.);
- The relevant Serbian authorities should consider the introduction of the "binding opinions" in the Serbian tax system whereby such rules would be binding upon the entity requesting the opinion (similarly to the "binding opinion" approach already applied by the customs authorities and tax authorities of neighbouring countries such as Bosnia/Republic of Srpska), as this would introduce a greater level of certainty for Serbian taxpayers, especially in the areas which have proven to be controversial in the practice, and provide additional source of guidelines as to the practical implementation of the Serbian tax laws.

E. LATEST TENDENCIES IN THE SERBIAN TAX SYSTEM

As a result of the "arrival" of the global economic crisis in Serbia, taxpayers have noted tendencies towards the introduction of new taxes and various duties in Serbia.

Without any intention on the FIC' side to question or advocate against the sovereign right of the state to impose taxes and public duties as a way of battling with negative effects of the world economic crisis on state budget, the FIC believes that situations where new taxes and duties are introduced in the middle of a financial year and without previous notice to taxpayers that would allow them to adjust their business activities to the new fiscal burden, is not the most convenient approach to such an important matter as taxes. In addition, it has been noted that a number of these new duties are introduced in non-tax laws which, in our view, do not contribute to the desired transparency of the Serbian taxation system. It is therefore, strongly recommended that any new tax burden to businesses and individuals in Serbia are done through tax laws.

The examples of the processes described above started even before the economic crisis with the introduction of Health Budget Fund – related tax in Tobacco Law. This duty

is still effective today, despite CEFTA action plan recommendations to incorporate it in the Law on Excise. Further examples proliferated with the introduction of 10 percent tax on the use of mobile phones in April 2009 and continued with planned introduction of protection, use and improvement of woods stamp duty and new duties on usage of waters as of 1 January 2011.

The FIC's standpoint is that these new taxes and duties and their effects on the overall economy as anti-crisis measures should be revisited by the Government of Serbia with a clear indication on their duration in the current system.

Introduction of Para-Fiscal Forms of State Revenues

In addition to the above, we would like to briefly stress the FIC's concern over the recent developments in the current fiscal policy of the Republic of Serbia with respect to new public duties and local taxes, which are in the process of being imposed on businesses by virtue of laws or by-laws.

The first group of issues are public duties related to various public goods (water, woods, etc). Normally, similar public duties exist worldwide, where they are commonly related to the use of such public goods. However, instead of being factually related to the use of certain goods, these public duties have the character of a regular tax obligation (as in most cases they will be payable by all legal entities as a percent of their annual revenues). For example, in the case of the public duty for protection, use and improvement of woods, which would come into force as of 15 November 2010, each legal entity in Serbia, will have to pay 0.025 percent of their total annual revenues on these grounds. In addition, the new Law on Water (applicable as of 1 January 2011) stipulates 6 various types of public duties related to water, whose percent or amount is going to be regulated under a by-law. There are similar developments with regards to mining, public traffic, agricultural land, ecology, etc. All of these public duties are not within the authority of the Ministry of Finance, but are independent sources of revenue for various Funds, Agencies and other Ministries.

The second group of issues relates to local taxes (payable to local authorities) and deals with the fact that the financing of local municipalities is not yet regulated in a systematic way. Namely, the Law on Financing Local Self-Governments only regulates the possible types of local taxes, but not the most important items such as: who the taxpayer is and what the amount of local taxes is. As a result, local authorities independently decide on these matters. Moreover, the Law neither provides any guidelines for determining the amount of taxes nor sets thresholds, nor does it specify the allocation of collected funds. In practice, it is widely spread that the amount of local taxes varies depending on the location of a company seat within a particular municipality, whereby the "zoning" is made in a way that bigger companies are always in the zone where the local taxes are several times higher as compared to other zones within the same municipality.

Without any intention to challenge the existence of local taxes as a concept in the Serbian tax system, the FIC strongly took the position that clear rules should be set with respect to calculating the obligation for local duties and what the maximum thresholds in this regard are.

ENVIRONMENTAL REGULATIONS

CURRENT SITUATION

In order to continue the enforcement of the environmental regulations introduced in 2009, the Serbian Government enacted some of the secondary regulations concerning environmental protection. Certainly, the most important documents adopted in the past year are the strategic documents for environmental protection and waste management to be applied until 2019. Furthermore, some by-laws regarding waste management, packaging and air protection have also been introduced.

The strategic plans for development in the next nine years seem highly demanding from this point of view, taking into consideration the current unfavourable financial situation in Serbia. In addition to this, critical pieces of secondary regulations are still missing and the authorities still lack institutional capacity to fully apply the regulations. Therefore, it is yet to be seen how this strategy will be implemented in practice.

POSITIVE DEVELOPMENTS

The most important document adopted in 2010 is the National Programme for Environmental Protection ("National Programme"). Generally, the National Programme is a detailed plan for future development of environmental protection and it recognises the most important current deficiencies in this area. Those deficiencies include inefficient implementation of the environmental regulations, lack of economic incentives for investments in environmental protection, lack of strategic documents and plans and lack of information system, including monitoring procedures and reporting system.

One of the most important intentions set out in the National Programme in respect to waste management is the plan to introduce national capacity for the treatment of hazardous waste by 2014. This is a positive objective of the National Programme having in mind that up to now, such waste was either exported, or stored, since there is no such capacity established in Serbia yet. Going into more specifics, the Serbian Government had also adopted the Waste Management Strategy, Rulebook on Dangerous Waste Management, Rulebook on Categorisation, Examination and Classification of Waste, and Decree on Plan for Decrease of the Packaging Waste, as well as a number of rulebooks for the implementation of the Waste Management Law and Law on Packaging and Packaging Waste. These include determining types of hazardous waste which may be imported as secondary materials, annual amount of packaging for which specified site for storage, collection and classification must be determined, type and annual amount of packaging waste for which management is not mandatory etc. Furthermore, positive developments in this area also include incorporation of the registry of landfills, in coordination with local self-government units and projects for the construction of regional solid waste landfills.

