WHITE BOOK

Proposals for improvement of the business environment in Serbia

2011

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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of the business environment in Serbia

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FOREWORD

Observant readers will remember that I devoted a major part of last year's White Book introduction to discussing the merits of Serbia integrating economically with the EU. Without repeating that discussion, I believe it is useful to remind the readers that we make a distinction between economic integration (about which FIC has opinions) and political integration (which is a question for the Serbian government and electorate).

When FIC advocates economic integration, we do so to promote economic growth and transparency. It is in the interest of our member companies to lay solid foundations for a functioning market economy in Serbia. There can be no doubt that these objectives are in the interest of the population of Serbia, as growth leads to employment and socioeconomic development. The aftermath of the crisis of 2008, coupled with a seemingly never-ending government finances malaise in several EU countries, accentuates the need for bold moves on the part of Serbian authorities.

When FIC keeps pushing the same messages, it is an indication of the importance and longevity of the issues we are facing. Moreover, we also have to conclude that there are still major improvement areas to address. Businesses in Serbia are facing a lack of transparency and due process in their everyday life. Many businesses see Serbian institutions as a stumbling block rather than a trusted partner. In spite of initialised reforms, the general impression is that corruption is still an issue and that investors have to lift problems to high political levels to make any progress. An economy based on a public administration looking to top officials to resolve relatively minor issues can never be expected to develop alongside mature market economies. Government simply needs to do more than it has done so far.

FIC believes it is virtually impossible for any government to raise internal standards without rallying around a cause, in this case EU integration. While it is painfully obvious that the EU has its own issues to deal with, Serbia needs a framework to move towards and, in all of its imperfection, the EU framework is the centre of gravity in Europe. In doing so, Serbian authorities will need to move in a more decisive way to ensure that laws and regulations are not only adopted but also implemented. At this point, these processes leave a touch of superficiality with many businesses.

FIC, being the leading business association in Serbia, takes clear positions on behalf of its members. We continue to be a relentless voice for change and improvement. We will continue to be frank in our assessment of progress on economic issues and the prevailing attitudes to business.

While giving credit for the many improvements made and the hard work of many people in the government and different parts of the administration, it is not possible to escape the fact that the government does not sufficiently appreciate the value of existing investors. While we all understand that it is fancier to cut a ribbon for a new investment, there is a very laissez-faire approach to existing investors, in particular SMEs. FIC members are reinvesting more than a billion euro in Serbia every year without much fanfare. These investors are crucial to the future economic success of Serbia.

We at FIC have always said that we want to express constructive criticism. To this end, we have engaged with Serbian authorities over the past year to convey the opinions and advice of our members. FIC committees bring together managers and specialists representing the collective experience of people doing business in Serbia. Through these committees, the members have contributed thousands of work hours to prepare the White Book 2011 – the most authoritative and updated guide to how the business environment can be improved in Serbia. It is my hope and sincere advice that this effort is truly studied and that the recommendations are given careful consideration.

Kjell-Morten Johnsen
FIC President

FIC OVERVIEW

Nine 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, FIC counts about 120 members with representatives from more than 20 different countries. Involved in a wide range of industries, 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 organisation 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 organisations and institutions. Its main purpose is to share positive international business practices with local authorities and support their reform activities. Therefore, FIC is constantly involved in both formal and informal dialogue between willing stakeholders.

Last year was marked by intensified communication with international stakeholders, vigorous consultations regarding the EU integration process and macroeconomic arrangements with international institutions. At the same time, FIC has expanded its dialogue with the authorities and devoted special attention to communication with mid-level state administration. Activities in the past year included the launching of a number of advocacy initiatives; partnerships in the organisation 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 organisation of the second Reality Check Conference – a forum for discussion between chief executives of FIC member companies and high Government officials concerning the issues that hamper business conditions. This dialogue was deepened by facilitating expert discussions with state administration on key business climate issues.

Looking back to the immense engagement and concrete contribution of FIC committees in the Comprehensive Regulatory Reform (aka Regulatory Guillotine) in 2009, FIC continued to advocate the streamlining of administrative procedures. In the past two years, the Government adopted about 60% of the proposals that FIC put forward within the "Guillotine". In spite of ongoing efforts, only 1/3 (one third) of recommendations have been implemented in practice.

During 2011, FIC continued to screen and analyse Serbia's regulatory framework and participate in a number of different consultative processes, discussion forums and regulatory projects, with a view to constantly communicating standpoints and suggestions of the foreign investors' community. Participation in the preparation of the Company Law may serve as the prime example of the public-private consultative process, where FIC had the opportunity to provide its input from the early stages of law drafting to its finalisation.

As a rule, the majority of FIC activities have been initiated by the members themselves and developed through the work of specialised committees that cover the members' dominant interests and needs. FIC has established cross-sectoral 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 sectoral Leasing & Insurance Committee, as the newest example of members' readiness to utilise FIC as key conduit for advocating change and sharing experiences.

Committed to improvement of established partnerships, FIC has 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 FIC reconfirmed its readiness to closely cooperate with similar associations, such as the American Chamber of Commerce and the Serbian Chamber of Commerce, with the idea of increasing leverage of the common advocacy initiatives stemming from membership interest. In the future period, 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

Corporate social responsibility, corporate citizenship, sustainability and many other terms are being used in Serbia and worldwide to describe the modern understanding of businesses' role in the society – to contribute to economic development, while considering and influencing positively the well-being of its employees and their families, local communities and society at large. But, regardless of the lack of commonly accepted terminology or definition, this concept has transformed the business landscape significantly over the last several decades, changing the ways in which companies manage their operations, governments approach economic and social policies, and general public articulates its expectations.

We strongly believe that managing the business processes to produce an overall positive impact on the society is crucial, and the only possible way to obtain long term sustainability and results. Therefore, we consider corporate social responsibility (CSR) to be a topic of exceptional significance in the business sector, and accordingly, in the present publication.

Several newly emerged initiatives marked the year behind us, introducing new topics in the Serbian CSR arena. Boosted by European Year of Volunteering, numerous local and international employee volunteering projects were implemented, positioning this topic as one of the most widely accepted by the Serbian business community, moving slowly from traditional action days to skills based volunteering. Another important development is the growing number of companies publishing their CSR reports, some of them following internationally recognized methodologies, such as Global Reporting Initiative, in that process. This as an important milestone, which will inevitably lead to further improvements in the ways in which companies in Serbia implement CSR principles and communicate about it. Finally, overall development of responsible practices was followed by growing number of relevant CSR awards, giving due recognition to successful projects and initiatives. One of them, presented by the Serbian Chamber of Commerce, is an excellent indicator of increased interest in corporate social responsibility, with nearly 40 applications per category, both by large companies and small and medium enterprises.

In a period of only several years, corporate social responsibility in Serbia moved from a little known concept to one of the most frequent topics in business related discourses, mentioned equally often by both businesspeople and public sector representatives. Initially impelled by multinational companies, businesses operating in Serbia have started numerous CSR projects and initiatives, mainly related to supporting local communities. However, according to the latest public opinion poll on CSR (Synovate, October 2010), this progress is not perceived by the general public: only 34% of the representative sample recognized the concept of CSR, and out of this number, only 11% were able to provide a concrete example of a socially responsible company. The same poll shows that consumers' awareness is also significantly low: 60% of the surveyed citizens affirm purchasing a product or a service regardless of the provider's ethical background. These facts are directing us towards our next priority: raising public awareness on corporate social responsibility, its importance for the society as a whole, and citizens'/consumers' role in its development.

This needs to be achieved in partnership with the state and its institutions, through joint promotion of best practices, clear distancing from irresponsible ones, and demonstration of concrete benefits for the citizens and the society as a whole that can derive from CSR principles strongly embedded at all levels, including government's strategies, policies and procedures. The past year did not bring expected developments in terms of creating enabling environment for CSR by the government, as the National CSR Strategy, adopted in 2010, remained without the announced action plan and concrete steps in its implementation. As a part of the business community in Serbia, we strongly affirm our commitment to act as a constructive partner to state institutions in forwarding the concept of corporate social responsibility, putting at disposal our experience and expertise.

As the vast majority of companies' existing CSR initiatives targets social issues in local communities, we also appeal to our peers in the business sector and all other relevant actors to approach other areas of corporate social responsibility with equal attention, by integrating environmental considerations in their daily operations, ensur-

ing safe and motivating work environment, promoting good corporate governance, and contributing to local economic development by strengthening SMEs in their supply chains. The latter - CSR in small and medium enterprises, is currently the issue of outstanding interest in the European Union, and for us it represents a new area of immense potential and possibilities, yet to be tackled in the following years.

WE REMAIN COMMITTED TO:

- Sustaining the adoption of an adequate legal framework, which will enhance and stimulate socially responsible behavior of corporate citizens;
- Acting as best practice examples of good corporate governance and transparency in all aspects of doing business;
- Establishing and fostering multi-stakeholder and cross sector dialogue in addressing the most acute social and environmental issues;
- Promoting CSR reporting, based on monitoring and measurement of impact and outputs;
- Supporting media in contributing to public awareness on CSR;
- Advocating for introducing CSR in university curricula, in order to educate future generations of business leaders.

INVESTMENT AND BUSINESS CLIMATE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Sustainable economic development will continue to depend greatly on foreign resources inflow. The decrease in resources inflow, resulting from privatization, requires creation of stimulating climate for growth in greenfield investments. The process of Serbia legislation harmonization with EU regulations, and upgrading of legal security for business operation and investments, must be quickened.	2008		√	
Regulation of property rights, especially in relation to building land and facilities construction.	2008	√		
Introduction of competition on the market for infrastructural and utility sector and starting of privatization process (partial or full) for public enterprises operating in this sector.	2008			√
Creation of conditions for market competition in a regulated market, by providing equal rights for all competitors, and proper regulation of monopolies.	2008		√	
Reform of educational system in Serbia and its harmonization with requirements of the economy.	2008			√
Stimulation of applied sciences development through appropriate financial support and more intense relationships with R&D institutions from abroad.	2008		√	
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.	2008			√
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 for business activities.	2008		√	
Increase transparency and create an orderly procedure in which these fees and taxes are introduced.	2010		√	
Prepare and enact a legislative act at the central government level maximizing amounts of fees to be charged by local authorities.	2010			√
Abolishment of all unnecessary barriers to business such as tax for protection and usage of woods and tax for usage of waters which are set as general obligations for all legal entities regardless of the area of business in which they operate.	2010			√
Amend the Decree on Amount of Fee for Use of Cadastral Registry Data and Provision of Services by the Cadastral Registry in a manner to set fixed fees for services provided by the Cadastral Registry which reflect actual cost of the service provided.	2010			√
Clearly define criteria for determining environmental fees for the use of natural resources by local self-government.	2010		√	

Last year was marked by a very slow and uneven recovery from the economic and financial crisis of previous years. Serbia is still facing a complex set of macroeconomic problems:

- The highest inflation in Europe. Since the last White Book, the inflation has been over 10%, far higher than the targeted rates of 3–6%. Recently the inflation has had a tendency to decline;
- Serbia also has one of the highest unemployment rates at around 20%, and the number of unemployed is still growing. The percentage of actively employed among the potential work force (from 18 to 65 years) is therefore shrinking and stands at around 45%;
- Fiscal revenues are shrinking because of the reduced activity and increase in the grey economy. This leads to higher borrowing and higher budget deficit. The budget deficit is augmenting the public debt that approximates 45% of GDP, i.e. the upper bound according to existing fiscal rules and legislation;
- The Serbian Dinar to Euro exchange rate has appreciated by 10% since the last White Book, thus annulling the export conducive effect of the previous depreciation;
- The National Bank of Serbia led a restrictive monetary policy to fight inflation, by keeping interest rates high, thus discouraging larger flows of investment;
- The expansionary fiscal policy, combined with a restrictive monetary policy, so far did not produce desired results.

Serbia's GDP growth, set at roughly 2.5%, is falling short of expectations, and still has to reach the pre-crisis level. The good news is that the structure of growth is better than in the past. Now it is predominantly driven by exports and investment, rather than by imports and consumption, as was previously the case. Foreign trade indicators are improving, with exports growing faster than imports, so that the coverage of imports by exports is now roughly two thirds. But to have a more substantial effect on GDP growth, the rate of increase of exports needs to be 1.5 times higher than the imports growth rate. That, unfortunately, is not the case in Serbia. The situation with investments is similar. Though higher than in the previous years, the share of investments in GDP, set at 20%, is not high enough to generate a higher growth rate.

As a consequence, the pace of recovery from the previous crisis is not strong enough to reverse the negative labour market trends or to contribute to an increase in public revenues. The situation in the labour market is the biggest socio-economic and political problem facing the Government. On the other hand, the slow recovery does not seem to have a positive effect on reducing inflation. Neither did the appreciation of the Dinar translate into lower prices.
The structure of capital inflow that helps finance the balance of payments deficit is not favourable. The inflow is dominated by the least stable, i.e. portfolio investments, which account for around 7% of GDP equivalent. This increase in portfolio investments is due to a combination of two things: very high interest rates on government bonds on the one hand and, Serbia's improved credit rating (or decreased risk premium) on the other hand. Foreign direct investments are roughly at the same level as in the previous year, about 4% of GDP equivalent, far behind portfolio investments.

By and large, banks have maintained liquidity throughout the last year. This did not translate into liquidity of the economy. The number of illiquid companies has increased by over 30% during the past year.

Serbia has made two steps closer to joining the European Union by submitting a candidacy application and getting a positive recommendation of the Commission of the EU to the EU Council. The Commission Report on reform achievements in Serbia over the past year are generally positive. That and the cooperation with the Hague Tribunal constitute the basis for the positive recommendation. In December, the European Council will decide on acceptance. At the time of writing, because of the situation in Kosovo, it is unclear what the Council's final decision will be. In the meantime, as a consequence of the dragged out accession process, the share of Serbia's population in favour of joining the European Union has dropped to a record low, only 46%. The anti-EU sentiment has increased to 34%.

Serbia is intensifying investment oriented contacts with Russia and China. Most of the expected investments are in the transport and energy sector and would, therefore, contribute to the improvement of the pillars of development. So far, these contacts are still in the planning stage. Serbia is

also making good use of the regional Free Trade Agreement (CEFTA) and is a net exporter to most of the countries.
The business climate did not undergo major changes for the better. The Global Competitiveness Report shows Serbia still holding an unfavourable ranking of 95 among 142 countries, which is just one place better than the previous year.

In some important aspects that form the complex Global Competitiveness Index, Serbia ranks even lower than in the composite index. For example, Serbia ranks 107th in *intellectual property protection*, 134th in *burden of government regulation*, 132nd in *extent of staff training*, 137th in *effectiveness of anti-monopoly policy*, 118th in *extent and effect of taxation*, 125th in *business impact of rules on foreign direct investment*, 103th in *availability of financial services*, 136th in *firm-level technology absorption*, 130th in *company spending on R&D,* and 136th in *nature of competitive advantage*.

The goal of increasing Serbian competitiveness has not been reached yet. At some point or other, the Government has started a number of initiatives designed to improve the business and investment environment. The comprehensive review of legislation (so called Guillotine) is still far from complete. The Government institutionalised a Council for Competitiveness, but this high level Council has not produced visible results yet. Similarly, the battle against corruption is a stop-and-go affair, never reaching the top of the corruption pyramid.

FIC RECOMMENDATIONS

Unfortunately, it is necessary to reiterate some of the recommendations that have already been tabled in previous White Books for the simple reason that insufficient improvement has been registered in the past years:

- Accelerate the rate of transition reforms with the dual goal of improving business conditions and bringing Serbia closer to the European Union;
- Reduce and simplify the bureaucratic procedures at both national and local level;
- Create conditions for market competition in a well-regulated market, by providing equal rights to all competitors, and proper regulation of monopolies;
- Intensify the fight against corruption, since this is seen as one of the most problematic factors for doing business in Serbia;
- Conduct a well-balanced economic policy that will be conducive to business and attracting investment.

PILLARS OF DEVELOPMENT

There have been some improvements in the sectors considered as pillars of development, but the FIC assessment remains the same as in the previous years: the improvements are smaller than they could have been and definitely smaller than necessary to attract more investments.

In the **energy sector**, an important development was the recent passage of the new Energy Law, which includes a detailed schedule for market liberalisation, incentives for "green" energy, the possibility of exemption of new interconnections and transport infrastructure from the third-party access rules, and strengthens the role of the Energy Agency. However, full implementation of the majority of these novelties will be possible only after the adoption of a number of by-laws. The oil market has been liberalised as of 1 January 2011 and there are a number of significant projects in the pipeline.

We have five recommendations, including an appeal for quick adoption of the by-laws necessary to make the Energy Law effective as soon as possible.

In **real estate** and **construction**, a complex sector that covers land ownership and real estate, construction, land cadastre, restitution, and real estate leasing, the key recent development was the passage of the Law on Restitution, which establishes the ownership rights security in a symbolic and exemplary manner. Also, we should mention the new Law on Planning and Construction, which simplifies the process of acquiring permits and allows ownership of land instead of long-term leasing.

However, there are a number of follow-up or new activities that we recommend, 12 altogether. The first recommendation is to divide up the Planning and Construction Law into 5 different fields, and then adopt the necessary by-laws in each of them, as soon as possible.

There were numerous regulatory changes in the **telecommunications sector**, generally for the better. In May 2011, the first market analysis in the Republic of Serbia, based on the model of EU standards, was initiated. The finalisation of this analysis is expected by the end of this year.

In June 2011, the Digital School project was finished. Within the project, 2,910 schools on the territory of the Republic of Serbia were provided with 30,000 computers and the funds for project implementation were provided from operators' fees in 2009.

Even though there was noticeable progress in the past year, we still have 9 recommendations on how to improve this sector further. The first among them is similar to many other sectors; it calls for abolishing bureaucratic procedures in the telecommunications sector.