The National Programme sets forth that the operability of monitoring and reporting system should be ensured by the end of 2014. This is set as priority of Serbia's environmental policy and it is to be achieved in the short-term timeframe for the implementation of the National Programme.

With regard to air protection, in 2010 Serbian authorities adopted the regulations for treatment of substances that deplete the ozone layer, conditions for monitoring and air quality requirements and rulebook on content of the plans for air quality. Furthermore, the National Programme sets as a short-term goal the implementation of the EU Emissions Trading Directive, as well as EU regulations on climate and energy as one of the conditions precedent to achieve the decrease of the CO2 emissions. Decrease of CO2 emissions is also to be accomplished by stimulating the use of alternative energy sources and energy efficiency, planned through economic incentives which should be introduced in the near future.

It should also be noted that the initiation of procedures for the issuance of IPPC Permits has started and we may expect the first IPPC permit to be issued in the near future; Chemicals Agency has been established; incentives for the use and re-use of waste tires have been introduced, as well as the Rulebook on Registry of Approvals for Packaging Waste Management.

REMAINING ISSUES

- Environmental laws enacted in 2009 are still not fully operational in practice, due to delay in passing of the by-laws and underdeveloped capacities of local self-management, including municipal environmental inspectors;

- There are numerous by-laws still to be adopted in the sector of waste management, such as Regional and Local Plans for Waste Management and PCB Waste Treatment;

- Regulations regarding economic instruments, monitoring system and deposit-refund system for packaging still remain to be adopted;

- There are also regulations on the reporting system for packaging management, as well as procedures for the management of particular types of waste, especially contaminated and hazardous waste, which still remain to be adopted;

- On the other hand, the monitoring and reporting system has not been fully implemented, the registry on emissions of polluters is not complete and therefore there is a lack of data on environmental status;

- Incentives for investments in environment protection (clean production, pollution decrease, energy efficiency, waste reduction, eco-innovations, etc.) have not been introduced yet.;

- There is not enough government support in envisioning and planning the policies and support in building institutional capacity and infrastructure for the implementation of environmental regulations. In particular, there is a lack of public private partnerships cooperating with local authorities to help drive the implementation of the government waste policies;

- Although the registry of dumpsites has been created, no progress has been made towards supporting local self-governments to construct regional landfills, as well as sanitation and recultivation of existing dumpsites;

- No local environmental plans have been enforced yet.

FIC RECOMMENDATIONS

We recommend the following legislation to be adopted:

- Law on Rational Use of Energy;
- By-laws on air protection including Decree on Thresholds for Emissions into the Air;
- By-law on waste management;
- Local plans for waste management;
- National plans for waste management of certain types of waste.

We furthermore recommend the following:

- Consolidate regulatory framework through adoption of by-laws on environment protection information system and waste management;
- Engage and train local authorities' staff in applying environmental regulations in order to develop local self-management capacities, including municipal environmental inspectors;
- Introduce economic instruments, adopt monitoring system and deposit-refund system for packaging;

- Reinforce the capacities of local governments for the purpose of preparing local environmental action plans;
- Continue building infrastructure for environmental protection – testing, analysis, broadening of network of authorised organisations, certification, specialised services for waste management, depositing hazardous waste, remediation of contaminated soil, etc;
- Adopt and harmonise emission regulations with the EU acquis, especially thresholds for emissions into the air;
- Support foundation of new and development of existing enterprises engaged in production and/or services in the environmental protection sector, and support foundation of new and development of existing enterprises engaged in production of energy from alternative sources;
- Introduce economic incentives for investments in environmental protection (clean production, pollution decrease, energy efficiency, waste reduction, eco-innovations, etc.);
- Design special regulatory and economic instruments as incentives for enterprises to apply regulations for environment protection;
- Support public private partnerships which will work with local authorities to help drive the implementation of government waste policies, as a necessary prerequisite for the implementation of any programme conducive to private sector investment and growth;
- Further engagement and training of local authorities' staff in issuance of IPPC Permits and environmental impact assessment procedures.

SECTOR SPECIFIC

FOOD AND AGRICULTURE

1. REGISTRATION PROCESS OF PESTICIDES

CURRENT SITUATION

The current Law on the Registration of 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, Forestry and Water Management, does not ensure food safety and poses an unknown risk to consumers due to the fact that certain amendments (Articles 86 - 90) in the new law are referring back to the previous Law on Plant Protection ("Official Journal of the FRY", No. 26/98) from 1998.

The fact is that in Serbia it is still possible to register pesticides without complete toxicological and eco-toxicological data packages, or so called product dossiers, which would ensure that all contents of a plant protection product are known, including impurities which could enter the food chain.

More than 800 pesticides are registered in Serbia and the majority, (approximately 500 product brands), are being allowed to enter the market without proper toxicological and eco-toxicological data and are being applied on Serbian products including fruits, vegetables, corn, grapes, etc.

The majority of these pesticides would not be granted registration in the European Union and other markets destined for Serbian food exports.

POSITIVE DEVELOPMENTS

The Industry, in cooperation with ECPA and the Ministry of Agriculture made an effort to develop a proper law, in line with EU legislation, which incorporates all requirements including toxicology and eco-toxicology and which puts all responsibility in the hands of the Ministry of Agriculture, Forestry and Water Management. The expectation is that there will be a transparent and fair process for all, including R&D companies and domestic non-researching companies.