The labour market and **human capital** remain among the biggest challenges, despite some pro-active measures taken by the Government. Efforts by the Ministry of Economy and Regional Development and the Ministry of Science (now integrated into the Ministry of Education) to stimulate employment of the young, educated workforce have given some positive results. The magnitude of the problem is such that much more needs to be done to reduce it. Our key recommendation is to improve the educational system and align it better with labour market needs.

Labour relations are another area of concern. The General Collective Agreement has expired and there are efforts to replace it by a number of industry-wide agreements. There are a number of recommendations on how to improve labour related legislation. With 28 recommendations, this is by far the most intense section of the White Book in terms of the need to change the current situation.

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INFRASTRUCTURE

TRANSPORT

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Increase funding of maintenance and rehabilitation of major roads in order to stop the long term deterioration of the road network.	2009		√	
Increase efforts in boosting institutional reform and capacity building in the area of infrastructure, with accent on transport.	2009		√	
Reinstate the quality of the national road administration in order to enable it to provide an adequate institutional framework in this area.	2009			√
Increase efforts in private sector development and increase private sector participation in the construction of major roads and railways in Serbia.	2009			√
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.	2009		√	
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.	2009			√

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 the existing funds have resulted in a significant de-capitalisation of the sector and deterioration of the infrastructure and equipment quality. The institutional capacity has also considerably 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 has 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 2011, in the similar manner as in 2010.

POSITIVE DEVELOPMENTS

The Government has announced a Transport Master Plan for Serbia, which foresees 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. For the moment, the plan includes 4 major projects planned for completion until 2015.

Construction works are still underway on Corridor 10 and Corridor 11 (connecting Serbia with the Montenegrin highway Bar–Boljare). In April 2010, Serbia signed an agreement on the construction of a bridge over the Danube with the Chinese Government. Although the construction of this bridge was scheduled to begin in late 2010, the latest news is that it will begin in the autumn of 2011. A major development in the transport area in 2011 is the commissioning of the Beska bridge over the Danube near Novi Sad. The Con-

struction of the Ada Ciganlija bridge is in its final stage and its commissioning is expected in late 2011 or early 2012.

REMAINING ISSUES

Even though the Government has allocated significant funds for the repair 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 2011, it is likely that some of the foreseen 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–Porr consortium for the construction of the Horgos–Pozega motorway 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, among other reasons, a deficient legal and regulatory framework. 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. It is expected that the enactment of new PPP and Concession Law scheduled for the autumn of 2011 will bring more PPP investment in this area in Serbia. With this Law in place, investors will have a more precise and thorough legal framework governing PPPs in Serbia, which will, hopefully, attract more of them as potential partners to the government (both central and local).

Another issue in this area is the very high road tolls which deter freight transport from Serbian routes. Although road tolls are now equal for domestic and foreign vehicles, they are still significantly higher than in the neighbouring countries, which has resulted in a decrease of transit tourism revenues since the bulk of the (primarily) freight transport has 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 road tolls for a return on their investment. Serbia also failed to introduce a cheaper and more efficient system of vignette (toll) stickers, implemented throughout Europe instead of road tolls. It is disturbing that every few months the road administration calls for increase of already high road tolls.

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 towards boosting institutional reform and capacity building in the area of infrastructure, with focus on transport;
- Upgrade the quality of the national road administration to enable it to provide an adequate institutional framework in this area;
- Increase efforts towards private sector development and increase private sector participation in the construction of major roads and railways in Serbia;
- Increase efforts to minimise 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 "vignette" sticker system instead of the toll-road system.

ENERGY SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amend the Energy Law incorporating requirements from the Energy Treaty and implement provisions which provide incentives for privileged energy producers.	2009	√		
Increasing public awareness about efficient usage of electricity and need for price increase.	2009		√	
Terminate the monopoly of Oil Industry of Serbia as soon as possible in order to attract potential investors.	2009	√		
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.	2010		√	
Prepare and offer defined and furbished locations to investors including the entire necessary infrastructure.	2009			√

CURRENT SITUATION

The new Energy Law was passed on 28 July 2011. By the passage of the new Energy Law, Serbia has brought its primary legislation in the energy sector in line with the EU's Second Energy Package, as required under the Energy Community Treaty. The key novelties introduced by the new Energy Law include a detailed schedule for market liberalisation, incentives for "green" energy, the possibility of exemption of new interconnections and transport infrastructure from the third-party access rules and a strengthened role of the Energy Agency. However, full implementation of the majority of these novelties will be possible only after the adoption of a number of by-laws.

In the beginning of 2011, Serbia finally liberalised the oil and oil derivatives market. Even though it was expected, liberalisation did not result in lower prices of oil derivatives.

POSITIVE DEVELOPMENTS

Developments introduced in the primary legislation

The new Energy Law introduced very important changes in the area of renewable energy sources (RES). First of all, the Law now explicitly prescribes that the generators of energy from RES are entitled to the feed-in tariff. Further, the new Energy Law introduces the possibility for the generators of wind and solar energy to be granted the preliminary status of privileged generator (within available capacity). The preliminary status of the privileged producer may be granted after the investor obtains the building permit. In addition to other requirements necessary for obtaining the preliminary status, the investor will have to provide a bank guarantee covering 2% of the total project investment. With the introduction of the preliminary Power Purchase Agreement (PPA), which can now be concluded before the completion of the construction of the production facilities, the new Energy Law has finally addressed the main concerns of the investors and financiers in the RES sector. Regulations necessary for the implementation of these novelties should be adopted by the Government by the end of December 2011.

Energy generation will no longer have the status of an activity of public interest. Accordingly, it will no longer be subject to numerous requirements imposed by the laws governing activities of public interest, specifically the obligation to conclude an agreement on the assignment of activities of public interest with the Government. Other en-

ergy activities, such as energy transmission, transportation, distribution will continue to have the status of activities of public interest.

The Energy Law provides for the possibility for exemption of the new transmission infrastructure from the principle of equal access to transmission systems. The possibility of exemption is also provided for new infrastructure in the natural gas sector. The exemption is intended for new interconnection systems and for systems used for natural gas storage, as well as for substantial extension of the existing capacities. The main conditions for exemption of new infrastructure facilities are set by the Law, while more detailed conditions and the procedure for exemption are to be set in separate regulations of the ministry in charge of energy.

Finally, the new Energy Law abolishes the regulatory powers of the Government in the area of energy pricing. Starting from 1 October 2012, the Government will no longer approve the regulated (tariff) prices of energy, which will be subject only to the approval of the Energy Agency.

Liberalisation of the Oil Market

Starting from 1 January 2011, Serbia liberalized the market of oil and oil derivatives. Before this liberalization, the Government used two main instruments to regulate the market of oil derivatives:

- Setting the maximum allowed prices of oil derivatives under the Regulation on Prices of Oil Derivatives. The Regulation on Prices of Oil Derivatives was repealed on 29 December 2010. As a result, the prices of oil derivatives are now set freely on the basis of market principles.
- Imposing restrictions on the import and processing of oil under the Regulation on the Conditions and Manner of Import and Processing of Oil and Oil Derivatives. Import of crude oil was not restricted, while the import of oil derivatives was allowed only to *Naftna industrija Srbije* – NIS (Oil Industry of Serbia), controlled by Gazprom Neft. Furthermore, importers of crude oil could process crude oil only in the refineries operated by NIS.

Significant Projects

Public Enterprise *Elektroprivreda Srbije* (the "EPS") and German "RWE Innogy" established a joint undertaking – *Moravske hidroelektrane*. *Moravske hidroelektrane* will be responsible for the development of at least 5 hydropower plants on the Velika Morava River with a total installed capacity of some 150 MW. The value of the investment is estimated at about EUR 350 million.

EPS and the European Bank for Reconstruction and Development (EBRD) signed a EUR 80 million loan agreement for the financing of the project for the improvement of environmental protection in the Kolubara Mining Basin. The total value of the project is EUR 180 million. The remaining funds necessary for the project will be provided from the loan of KfW Bank (EUR 74 million) and from EPS's own resources (EUR 26 million).

EPS and Italian Edison concluded the preliminary agreement on cooperation in the construction of the thermal power plant *Kolubara B* – 2 units of 675 MW installed capacity each. The feasibility study is planned to be completed by the beginning of 2012, after which EPS and Edison should establish a joint undertaking for the purpose of project development. EPS should contribute the works and equipment installed in the plant in return for a 36.4% share in the company.

The rehabilitation of the first of 6 units in the hydropower plant *Djerdap I* has been finalised. After the rehabilitation, its capacity has been increased by 10%. The rehabilitation of the remaining units will be finalised in the next 5 years. The value of the entire project is estimated at USD 168 million.

REMAINING ISSUES

The main obstacles to improvement of the situation in the sector remain in numerous permits and authorisations necessary for project development and long procedures for issuing relevant permits and authorisations. Furthermore, authorities often fail to issue the necessary approvals within the deadlines established by law. For example, the development of one project in Vojvodina which started in 2005 is still far from completion.

The energy import dependency also remains a major problem in the energy sector. According to the Energy Balance for 2011, the total quantities of primary energy necessary

for consumption in 2011 amounts to 15,092 million of tons of oil equivalent (Mtoe), 1% higher than in 2010. These quantities should be provided through domestic production (63%) and net import (37%). At the same time, these quantities show the trend of increase of import dependency by 3%, compared to 2010.

One of the reasons for significant import dependency is a lack of investments in the energy sector, in particular in electric power generation. Even though power prices were increased in the spring of 2011, they are still significantly lower than needed to ensure the investments in new and rehabilitation of the existing capacities.

The global financial situation also has impact on investments in the energy sector, given that it is difficult to acquire the financing necessary for development of energy projects.

Finally, positive effects of the novelties introduced by the Energy Law, such as incentives in the RES sector, will be available only after the adoption of the by-laws necessary for the implementation of the Energy Law. Specifically, detailed terms for utilisation of incentives in the RES sector, granting the status of privileged and preliminary privileged producer and "available capacity" for wind and solar plants are to be set by the Government by December 2011. A particular concern of the investors in the sector is the "available capacity", i.e. limits with respect to the total capacity of wind and solar power plants which will be entitled to feed-in tariff.

FIC RECOMMENDATIONS

- Simplification of procedures for issuing permits and approvals necessary for the development of energy projects;
- Adoption of by-laws necessary for the implementation of the Energy Law in a timely manner;
- Engagement of interested parties, i.e. investors, financiers and advisors in the sector (primarily RES sector) in the procedure for the adoption of the by-laws;
- Increasing public awareness of efficient usage of electric power and need for price increase;
- Prepare and offer defined and developed locations to investors, including all necessary infrastructure.

TELECOMMUNICATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Abolishing the 10 percent mobile tax.	2010	√		
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.	2010		√	
Issuing missing by-laws and adjusting existing ones in compliance with the EU regulatory standards, requirements and procedures.	2007		√	
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.).	2009			√
Stimulating broadband services.	2008			√
Encourage the development of new telecommunication infrastructure and enable usage of existing alternative infrastructure by all kinds of electronic services.	2007		√	
Rebalance fixed telephony tariffs on a cost-based price structure.	2007	√		
Efficient implementation of the Construction Law.	2010		√	
Decision on Allocation of Digital Dividend and adoption of new Frequency Allocation Plan based on technology neutrality.	2010			√

CURRENT SITUATION

The last year has brought numerous important changes in the functioning of the telecommunications regulatory framework.

As a part of the reconstruction of the Government of the Republic of Serbia, a new Government was formed with 17 ministries in total. The Ministry of Telecommunications and Information Society and the Ministry of Culture were merged into the new Ministry of Culture, Media and Information Society.

Immediately after the formation of the new Ministry, the Digital Agenda Administration was formed within the Ministry with the aim of finalising projects in the area of information and electronics and improving information and communication technologies in Serbia.

Also, in March 2011, with great delay, the Serbian Government proposed candidates for members of the RATEL Managing Board, subsequently elected by the Parliament of the Republic of Serbia.

With the purpose of enforcing the Electronic Communications Law, RATEL initiated public consultations on the enactment of the necessary by-laws. For the first time, nine markets subject to regulation were defined and the electronic communications market was analysed accordingly. Operators with significant market power (SMP operators) were proposed, as well as their obligations on the above grounds.

The long-awaited sale of Telekom Srbija was not successful. In October 2010 tenders were invited for the sale of 51% of shares and, although the Government extended the deadline for the submission of bids, the sale of this state giant

was abandoned in May 2011 due to non-fulfillment of tender requirements.

A decline of EUR 50 million in telecommunication services revenues was recorded in 2010 against 2009 and total investments in telecommunications were reduced by EUR 14 million, which is indicative of the consequences of the crisis and decrease in market growth.

POSITIVE DEVELOPMENTS

Owing to the efforts of operators, the line Ministry, RATEL and to current indicators of the Statistical Office confirming the country's recovery from the economic crisis, the Government of the Republic of Serbia enacted a decision to abolish the tax on mobile telephone use as of 1 January 2011. Mobile telephony operators were thus relieved of the tax that had been introduced due to the impact of the global financial crisis on Serbia.

As a result of joint efforts of operators in the previous two years, amendments to the Law on Planning and Construction were adopted in March 2011, stipulating certain conditions the procedure for obtaining a building permit for antennas is not required, i.e. provisions of this Law do not apply.

In May 2011 the regulatory body announced public consultations on the analysis of relevant electronic communications markets and published the draft decisions on promulgation of SMP operators[1] and their obligations. This was the first market analysis in the Republic of Serbia on the model of EU standards. It is expected that the analysis will be finalised by the end of this year.

In the same period, a number of rules were enacted aimed at full enforcement of the Electronic Communications Law. Certain operators' fees to RATEL were reduced, but many utility fees were increased.

The Digital School project was completed in June 2011. The project equipped 2,910 schools on the territory of the Republic of Serbia with 30,000 computers. Project implementation was funded from operators' fees in 2009.

July 2011 saw the introduction of number portability in mobile telephony. Thereby the working group, consisting of representatives of RATEL and operators, in charge of all preparations for the implementation of the number portability service in mobile telephony, completed its task.

Telekom Srbija approved a rise in the retail prices of fixed telephony services, effective as of August 2011. At the same time, the regulatory body enacted a decision on the reduction of termination fees in Telekom Srbija's fixed network for all calls from other fixed and mobile networks. Both decisions entered into force on 1 August 2011.

REMAINING ISSUES

The Action Plan, as an integral part of the Strategy for the Development of Electronic Communications in the Republic of Serbia until 2020, is overdue. The Action Plan is a list of necessary activities that would further concretise institutional plans and activities in this field and provide higher predictability to all the market players.

The Electronic Communications Law postponed the full liberalisation of fixed telephony to 2012. The unsuccessful sale of Telekom, the small market share of Orion and waiting for Telenor to start providing fixed telephony services are the main characteristics of the fixed telephony market at this moment. Given the unsuccessful sale of Telekom, the strong influence of the state on the developments in the electronic communications field is expected to continue.
The introduction of number portability in fixed telephony should also be implemented successfully.

Establishing the jurisdiction of the Ministry of Culture, Media and Information Society over all activities in the telecommunications field is proceeding slowly. Full jurisdiction of the Ministry over the activities in the electronic communications field should be established to enable growth of the electronic communications market and strengthen RATEL's capacities to implement EU regulations.

It is necessary to improve cooperation and coordination on the preparation of bills and by-laws between the line ministry and other state institutions relevant for the telecommunications field, particularly in the area of construction, environment, consumer protection, introduction of various types of taxes and fees.

[1] Operators with Significant Market Power.

FIC RECOMMENDATIONS

Although progress has been made in the regulatory framework of the electronic communications market since the publication of the last White Book (2010), some recommendations of the Council provided in White Book 2010 are still relevant and necessary for the growth and development of the electronic communications market in the Republic of Serbia and are therefore of high priority:

- Abolishing bureaucratic procedures relating to telecommunications (issuing certificates for the design of telecommunications equipment and network, technical inspection of the installation and operation of telecommunications equipment, requirements for detailed documentation for product and network design, technical inspection of compliance with international standards, etc.);
- Stimulating broadband services;
- Introduction of number portability in fixed telephony;
- Encouraging the development of new telecommunications infrastructure and enabling the use of the existing alternative infrastructure for all types of electronic services;
- Efficient enforcement of the Law on Planning and Construction, reduction of unnecessary bureaucracy when it comes to base stations construction, especially in the area of environmental protection legislation related to construction;
- Decision on allocation of digital dividend and adoption of the new Allocation Plan based on the technological neutrality principle. Making available frequencies used for public mobile services in Europe – extension to 900 MHz and 2600 MHz.

We would like to emphasise particularly the following:

- The regulatory body should adopt the by-laws to the Electronic Communications Law and conform them to EU standards as soon as possible;
- Strengthening the capacities of the administration and the independent regulatory body to boost the electronic communications market;
- Solving compliance issues relating to environmental protection regulations in the process of development of the telecommunications network (Instructions for the construction and use of non-ionising radiation sources) that hinder the development of the infrastructure and significantly impede the operators' investments, due to their complexity and the very long procedures.

REAL ESTATE AND CONSTRUCTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009		√	
The state government and relevant ministries drafted and adopted few necessary by-laws. 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 Construction Law. The by-laws should provide more precise interpretation of the provisions of the Law.	2010			√
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.	2009			√
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.	2009			√
The penalty policy in the Construction Law should be re-designed.	2009			√
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.	2010			√
The Restitution Law should be drafted and adopted after a public debate as soon as possible.	2009		√	
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.	2009		√	
The new Law on Managing and Maintaining Property should also be drafted no later than the beginning of 2012 and adopted after a public debate.	2009			√
The State should draft the Law on Real Estate Leasing harmonising it with other Laws being closely connected with real estate business (especially regulating fields of Tax Law provision regarding the company profit tax, transparent tax treatment of operational leasing/rent.	2009		√	
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.	2010			√
Dialogue, communication and long-term cooperation should be built between the state, relevant ministries, local authorities and the FIC and its RE Committee and other organisations dealing with real-estate .	2009		√	

CURRENT SITUATION

The Law on Planning and Construction adopted in September 2009 remains the FIC's main area of interest. The Law has been additionally amended in April 2011. The final impact of the Law and its amendments remains to be seen, in particular considering the adoption of the Law on Property Restitution and Compensation regulating the issue of restitution.

The Law on Planning and Construction is very complex since it impacts five very important fields: spatial planning, construction, urban buildable land, restitution and legalisation, thus causing difficulties in its implementation and application in practice.

One of the most important improvements of this Law is the introduction of conversion of land usage rights into buildable land ownership (freehold) rights. The companies that have acquired land in the past (through privatisation, bankruptcy or foreclosure, or based on legislation in the area of buildable land in effect prior to 13 May 2003), will be able to convert usage rights into ownership rights by paying a fee equivalent to the difference between the market value of buildable land and the costs of acquiring land rights. The new Law should also enable ownership of buildable land 60 years after acquiring land usage right.

An important change is that the construction permit will be transferable, which means that an investor is entitled to transfer buildable land and/or structure under construction together with the construction permit to a third party through a simple administrative procedure.

The law foresees the establishment of a Registry of Investors, as a database of all investors with the goal of preventing manipulations in the real estate and construction markets.

The competencies of the building inspection have been expanded allowing them 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 a permit, prior to the adoption of the Law, with certain exceptions listed in the Law (for example: property built on protected natural and cultural areas or property built on public land, etc.). The deadline for submitting the applications for legalisation expired on 11 March 2010.

All municipalities are required to adopt municipal Urban and Spatial Plans within a time frame of 18 months, and failure to do so is sanctioned with dismissal of the municipal parliament. The plans must be provided in electronic format and made available to the public.

The proposed legal solutions did not produce desired results in practice, in particular with regard to conversion. With that in mind, amendments to the Law on Planning and Construction were adopted in April 2011. The amendments aimed to fill the gaps in the domain of construction permits issue and transfer, conversion of usage rights to ownership rights, and clarify certain provisions mostly pertaining to technical standards.

Land Ownership and Real Estate

The current economic situation that is placing additional pressure on companies' solvency is a consequence of an increase in the number of non-collectable claims, suspended accounts and insolvent businesses. At the same time, the neglected obligations of the state, commercial chains and other large and powerful business entities towards small business entities adversely impacted the real estate sector. Despite overcoming the first impact of the global economic crisis owing to strong market dependability on local and specialised real estate investors and developers and a highly capitalised banking sector, a full market recovery would require the entrance of prime investors that could supply large-scale projects to the market. These should be stimulated significantly through changes in the real estate legislation.

Ownership of city buildable land, which was to remain the sole property of the Republic of Serbia, can now be transferred under the terms prescribed by the new Planning and Construction Law. However, it seems that the transformation process is very slow and will not be completed within the terms prescribed by the Law.

A large share of real estate in prime locations in Belgrade and in other cities remains in municipal ownership and is

leased, but not according to current market conditions. Such practices discourage quality retailers from entering the market and contribute largely to the grey economy, thus reducing budget revenues. There is also a large number of other real estate that could be overtaken through privatisation of the companies that own it.

Management and maintenance policy of residential property has not changed since 1995, when the existing Law was adopted. Since then, there have been no significant amendments to the Law on Management and Maintenance of Residential Property that does not foresee any model of professional residential management, (currently this is a voluntary service performed by the president of the house council), and is not binding for residential owners. The generally accepted organisation model still heavily reflects cooperation with public utility companies with an option to engage some privately-owned enterprises for specific works.

Construction

The issue of construction permits is still non-transparent, long and heavily burdened with bureaucracy. The major problem with respect to the procedure for issuing construction permits is the fact that the greatest part of buildable land is not covered by adopted urban plans that are regarded as a precondition for the issue of the construction location and associated permit. The new Law should improve the current situation.

Poor infrastructure and bureaucratic procedures in public utility companies involved in this process are a major problem in construction. A reform of this sector is crucial for the entire procedure.

An additional problem with respect to the procedure for issuing construction permits is the fact that the location ownership right has to be acquired before applying for the construction permit. In most cases this means that the conversion procedure should be completed prior to the issuing of the construction permit, which significantly prolongs the procedure and may entail additional costs. Since the conversion process for a fee involves either great difficulties or impediments, many sites that could attract investors are not available for development.

The existing legal framework defining the relationship between investor and main contractor is not in accordance with internationally recognised best practice.

Land Cadastre

The new Law on Cadastre and State Survey was adopted in August 2009 and should enable a more efficient state survey and establishment and maintenance of a real-estate cadastre. The Law defines the main principles of cadastre, based on the European model of land books and other cadastral registries in order to increase transparency and accuracy of cadastral records.

The Cadastre Project in Serbia has not been completed yet. Several municipalities in Belgrade (Novi Beograd, Stari Grad, Vracar), set up their cadastral registry system, but this process ought to be finalised as soon as possible. Consequently, the announced deadline for cadastral registration set at end of 2010 has not been achieved.

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

The extremely challenging and inconsistent interpretation of relevant regulations on behalf of cadastral authorities and additional difficulties caused by the slow decision-making by the line ministry concerning appeals on issued decisions, pose an additional problem.

Restitution

The Law on Property Restitution and Compensation was adopted in September 2011, and is in force from 6 October 2011.

The priority of the restitution process is grounded in its tremendous potential for promoting security of ownership rights in a symbolic and exemplary manner, clearly showing that the State is returning what it has unjustly expropriated. On the other hand, the adoption and implementation of the law regulating restitution is a condition for Serbia's accession to the EU.

Law on Property Restitution and Compensation protects the acquired rights of natural persons and private companies, while the obligation of restitution arises only in the event

when natural persons and private companies lack title to the property that can be subject to restitution. Even though the Law on Property Restitution prescribes the priority of natural restitution, (i.e. restitution of unjustly expropriated property), there are numerous exceptions. Therefore, it is likely that compensation will be the most commonly implemented form of restitution. Property restitution is the obligation of the Republic of Serbia, local government, public enterprises established by the Republic of Serbia, socially owned companies and cooperatives, while the disbursement of the compensation is the exclusive obligation of the Republic of Serbia.

Real Estate Leasing

Amendments to the Law on Financial Leasing from May 2011 introduced the option of financial leasing of property. However, the new legislative framework has not been fully developed, and it remains to be seen whether financial leasing of property will be viable in practice. The main issues related to the application of the Law on Financial Leasing arise from the interpretation of the service of financial leasing of property by the tax authorities.

Mortgage

Following the first 6 years of application, the shortcomings of the Law on Mortgage have become apparent in practice. For example, provisions of Article 49 prescribing that in the event of out-of-court sale of mortgaged property, rights of later creditors remain reserved, thus implicating the sale of mortgaged property along with mortgages of a lower tier. Other examples include the unclear status of property built on land under mortgage (i.e. when mortgage automatically extends to built property), issues involving project financing and similar.

Strict bank regulations and restrictive interpretation of provisions of the Law on Mortgage by public property registries disable comprehensive application of the Law and thus limit the option of project financing of construction.

POSITIVE DEVELOPMENTS

The main positive development is the adoption of a new set of laws in September 2009 (Law on Planning and Construction, Law on Cadastre and State Survey, Law on Social Housing), and amendments to the Law on Construction from April 2011. Even though it is too early to analyse the future impact, which depends on the implementation and application in practice, the new set of laws could be a major breakthrough in the real estate market. This area is very sensitive, especially as regards restitution, and bringing its comprehensive regulations in line with the current international legislation and practices is essential to create a favourable and attractive investment and business environment. Enacting of the Law on Property Restitution and Compensation is a big step, but it is uncertain how it will be implemented.

LAND OWNERSHIP AND REAL ESTATE

By-laws regulating in more detail the conversion of the right of use to right of ownership of buildable land were originally adopted during 2010. They initially provided a clearer interpretation of the conversion process. However, from May 2011 the already slow process was blocked. The new by-law was adopted on 1 September 2011. This by-law is of crucial importance since it ought to chart the future of the construction and real estate sectors in the upcoming period. The by-law contains technical shortcomings and legal inconsistencies, and would require additional interpretations or even changes to make it functional. Furthermore, the chosen model is very difficult to implement and there is a possibility that in a number of cases conversion is not going to be possible.

The Law on Mortgage, adopted 4 years ago, introduced the possibility of re-issuing construction permits following the foreclosure of a mortgage over a semi-finished structure to the subsequent purchaser. However, such a possibility diverged from the previous Construction Law, which insisted on having the same investor throughout the construction venture. The new Law has changed this now, allowing the possibility of a transfer. The new Law on Cadastre and State Survey has been adopted, with a very important clause that all property registered in the cadastre should also be appraised. This opens the possibility for the state to regulate and organise this process through the adoption of rules and procedures, with the methodology of mass and individual evaluations.

Instead of the currently preferred type of land rights – lease of buildable land, the new Construction Law introduces the possibility for investors to acquire ownership under the terms prescribed by the Law.

Construction

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

The new Law on Planning and Construction prescribes that a construction permit is transferable, meaning that an investor may transfer the permit to somebody else in case the investor withdraws while construction is underway.

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

Several municipalities have already established one-stop information offices for foreign investors, which significantly improved the previously mentioned issue of access to required information, resulting from the lack of information and/or unskilled staff.

Restitution

Law on Property Restitution and Compensation has been enacted and is in force from 6 October 2011.

REMAINING ISSUES

Land and Real Estate Ownership

The application of the Law on Planning and Construction did not yield the expected results. The reason for this is that the provisions pertaining to conversion do not contain precise instructions. The land registries avoid positively resolving cases where conversion is requested, and even in the event of a positive resolution, the public defenders appeal such decisions. This means that the state authorities are not prepared to recognise the right of ownership of buildable land consequently avoiding to give up ownership rights currently inscribed in favour of the Republic of Serbia.

In addition, the procedure for issuing construction permits remains excessively time-consuming.

Municipalities failed to deprive investors of state-owned buildable land in cases where users have not constructed a building within the prescribed period of time.

A clearly defined policy for sanctioning local authorities for non-performance or untimely performance of obligations has still not been provided.

No significant improvements have been made in the previous years with regard to residential property management and maintenance. The 1995 Law on Management and Maintenance of Residential Property foresees the adoption of by-laws further regulating this field, but none of them have been drafted yet (the legal act on residential property maintenance from 1993 is still in force).

Public utility companies were contracted to finance residential property maintenance for corrective maintenance works and emergency services, and funds were raised for investment maintenance, which is often not feasible in practice.

Construction

The overall process of issuing permits remains non-transparent, long and heavily burdened with red tape, primarily as a consequence of the difficult and time-consuming process of collecting all of the required documents. In May 2011, the number of issued construction permits increased by 13.1% compared to May 2010, however, in the same month the index of planned value of works decreased by 46.7% compared to May 2010.

On the other hand, the transfer of a construction permit is possible only in instances when a construction permit is issued, i.e. when the potential investor has already drafted the main project for location development. In this respect, the Mortgage Law is not in line with the Law on Planning and Construction, as the property for development is not a suitable collateral for financing the drafting of the main project.

Land Cadastre

The Cadastre Project, funded by the World Bank has still not been completed in Serbia. The project should have been finished in 2010, but the deadline has been seriously breached.

The cadastral land registry system for several municipalities in Belgrade (Novi Beograd, Stari Grad, Vracar) is almost complete, but the overall process needs to be finalised as soon as

possible since incomplete land books and other land-related records are indisputably the key problem in this area, contributing to irregularities in acquiring property rights.

Even though several Municipalities have established one-stop information offices for foreign investors, the issue of access to required information, either due to lack of information and/or unskilled staff remains.

Restitution

The Law on Property Restitution and Compensation provides a declarative principle of natural restitution as a basic model; however, the numerous exceptions are an indication that compensation will be the most commonly implemented form of restitution. Such a principle of restitution embodies an attempt to bring together conflicting interests of persons entitled to restitution, and persons with acquired rights over confiscated properties (in most cases foreign investors).

Real Estate Leasing

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

FIC RECOMMENDATIONS

- The new Construction Law impacts five very important fields: spatial planning, construction, urban buildable land, restitution and legalisation. All these fields should be separately regulated as soon as possible through systematic by-laws in cooperation with the NGO sector;
- The government and relevant ministries have drafted and adopted few of the required by-laws and clearly defined instructions for local authorities with regard to the implementation of the new Law on Planning and Construction in all fields. The problem of conversion with a fee remains, as does the problem of registration of title of ownership of buildable land, due to the rigid interpretation of the Law on Planning and Construction by the Land Cadastre. By-laws should provide a more precise interpretation of the provisions of the Law on Planning and Construction, at least by providing common practice;
- Authorities must introduce transparency and consistency in their own work on all levels and ensure high level of control of all relevant institutions;
- The permits' issuing process should be further simplified while the land development fee, along with other construction start-up costs, must reflect an effort to reduce existing and subsequent operational costs in order to facilitate market expansion and accelerate the process of attracting further investments;
- The penalty provisions under the Construction Law should be amended to be more adequate and stringent since they are currently limited only to pecuniary fines;
- The legal framework defining the relationship between investors and the main contractor should be improved in accordance with the internationally recognised best practice by amending the Law on Contracts and Torts;
- Draft Law on Managing and Maintaining Residential Property should be developed by January 2012, and adopted following public consultations. The complete legislation defining ownership rights of residential owners and their obligations with regard to management and maintenance, indispensable for the proper functioning of residential property management and maintenance, should also be developed;

- An important field such as real estate lease needs to be further elaborated by a law, not by-laws. The Law on Real Estate Lease must be harmonised with current real estate regulations. This in particular pertains to the possibility of inscribing an existing real estate lease in the public real estate registry, which must be clearly prescribed either by the law regulating real estate leasing or the Law on Cadastre and State Survey.

- The Mortgage Law should be changed completely, as it has too many omissions and uncertain provisions and is not in line with the new Law on Planning and Construction;

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

LABOUR

THE LABOUR RELATED REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
We believe that additional decreases in labour expenses are necessary in order to boost the employment rate and reduce the so-called moon-lighting. 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.	2007			√
The temporary work permit should be extended to 3 years, the procedure for obtaining business visas and temporary residence permits should be less complicated and time consuming and the procedure for transfer of funds abroad by employed foreigners should be simplified.	2007			√
Complicated salary system is an additional investments barrier. We propose that work performance is not mandatory or monthly and that awards/bonuses are not additional salary category as they are really given for contributing performance. Free agreement of salary with the employees and motivating salary system are the basis of the labour market.	2009			√
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.	2010			√
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.	2008			√
Employment related paperwork should be simplified by introducing electronic delivery of documents and electronic data bases and implementation of the electronic signatures rules. In relation to that paragraph 5 of Article 122 of the law should be deleted.	2008			√
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.	2007		√	
The deadline for issuing the decision on annual leave should be reduced to 5 days prior to the commencement of annual leave and even less if the said decision is at employee's request and it should be possible to issue the decision on annual vacation electronically, as annual leave is often agreed upon on short notice, especially with management.	2007			√

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.	2008			√
The contributions to regional chambers of commerce should be unified throughout Serbia.	2008			√
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.	2009			√
A business trip in the country should be defined.	2009			√
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.	2010			√
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.	2009			√
The duration of 12 months for definite term employment should be extended to 36 months. Also, such contract should not be conditional on the existence of predetermined reasons (work on a specific project, increase of volume of work, seasonal jobs etc.), but the parties should be free to contract the purpose they deem sufficient.	2010			√
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.	2010			√
We propose that the duration regarding rescheduling of working hours shall be based on the calendar year.	2010			√
We propose that the extensive criteria governing the increasing of the length of annual vacation should be established in a manner to enable employers to apply only specific criteria that corresponds with their business needs. This way, employers would not be required to apply all the current criteria, as currently required by the Labour Law.	2010			√
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.	2010			√
It is important to change the method of calculation of severance payment in case of redundancy by basing this amount solely on years of service of an employee with that actual employer. As alternative, the rest of the amount of severance pay (for the years of employment with previous employers) shall be born by the state.	2010			√

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.	2010			√
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 that the established period in a cases provided by other law.	2010			√
The statutory limitation periods that are laid out in Article 184 paragraph 1 should be extended.	2010			√
The damage compensation from Article 191 paragraph 5 of the Labour Law that the court may award to the employee should be limited to a maximum of 18 salaries that would have been effected by the employee if he/she was employed, depending on the period of employment, the employee's years, and the number of members of family supported by him/her.	2010			√
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.	2010			√
Considering that deduction of a portion of salary is an effective disciplinary measure and is determined by laws of some surrounding countries, we propose that the said deduction should be 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.	2010			√
Paragraph 3 of Article 180 of the Labour Law should be set as separate Article "180a" and provide that, if an employee violates work duty or disrespects work discipline, the employer may impose a reprimand and inform the employee that his/her employment will be terminated should he/she commits the same or similar violation, without warning.	2010			√
The employer should have the right to temporarily (up to 30 working days) transfer the employee to another appropriate job (with the same employer) with no obligation of concluding an annex (e.g. 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.	2010			√
The provisions of the Labour Law should be adapted the existing management structure of all legal entities. Accordingly, the 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.	2010			√
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).	2010			√

The extended application of the GCA should be nullified, while the relevant law provisions that regulate the extended applicability of the GCA should be deleted. Otherwise, our recommendations given in the previous editions of the White Book remain – whereby they under no circumstances mean that employers – members of FIC agree with the GCA.	2009		√	
Consider the possibility of the Law on Employment and Insurance in case of Unemployment 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.	2010			√
The Law on Professional Rehabilitation and Employment of Persons with Disabilities should be terminologically coordinated with special laws in the area.	2009			√
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 then PSF considering that the PSF already has significant volume of work.	2009			√
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. Also, there are business activities for which performance it is practically impossible to employ a person with disability (construction etc.).	2009			√
Obtaining business visas and temporary residence permits is an excessively complicated and time consuming process. Enhance practical application of the Law on Foreigners	2009			√
The Law on Protection of Citizens of the Republic of Serbia Working Abroad should be modernised and harmonised with relevant regulations. Fast mobility of labour should be provided by reduction of administrative obstacles and needlessly long procedures. Alternatively this Law would be suspended and essential issues regulated by the Labour Law.	2009			√
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.).	2009			√
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.	2010			√
The issuance of work permits and general business conditions for staff leasing agencies (including the license fee for staff lease agencies) should be also regulated by the law. This way, the law would create legal certainty and remove the possibility of discretionary decisions being handed down (e.g. by ministries) with regard to these issues.	2010			√

CURRENT SITUATION

In 2011, the most significant change in the employment legal framework was the expiry of the General Collective Agreement (the GCA) on 17 May, whereby all obligations introduced previously by this instrument for all employers in Serbia, ceased to be valid. On the other hand, the industry-wide collective agreement for construction and construction materials industry (in force as of January 2011), as well as the industry-wide collective agreement for agriculture, food, tobacco industry and water management (in force as of March 2011) were enacted and subsequently followed by the decision of the Minister of Labour and Social Policy on the extended application of these industry-wide collective agreements to all employers acting in the respective areas. The content of these industry-wide collective agreements is similar to the formerly valid GCA. Also, according to the unofficial information circulated in public, negotiations on new industry-wide collective agreements in the field of metallurgy and trade, as well as in the area of chemistry and non-metal industry, are currently in progress and their conclusion should be expected very soon. Therefore, it seems that, even if the GCA ceased to exist, it will be replaced by the stipulation of several industry-wide collective agreements in various industries and possible extension of their applicability to all employers within specific industries.