REMAINING ISSUES

The International Plant Protection Research and Development Industry needs 10 years to develop 1 new product and invests roughly EUR 250 mil. over this R&D period. It provides the necessary data (dossiers) to prove that a product is not only efficient for the recommended use, but also safe for the crop, farmer, end-user and the environment, if used in accordance with the label. Domestic Serbian companies are allowed to register and sell very low-priced generic copies with contents largely from unreliable sources, which have flooded the market over the last couple of years.

This gives an unfair advantage of these companies over the international R&D companies and does not create a favourable investment climate.

It can be concluded that the Serbian legislation is not in line with international, EU and WTO standards and needs to be harmonised as soon as possible.

The fact is that the new law is not fully implemented and thus not fully harmonised with EU standards and has left loopholes for some companies to continue registering their pesticides with unknown contents or impurities.

FIC RECOMMENDATIONS

- The aim is to incorporate European standards into the domestic Serbian legislation, in terms of the efforts of Serbia to fully harmonise the regulations of the Republic of Serbia with the EU and the World Trade Organization (WTO);

- The FIC advocates full harmonisation with EU standards and proper implementation of the registration process of plant protection products in the Republic of Serbia, in order to ensure food safety for consumers and fair competition between international and domestic companies, at the same time creating favourable market conditions for foreign investments. Lack of clarity leads to diverse practices among industry players and arbitrary interpretation by the Trade inspectors.

2. QUALITY STANDARDS IN MILK AND JUICE PRODUCTION

CURRENT SITUATION

Quality standards in general are the issue that concerns the whole food industry and Serbian market and should be constantly improved and updated. We would like to refer to two relevant areas, namely milk and juice production, where the FIC can provide most support and point out necessary improvements.

In the past few years, food production in Serbia has been facing the negative consequences of the global economic crisis, combined with numerous specific weaknesses. The regulatory framework in which food production operates is still insufficiently harmonised with EU regulations. While the total framework defining milk production, as an example, is extremely wide (fifteen laws), the most significant Livestock Breeding Law was passed in 2009. Instead of obtaining products that satisfy the quality and safety needs of consumers, the social character of milk production is for the time reflected in the Food Safety Law passed in 2009 and the Rules of Procedure on Raw Milk Quality also passed in 2009.

REMAINING ISSUES

Although it exists, the legal framework for the production of high-quality raw milk does not adequately reflect the needs of modern production of raw milk in Serbia. Despite the still existing extensive production there is a considerable number of modern milk producers who, thanks to the support of milk processing industries, are capable of producing milk in compliance with EU standards. However, due to incompatibility of Serbian regulations with EU regulations regarding raw milk quality, export of milk to EU is not possible. This additionally reduces the competitiveness of Serbian agriculture, but also of the milk processing industry in general. Despite this fact, the milk export in the past three years has reached the level of USD 30 million, generating a surplus in the foreign trade balance for milk products.

The core problem of harmonisation with EU standards remains in Food Safety Law (Official Gazette No.41/09) and Rules on Milk Quality (OG No. 21/09), which defines raw milk quality parameters and supervision. On the other hand, although the Food Safety Law clearly prescribes the foundation of a National reference laboratory as a supervisor over existing accredited laboratories, it has still not been established. Consequently, full implementation of the Rules on quality of Raw Milk is not possible, which leads to numerous negative implications for the milk market. The Rules on Milk Quality is a good starting point for the production of high-quality milk, but in comparison with the EU regulations on quality standards, the permitted level of microorganisms in milk, vital for the safety of milk, are far from the ones prescribed by the EU. The price of raw milk also greatly depends on its microbiological validity, which is the precondition for fair and honest classification of milk.

When it comes to implications for the juice and nectars market segment, the implementation of existing legislative remains the biggest problem. Namely, the products of a large number of producers are not compliant with the newly adopted local and existing EU legislation[1] and there is no sanctions against such fact. This in turn directly disables exports of Serbian-made products, creates an uneven playing field for producers (between those who do abide

[1] According to the analyses conducted by the National Consumers Organisation of Serbia, by the AIJN (European Juice Producers Association) accredited SP laboratory, in September 2009.

by the law and those who do not), and finally endangers consumer health and misleads consumers, which should also be addressed through the Consumer Protection Law and Law on Advertising.

FIC RECOMMENDATIONS

In order to improve the current situation, it is necessary to:

- Adopt new Rules on Raw Milk Quality obligatory for all dairies, with emphasis on high hygienic quality of milk, in line with EU standards of quality;
- Urgent establishment of National Reference Laboratory as prescribed by the Law on Safety of Food is necessary. Providing for complete independence of National Reference Laboratory by making it legally obliged to carry out microbiological examination of raw milk according to internationally accepted standards on behalf of the state, but also of farmers and dairies. This would largely improve the current lack of trust between farmers and dairies, which are the ones classifying milk according to their own criteria nowadays. Greater stability of the raw milk price would be achieved, thus enabling farmers to increase the quality of milk more directly by their own corrective measures and consequently get a higher price. Finally, a favourable effect would be achieved on consumer safety, because the quantity of produced high-quality raw milk would also be increased;
- Consider adopting amendments to the Laws on Consumer Protection and Advertising to address poor implementation of Serbian and EU standards in actual production and sanction deceiving advertising;
- FIC considers that lessons learned from the process of improvement within the areas of milk and juice production can be used through the whole food production sector.

3. SUBSIDIES AND MID-TERM STRATEGIES

CURRENT SITUATION

The subsidies policy has been and is likely to remain a significant economic assistance tool of Serbian, as well as state policies of many EU members. The economic character of subsidies should be aimed at achieving efficiency and sustainability of agricultural production, which would create preconditions for the increase of export competitiveness of the sector and the achievement of high quality production.