Other than the above noted, in 2011 there was no significant legislative activity in the labour regulation area. Therefore, the regulations that came into force during 2010 are still being discussed and represent the relevant labour framework, including the Law on Volunteering (applicable as of 5 December 2010), the Law on the Central Registry of Compulsory Social Insurance (in force as of 15 May 2010), etc. Also, the provisions of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities (in force as of 2009, but fully applicable as of 23 May 2010), that require employers to employ a certain number of persons with disabilities (PWD) are still in focus.

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

The new Regulation on Employment Incentives (Official Gazette of RS No. 32/2011 and 34/2011), effective as of 21 May 2011, introduced certain salary tax and social insurance contributions exemptions, which will be applicable for up to 12 months after hiring new employees, provided that the headcount does not decrease during that period. The existing employers may not decrease their headcount as of 31 March 2011 in order to qualify for these incentives.

The Law on Prevention of Mobbing at Work applies as of September 2010. The Law regulates in detail all mobbing-related matters in terms of definitions, rights, obligations, procedures, etc. The lion's share of the Law is dedicated to the procedure for protection from mobbing. In that respect, both the procedure before a mediator and, subsequently, the procedure before a competent court are potentially available to employees. The burden of proof in such court procedures is on the employer, provided that the employee shows a prima facie case of mobbing. It should be highlighted that the employer is liable for damage caused by its representative or by an employee to another employee. The Law also introduces numerous obligations for the employers with regard to the prevention of mobbing

POSITIVE DEVELOPMENTS

The GCA expired on 17 May 2011. In addition to its extended application being the subject of serious criticism by employers who are not members of the Association of Employers that signed the agreement, the expiry was welcomed by a vast majority of employers in Serbia, as its overall content was not in line with the principles of modern market economy, and as it was extended too far beyond the socio-economic context for the extension that might have been justified in the cases set forth by the Labour Law.

We reiterate that the Law on Vocational Rehabilitation and Employment of Persons with Disabilities (effective as of 23 May 2009) was passed to improve the employment status of persons with disabilities, considering that a vast majority of these individuals does not work, 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 people with disabilities in so-

cial 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 a powerful force of their 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 fulfilled, a single application form is to be filed with the Republic Fund for Pension and Disability Insurance (FPDI) or the Republic Institute for Health Insurance (IHI). Accordingly, instead of several forms – a brand new application form (M form) applies from 1 October 2010 and will be submitted electronically in the future (after technical adjustment of the competent authorities).

The new Regulation on Employment Incentives has introduced significant salary tax and social insurance contributions exemptions that are expected to entice new hirings and move a part of the workforce from the grey zone. However, there are some concerns that this Regulation will also lead to discrimination issues. New employees may be hired for an indefinite or fixed term, but must be unemployed for at last 6 months prior to this new employment in order for their employer to qualify for the state incentives. The amount of the salary tax exemptions ranges between 30% and 100% (the latter for employees who are younger than 30 or older than 45 years), whereas in both cases the state exempts the employers from the total amount of mandatory pension and disability contributions. The described exemptions will be applicable for 12 months after hiring of new employees, or for the duration of their fixed-term contract (should this contract expire before that time), provided that the headcount does not decrease during that period. The existing employers may not have a decrease in their headcount as of 31 March 2011, increased by the number of the newly employed under the provisions of this Regulation.

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 the amendments of the Labour Law are still pending and up to the date of this report there has been no progress with respect to the issues previously identified by the FIC as the most problematic, our comments given in the previous editions of the White Book remain and are still to be considered as the standpoint of FIC members in relation to this piece of legislation. However, we will not reiterate all these comments again in this edition, but rather only emphasise the issues that the FIC considers the most important, as follows:

- 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;
- Salary compensation for sick leave, national holidays, annual leave, annual vacation, paid leave, etc. is calculated on the base that 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;
- Certain categories of employees cannot be unilaterally made 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), while, if they sign an agreement on termination, they cannot enjoy the entitlements related to unemployment insurance;
- 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 an annex;
- Fixed-term employment is limited to 12 months and conditions for it are restrictive;
- The currently stipulated minimum of 3 working weeks of 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);

- 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 reason of redundancy is required to make a severance payment not only for the length of 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;
- The length of the suspension measure up to 3 working days (Article 170 of the Labour Law) is very short and inefficient in most cases;
- The employer is obliged to offer the employee an annex to the employment contract even if that employee is only temporarily and for a very short period of time 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 an employee who is on vacation, short-term sick-leave, etc.);
- The only "disciplinary" measure stipulated by the Labour Law is temporary removal of an employee from work;
- According to Article 48 of the Labour Law, a general manager may either conclude a management contract (which does not constitute employment) or an employment contract which is tied to his/her term of office, which means that a general manager's management contract or employment contract may be automatically terminated upon removal from the position in question. However, it is not clear whether this may also apply to companies that have a management board instead of the general manager. Additionally, it is not clear whether this may apply to executive directors who may also be removed from their positions at any time, without any reason whatsoever;
- Overall, the provisions of the existing Labour Law reduce the flexibility in special forms of business engagement (as it does not recognise staff leasing and limits possibilities of engagement outside employment), which has a negative impact on the employment rate and the increase in the grey market.

The Industry-Wide Collective Agreements (for construction and construction materials industry, and for agriculture, food, tobacco industry and water management)

The recent conclusion of industry-wide collective agreements for agriculture, food, tobacco industry and water management, as well as for construction and construction materials industry, came as an unexpected development for employers performing their activity in these industries, but not being members of the Association of Employers which participated in the conclusion of the respective branch collective agreements. Such employers found out about the outcome of social dialogue only once these industry-wide collective agreements were published and followed by the decision of the Minister of Labour and Social Policy on the extended application to all employers in the respective areas. This way, employers who did not participate in negotiations and the conclusion of these industry-wide collective agreements were forced to abide by various obligations prescribed by them. This raised new concerns among foreign investors (some of them being the largest companies within the respective industries), who had already objected to the extended application of the GCA and addressed their criticism to competent authorities on several occasions. Therefore, all arguments previously raised against the extended application of the GCA refer to the extended application of the industry-wide collective agreements as well: (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 industry-wide collective agreements the legal status of a law without undergoing the regular parliamentary procedure for passing 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 industry-wide collective agreements is not in line with the principles of modern market economy (e.g. determining the base salary based on coefficient and minimum price of labour etc.).

The industry-wide collective agreements provide more favourable 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:

- They mandate calculation of the base salary by using the coefficient for the specific job (obsolete method which existed under the old law), as well as restrictions with respect to the term of application of the negotiated base salary for the simplest work (six-month period at the most) and its amount (the newly negotiated amount may not be lower than the previously agreed amount). Such provisions may create problems in practice for the employers that do not have collective agreements or a union;
- The employer is obliged to issue a prior notification on the introduction of overtime work (24 hours in advance, or 36 hours in advance), which is usually impossible in practice, due to the very nature of overtime work, which represents unexpected increase of the workload;
- In the case of redundant employees, additional criteria for their selection are introduced, whereas the collective agreement for agriculture, food, tobacco industry and water management also sets higher minimum severance payment (1/3 of the employee's salary per each year of service, but no less than 50% of the average salary in the Republic for each year of service);
- The industry-wide collective agreement for agriculture, food, tobacco industry and water management 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; and also provides that 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.;
- Food allowance is set at a minimum amount of 20% of the minimum gross salary; allowance for annual leave in a certain percentage of the minimum gross salary (70% in the construction industry and 100% in agriculture, food, tobacco industry and water management); field work daily allowance in the amount of 2% and 3%, respectively, of the average salary in the Republic; daily allowance for a business trip in the country in the amount of 5% of the average salary in the Republic, etc.);
- The industry-wide collective agreements provide for the employers' obligation to insure employees against death, work-related injury and impairment or loss of work capacity. It is still unclear how to apply this provision, which was also encompassed in the GCA, bearing in mind the relevant provisions of the Law on Occupational Safety and Health and the past interpretation of this Law by the competent bodies that this obligation is not applicable until this type of insurance is regulated by a separate law.

The industry-wide collective agreement for the construction and construction materials industry is concluded for a 12-month period, whereas the industry-wide collective agreement for agriculture, food, tobacco industry and water management, is concluded for a 3-year period. In both cases, the collective agreements will expire unless the parties to these agreements agree otherwise within a maximum of 30 days prior to their expiry.

The Law on Employment and Unemployment Insurance

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

The Law on Vocational Rehabilitation and Employment of Persons with Disabilities

With respect to issues concerning the implementation of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities, we emphasise the following:

- 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.);

- Although there is a possibility for the current employees to undergo evaluation of their working ability in order to be recognised as persons with disabilities, in practice such procedure is very complex and administratively cumbersome, as it includes submission of numerous documents by the employee and engagement of different state authorities during one process, with somewhat overlapping powers (National Employment Service and FPDI);
- In practice, a majority of employers opt for payment to the state budget instead of employment of persons with disabilities, mostly as they do not have the need for additional workforce or as they cannot find adequate persons with disabilities for the work they require.

The Law on Foreigners

Obtaining business visas and temporary residence permits is an excessively complicated and time-consuming process. Besides the time required for collecting the numerous required documents for approval of the residence permit, the waiting period as of the date of submitting all documents until the issue of the residence permit is one month. This period is too long, as for this period of time the foreigner is not able to temporarily import any of his/her belongings from abroad, to start working, etc.

The foreigners who apply for work permit from the National Employment Service (NES) upon acquiring residence permit are faced with an additional bureaucratic procedure which, amongst other, requires submission of the opinion that the NES itself had already issued to these foreigners during the procedure for acquiring residence permit.

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

The terminology of this Law is not completely harmonised with the Labour Law and other positive regulations.

The prescribed procedure for hiring Serbian employees abroad is outdated, extraordinarily clumsy, complicated, it takes very long and, as a whole, is not adjusted to the requirements of modern market economy and removing borders on the labour market. As such, it has a counter-effect, instead of fulfilling its main purpose – protecting our citizens employed abroad. Furthermore, without the implemented procedure – informing the competent Ministry of Labour and Social Policy about the intention of sending an employee abroad to work and its conclusion that conditions for it have been fulfilled, one cannot obtain health insurance for employees valid abroad at the Republic Institute for Health Insurance, in accordance with regulations in the Republic of Serbia (RS).

Staff leasing

The staff leasing practice of companies in Serbia, although somewhat tolerated in practice, due to the lack of formal regulation at this time may lead to certain problems for the employers who use this institute. Namely, there is a possibility of fining such employers due to the fact that persons working for them based on staff leasing do not have any agreement with these employers. Also, there is a risk (in certain cases evident in practice) that the leased staff claim that they were actually employed within the company where they performed work, although they did not have any agreement with such company – this is usually the case when they are dismissed due to termination of business cooperation between the staff leasing agency and the company that used these services.

Shift work

The Labour Law does not define the concept and characteristics of shift work, which is in practice a source of significant problems.

Namely, in the absence of precise regulations, the competent courts and the Ministry of Labour have tended to interpret the concept of shift work too extensively, considering the shift work as such work in which there is a difference in the beginning and end of working hours and recognising the right to increased pay on the basis of such de facto understood shift work in all cases, unless the internal document of the employer and employment contract explicitly stipulate that employees perform work in shifts, and that the increase in pay based on shift work is included in the agreed amount of base salary, which are formulations almost non-existent in the Serbian economy.

Since the Labour Law provides for a 26% salary increase based on shift work, this represents an intolerable burden for the vast majority of employers in 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, during the previous period, provided and still has a number of suggestions on how to improve the situation. In this respect, we confirm the suggestions regarding labour relations from our previous edition of the White Book, and will herein elaborate and repeat only the most important recommendations on how to improve the existing legal framework and practice:

The Labour Law

- 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, we propose that work performance should not be a mandatory, but a discretional part of the salary. 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 employees' work is the basis of functioning of the labour market;

- We suggest the salary compensation during absence from work to be amended, i.e. to be due in the amount of base salary increased by seniority;

- Employment-related paperwork should be simplified by introducing electronic delivery of documents and electronic data bases and implementation of the electronic signatures rules. In relation to that, paragraph 5 of Article 122 of the Law (requiring the employee to sign the written certificate on payment of each salary) should be repealed;

- 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;

- Stipulate that outside the cases listed in Article 171, an annex to the employment contract can also be signed in other cases, based on mutual agreement between the employer and employee;

- We propose that the duration of 12 months for fixed-term employment contract in the Law should 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;

- The currently stipulated minimum 3 working weeks of annual vacation within a calendar year (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 also be 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 declaring an employee redundant, solely on the years of service of such employee with that particular 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) should be borne by the State, or by the Fund of Unemployment Insurance at their own expense;

- We propose to establish one-month duration of suspension measure under paragraph 2 of Article 170 of the existing Labour Law;

- Given that the only "disciplinary" measure stipulated by the Labour Law is temporary removal of an employee from work, and considering that deduction of a portion of salary is an effective disciplinary measure and as such foreseen 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 employee's contracted monthly base salary;

- We propose that the employer has the right to temporarily (up to 30 working days) transfer the employee to another appropriate 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 an employee who is on vacation, short-term 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, flexible management contracts or employment contracts tied to the term of office should be introduced as a possible option for all management positions which are based on appointment that may be revoked at any time without any reason. Also, we propose that labour relation issues should be decided by the competent authorities within the employing company that are authorised to do so under the law applicable to that kind of company or by a valid internal document of the employer.

The industry-wide collective agreements

- The extended application of the industry-wide collective agreements should be nullified for reasons listed above, while the relevant legal provisions that regulate the extended applicability of collective agreements should be amended, i.e. deleted in full. Otherwise, the Ministry of Labour and Social Policy should provide for more restrictive compliance check of the relevant industry-wide collective agreements with the Labour Law, before declaring the extended application to all employers acting in the affected industries. The latter does not mean in any manner that employers, members of the FIC, agree with the extended application of industry-wide collective agreements.

The Law on Employment and Unemployment Insurance

- Consider the possibility of widening the circle of employees or the period of use of pecuniary rights in the case of termination of employment without their fault;

- Limit the maximum unemployment benefit to the capped amount for payment of the relevant contribution (as employees had been paying contributions for the insurance based on their salaries, not based on the minimum salary in Serbia). This would not only be fairer, but would also be socially responsible and facilitate the necessary redundancies without creating legal disputes by the redundant workers (especially during the last two years prior to retirement).

The Law on Vocational Rehabilitation and Employment of Persons with Disabilities

- The law should be terminologically coordinated with special laws in the area;
- The work ability assessment and issue of a decision 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 then FPDI considering that the FPDI already has a significant workload. Also, the list of documents required by the authorities from the employee should be reasonably decreased;
- 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 whose performance it is practically impossible to employ a person with disability (construction etc.);
- The Law should enable the employer to initiate the procedure for the establishment of disability of current employees and not leave it to employees alone;
- The PWD already employed before the enactment of the Law should automatically count against the quota.

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, e.g. by shortening the period of time for residence permit issue, reduce the number of documents required during the procedure for acquiring residence and work permit, etc.

Protection of the Citizens of the Federal Republic of Yugoslavia Working Abroad

- The Law should be renamed to begin with, updated, harmonised with the terminology of the Labour Law and other relevant regulations and, before all, adjusted to the new business environment, with open possibilities of local companies doing business abroad through their employees. In addition, swift mobility of the labour force should be enabled, with reducing administrative barriers and unnecessarily long procedures;

•Alternatively, this law should be abolished, and the basic issues related to the protection of Serbian employees working abroad should be regulated by the Labour Law.

Staff leasing

- The concept of staff leasing should be regulated by a separate regulation or, possibly, by the announced changes of the Labour Law, 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 issue of work permits and the content of general business conditions for staff leasing agencies (including the fee for the issue of a license for staff leasing agencies) should also be 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.

Shift work

- The proposal is to harmonise the Labour Law with actual practice, and that provision on salary increase based on shift work is rephrased so that salary increase at a rate of 26% is only given if an internal document or employment contract provides so, while otherwise it is considered that the increase in pay based on shift work is included in the contractually stipulated amount of base salary.

The Law on Prevention of Mobbing at Work

- Consider the possibility of amending Article 31 of the Law. Namely, the burden of proof in court proceedings is on the employer as the defendant, which significantly violates the concept of equality between the litigators. Also, one of the main legal principles is that onus probandi should be on the claimant, not the defendant.

HUMAN CAPITAL

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Positive measures which stimulate employment should be continued.	2009			√
Education system should be improved. Regular contact between 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.	2008			√
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.	2008			√
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.	2010		√	

CURRENT SITUATION

The global economic crisis has continued to influence the labour market significantly in 2011. Reduced economic activity and consumption worldwide have brought about a reduction in exports and economic activity in Serbia, and the reduction in income of the Serbian population has 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 2011 is 22.2%, accord-

ing to the Republic Institute for Statistics, and the figure in April 2011 was higher by 3% than in April 2010.

Labour market in Serbia is showing the same trend as the rest of the economy – that of decline. In order to reduce expenses, many companies have decided to reduce their headcount. That trend continues in 2011 – employers downsize the workforce in order to reduce costs. The Government has to balance between growing budget deficit and companies' needs to receive support through salary tax incentives to slow down the downsizing processes. Compared to the previous year, the number of unemployed has increased by 3 percent.

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

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

There are certain changes in the education system. Most universities and colleges are aware that they are in a competitive market. Because of the competition, they have started with changes in order to position themselves better. 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 imposes the need for companies to invest significant funds in the education and training of hired fresh graduates.

POSITIVE DEVELOPMENTS

Although burdened by serious problems, the Government of Serbia has undertaken some proactive measures in the times of crisis. When it comes to human capital, just as last year, this year the Ministry of Economy and Regional Development has continued the initiative to sponsor employment of 10,000 apprentices, which has been very well accepted by the business community and young graduates. The Ministry of Economy and Regional Development has opened the door to investors to apply for financial support through direct investment. Thus, 17,194 new jobs have been opened during the year according to their data.

In 2011, the Ministry of Science has provided significant contribution 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. Young people, endowed with capacities for scientific research, are encouraged by the Ministry of Science. The Ministry provides scholarships, directs and encourages them to complete graduate studies promptly and also ensures their involvement in the Ministry's projects 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.

The Strategy for the Development and Promotion of Corporate Social Responsibility (CSR) was adopted. The Serbian Government adopted the Strategy, which comprehensively regulates the situation in this area, for the period from 2010 to 2015.

The Ministry of Labour and Social Affairs as the initiator of the Strategy expects that this document will form the basis for better functioning of social responsibility, among other things, through the elimination of social exclusion and discrimination and also through the promotion of social justice, protection of employees and consumers and a more responsible attitude towards the local community and the environment.

REMAINING ISSUES

Due to the impact of the economic crisis, an increase in grey labour force can be expected. Since there are a number of companies that fail to pay their dues to the state, the Government occasionally announces new taxes on wages in order to cover the budgetary deficit. This measure would affect

those employees whose companies settle their liabilities regularly. Instead of additionally burdening them, it would be more effective to reduce the grey and black labour market by enhancing Labour Inspection activities in the field.

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

Negative demographic trends should also be mentioned. The population of Serbia is ageing, and Serbia is ranked 6th among countries with the oldest population in the world. Also, the population is increasingly concentrated in the northern part of the country. The Government has recognized these trends, but the situation has not improved. This situation will further reduce chances of certain parts of Serbia of attracting new investments.

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. A company's decision to invest in a certain country is guided by the quality and structure of the workforce on the market.

FIC RECOMMENDATIONS

- Positive measures which stimulate employment should be continued;
- Education system should be improved. Regular contact between FIC and the Government, ministries of education and youth, as well as 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 the state.

LEGAL FRAMEWORK

As was the case with the last two editions of the White Book, this 2011 edition is written in the light of a large number of new laws that have been adopted by the Serbian Parliament within the course of harmonisation of the Serbian legal framework with the EU legislation.

In general, such intensive legislative activity has created a legislative system which is overall well harmonised with that of the EU. For example, a newly enacted Law on Capital Market is in full compliance with the relevant EU regulations. Several other important acts are being drafted and enacted as well, including the new Company Law, the new Law on Consumer Protection, the Law on Enforcement and Security, the new Energy Law, the Law on Public Notaries, etc. On the other hand, some of the newly adopted laws contain certain provisions which are not in line with the EU standards, the new Law on Insolvency being a notable example.

However, in the White Book 2011 we have addressed several issues and provided many recommendations whose main aim is to improve the functioning of the legal system, which in our opinion represents the backbone of a good business environment.

Most of the chapters covered herein address the problem of the lack of adequate bylaws. Namely, relevant bylaws are sometimes enacted long past due time – for example, bylaws under the abovementioned Law on Consumer Protection (rendered in October 2010) have not been enacted yet. Furthermore, in certain cases, the by-laws, when enacted, are not of sufficient quality to provide for proper application of the law – for example, the Guidelines used by the Commission for the Protection of Competition can be deemed not completely satisfactory for the application of complex anti-trust legislation, therefore creating a need to look up the practice of the competent EU bodies such as the European Commission, which is, unfortunately, seldom done. On the other hand, it is not uncommon to experience long delays in the foundation of a state body or authority which is provided for by the new legislation. For example, the National Council for Consumer Protection has not been formed yet. The issues of capacity-building and further specialisation of the public administration and judiciary remain crucial.

To conclude, even though Serbian authorities have propelled a wide-ranging legislative endeavour, formulating and endorsing numerous laws ranging from those that represent the regulatory milestones, to those that tackle specific regulatory fields, there is still room for improvement. Having said that, we hope that the further pace of reforms will enable the successful execution of contemporary legislation.

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COMPANY LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Initroduced in the WB:	Significant progress	Certain progress	No progress
The legal regime for partnership should be changed to allow for the limited liability of partners in a partnership.	2010			√
It is necessary for the provisions on exclusive jurisdiction in case of dispute resolution to be harmonised with the Foreign Investment Law.	2009	√		
It is necessary to adjust the provisions on maintenance of the charter capital value with the provisions on liquidation of the companies.	2009	√		
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.	2009	√		
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.	2008		√	
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.	2008		√	
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.	2008		√	
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 directors" responsible for overseeing the management and business affairs of the company.	2009	√		
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.	2009	√		
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.	2009	√		

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.	2010	√		
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.	2010	√		

CURRENT SITUATION

New Company Law

The Serbian Parliament has recently adopted a new law on business entities (the "New Company Law"), with the aim of overcoming certain flaws of the existing law on business entities (the "Existing Company Law") that have become manifest over the course of its five-year application. Although regulating the same subject matter, the new Company Law is a completely new piece of legislation. As such, it not only introduces a number of novelties in the Serbian legal system, but also regulates existing legal institutions in a much more detailed and clear manner, thereby overcoming certain legal ambiguities under the previous law. However, since this is a capital and rather complex piece of legislation, the effects and the outcome of the practical implementation of the newly introduced concepts are yet to be seen.

In addition to regulating various important issues with respect to business operations, the new Company Law continues to regulate the legal status of companies, their establishment, management, changes in status and legal form, and their dissolution. It applies to limited liability companies (LLCs), joint stock companies (JSCs), branches and representative offices, as well as to various other forms of business operations (e.g. individual entrepreneurs, non-profit business associations and various forms of partnerships).

Although in force as of 4 June 2011, the new Company Law will actually become applicable only as of 1 February 2012 (except for its Article 344, paragraph 9 and Article 586, paragraph 1, which will become applicable only as of 1 January 2014). Thus, Serbian LLCs and JSCs have until 1 February 2012 to harmonise their form and organisational structure with the new requirements and to have the same registered within 3 months – otherwise they may face forced liquidation.

We now present an overview of some of the key changes contained in the New Company Law.

Novelties in General

Foundation Deeds

As under the Existing Company Law, a Foundation Deed can either be a foundation decision (in a one-member company) or a foundation agreement (in a multiple-member company). As before, a Foundation Deed must be notarised.

However, unlike the rules under the Existing Company Law, which requires notarisation of all amendments to a Foundation Deed for an LLC, the new Company Law provides for a possibility to have such requirement waived by the members of an LLC. As for JSCs, the new Company Law expressly prohibits any subsequent changes to a JSC's Foundation Deed, given that such document is deemed to be a document of formation, while all corporate governance rules for a JSC are to be contained in its Articles of Association.

Nullity of a Foundation Deed

The New Company Law introduces the concept of nullity of a Foundation Deed, instead of the currently applicable nullity of the company's registration (a subject matter that remains regulated by the Law on Business Registration). Thus, a Foundation Deed may be deemed to be void if: (a) it is not in the required legal form; (b) the stated commercial activity of the given company contravenes mandatory provisions of law or public policy; (c) it does not state the business name, amounts of contributions made by shareholders, registered share capital or the company's prevailing business activity; and (d) "all" of the signatories of the Foundation Deed did not have the requisite legal or business capacity (we note that the term "all" in this context seems to be an obvious drafting error). Nullity of a Foundation Deed constitutes grounds for a forced winding up of a company.

Address for Mail Receipt

Unlike the Existing Law, the New Company Law provides the possibility for the Company to have, besides a registered seat, a special address for receipt of mail, which is subject to registration with the Company Register of the Serbian Business Registers Agency. In addition, special rules are provided on accurate delivery of documents to the companies and shareholders.

Authorised Representatives

The provisions on the authorised representatives of a company have been changed in that a company may now also be represented by a legal entity (rather than only by a physical person), provided, however, that only another Serbian company can act as such authorised representative. Furthermore, existing uncertainties regarding the appointment and the authorisations of a procurist have now also been clarified so that a procurist is appointed by the shareholders' assembly, unless provided otherwise in the Foundation Deed or Articles of Association. In this context, the most important change is that a procurist's authority can now be limited by the requirement of a joint signature with another authorised representative. In addition, the New Company Law provides for solutions in case that the company has no legal representative.

Share Capital

The provisions on share capital have undergone profound changes. Most importantly, share capital is now denominated only in RSD, which resolves the problematic issue of having a company's share capital expressed in various currencies (e.g. RSD in its financial statements as compared to EUR in the Company Register).

The minimum initial registered capital for an LLC has now been reduced to RSD 100, while it has been increased to RSD 3 million for a JSC. Furthermore, a company may now be registered with the Company Register even before the initial capital has actually been paid in – which will simplify the registration process. Contributions in kind to an LLC can no longer be in "work and services."

Corporate Governance

Important changes have also been introduced with respect to corporate governance structures. Thus, both an LLC and a JSC may choose either a one-tier (shareholders' assembly and directors) or two-tier (shareholders' assembly, supervisory board and directors) corporate governance structure.

Negative Capital

The New Company Law provides an obligation for a company to reduce its share capital if its net assets are below the value of its registered capital.

Use of Corporate Seal

A company no longer needs to affix its corporate seal to written communications with third parties, unless this is expressly required by law.

Financial Assistance

The prohibition of financial assistance has been made even stricter, rendering the relevant transaction void, and both the company and its responsible persons subject to prosecution for committing a commercial offence. This seems overly harsh as a consequence for financial assistance, since it can result in inhibiting acquisitions in Serbia and is otherwise not in line with solutions found in certain Western European legal systems.

Disposing of Assets of Great Value

Whereas the Existing Company Law is silent as to the consequences of a breach of this law's provisions on the proper procedure to be followed in connection with disposing of assets of great value, the new Company Law is clear. Thus, a minority shareholder holding an interest of at least 5% may sue for annulment of the relevant disposition agreement; provided, however, that such an agreement may not be annulled if the other party thereto did not know or could not have known that the disposition violated such required legal procedures.

Dissenting Shareholders' Rights

As under the Existing Company Law, the New Company Law also provides for the right of a dissenting shareholder to request that the company purchase its share(s) – in the case of disagreement with some important decisions adopted at a shareholders' meeting. However, the New Company Law provides for a different valuation method; i.e. the share(s) will be valued at the higher of: (i) book value; (ii) market value or (iii) the value determined by an expert valuator.

Key Changes as to LLCs

Number of Shareholders

There is no longer a prescribed limit on the number of members in an LLC.

Pre-emption Rights

The provisions on the other member' pre-emption rights with respect to a sale of an ownership interest are no longer mandatory and such rights can be expressly excluded in an LLC's Foundation Deed (note that the LLC itself no longer has a pre-emptive right).

Additional Payments

The possibility of members making "additional payments" (that do not increase the LLC's capital and are subject to a refund) has been reintroduced by the New Company Law. This institute, which was originally envisaged in the Enterprise Law of 1996, but failed to be explicitly provided under the Existing Company Law, facilitates additional funds to a company in a simple and fast procedure, without the need to go through a complicated capital increase procedure. Additional payments are refunded through analogous application of capital decrease rules – however, it remains to be seen how these refunds will be implemented in practice. Furthermore, in bankruptcy proceedings, additional payments will be returned to the shareholder only after third-party creditors have been paid.

Pledge of Ownership Interest

Although the Existing Company Law does not contain an explicit prohibition of a pledge of only a part of an ownership interest (such being deemed to be one whole), it was often interpreted not to allow for such splitting of an ownership interest in the case of a pledge. The New Company Law now clearly provides that even only a part of a member's ownership interest in an LLC may be pledged.

Key Changes as to JSCs

Public and "Non-Public" Joint Stock Companies

Unlike the Existing Company Law, which differentiated between open and closed JSCs, the New Company Law does not contain such an explicit differentiation. Rather, the new law provides of certain rules which apply to public company only.

The fact that there are two types of JSCs is, thus, predominantly derived from the new Capital Markets Law. This law, thus, defines a public JSC as a company which has either i) successfully completed a public offering of securities in accordance with the prospectus which is approved by the Commission; or ii) which securities are included in trading on a regulated market or MTP in the Republic of Serbia.

Limiting Number of Shareholders at the Shareholders' Meeting

The New Company Law now provides that the minimum number of shares that a shareholder must be required to have in order to have the right to be physically present at the shareholders' assembly cannot be set higher than 0.1% of the total number of shares of a certain class.

Profit Allocation

Important clarifications have been also introduced in the regime of profit allocation of companies. Namely, the Existing Company Law provides the following order of profit distribution: (i) loss coverage; (ii) statutory reserves; (iii) dividends; and (iv) other reserves determined through internal acts of a company. This leaves room for different interpretations as to whether dividends must or must not be paid by a company that opted to allocate profits to its internal reserves. However, the New Company Law now clearly provides that the payment of dividends is only an option that may be considered by the company after the allocation of profits for loss coverage, statutory and other reserves.

Squeeze-out and Buy-out

The New Company Law provides a new set of rules for the squeeze-out of minority shareholders. Namely, a squeeze-out right is not conditioned by a requirement to first conduct a takeover process, and also, now a lower threshold is provided for the commencement of the respective procedure.

Namely, pursuant to the New Company Law, a shareholder holding at least 90% of the capital or voting shares in a company may request that the company's shareholders pass a decision on the squeeze-out of remaining shareholders. The squeeze out price is to be calculated in accordance with the rules on calculation of price that is paid to dissenting shareholders, i.e. the higher of: (i) book value; (ii) market value or (iii) the value determined by an expert valuator. Similarly, a shareholder who acquired at least 90% of shares is obligated to buy out the remaining shareholders of a company upon their written request, for the same

price that would be paid to a dissenting shareholder. Exceptionally, the squeeze-out price for the shares can be set differently than described above if a shareholder acquired 90% of shares by way of a voluntary or mandatory takeover bid (ToB). In such a case, during a 3-month period after completion of the ToB, a squeeze-out of shareholders may be done at the price paid in during the course of the respective ToB. Once this 3-month period has lapsed, the squeeze-out may be executed for the same price paid to dissenting shareholders. The same rules apply to the rights of minority shareholders demand buy-out of their shares.

Market Value

The market value of the shares of a public JSC is now precisely defined (as compared to the current calculation formula contained in the Existing Company Law). Namely, the Existing Company Law contains a vague definition of the market value of shares, which gives rise to different interpretations and often unrealistic valuations. The New Company Law defines the "market value" of a share as the weighted average price of such share at the regulated market or the multilateral trading facility, during the 6-month period preceding the date on which the decision on the setting of the market value of such share was issued (provided that, during such period, at least 0.5% of all issued shares in the respective class were traded on the market and that during a period of at least 3 months within this 6-month period, at least 0.05% of all issued shares of the respective class were traded on each month). If such trading has not been achieved or if a new class of shares has been issued or if the shareholders' meeting so determines, then the market value of the shares shall be determined by an authorised valuator.

Capital Decrease by Withdrawal and Cancellation of Shares

The Existing Company Law fails to accurately regulate the process of a capital decrease in a JSC through withdrawal and cancellation of shares, which could lead to interpretation that the capital of a JSC could be reduced by a simple withdrawal and cancellation of shares based on a decision of the shareholders' assembly (an interpretation that could have led to violation of the basic rights of shareholders who could have been expelled from a company against their will, based on a decision of the majority). The New Company Law, however, properly regulates this issue by expressly providing that a JSC's capital may be decreased by withdrawal and cancellation of shares, so long as such option is envisaged in the Articles of Association or if the respective shareholders have consented to such decrease.

Protection of Minority Shareholders

The New Company Law introduces the novelty that shareholders possessing at least 10% of shares may submit a request for special and extraordinary audit. A special audit may be requested for questioning some business decisions (evaluation of non-pecuniary contributions and conditions related to disposal of major assets), while an extraordinary audit may be requested in case of doubt about the accuracy of financial statements.

Mergers

The provisions on mergers have been amended to provide for greater protection of creditors. Thus, whereas the obligation to publish a merger agreement applied only to JSCs, it now also extends to LLCs. Furthermore, the new law introduces the obligation for a company undergoing a merger to directly inform in writing all creditors whose claims exceed RSD 2,000,000.

Winding up

The New Company Law introduced rules on forced liquidation that are lacking under the Existing Company Law, making execution of this process unfeasible. Thus, forced liquidation will be initiated in several circumstances explicitly provided in the New Law, among which negative capital.

Furthermore, the New Company Law now clearly provides that the initiation of liquidation proceedings does not have any effect on execution (foreclosure) or any other similar proceedings.