Also, four year strategies are missing as a tool to provide clear state guidance and support mid- to long-term investment plans required for many of the concerned agricultural industries.

POSITIVE DEVELOPMENTS

The National Agricultural Programme (NAP) of the Republic of Serbia is currently in the process of adoption by the Government of Serbia. The document represents a sublimation of legislative, institutional and financial activities of the Ministry of Agriculture, refers to a four year period and, as such, offers an overview of stable, predictable and consistent state policy in the agricultural sector that is useful for all

agro-business entities in their respective business planning processes. FIC also fully supports the scope of agricultural crops defined in NAP

REMAINING ISSUES

In many agricultural sectors the efficiency of production is below the EU average. Productivity may be low both in the sense of low yield per land unit or head of cattle (for example milk) and in the sense of low productivity of land and capital. The reason for low productivity is poor race composition, low level of land irrigation, low utilisation of inputs and seed on one hand, and obsolete mechanisation, technology and infrastructure on the other. Because of low productivity the quality of production itself is threatened.

FIC RECOMMENDATIONS

- Adopt four-year strategies for all major sectors of agricultural production determining mid-term subsidy policies as an implementation tool for NAP. We also recommend adopting regulations promoting quality standards in agricultural production (for example Global GAP and HACCP for milk) and changing the structure of subsidies to quality classes in order to promote efficient production. By introducing quality standards in farming and by integrating them into the quality system of processors, the agricultural industry will be enabled to become competitive and export its products to the EU.

- Where they remain as an economic assistance tool, subsidies should be available for all legal and physical persons under equal conditions regardless of ownership structure, as well as past or current growing surfaces, in order to secure transparency of the process, rewarding of efficient producers and recognition of professionalisation of farming.

TOBACCO INDUSTRY

CURRENT SITUATION

The tobacco industry is one of the strongest and most stable sectors in the Serbian economy, contributing to over 8 percent of total Government revenue and nearly 2 percent of Serbia's GDP. Since the beginning of a serious and comprehensive tobacco market reform all the major international players have gradually started to develop their operations in Serbia. The three biggest global tobacco companies have their production capacities established, while the level of foreign investments in the tobacco industry exceeded USD 1 billion, which clearly shows investors' mid- and long-term commitment to Serbia. Taking into account Serbia's EU aspirations and the economic significance of the tobacco industry, the importance of having a predictable fiscal and regulatory environment that is gradually heading towards alignment with the best international practices is crucial to ensure sustainability and further industry development.

POSITIVE DEVELOPMENTS

In the past year the most important advance, not only for the tobacco industry but also for the consumers, hospitality sector and the Government as well, was the adoption of the new Law on protection of population from exposure to tobacco smoke, which regulates smoking in public places. The FIC welcomes the adoption of a balanced solution that provides a true compromise between the rights of smokers and non-smokers and a solution that can be effectively enforced.

In addition, the current Law on Excise in Serbia adopted in 2009, which sets forth a gradual annual increase of excise tax on cigarettes for the period 2009-2012, secured projected growth of State revenues while preserving stability of the highly competitive cigarette market.

REMAINING ISSUES

- The law on advertising that was adopted in 2005 allows arbitrary interpretation of some of its provisions. These discretionary privileges resulted in difficulties in the implementation of the law in the area of the tobacco industry. The new Advertising Law is in the pipeline and we hope that a clear level playing field in the area of tobacco advertising will be adopted and implemented on all market players;

- Serbia remains committed to gradually adjusting its tobacco taxation with EU requirements. Having in mind novelties in EU taxation rules and based on the experience from other countries, (EU accession timing, transition periods, challenges), Serbia needs to plan a smooth and gradual long-term excise tax harmonisation with the EU;

- In addition, the Government should consistently pursue transparency of tobacco taxation ensuring that all fiscal charges on tobacco products are directed solely through the Law on Excise;

- Draft FCTC guidelines for Articles 9 and 10 suggest a ban in using ingredients, such as flavouring agents, in the production of tobacco products, allegedly with the objective to reduce the attractiveness of tobacco products. These guidelines are quite arbitrary for they are not based on thorough scientific evidence, and their implementation would consequently distort markets like the Serbian one because almost 100 percent of the tobacco products consumed here are blended.

FIC RECOMMENDATIONS

- The FIC believes that the regulator has to set forth clear rules in tobacco advertising which would be effectively enforced and which would create a level playing field for all market participants. We hope that the new Advertising Law will include more precise formulations, particularly in reference to Article 64, ensuring its coherent interpretation and ultimately effective enforcement in the future. The FIC believes that the industry can provide practical inputs for the regulatory improvement and therefore involvement of the industry in the consultancy process is highly recommended;

- The FIC believes that the Government should extend the tax planning beyond 2012 in order to ensure gradual, smooth and timely harmonisation with EU requirements, particularly taking into account recently revised EU tax related Directives 92/79 and 92/80. The FIC strongly supports a dialogue between the Government and the industry from the early stages of tobacco excise planning;

- Another important thing to be taken into account is the concept of ear-marked tax on tobacco products. The current health-related Budget fund charge not only undermines the operating environment for investors but also makes public finance less transparent and contrary to IMF recommendations and positive EU practices. the FIC recommends that all fiscal charges on tobacco products should be directed specifically through Law on Excise;

- Potential regulations that would have damaging consequences for the tobacco market and the economy are the draft Guidelines for the implementation of FCTC's Articles 9 and 10. The FIC recommends that the Government take a negative position on the adoption and implementation of these Guidelines in Serbia, thus preventing significant distortions in the tobacco market, tobacco production and processing, and the production and export of cigarettes.