POSITIVE DEVELOPMENTS

In addition to the new developments described above, the New Company Law is in itself in many ways a positive development with respect to better regulation of corporate governance and company related issues. Namely, many of the legal norms of the current law are unclear and under-regulated, leaving many important aspect of corporate law subject to different interpretations – which leads to uncertainty.

The New Company Law has resolved many of the issues that were raised in the White Book of 2010. In particular, the new law now clearly provides for the possibility for shareholders to make "additional payments." Moreover, it also regulates the treatment of what is currently known as "additional contributions" and explains that such contributions should be treated as a shareholder loan. Also, it now provides for clearer rules on compulsory winding up, especially where the share capital falls below the minimum.

As for the provisions on applicable jurisdiction, the New Company Law now clarifies that its jurisdictional provisions do not mean that such jurisdiction is exclusive. Therefore, parties are free to agree to jurisdictions of other courts, as well as arbitral tribunals.

Another welcome change is that the New Company Law provides a new set of rules for squeeze-out procedures that are lacking in the Existing Company Law.

REMAINING ISSUES

The New Company Law still does not provide for the possibility of having limited liability for the partners in a partnership. This is very much needed for partners in professional partnerships, since they too should be allowed to enjoy the protection of limited liability – whereby any risks to third parties could and should be covered by liability insurance.

The provisions of the Company Law on the limitations of the powers of the officers to represent the company are still not consistent with the relevant provisions of the Law on Contracts and Torts.

Business associations are also regulated by the New Company Law, which created inconsistency with already existing provisions on business associations provided in the Law on Associations.

Although the Company Law seems to clarify several matters which have proven to be problematic in the implementation of the Existing Company Law, it is clear that the New Company Law introduces several new concepts and regulates certain matters differently. The practical effect of these changes will be seen once the New Company Law is fully implemented. However, even at this stage, it appears that several issues, such as financial assistance rules are unnecessarily severely regulated.

FIC RECOMMENDATIONS

- The legal regime for partnership should be changed to allow for the limited liability of partners in a partnership;
- The provisions in the New Company Law that deal with limitations to the authority of a company's representatives should be harmonised with the provisions on the Law on Contracts and Torts.

CAPITAL MARKET TRENDS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Harmonise all regulations related to securities with EU and other international standards, in order to increase trust of foreign investors.	2009	√		
Pricing rules for share issuance should not be defined by the Company Law, or exemptions in case of IPOs should be introduced.	2008		√	
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.	2010	√		
Draft Law on Securitisation should be introduced into Parliament procedure and adopted as soon as possible.	2009			√
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.	2009			√

CURRENT SITUATION

Since the publication of White Book 2010, the capital market in Serbia has gone through material changes the effects of which are yet to be seen.

Namely, on 5 May 2011, the National Assembly of the Republic of Serbia adopted the Law on Capital Market replacing the criticised Law on the Market of Securities and Other Financial Instruments. The Law on Capital Market came into force on 17 May 2011. However, it will be applicable from 17 November 2011.

Generally, it is obvious that the main aims of the Law on Capital Market are harmonisation with EU regulations and IOSCO principles and making the Serbian capital market more attractive to both domestic and foreign investors. Also, the need for a new law to regulate the capital market arose due to the adoption of the new Company Law which, *inter alia*, abandons the classification of joint stock companies into open and closed. Therefore, the Law on Capital Market introduces significant novelties in the Serbian capital market, the effects of which may be analysed in depth only after commencement of its application.

In addition, the Law on Amendments to the Law on Investment Funds was adopted in May 2011, introducing several important changes in the regulations related to the operation of investment funds.

We expect that new regulatory framework for capital market adopted in 2011 will result in the improvement of the Serbian capital market and increase in foreign investments. Nevertheless, certain additional regulations such as by-laws for the implementation of the Law on Capital Market and the Law on Securitisation should be adopted as well, in order to reach this goal.

POSITIVE DEVELOPMENTS

As mentioned above, the new Law on Capital Market introduces numerous changes which, in general, may be interpreted as a positive development. We will briefly emphasise only the most important changes.

One of the major novelties is the reorganisation of the financial market, in other words, the Law on Capital Market abandons the term "organised market" and introduces the following new segments of the financial market: (i) Regulated market – a multilateral system organised and administered by the market organiser that enables third parties to buy/sell financial instruments, in accordance with the rules and procedure determined by the law, (ii) Multilateral Trad-

ing Platform (MTP) – a multilateral system organised and administered by the market organiser or an investment company that enables third parties to buy/sell financial instruments, in accordance with the rules and procedures determined by the law and (iii) Over-the-counter (OTC) Market – a secondary market for trade of financial instruments that is not required to have a market organiser and whose trading system entails negotiations between the seller and the buyer of financial instruments in order for the transaction to be concluded. Only investment companies licensed by the Securities Commission can trade on the MTP or Regulated Market, whereas other parties may only trade through these companies.

The Law on Capital Market contains a new definition of public offer, as any notice given in any form or by any means that provides for enough data about the conditions of the offer and offered securities so that the investor is in a position to decide on purchase or registration of securities from the offer, as well as on the offer and sale of the securities through financial intermediaries, i.e. underwriters and agent. The basic principle related to the public offer is the compulsory publication of the prospectus and its prior approval by the Securities Commission, without which the offer would be considered as null and void and the admission to the regulated market or MTP would not be allowed.

The Law on Capital Market defines a public company as an issuer that fulfils at least one of the following minimal conditions: i) it has successfully completed a public offering of securities in accordance with the prospectus approved by the Commission; or ii) its securities are admitted to trading on a regulated market or MTP in the Republic of Serbia. This definition is compatible with the definition of "public joint stock companies" from the new Company Law. The Law obliges public companies to deliver annual, semiannual and quarterly reports and other data, all in order to increase transparency on the financial market. Furthermore, the Law on Capital Market prescribes the obligation for a public company to file a request for the admission of its shares to the regulated market.

Also, with the goal to enable greater transparency before and after the trade, the Law determines the conditions to be fulfilled by the Regulated Market and MTP and on the notification about transactions. Only the market organiser with its seat in the Republic of Serbia, or the stock exchange, is entitled to govern the Regulated Market. The organiser of the MTP is either the broker-dealer company or the stock exchange. The respective permits for market organisers are issued by the Securities Commission. The regulated market and MTP are required to have transparent and clear rules for the admission and exclusion of financial instruments. The Commission has the authority to supervise the market organiser and to take measures provided by the Law when necessary.

The procedure for debt securities trading is regulated in a new way, so that these securities can be traded simultaneously on the regulated market, MTP and OTC.

An interesting novelty is the introduction of the Investor Protection Fund (IPF), a new institution on the financial market authorised to protect investors whose resources or financial instruments are exposed to risk of bankruptcy of the investment companies, credit institutions or management companies performing certain services. IPF is not a legal entity and is organised and governed by the legal entity licensed by the Securities Commission. The members of the IPF are the investment companies, credit institutions and management companies required to pay a contribution. The framework and procedures for the recognition and payment of damage claims of customers of the IPF is governed by Securities Commission acts and IPF Organiser Rules. The IPF Organiser supervises the activities of IPF members, whereas the Securities Commission supervises the activities of the IPF itself.

The above mentioned Law on Amendments to the Law on Investment Funds has also introduced several important positive novelties, the main being:

- Extension of the activities of investment fund management companies to allow management companies, inter alia, to manage portfolios and provide investment consulting services to third parties;
- Possibility for management companies to acquire investment units/shares in an investment fund up to 20% of net value of the fund's assets;

- Investment restrictions for investment funds have been reduced, so the assets of the investment funds may be invested in securities issued by the investment fund's custody bank, as well as by a broker-dealer company and the bank representing the managing company in relation to securities trading;
- Detailed provisions on custody bank operations, as the Law on Capital Market does not include relevant provisions any more.

In addition, the Securities Commission has adopted relevant amendments to the existing by-laws required to implement the Law on Investment Funds and the new Rules on Requirements for Conducting Custody Bank Activities.

REMAINING ISSUES

Generally, it is very hard to identify the remaining issues as the by-laws required for the implementation of the new Law on Capital Market have yet to be adopted and the Law will be applicable starting from mid-November 2011.

However, we emphasise that the Law on Securitisation should be prepared and adopted as well in order to have a complete capital market legal framework.

Also, we underline that pricing rules for the issue of shares remain in the Company Law, which we deem is not the best solution. However, the positive side is that the new Company Law has at least introduced exemptions in case of IPOs.

FIC RECOMMENDATIONS

- The Commission should adopt all necessary by-laws for the implementation of the Law on Capital Market as soon as possible, and in any case within the term prescribed by the Law;
- The Draft Law on Securitisation should be submitted to the National Assembly for immediate adoption.

JUDICIAL PROCEEDINGS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
To enact the Law on Amendments to the Enforcement Law.	2010	√		
Education of the parties regarding the advantages of mediation over regular court proceedings.	2010			√
Increase the number of court staff and/or improve allocation of work.	2010			√
Develop programmes to improve public awareness of the changes in the judicial system.	2010		√	
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.	2010		√	
Develop a better and more efficient notification system and enhance responsibility of legal entities regarding reception of notifications.	2010			√

CURRENT SITUATION

In recent years, a series of legislative reforms took place in Serbia regarding the organisation of the judiciary and judicial proceedings. Namely, a new organisational scheme of courts was established by the Law on Court Organisation (Official Gazette of the Republic of Serbia No. 116/2008, 104/2009 and 101/2010) and the process of reappointment of all judges was initiated under the Law on Judges and the Law on High Judicial Council (Official Gazette of the Republic of Serbia No. 16/2008 and 101/2010), which still has to reach its epilogue, due to serious abuses of the whole process. The reforms in Serbia continued in the adoption of the new Law on Enforcement and Security (Official Gazette of the Republic of Serbia No. 31/2011) and the new Law on Public Notaries (Official Gazette of the Republic of Serbia No. 31/2011) reintroducing the public notary system for the first time since World War II. The latest reform on civil procedure is in respect to litigation, which has been launched by the adoption of the new Law on Civil Procedure (Official Gazette of the Republic of Serbia No. 72/2011).

The reappointment procedure of judges conducted in late 2009 has been revised by the High Judicial Council of Serbia as of 15 June 2011 at the request of the European Union and the Council of Europe, and also on account of several hundred complaints filed with the Constitutional Court of Serbia. The discharge of nearly 800 judges in the said reappointment procedure, and the dismissal of a number of administrative staff in the courts, created a real problem for the courts in terms of coping with the incoming cases. It also made the situation worse in terms of the overall quality and quantity of the resolved cases. Hearings in the largest (i.e. best equipped and most overloaded) courts, especially those of general jurisdiction, are often scheduled twice a year per case. An appellate procedure usually takes more than a year to complete. Simply put, courts are overwhelmed with cases and, despite the official statistics showing positive results of this reform, the situation in reality seems worse than before. On the other hand, it is notable that most Serbian courts now have publicly available online databases in place for ongoing cases.

The Law on Enforcement Proceedings has been replaced with the newly adopted Law on Enforcement and Security, which was applicable as of 17 September 2011. The new Law on Enforcement and Security governs the procedure of enforcement and security for claims based on domestic or foreign executive documents or authentic documents. A new branch of the legal profession has also been introduced – bailiffs, both judicial and private ones. However, the private bailiffs will begin providing their services as of 17 May 2012, provided that all the requirements stipulated by the Law have been fulfilled.

The Law on Public Notaries governs the organisation and activities of public notaries and will become applicable as of 1 September 2012. The activities of public notaries are currently performed by courts.

Another notable development is the adoption of the new Legal Profession Act (Official Gazette of the Republic of Serbia No. 31/2011), which has established additional requirements for becoming an attorney at law, such as completing the Bar Academy. This Act also introduced the possibility for foreign attorneys to be registered with the Bar Association of Serbia and to represent parties in Serbia.

The Law on Civil Procedure (Official Gazette of the Republic of Serbia No. 125/2004 and 111/2009) still governs the civil procedure and protection of rights before courts regarding civil, commercial, personal, labour, personal, family, and other property and civil law disputes, except in cases for which a specific procedure is envisaged by another law. However, due to the adoption of the new Law on Civil Procedure, which has the same scope of regulation as its predecessor, the old law shall cease to apply on 1 February 2012. The main issues regarding civil proceedings in Serbia currently arise from the provisions on summoning and notification of the parties in a procedure, which are obsolete and allow delay tactics and abuse of the process by the parties and other participants. The other important issue is that the phases of the main hearing and evidence presentations are not concentrated. This is mostly caused by the unsatisfactory organisational reform of the judiciary. There are other problems such as the lack of a deadline for issuing an appellate decision, insufficient rules on summoning or notifying the parties and the court via e-mail, lack of the option to use audio and video equipment at hearings, lack of stenographers and lack of a clear and strict deadline to produce evidence at a hearing. It is also important to mention that the currently applicable Law on Civil Procedure does not provide equal rights for the party applying for a legal remedy and its opponent. Namely, the party opposing a legal remedy has a half as much time to submit its response to the legal remedy submission than the party submitting the legal remedy. However, it should be expected that the new Law on Civil Procedure will remedy the main issues of its predecessor.

Arbitration proceedings in Serbia are governed by the Law on Arbitration (Official Gazette of the Republic of Serbia No. 46/2006) adopted in 2006. This Law fully complies with the 1985 UNCITRAL Model Law on Arbitration. However, the Law on Arbitration is not completely in conformity with the subsequently adopted 2006 UNCITRAL Model Law on Arbitration. On the other hand, the mediation procedure is governed by the Law on Mediation (Official Gazette of the Republic of Serbia No. 18/2005). Mediation and arbitration in some matters (such as labour law, activities of touristic agencies, etc.) are governed by separate laws or regulations. Both arbitration and mediation are rarely used in practice, primarily due to their poor promotion in public as more efficient and cheaper options for dispute resolution.

POSITIVE DEVELOPMENTS

The revision of the reappointment procedure of judges in a more transparent manner is certainly the main precondition for an efficient judiciary system. Therefore, it is now up to the High Judiciary Council to correct mistakes from the past, but it is important to note that the chance is there. Most courts of general jurisdiction, as well as commercial courts now have online databases showing the status of ongoing cases. However, not all of the courts have useful online databases like the Administrative Court and the Constitutional Court of Serbia; some have no databases at all, such as Appellate Courts, Misdemeanour Courts and the Supreme Court of Cassation.

The ultimate, or at least the most promising improvement of judicial proceedings in 2011, has been achieved by the Law on Enforcement and Security, which introduces more precise rules on deadlines for rendering decisions upon the motion on enforcement, as well as upon legal remedies, and sets up clear and detailed procedures. The delays are possible only in extraordinary cases or in cases explicitly prescribed by the Law, in order to achieve more efficient enforcement procedures. The Law reduces the number of legal remedies and now objections are the only available remedy that can be submitted, but for a limited number of reasons. The law introduces a greater number of enforceable decisions and authentic documents, and

allows a party to initiate enforcement proceedings even on the basis of a foreign authentic document (e.g. invoice, promissory note, etc.). The Law establishes the activities of so-called private bailiffs that conduct their activities either as entrepreneurs or in the form of a partnership. The bailiffs have to fulfil special requirements, such as to have passed the bailiff's exam, possessing certain characteristics required by the Law and required working experience. Their role is aimed at increasing the efficiency of enforcement proceedings, at least where debtors are natural persons.

The new Law on Civil Procedure introduces promising improvements in terms of summoning and notification of the parties and other participants in the procedure, in order to prevent present abuses by the parties. These improvements also address the option of electronic communication between parties and the court, in accordance with special laws (the Law on Electronic Documents and the Law on Electronic Signature). The concentration of the main hearing and evidence-presentation procedure and deadlines for presenting evidences within the main hearing are also notable improvements. In this regard, the court has an obligation to render a time frame for the main hearing and for producing evidence. Parties may propose evidence only before the end of the preliminary hearing, and after that only exceptionally. This law establishes liability of the judges for breach of discipline, where they can be faulted for delays in the procedure. The law also imposes higher fines for the parties that abuse the proceedings. The appellate courts are also provided with a deadline to render an appellate decision – within 9 months from the moment when they received the case files. Last, the parties are finally provided with equal rights in remedial procedures so the deadlines to submit the legal remedies are equal to the deadlines to provide the response to such legal remedies.

The new Legal Profession Act established the Bar Academy attached to the Bar Chamber. The Bar Academy will commence its operations as of May 2012 with the purpose to ensure improved education of attorneys. Introducing the possibility for foreign attorneys to be registered with the Bar Chamber in Serbia will introduce fair competition on the Serbian legal services market and consequently the improvement in the quality of legal services. The said Law should have contained the limitation based on the principle of reciprocity in order to ensure equal chances for Serbian attorneys on other markets of legal services. In the previous Legal Profession Act, the possibility for foreign attorneys to represent parties in Serbia was allowed only exceptionally.

The re-introduction of the public notary into the Serbian legal system is an especially notable positive improvement of the Serbian legal system. Public notaries will contribute to removing significant workload from courts, which are overwhelmed by requests of parties for notarisation of various documents. Public notaries will draft, certify and issue public documents on legal transactions, statements and facts based on which rights are created, certify private documents, take the documents, money, securities and other movable property into deposit and conduct other activities in accordance with the Law. Public notaries will also take over the jurisdiction from courts in most civil extra-judicial matters, leaving only the most important matters within the jurisdiction of courts, among which the expropriation indemnity and the maintenance of public registries should be mentioned.

REMAINING ISSUES

The most important issue is the completion of the reappointment procedure of judges, as well as the increase in the number of judges. Allocation of work among courts of different jurisdiction, as well as among judges is another issue that has to be resolved. In order to make the judicial system more accessible and available to citizens, it is necessary to establish functional online data registries in the remaining courts.

The new Law on Civil Procedure is introduced as a significant improvement to its predecessor. It is aimed to secure modern up-to-date civil procedure and litigation. However, it is still too early to comment on its practical issues. The possible source of problems in the application of this new law may stem from the poor organizational reform of the Serbian judiciary, as mentioned above. Other issues could be related to the possibility of electronic communication between the parties and the court in terms of lack of clear

regulations and bylaws in that field and a lack of necessary funds for technological equipment for the courts.

In order to free up the dockets of courts, the ability to conclude an arbitration agreement or to initiate a mediation process should be promoted more. The mentioned proceedings are often more cost-efficient and less time-consuming than ordinary litigation, and both are available either to foreign and/or to domestic entities. However, there is room for certain improvement of the Law on Arbitration, given that it has not been updated with the latest, more detailed 2006 UNCITRAL Model Law on Arbitration rules, especially pertaining to interim relief. Namely, the Law on Arbitration implicitly provides for the possibility of electronic arbitration agreements and for the jurisdiction of arbitral tribunal in rendering interim measures. However, the 2006 UNCITRAL Model Law on Arbitration contains explicit rules on electronic arbitration agreements and more detailed provisions on interim measures. On the other hand, these proposed improvements regarding interim measures would have to be carefully harmonised with the provisions of the Law on Enforcement and Security regulating the same matters, in order to avoid any possible difficulties including the conflict with the rules on exclusive jurisdiction of state courts. Therefore, reasonable amendments to the Law on Arbitration in order to comply with the new 2006 UNCITRAL Model Law would be more than welcome.

FIC RECOMMENDATIONS

- Complete the reappointment procedure of judges;
- ncrease the number of judges and court administrative staff;
- Improve and justify the allocation of cases among courts and judges;
- Establish online databases in remaining courts;
- Promote the possibilities and advantages of alternative dispute resolution (arbitration and mediation);
- Adopt amendments to the Law on Arbitration in order to comply with the 2006 UNCITRAL Model Law on Arbitration.

INSOLVENCY LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2010		√	
Closure of the companies that have been over-indebted for a long period of time and their ultimate erasure from the Serbian legal system by e of 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.	2010	√		
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 offences.	2010			√

CURRENT SITUATION

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

The new Law should encourage creditors to settle difficulties in business operations with 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 a legal entity", i.e. they do not want to initiate bankruptcy proceedings on their own. By the time creditors decide to do so, it is usually too late and the debtor is left with no assets, i.e. their value is so small that creditors cannot be protected.

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

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

The new Law also specifies that a receiver manages business operations and represents debtors 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 licenses, but now with wider competences in "professional supervision" of receivers through, for example, issuing warnings and fines against receivers acting in an unprofessional manner.

The nature and manner of payment of the advanced costs of

initiating bankruptcy proceedings, costs of bankruptcy proceedings in the course of bankruptcy proceedings and obligations regarding the bankruptcy estate are precisely defined.

Probably the most intriguing novelty is the ex officio initiation of the bankruptcy proceedings by a bankruptcy judge, based on the information received by the Enforced Collection Department of the National Bank of Serbia i.e. bankruptcy proceedings are initiated automatically for all companies whose accounts have been blocked for three years in a row (for companies that fulfil this condition until the end of 2010), for all companies whose accounts have been blocked for two years in a row (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 in a row. The Department is obliged to provide the courts on a monthly basis with 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 initiating 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 receiver's proposals, and now the proposal is to be accepted if the committee fails to respond within the specified period. The Law has reintroduced the statute of limitations for reporting 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 initiating bankruptcy proceedings.

The envisaged penalties for violating the provisions of the Law include 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 personality (i.e. its capacity of a legal entity), while the founder or the owner of the company has changed, the buyer of the legal entity (the bankruptcy debtor) is registered as its founder, i.e. its shareholder or stakeholder, and acquires ownership rights in line with the Company Law. One of the most important characteristics of a bankruptcy debtor, following the sale of the debtor as a 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 discharging debts to creditors, while the proceeds from the sale of the debtor are included in the bankruptcy estate. In accordance with the Law on the Registration of Business Entities, the Register of Bankruptcy Estate has been formed and can be found on the official website of the Serbian Business Registers Agency.

The application of the Insolvency Law, along with the promotion of receiver profession, is additionally encouraged by a set of by-laws that have been brought into force based on the Insolvency Law, in particular: (a) Rulebook on the basis and criteria for determining remuneration and compensation for costs of the receiver (Official Gazette of the Republic of Serbia, No. 1/2011), (b) Rulebook on the programme and manner of passing professional exam for performing receiver activities (Official Gazette of the Republic of Serbia, No. 47/2010), (c) Regulation governing the manner of conducting professional supervision of licensed bankruptcy administrators (Official Gazette of the Republic of Serbia, No. 35/2010), (d) Regulation on the conditions and manner of selection of bankruptcy administrators by random selection method (Official Gazette of the Republic of Serbia, No. 3/2010), (e) Regulation establishing the national standards for administering the bankruptcy estate (Official Gazette of the Republic of Serbia, No. 13/2010), (f) Rulebook on the manner of issue and renewal of license for pursuing the profession of a bankruptcy receiver (Official Gazette Republic of Serbia, No. 22/2010), (g) Regulation governing the conduct of reorganisation procedure under a pre-packaged plan of reorganisation and the content of the pre-packaged plan of reorganization (Official Gazette of the Republic of Serbia, No. 37/ 2010) (h) Decree on the content of, method of registering and of keeping the Bankruptcy Estate Register (Official Gazette of the Republic of Serbia, no. 4/2010,) i) Decree on the type and rates of fees for registration and other services provided by the Business Registers Agency in the process of administering the bankruptcy estate (Official Gazette of the Republic of Serbia, No. 4/2010).

POSITIVE DEVELOPMENTS

The new Law will ensure a more professional and cost-efficient insolvency procedure, which should lead to a more efficient settlement of creditor claims (i.e. higher percentage of creditor claims 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 alike. 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 the maximum level of professionalism, satisfying all parties in the proceedings.

REMAINING ISSUES

At the moment, unlike in the European Union (and probably unlike anywhere else in the world when it comes to 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. As this possibility was practically blocked by the new Law on Legal Profession adopted in May 2011, the Republic of Serbia remains one of a few rare countries where attorneys are denied the right of conducting bankruptcy proceedings as receivers, therefore making bankruptcy proceedings less efficient and significantly less cost-effective, which is the exact opposite of the principles on which bankruptcy proceedings are based on.

Also, even though the intent of the legislator was to make a selection of receivers as transparent, impartial and equitable as possible, in which sense a step forward has been made – by bringing into force the above-mentioned Regulation on the conditions and manner of selection of bankruptcy administrators by random selection method (Official Gazette of the Republic of Serbia, No. 3/2010), practice has shown reluctance towards this model of selecting receivers which is common in the developed world and modern bankruptcy proceedings, and nomination of the same receivers by the same judges, while a significant number of active licensed receivers has not been entrusted with an opportunity to lead at least one bankruptcy proceeding.

One of the most important reasons for the 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 the responsibilities of receivers under the new Law have been defined and increased, the 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 which occurred as a regular practice during the application of the previous Insolvency Law, or entrusting the performance of certain duties which according to Law are within the jurisdiction of the court to the receivers, with a subsequent formal verification by the court, as well as drafting court decisions).

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 proceedings determined by the bankruptcy judge, it is deemed that creditors have no legal interest in conducting the insolvency proceedings and insolvency proceedings are, in that case, concluded and bankruptcy debtor is removed from the Business Register. The debtor's bankruptcy estate becomes the property of the Republic of Serbia but that does not, as prescribed by Insolvency Law, interfere with the previously acquired rights of security and priority of settlement, but the Republic of Serbia is not liable for debtor's liabilities. This as a practical consequence has the fact that ordinary claims and unsecured claims cease to exist because there no longer exists legal basis for their settlement. On the other hand, the legislator has left the possibility for the settlement of secured creditors. Therefore, the problem is the ambiguity and partly contradiction of the mentioned provision which explicitly states that the Republic of Serbia is not responsible for debtor's liabilities, where it should be borne in mind that in the case of conclusion of bankruptcy proceedings by way of applying the institute of so-called automatic bankruptcy, the bankruptcy debtor is removed from the Register, which consequently means that this debtor does not exist anymore, and that the state is not responsible for its liabilities, so the question

arises – in which way would the secured creditor claim be settled, i.e. against whom it would be possible to initiate settlement proceedings when the original debtor no longer exists and the Republic of Serbia is not responsible for bankruptcy debtor's liabilities.

Another significant contradiction concerning the conduct of bankruptcy proceedings relates to a different court treatment in case the reorganization plan is not fulfilled, when rendering a bankruptcy decision. This primarily applies to cases in which reorganization plan was implemented for some time and certain organizational measures were taken – for example, conversion of claims into equity and settlement of certain classes of creditors, followed by the failure to complete the reorganization plan. Courts have made different decisions in situations like this – certain courts are of the opinion that these situations call for restitution to be made through which creditors whose claims are settled during the reorganization process are brought into a situation where they are required to restore to the bankruptcy estate the funds they received, whereas in the case where payment is made to natural persons – employees and former employees, this may be almost impossible to achieve. However, there are opinions that restitution should not be executed; instead, bankruptcy proceedings are continued according to the present state, which may be questionable from the standpoint of those who converted their claims awaiting the outcome of a successful reorganization. This different practice potentially threatens and erodes the principle of equal treatment of creditors in bankruptcy proceedings but also potentially threatens the constitutionally guaranteed rights.

FIC RECOMMENDATIONS

- Encouragement of the bankruptcy debtor to initiate bankruptcy proceedings together with the submission of the reorganisation plan, giving the opportunity for more companies "to survive" instead of being definitely closed;
- Encouraging creditors to take more active part in conducting the bankruptcy procedure, through the submission of proposal for initiation of bankruptcy proceedings, and in particular, through participation in creditors' bodies;
- Closure of the companies that have been over-indebted for a long period of time and their ultimate removal 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;
- Encouraging mediation in bankruptcy proceedings whenever possible, all with the object of cost-efficiency and overall efficiency of bankruptcy proceedings;
- Enhancement of receivers' professionalism to the highest level and revocation of receiver's license from those that cannot contribute to the 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

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
State authorities should increase efforts in combating copyright infringements on the internet, especially with respect to software, music and film industries.	2010		√	
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.	2009	√		
Adopt the National Strategy on intellectual property rights and their protection.	2009	√		
More efficient and prompt implementation of regulations for the protection of IP rights.	2008		√	
State authorities should offer more incentives to intellectual property owners in their creative sphere.	2010			√

CURRENT SITUATION

The intellectual property legal framework has generally remained the same as it was a year ago, with the exception of the newly enacted Law on Optical Discs and Law on Protection of Business Secret. Namely, this framework mainly consists of the material laws enacted in years 2004, 2009 and 2010, which regulate the legal relations pertaining to inventions, topographies of integrated circuits, literary, scientific and artistic works, computer programmes, symbols, names and images used in commerce. Hence, the following laws that are harmonised to a large extent with the relevant international conventions, as well as with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and EU standards, contain the principal material provisions regulating intellectual property in Serbia:

- Law on Trademarks (2009);
- Law on Indications of Geographical Origin (2010);
- Law on Copyright and Related Rights (2009);
- Law on Legal Protection of Industrial Design (2009);
- Law on the Protection of Topographies of Integrated Circuits (2009);
- Law on Patents (2004);
- Law on Protection of Business Secret (2011).

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 a 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 current 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 the 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 related to copyright: 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.

The Law on Legal Protection of Industrial Design governs the method of acquiring the rights to the external ap-

pearance 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.

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

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

The enforcement of the above mentioned material laws is dependent on several important laws setting forth the procedural and organisational provisions for the protection of intellectual property rights and the prosecution of infringers, the most important being the following:

- Law on Organization and Competencies of State Authorities in Combating High-tech Crime (2005);
- Law on Special Powers for Efficient Protection of Intellectual Property Rights (2006);
- Criminal Code (2005);
- Customs Law (2010); and
- Law on Optical Discs (2011).

The institutions that protect intellectual property rights are the Intellectual Property Office (hereinafter: "IP Office"), as well as the line ministries and other state bodies (the courts being the most important).

POSITIVE DEVELOPMENTS

The most notable positive development since the last edition of the White Book is the enactment of the Law on Optical Discs and the Law on Protection of Business Secret.

The Law on Optical Discs has been published in the Official Gazette of the Republic of Serbia on 15 July 2011, and is to become applicable on 24 January 2012. This Law regulates the conditions for the manufacturing of discs and parts thereof, import and export of such parts and equipment used in the manufacturing of discs, but also the commercial reproduction, import, export and trade of disks.

The key aspiration of this Law is to reduce piracy, i.e. to prevent illegal manufacturing and trade of optical disks, since they are the most commonly used medium for illegal reproduction of intellectual property contents in Serbia. The key mechanism this law relies on is the issuing of manufacturers' codes on the basis of which the identity of the disk manufacturer can be established. Furthermore, only the person that has been assigned a manufacturer's code and granted a manufacturing license (both by the IP Office) may legally manufacture disks and parts thereof.

We are yet to see the practical effects of this law once it becomes applicable, regretting at the same time the fact that it took several years before it was adopted, during which time its application could have made a significant impact on the reduction of the piracy rate.

The Law on Protection of Business Secret has been published in the Official Gazette of the Republic of Serbia on 28 September 2011 and became applicable on 6 October 2011. The Law defines a business secret (basically, it is any information which has a commercial value for its holder and disclosure of which to a third party could cause damage to its holder) and stipulates that a business secret's violation represents an unfair competition act. It introduces a possibility of filing a lawsuit due to violation of a business secret, as well as rather strict penal policy for acting in contravention to the Law meaning liability for economic misdemeanour and fines in the amount of up to RSD 3,000,000.00 (approximatelly EUR 29,480.00).

The key aspiration of this Law is to create the environment where it would not be tolerated to obtain and use any information representing a business secret of other market participant without such market participant's authorization and to benefit from any such unauthorized access or usage without any liability for such wrongdoing. The actual implementation of this Law is yet to come.

Additionally, the passing of the Strategy of Development of Intellectual Property for the Period 2011–2015, which was one of last year's FIC recommendations, presents a noteworthy accomplishment of the Serbian Government towards the implementation of EU intellectual property standards in Serbia. However, the key condition for this to happen is that the goals proclaimed in this strategy have indeed been fulfilled in time and to the extent expected, i.e. that the substance of the planned activities has not been neglected and superseded by the formal enactment of any new regulation.

Finally, a significant improvement was made at the end of 2010 with the formation of a Special unit within the Tax Administration for the combat against software infringement. After an initial warming-up period, inspection of companies for unlicensed software have been intensified in recent months by this unit, resulting in lawsuits and increased awareness of both the companies and general public regarding intellectual property infringements.

REMAINING ISSUES

Despite the fact that relevant intellectual property legislation, generally in line with European Union and international standards, has been in place in Serbia for several years already, the efficiency of its enforcement is still not satisfactory. The latter is also a matter of effective cooperation between the competent state authorities and the owners of intellectual property rights, (a positive example being the successful cooperation between the Tax Administration, i.e. the Ministry of Finance and the Business Software Alliance). However, the internal organisational and possibly personnel changes within the state authorities in charge of intellectual property infringement matters seem necessary in order to lower the infringement rate.

Additionally, the new Law on Patents has still not been adopted, although its draft has been made available to the professional and general public some time ago. Its enactment in the following period would be a noteworthy development in this respect.

FIC RECOMMENDATIONS

- State authorities should continue and enhance efforts to combat online copyright infringements, especially with respect to software, music and film industries;
- Inspection of companies' compliance with software licensing requirements, which the Tax Administration has been conducting for several years with significant results, should be continued and intensified, especially by the special unit within the Tax Administration;
- 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;
- Enactment of the new Law on Patents.

PROTECTION OF COMPETITION

COMPETITION LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009		√	
The Commission should apply European guidelines when assessing competition issues to avoid inconsistencies in its application of the law.	2008			√
Clear guidelines and notices interpreting the Commission's understanding of certain terms should be drafted by the Commission. This applies to the leniency procedure, notifying obligations and the concept of the 'implementation of a concentration', etc.	2010		√	
Judges of the Serbian Administrative Court should have advanced training in both competition law and economics.	2010			√
The Commission should make its practice consistent towards all undertakings.	2008			√
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.	2009			√

CURRENT SITUATION

Overview

The new Competition Law, applicable as of 1 November 2009, has undoubtedly brought about certain improvements in the field of competition protection in the Republic of Serbia. However, even though appropriate sanctions are required to ensure compliance with the Competition Law provisions, the legality of some of the first decisions of the Serbian Commission for the Protection of Competition ("Commission") regarding fines has been seriously challenged by the professional public. This will undoubtedly undermine the Commission's efforts towards creating an environment conducive to a more effective implementation of Competition Law.

Main Facts

As of the beginning of its mandate, the decisions of the new Commission's Council, appointed in October 2010, have drawn much attention and, consequently, raised public awareness on the importance of the protection of competition. Starting from January 2011, for the first time, the Commission used its powers provided by the new Competition Law and imposed fines on undertakings that had infringed competition. Until today, fines were imposed in several cases, totalling EUR 10 million in the first half of 2011.

However, in two cases, the Commission has severely undermined the principle of legal certainty. In one such case (dairy industry), the Commission reopened the case 17 months after it had been closed, with the sole purpose of imposing a EUR 3 million fine against the companies in question. The Commission's rationale for reopening the case was its statement that an infringer "must be fined", as otherwise the purpose of the law would have been jeopardised. This potential doctrine has raised grave concerns within the business community, as all companies involved in any proceedings before the Commission since 2005 might be fined at any given point in time. In the other case (involving the retail sector), the Commission imposed fines amounting to EUR 7 million on two companies that had

submitted leniency filings. Not only did such action jeopardise the principle of legal certainty in the business community, but it has also sent companies a signal that leniency applicants will not necessarily benefit from immunity filings. Accordingly, many local and foreign investors are no longer seriously considering making leniency filings with the Commission, thus undermining any benefits the Commission can make from potential whistleblowers.