INSURANCE SECTOR

CURRENT SITUATION

Life and Non-Life Insurance

Insurance companies and their activities are governed and regulated mainly by the Insurance Law, adopted in 2004 and later amended, as well as related by-laws issued by the National Bank of Serbia (NBS). Other relevant legal sources are Law on obligatory MTPL insurance and By-law on voluntary health insurance issued by the Government of the Republic of Serbia. A laterally relevant legal source is the Law on Traffic Security. The NBS is the competent authority for granting and revoking licences of insurance companies and performing the supervisory oversight of the insurance sector it also gives an opinion on laws regulating the area. The Ministry of Finance is the competent authority for drafting amendments to relevant laws. Ministry of Interior is competent for drafting and implementing the Law on Traffic Security.

The Insurance Law regulates:

- Licensing of insurance companies – mandatory requirements concerning capital, organisation, internal acts, policies and business plan;
- General terms of organisation of an insurance company – requirements concerning the act on foundation and articles of association, mandatory bodies (general meeting of shareholders, management and supervisory board and general manager), "fit and proper" requirements for their nomination;
- Actuarial and internal audit issues;
- Reinsurance;
- Insurance agent and insurance broker activities and related licenses;
- Supervision of insurance activities by the NBS.

The Law on Obligatory MTPL Insurance (herein: Law on MTPL) regulates:

- Main contractual elements in an MTPL insurance contract;
- Insurers Association and its competences:
- Procedures of price limitation (include Insurers Association and NBS);
- Legal frame of MTPL policies.

The By-Law on Voluntary Health Insurance regulates:

- Competences of the Ministry of Health for granting and revoking licences for voluntary health insurance;
- Obligatory priority of social components in health insurance (no client could be refused from the insurance);
- Conditions for participating in the voluntary health insurance, though one set of conditions has already been met when the companies were given licences for performing such insurance – given duality will constantly generate confusion.

Pursuant to the provisions of the applicable Insurance Law, an insurance company is not permitted to engage in life and non-life insurance simultaneously. Also, insurance companies may engage in insurance or reinsurance activities only. An adjustment period for separation of activities - until 31 December 2011 – is envisaged for existing composite insurance companies. New companies must declare their field of activity at the time of incorporation. The Government of the Republic of Serbia proposed amendments to the Law on Insurance that would limit existing inequalities between the companies that have divided their insurance operations and the ones that remained composite. The proposal is in the Parliamentary procedure since February 2010.

Insurance Market Overview

As of the second quarter of 2009, there were 26 insurance companies operating in Serbia: 22 of them performing only insurance, 4 of them performing only reinsurance. New foreign insurers have been entering the market both through acquisitions and as greenfield operations.

In 2010, based on second quarter data the insurance market showed total increase of 5.12 percent equivalent to RSD 29.7 billion compared to the same period in 2009.
The structure of the market is also showing signs of changes. The contribution to total written life insurance premiums is 14.16 percent; this figure is encouraging but still low compared to most European countries.

Regarding non-life insurance lines, automobile insurance was still the leading insurance product in 2010. Automo-

bile insurance has been a growing market segment, both in terms of own damage (casco) with 13.04 percent and mandatory third-party liability (MTPL) insurance with 29.34 percent. The long awaited new Law on Mandatory Insurances has been adopted. In almost a year of practice it showed some improvements, but also weaknesses in the regulation of the MTPL sales frame, which is one of the most sensitive topic on the market.

Concentration of the market is still present as the three largest insurers in Serbia still account for a combined market share of slightly over 70 percent.

Significantly contributing in total premiums written in Serbia, insurance companies with majority foreign ownership account for the overwhelming majority of the life insurance market in terms of written premium.

On the regulatory side, 2009 and first half of 2010 were the years which saw additional efforts on the part of NBS and MoF to regulate MTPL market. NBS is further developing the system for protection of consumer (insured's) rights.

POSITIVE DEVELOPMENTS

- Insurance market preserved its financial stability;

- New investments in the sector will most probably be made.

REMAINING ISSUES

- Regardless of the fact whether the deadline for existing composite insurance companies to divide to life and non-life insurance will be prolonged or, as might happen, for that obligation to be removed totally, there are no explicit regulations that would allow companies that have legally separated the business lines to perform certain functions on a shared basis. This entails a higher cost burden, because of double administration. The Government has proposed amendments to the Law on Insurance, but the proposal has not been submitted to parliamentary procedure for 7 months. This proposal was made last year, but it has not been considered by the Parliament.

- MTPL sales channels have not been reformed by the Law on MTPL and Law on Traffic Security, but the absolute domination of technical services and agencies for vehicle registration have been confirmed. It is estimated that between 25 and 30 percent of MTPL premium has been spent on these sales channels, thus this topic remained the main risk generator for solvency of insurance market. The citizens are faced with obsolete administration procedures that are increasing: public spending of the state, spending of insurance companies for given superior one-stop-shop sales channels and eventually solvency risks for some domestically owned insurances whose instability would jeopardise trust and achieved results in this market. NBS is investing substantial efforts to tackle the situation, but without legal reframing and removal of systemic incentives for risky behaviour of major participants in the MTPL market. Atop of all financial risks generated by this registration procedure, is the fact that technical stations are incentivised to search for main profits in insurance sales, which is in systemic conflict with what should have been their main focus – security of the vehicles.

- Present legal solutions regarding health insurance enacted by the Government in 2008 and 2009 in effect closed the market for commercial insurers to develop and place their own insurance products, by imposing social standards of health insurance unacceptable for all but the state Health Fund which is placed as a direct competitor to the insurance industry. the FIC proposed solution of the current situation that is limiting voluntary health insurance, but no improvement has been made.

- NBS is heavily regulating the market with supervision of insurance terms and conditions together with tariffs, unlike in most EU countries where technical reserves are the focus of supervision, with terms and conditions and tariffs fully in competence of companies. Existing insurance models present on the local market are mostly based on named perils insurances and tariffs, unlike in most EU countries. Increased demand for tailor-made and new insurance products (often initiated by foreign investors) is forcing Serbian insurers to broaden their offer; this will lead to a so called underwriting model and ultimately to the development of the insurance market. The FIC proposed a solution of the current system, but no improvement or interest for reform has been shown.

FIC RECOMMENDATIONS

- The Parliament should adopt the proposed changes to the Law on Insurance that would enable divided insurance companies to decrease unnecessary administration cost;
- The Government of Republic of Serbia (Ministry of Finance and Ministry of Interior) in conjunction with NBS and insurance companies, should reform the legal frame for vehicle registration which is administratively too complex and in the current situation the sole reason for domination of technical services and agencies for vehicle registration. The available models in Europe are more efficient, with minimum administration and more efficient results for citizens, insurance industry and state administration;
- Reform of legal framework in health insurance that would sharply differentiate market from social voluntary health insurance and would allow fair competition to insurance industry to state health fund that is now in position to perform primarily its social function and thus represents unfair competition;
- Supervision focus on technical reserves and allowing full authority to insurance companies to regulate the terms and conditions and transition from tariff to underwriting models, to stimulate new processes and practices both within insurance companies and the regulator.

PRIVATE SECURITY INDUSTRY

CURRENT SITUATION

Despite the fact that Serbia's private security sector employs over 30,000 people and has over 200 active security companies, there have been no significant changes with regard to the relevant legislation. Today, Serbia is the only country in the region and in Europe that does not have a special law on private security. Several draft laws were developed, but never reached the relevant commissions of the Serbian Government.

In the previous 12 months, regardless of the lack of a Law on Private Security, the Serbian SRPS A.L2.002 national standard was developed and adopted, as a result of the cooperation between Center for Quality within Serbian Chamber of Commerce (PKS) and the Serbian Institute for Standardization. As stated in the promotional text, "this is the first national standard adopted in the last 50 years on initiative of the local business sector, which was not created by transposing European or international standards into Serbian standardisation. It is a result of the effective work of PKS for the benefit of its members."

Keeping in mind Serbia's European perspective and the fact that it has opened up for investments in the private security sector (two of the world's largest security companies are present in Serbia), certainly the legislation and standards will also have to gain international recognition and acceptance. Therefore, emphasizing the fact that there was no transposition of European or international experiences puts these efforts in a negative context.

Additional negative aspects are that the authors of the national standard have completely ignored the existence of other associations rallying private security companies and security professionals in Serbia, including the Serbian Association of Private Security Companies, (which is a member of the Confederation of European Security Services (CoESS); CoESS is an umbrella organization for all European national private security associations), as well as the Serbian Chapter of ASIS International (ASIS is the pre-eminent organization for security professionals, with more than 40,000 members on all continents; ASIS leads the global security standards initiative).

Therefore, the creation and promotion of the above mentioned "national standard" should not be considered as step forward, as its authors and promoters claim, because these standards are not mandatory, instead, they are confusing and they certainly cannot resolve the key problem, which is the lack of legislation in the private security sector.

The lack of legislation in the private security sector is causing serious problems in the functioning of this market, making it an active source of corruption. The Government is not licensing security companies – without security industry criteria in place, anyone can set up and run a Security Company; no licensing of security officers - no official pre-employment screening and vetting; most of the Companies have no professional liability risk covered by insurance in general; no mandatory training and education programs, etc.

As with regards to public procurement of security services for the needs of state organs or public enterprises, a bigger problem than standardization is the Government's contradictory position with regard to such procurement. The Government is highly interested in having the enterprises and citizens duly pay taxes and social contributions and its policy thereon is rigorous. However, when it comes to public procurement of security services, (the most common criteria is the lowest bid), in most cases the contracting party, (Government or public enterprise), does not care whether the selected bidder has paid all due taxes and contributions, whether his employees are being paid regularly etc.

In this manner, accepting "the most favourable" bid based on the lowest price actually has negative consequences because the net effects are less favourable for the Government, (the alleged savings gained by selecting the "most favourable" bidder are less than the amount that the government could collect revenues if it were to regularly levy all taxes prescribed by the law on that bidder). The quality of such services is better left unmentioned.

This issue deserves heightened attention by the state authorities themselves, but also by Associations of private security companies, which should declaratively sanction its members if conducting illegal business (blacklisting).

POSITIVE DEVELOPMENTS

What can be considered as a significant improvement in the work of the PKS Association of Private Security Companies is establishing a dialogue with Ministry of Interior (MUP). A number of meetings were held between the PKS Association of Private Security Companies and MUP. A mixed working group was

established and they drew important conclusions on the Law on Private Security, which should soon move things forward. Therefore, the conclusions of this working group are quoted here in their entirety:

- Separate laws will be developed for private security services and detectives; but the process prior to adoption by the National Parliament of the Republic of Serbia shall be conducted "all-in-one package";
- MUP representatives will carry out legal coordination of all proposed solutions contained in Draft Law, within their departments;
- The new, revised text which will represent the working version of the Draft will be delivered to the PKS Association of Private Security Companies by during the fall of 2010;
- The revised text of the Draft will be the starting position for further consideration at the meetings of the Association's Groups;
- Meetings of the Groups will be held upon receiving MUP's authorization that the Draft Law can be submitted to public consultation.

REMAINING ISSUES

The most urgent issue is the introduction of the Law on Private Security. The Law should be fully harmonized with EU standards and create a positive environment for further investments into Serbia's private security sector.

The next issue is standardisation. Serbia should avoid creating its own model of standards in place of accepting EU solutions available through CoESS and/or ASIS. By default, the Institute for Standardisation should ensure the quality and aim of standards which it is authorising.

The status of security companies needs to be revised in order to establish relations between the public and private security sectors.

The status of security sector employees needs to be redefined, taking into account the fact that their profession is risky, where protection of people and assets is not much different from similar police activities.

FIC RECOMMENDATIONS

- Continue preparing the draft of the legal framework for the introduction of the Law on Private Security, where the Ministry of Interior should play an active role, as the responsible entity; the mixed working group should include other Associations that can contribute to the adoption of a Law which will be fully harmonized with European models of legislation, adjusted to local specific features. The willingness of CoESS to act as a "key adviser" should be used, in order to introduce elements of synchronization of the domestic private security legislation with European legislation from the very start;

- National Standards are not to be imposed on security companies who do not recognize their validity; the market and enterprises must not be misled that those standards are mandatory, especially when it comes to tender procedures where the emphasis should be on bidders proving the legality of their business;

- Licensing of the companies should be handled by the Government (Ministry of Interior) or a government agency and not by any other organization/association since it would lead to monopolization of this sector and conflict of Interests (as shown by the example of the adopted "national standards"). Serbia's Ministry of Interior should be the authority in charge of issuing operating licences. It should also establish licensing criteria, training criteria etc;

- The Government should encourage close cooperation between security sector stakeholders (both Public and Private sectors), while consulting large private security investors who can present their experiences and best practices from other EU countries where they operate, in order to create a stimulating environment for further investments.

LEASING

CURRENT SITUATION

The implementation of the Law on Financial Leasing initiated a very intensive development of the Serbian leasing market. During several years following the passage of the Law, the number of leasing companies rose to 17 companies currently operating in Serbia. These are mostly affiliates of reputed financial institutions, leaders in the sphere of banking and financial operations in the markets of Central and Southeast Europe. These groups have implemented their knowledge and high corporate business standards to the Serbian market as well.

From the aspect of demand, leasing companies face a decrease in leasing users' needs. With respect to solvency, at the time when the economy is hit with the solvency crisis, leasing companies face a surplus of solvent resources! It would be worth considering the potential for establishing additional stimulating prerequisites for reinvesting these resources in the economy in order to avoid the situation when the leasing companies, in absence of adequate opportunities to invest in Serbia, decide to return them prematurely to their creditors, thus reducing again the potential investment.

POSITIVE DEVELOPMENTS

The early stage of market development was characterised by the offer mainly based on the financial leasing while, in the period from 2006, the offer was additionally diversified to include the operational leasing, the so-called "rent", too. Both types of funding represented very important sources of mid-term and long-term funding and one of the most efficient solutions for purchasing fixed assets necessary for economic operators to conduct their business operations. The structure of investments from a lessee's point of view confirms the fact that the main purpose of financial leasing in Serbia has been financing the real capital sector, meaning that over 90 percent of investments was channelled to this segment. Between 2003 and 2010, the purchase of fixed assets in Serbia was funded through leasing in the amount of more than EUR 3.3 billion.

CURRENT ISSUES

In order to understand leasing issues better, we will illustrate only some examples which, if provided for, would greatly improve the prerequisites for further uninterrupted and quality development of financial leasing in Serbia. Harmonizing and amending the current legislation and removing the limiting factors would certainly create quality prerequisites for such further development.

- Initiating the amendments to the Law on Financial Leasing, establishing legal basis for leasing real estate in order to enable funding real estate subject to leasing. Amendments to this law would definitely enable the recovery of this segment of economy and development of the leasing industry in the future. The Law on Financial Leasing currently prescribes the possibility that only "non-consumable movable property" can be the subject of financial leasing;

- Initiating the amendments to the Law on Financial Leasing that would define the minimum duration of a leasing contract of no less than two years, and that the lessees may, if they can afford it, pay out the whole leasing fee prior to the expiration term of 2 years; furthermore, if so stipulated by the contract, it should be possible to transfer the acquired right of ownership over the subject of leasing;

- Initiating amendments to the Law on Corporate Income Tax or providing a different interpretation of the same provision ("the tax payer who invests into fixed assets within his own registered business activity will be entitled to a tax credit in the amount of 20% of the investment made, provided it may not exceed 50% of the assessed tax for the year in which the investment has been made"), meaning that companies which purchase fixed assets through financial leasing will also be entitled to the said investment. Companies investing in fixed assets and/or those that come into possession of such assets through financial leasing contracts shall not be eligible for the said tax credits since the lessor remains the owner of leased assets for the whole duration of the contract on financial leasing;

- VAT on the interest rate should be revoked by making amendments to the Law on Value Added Tax in the part referring to interest rates. As far as we know, interest rates are financial services periodically entered into books on the credit side; thus, it would make sense to treat them as such under the VAT Law. Revoking VAT on interest rate would

bring in line leasing with a banking product and provide for conditions that we as a country do what the neighbouring countries have already done;

- Simplifying the procedure of execution over the subject to leasing in such a manner as to treat the contract on financial leasing as an executive document. Since Article 41 of the Law on Registered Pledges on Movable Property is in its wording very similar to the current Article 30 of the Law on Financial Leasing, the accepted solution in our legislation contains valid grounds for the proposed amendments to the Law on Execution and Security Instruments, but it is necessary that the Excerpt from the Financial Leasing Register should also be an executive document, thus shortening the procedures for confiscating the subject to leasing;

- A specific problem emerged in the area of VAT treatment of operating leasing of vehicles and equipment. Operating leasing is treated as a supply of services for VAT purposes, the tax basis being the service fee (leasing instalment). However, due to some similarities between the way operating and financial leasing of vehicles are conducted in practice (e.g. a customer chooses the vehicle and takes over delivery of vehicle to the premises of the supplier) tax authorities in several cases last year re-characterised operating leasing contracts into financial leasing contracts and imposed additional multimillion VAT liability on some of the operating leasing providers as if they were engaged in financial leasing (treated as supply of goods). The legal grounds for this re-characterisation of operating leasing operations into the financial leasing were found in the so-called substance over form principle and in rather vague criteria for distinguishing financial and operating leasing found in international accounting standards. On the other hand, tax authorities disregarded the fact that contractual provisions did not allow the purchase option to lessees, and did not take into account opinions issued by the Ministry of Finance confirming that even financial leasing should not be regarded as a supply of goods if there is no purchase option for the lessee. These cases created a grave legal uncertainty for all operating lease providers with respect to the question of how to apply VAT in the future, and triggered requests from the industry for a dialogue with tax authorities in setting the standards and rules under which operating leasing can be conducted in Serbia, as a business distinct from the regulated and supervised financial leasing business, and which can be treated as a supply of services for VAT purposes.

FIC RECOMMENDATIONS

- Initiating amendments to the Law on Financial Leasing and enabling funding of immovable property;
- Initiating amendments to the VAT Law and treating interest rate as a financial service;
- Amendments to the Law on Financial Leasing should not limit the duration of a leasing contract;
- Amendments to the Law on Corporate Income Tax should equalise the investments made through leasing with other types of investments;
- Explanation of the proposal for supplementing the Law on Execution and Security Instruments treating the excerpt from the Financial Leasing Register as an executive document;
- Dialogue to be established between leasing industry and the Ministry of Finance in order to set the standards and rules under which operating leasing of vehicles and equipment can be conducted as a business distinct from financial leasing, and be regarded as a supply of services for VAT purposes .

HOMECARE PRODUCTS AND COSMETICS INDUSTRY

CURRENT SITUATION

In the previous year, the Serbian Parliament adopted many new laws of interest for the chemical and homecare products industry, among them the Law on General Product Safety should be pointed out.

On the other side, the Chemical Agency adopted many by-laws, among them:

- By-laws pursuant to the Law on Chemicals;
- By-laws pursuant to the Law on Biocides;
- Detergents Regulation.

POSITIVE DEVELOPMENTS

With the adoption of the new laws and by-laws in the previous year, a large improvement was achieved with regard to environment preservation and accomplishment of EU standards in this field.

The Chemical Agency was founded as the institution responsible for the implementation of adopted laws, primarily the Law on Chemicals and Law on Biocidal Products.

Cooperation between the Chemical Agency and companies was organised through seminars and common meetings, which led to a better understanding of new laws and by-laws.

Aside from local regulations, some branches of the Industry made significant efforts in voluntary activities during the past few years. Similarly, activities in Serbia were performed in the same way as in EU countries, although there was no legal obligation in this respect. Various experiences and support were used, like A.I.S.E. with their programmes (sustainable cleaning, compact detergents etc.). The goal was to ensure human and environmental safety and to communicate safe and sustainable use to consumers.

REMAINING ISSUES

- Adoption of laws in the area of environmental protection is not completely in accordance with the present situation in the Serbian industry and business. While EU member countries have been working on environmental protection for years, in Serbia this field has been neglected, so applying existing EU legislation in the Serbian environment is difficult;

- While there were positive developments in harmonising the legislative area of product safety (from general safety to food products, technical standards, detergents etc.), the implementation practices /norms may be further harmonised;

- Cosmetics regulations have not been changed since the last century. According to COLIPA instructions, a draft of the new Cosmetics regulation was prepared several years ago, under the initiative of the Serbian Chamber of Commerce. It is still pending adoption by the Serbian Parliament to become effective. This should result in an updated Industry overview of ingredients, instructions and preparation of the product, which would lead to customer satisfaction.

FIC RECOMMENDATIONS

- The projects and Companies that are dealing with hazardous waste in Serbia should be stimulated, as well as an increase in the number of Operators that are supposed to take responsibility for hazardous waste management. (It is necessary to adopt new by-laws concerning hazardous waste and to define precisely the term of hazardous package to enable compliance with the Law in the future.

  In order to provide wider support for voluntary activities like in EU countries, the Industry would like to invite the Government to create the necessary environment and increase participation in these activities, especially among local producers.

- To adhere to the spirit and the letter of the EU directives we advocate for an in-market control and monitoring replacing the current pre-market sanitary clearance of each product. The in-market monitoring is applied across the EU and can be implemented in Serbia, also for products already accompanied by relevant EU quality, safety and conformity certificates. The existing laws (Law on General Product Safety, Law on Chemicals, Rulebook on detergents, Rulebook on health standards for consumer goods which can be released for further sale etc.) already presume producer responsibility. In this respect, we recommend an EU-like system based on in-market control after the product is imported. This system would be fully compliant with EU practices and it would overcome current trade barriers:

  - In terms of time to access the market (5 days to 3 weeks);
  - Operations: no need for the trader to keep a warehouse;
  - Administration: complex, expensive, out of the trader's overview/supervision;
  - Costs: for operations needed to comply with the current practice, samples taken almost off every truck, testing procedures that are performed for almost each shipment of the same product. In addition, there is the amount blocked out of cash flow.

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