In case of some decisions, the Commission provides a reference to the EU practice, without specifying the relevant cases, while in one case, the Commission generally referred to the practice of the national competition authorities, without even mentioning the EU practice.

Additionally, in certain cases the Commission has repealed, amended or modified its guidelines, applying the new provisions retroactively.

The transport, retail and insurance sectors, as well as public procurement procedures, remain in the Commission's focus and a few new investigations have been initiated. In addition, the oil and oil derivatives market in Serbia was a concern not only to the Commission, but also to the European Commission in the context of dual excise duty system for oil derivatives introduced by the Law Amending the Law on Excise Tax (Official Gazette of RS No. 101/10).

In line with its powers, during 2010 and 2011, the Commission issued several guidelines and recommendations. The most important are the Guidelines on the Calculation of Fines, which stipulate a specific calculation method for fines for infringements of the Competition Law.

The Commission has adopted a more formalistic approach when deciding on merger notifications, i.e. the communication with the Commission is limited to written submissions and very often, a voluminous set of documents, regardless of their importance, is to be provided together with the notification. In addition, it seems that the Commission is not willing to provide legal opinions on the notifiability of the transaction, although it is the Commission's main duty.

For the first time, the Commission's decisions are being confirmed by the court, i.e. in four cases the Serbian Administrative Court decided that the Commission's decisions are lawful. However, not all court's rulings are publicly available.

Despite the fact that the Commission's fees were already quite high, in May 2011, the Commission adopted a new Fee Schedule whereby the fees were increased by 25%, amid the financial crisis.

POSITIVE DEVELOPMENTS

The application by the Commission of its broader competences given by the new Competition Law resulted in a higher awareness in the area of competition protection. The recent rulings of the Administrative Court that confirmed the Commission's decision improved the Commission's authority.

In addition, the relevant guidelines and recommendations issued by the Commission generally improve the current legal framework and should ensure a better understanding of the competition rules.

REMAINING ISSUES

Even though the Commission has somewhat improved its track record before the Administrative Court, the proceedings before the Commission still do not provide for sufficient guarantee of all procedural rights of the parties. The Commission's serious lack of requisite economic knowledge and respective methods is still apparent.

This is of particular importance as the new Law bestows a great deal of new powers on the Commission, so legal certainty and due process are essential. On the other hand, judges of the Administrative Court still need comprehensive knowledge in the areas of competition law and economics in order to be able to interpret the Commission's arguments and decisions properly. This is of considerable importance for establishing judiciary control of the Commission's work. Otherwise, the Commission would be in a position to misuse its powers and independence.

The right balance between the Commission's role to sanction illegal behaviour and to promote competition rules is to be determined. Namely, competition advocacy should

not be overlooked and the Commission should promote competition law principles more effectively.

A dialogue among all relevant stakeholders, including proper dialogue of the private sector and the Commission, has not been established in a sufficiently institutionalised manner. The Commission's website, as a potentially valuable source and tool of information and a means of communicating with all stakeholders is not well organised and often does not provide updated information. In addition, in most of the cases, confidential versions of the Commission's decisions, as well as the Administrative Court ruling related to competition issues are not publicly available. It is undisputable that better transparency in the Commission's work will ensure consistent practice of both bodies and also provide valuable predictability for all undertakings. This applies to the general legal opinions given by the Commission as well.

FIC RECOMMENDATIONS

- The Commission should apply EU rules when assessing competition issues to avoid inconsistencies in its application of the Law. When applying such rules, exact cases are to be mentioned in the Commission's decision;
- 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 of guidelines and notices relating to restrictive agreements, notifying obligations and the concept of "implementation of a concentration", etc. The FIC and other interested stakeholders should have the opportunity to participate in the drafting process;
- For legal certainty, besides the Guidelines, the Commission needs to adopt by-laws defining certain categories that are core for the anti-trust framework, e.g. dominant position (as done in BIH), the leniency procedure in more detail, exclusion of certain types of agreements with respect to specific industries, i.e. insurance, auto industry;
- Judges of the Serbian Administrative Court should have advanced training in both competition law and economics. The rulings of the said court should be publicly available;
- The Commission should make its practice consistent towards all undertakings. Competition advocacy certainly represents one of strong means for achieving such goal;
- The Fee Schedule must decrease the fees to a reasonable level in line with comparable jurisdictions such as Croatia, Slovenia, Romania, Slovakia, Bosnia and Herzegovina, and Montenegro;
- All Commission's instructions, notices and guidelines should be published in the Official Gazette of the Republic of Serbia and/or on the Commission's website. In addition, confidential versions of all decisions of the Commission, as well as the Administrative Court rulings related to competition issues should be publicly available.

STATE AID LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009		√	
The adoption of necessary secondary legislation by the Government of Serbia, especially with respect to the potential jurisdictional conflict with the Competition Commission.	2009		√	
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.	2009			√
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.	2009		√	
Facilitate the organisation of training and education seminars for members and technical staff of the Commission which will be held by the European Commission.	2009		√	

CURRENT SITUATION

The State Aid Control Law took effect on 1 January 2010. The Law stems from the provisions of Articles 85 and 86 of the Treaty establishing the European Community (The Rome Treaty). It seeks to establish a system for state aid control, with the aim of applying competition rules in this field, in order to achieve liberalisation and equal footing for market participants. The second objective is to eliminate arbitrariness and intransparency of state institutions granting aid. The members of the State Aid Control Commission were appointed in late December 2009 and the Commission held its inaugural session by the end of March 2010. Until now, 17 sessions of the Commission were held in total. The regulatory framework has been supplemented by the Rulebook on the Methodology of Annual State Aid Reports in Serbia, bringing their form in line with the EU practice. The first report drafted in this manner is expected to cover 2010.

POSITIVE DEVELOPMENTS

The beginning of the Commission's work is an important milestone. In sessions held so far, it has evaluated over 100 submissions, accumulating practice in horizontal and regional aid for different issues – Government's anti-crisis measures, employment subsidies, mining and transport funding, industrial aid, grants for culture and the media. Sector aid was not evaluated thus far and de minimis aid accounts for a significant percentage of the conclusions. The instruments themselves vary – direct subsidies, interest subsidies, preferential credits, etc. Aid schemes and individual aid are almost equally represented.

The Commission's conclusions and annual reports are available on the Ministry of Finance's website, which is a positive example of transparency. Bringing the annual reports in line with the EU methodology is another step in the right direction.

REMAINING ISSUES

According to the EU practice on state aid, the aid/GDP ratio is much more important than the total aid granted. The European Commission's Annual Progress Report for Serbia in 2010 established that this ratio was growing (this is confirmed by the reports on aid: 2007 – 2.0%, 2008 – 1.91%, 2009 – 2.29%), and claimed that "the state continues to significantly influence competition through its regulatory and financial mechanisms". Taking into account a wave of new anti-crisis and investor-attracting measures, it is clear that the state continues to play an important role in the business environment in Serbia.

The State Aid Control Commission has adopted a legal opinion, according to which it deliberates only on aid given after 20 March 2010, while the rest would be adapted according to the Existing State Aid Harmonisation Programme. The Programme has not been adopted yet, although 2011 was the deadline, meaning that certain programmes might have remained outside the legal area. A special challenge lies in the fact that, in accordance with the Stabilisation and Association Agreement, as of 1 January 2012, public companies also fall under state aid rules. Considering their role in the Serbian economy, the Commission's practice in this area might prove vital.

Apart from the Ministry of Economy and Regional Development, it is noticeable that the largest number of submissions are received from the institutions of the Autonomous Province of Vojvodina (especially its Culture and Information Secretariats), with a lesser role of the National Employment Service. Efficient control of other state institutions is paramount. A significant number of cases still relate to individual aid and industrial subsidies on various accounts, which do not, in the long run, contribute to competitiveness and liberalisation on the market. Although a recent change in this trend has been noted, the Commission has, in a dozen cases, approved aid of an unspecified total amount, which is not in line with fiscal responsibility. Although the amounts themselves are not large, a question may be posed as to the efficiency, transparency and expediency of a significant number of *de minimis* programs.

There are deficiencies as to the capacity of the State Aid Control Commission. In its practice so far, the Commission has not declared a single submission unlawful. Also, all the cases it has evaluated are submission-based, none *ex officio* (only one application was made by private sector, and it was refused due to public status of the aid recipient). Even in cases of *ex post* review, the question was procedural, with aid being granted before applying to the Commission, which would approve it after receiving the belated submission. Political controversy over certain aid programmes, alongside a perceived lack of review of several important cases with high media exposure, had a negative impact on the legal and business environment. There has been no case of an institution that failed to submit an aid programme for review and was penalised, or of a proper ex post investigation. The active role of the Commission, the heightened engagement of the public, as well as commercial interests and state institutions are invaluable.

Deeper statistics and analytics of state aid, proper response and planning, trend monitoring, follow-up and a higher degree of control would certainly be beneficial. Transparency and visibility of the State Aid Control Commission's work, beyond mere publication of conclusions and reports, is not only its legal obligation, but a necessity. Public presence in topics relevant to state aid control is important in building recognisability, increasing awareness and improving the conditions in this significant field.

From the institutional side, the status of the State Aid Control Commission, as a governmental unit dominated by representatives of different ministries, instead of an independent body, can still bring its decision-making independence into question. Although certain steps have been taken, the Commission's capacity is still not adequate for its role. The possible jurisdictional conflict between the Commission for the Protection of Competitionand the State Aid Control Commission regarding the enforcement of general competition rules has not occurred in their operations so far, but it would be prudent to regulate it by law.

FIC RECOMMENDATIONS

- The adoption of the Existing State Aid Harmonisation Programme as soon as possible;
- A consistent and effective enforcement of the Law;
- Increased training and pressure on public authorities to respect the rules in granting aid and a more proactive role of the Commission in tracking and *ex post* control;
- Declared operational independence is not sufficient – a change in the Law is needed to ensure the status of an independent body for the State Aid Control Commission;
- Continued harmonisation with EU standards and established state aid control practice of the European Commission;
- Increased public presence of the Commission (e.g. press releases and conferences, seminars and training, its own website);
- Increased capacity, statistics and analytics, appropriate response and a "voice" of the Commission could have an important impact on state aid structure and general policy;
- Resolving the potential jurisdictional conflict with the Commission for the Protection of Competition with regard to the general competition protection rules.

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Law on Consumer Protection should be consistent with all sectoral laws and regulations dealing with consumer rights.	2010		√	

CURRENT SITUATION

The New Law on Consumer Protection (Official Gazette of the Republic of Serbia, No. 73/2011; hereinafter: the "Law") was passed in October last year and has been effective since 1 January 2011, with the goal of further harmonisation of consumer protection area with the European Union standards. The solutions introduced by the Law represent an important step towards the establishment of equal relations between traders and consumers (which relations have traditionally been distorted to the detriment of consumers). Implementation of the Law has not yet been fully secured; at the time of releasing information about this topic (September 2011), not all by-laws had been adopted. It is expected that significant improvement is to be achieved by the establishment of the Government's National Council for Consumer Protection, better coordination and operation of sector organisations and associations, where the Ministry of Agriculture, Trade, Forestry and Water Management is in charge for keeping records of them pursuant to the Rulebook on Recording Associations and Unions of Associations for Consumer Protection. This record is to be publicly and electronically available and is planned to be easily accessible.

The Law on the Protection of Users of Financial Services has recently been passed (June this year) and will be effective from 5 December 2011 (except for some provisions which will be effective from 1 January 2012), and is a *lex specialis* in the area of financial services towards their users. Services to which this piece of legislation applies are banking services, financial leasing services and financial arrangements. At this moment, it is difficult to foresee the effects of this law (particularly in the area of banking services and their general policies), but it is obvious that this law has already attracted significant attention in the general and expert public and bodies in charge.

POSITIVE DEVELOPMENTS

The Law strictly defines the consumer as a natural person (as opposed to the previous law covering both natural and legal persons) procuring goods/services on the market for purposes excluding business or other commercial purposes.

A set of innovations is introduced by the Law, e.g. it is not possible for a consumer to waive his/her rights, rules on informing the consumer are fairly structured, a trader/retailer must indicate prices of goods/services in a clear and unambiguous way, which also applies to discounts.

The Law prohibits unfair business practices of traders, especially deceptive and aggressive operations and breach of the legal duty of informing consumers. There is significant improvement in area of entering into so-called distance contracts, especially in terms of unilateral termination (including the manner of protecting such rights).

The Law provides for nullity of unfair terms in consumer contracts and defines the contractual provisions considered as unfair, regardless of the circumstances of each particular case, as well as contractual provisions presumed to be unfair, unless proven otherwise (e.g. a provision granting the trader an exclusive right of interpretation of contractual provisions is considered as unfair, while the Law provides that unclear provisions of consumer contracts are to be interpreted in favour of the consumer).

Further, the Law prescribes legal consequences of nonconformity and introduces a legal regime under which the trader is obliged to guarantee for conformity of goods within a period of 2 years from the date of risk transfer to the consumer. However, if a deficiency of goods/services occurs within the first 6 months, the consumer is not required to prove that the nonconformity existed at the time of risk transfer. The Law prohibits the use of the term "guarantee"

and other similar expressions, if the use of such terms does not mean providing the consumer with more rights than those provided under the Law.

Consumer disputes may be settled in both judicial proceedings and out of court. In general and since cases of violating consumer rights do not concern only individual consumers, we find as significant achievement that (registered) consumer associations and unions of consumer associations are entitled to represent their interests in procedures before the bodies in question. Therefore, promotion of collective consumer interest is (to be) safeguarded and can be achieved in a (more) efficient and economical manner.

REMAINING ISSUES

Although the solutions foreseen by the Law, prima facie, regulate many aspects of consumer protection, there are many legal standards and unclear formulations (e.g. professional care, average consumer, reasonable decision, serious and non-contractual obstacle), which might be a challenge for bodies in charge and courts, since the practice is still weak and untested.

In accordance with the principle of satisfying consumers' basic needs, the Law specially regulates consumer protection in the sphere of services which are considered to be of general economic interest and introduces a special category of a vulnerable consumer. It is still unclear which consumers are to be considered as vulnerable, or how they will be supported when it comes to facilitating their access to the services of general economic interest. The National Programme of Vulnerable Consumers Protection and relevant by-laws are expected to be adopted by bodies in charge. We are uncertain how the Government will secure vulnerable consumers protection, especially during the situation of economic crisis and the state budget pressure.

The general guarantee regime for goods/services conformity with a 2-year guarantee period has been introduced. However, it is noticeable that our legal system still enforces legal instruments (mostly orders), which foresee shorter guarantee periods for different types of technical and other goods. Some of those instruments were abolished by the Order on Abolition of Specific Orders; however, some which are not in compliance with the Law are still in force and should also be abolished.

FIC RECOMMENDATIONS

- Establishing of the National Council for Consumer Protection and professional training of competent bodies, consumer associations and all other entities safeguarding consumers under the Law, and development of their mutual cooperation;
- Adoption of the National Programme for Vulnerable Consumers Protection and adoption of missing by-laws, in order to provide consistent implementation of the Law;
- Further work on harmonisation of regulations regarding consumer protection with other areas of law, and international and EU principles;
- Timely adoption of by-laws required under the Law on the Protection of Users of Financial Services, so as to enable the providers of financial services to harmonise (as soon as possible) their internal instruments with the applicable regulations.

PUBLIC PROCUREMENT

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Introduction of the obligation of procuring entities to reasonably plan procurements and to advertise its procurement plans.	2010			√
Preventing the abuse of the negotiating procedures, which are the least transparent, through enacting appropriate amendments to the Law or through appropriate by-laws.	2010			√
Introduction of the authorisation of the Public Procurement Agency to monitor the implementation of the awarded public contracts.	2010			√
Changes and amendments to the penal provisions – introduction of more severe pecuniary fines and other safeguards, longer statute of limitation, etc.	2010			√

Although the result from the "score card" gives the impression that the recommendations from the previous edition of the WB have been neglected by the relevant governmental stakeholders, such a conclusion is only partially grounded. Indeed, no changes have been introduced in the public procurement legislation, but some progress is visible. Firstly, the implementation of the Law on Public Procurement has shown some result in enhancing the transparency of public procurement procedures. Secondly, the Ministry of Finance has presented the Draft Strategy on Public Procurement Development, demonstrating awareness of the existing problems and proposing relatively satisfactory solutions. However, these steps are to be seen only as a good sign. The process of introducing the standards of good practice in this delicate field is still ahead. Adequate framework for public procurements does not only affect favourably the efficiency of public spending, but ultimately also influences competition between private enterprises and therefore increases overall competitiveness of the economy, particularly having in mind the total value of goods and services procured by the public entities. In addition, the importance of public procurement regulation conducive to efficient and transparent public spending is certainly one of the key elements that enhance overall anti-corruption endeavours.

CURRENT SITUATION

As already noted, there have been no changes in the relevant legislation in the previous period. The Law on Public Procurement (effective as of January 2009) remains the legal framework for public procurement procedures. Although incorporating to a large extent provisions from the relevant 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 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 foresees 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. Protection of bidders' rights, as well as of the public interest, is granted within the procedure before the Commission, as an entity deciding upon claims of violation of the procedure by the procuring entity. The public procurement web portal introduced under this Law provides relevant information with regard to procurement procedure.

POSITIVE DEVELOPMENTS

There are several points which could be recognised as positive developments:

Comparing the data from the annual reports of the Public Procurement Office for the years 2009 and 2010, it could be

concluded that the structure of the conducted procedures by type shifted towards those more transparent and therefore more competitive types. For example, the value of the awarded contracts in negotiated procedures without previous public notice was reduced from 31% to 24% of the total contracted value, while the value of the contracts awarded in open procedures during 2010 reached 57% of the total public procurement value, in contrast to 43% in 2009. Speaking about the available statistics, another fact to be pointed out is that the total value of the contracts awarded under Public Procurement Law during 2010 increased by more than 43% (expressed in RSD) compared with the relevant figure from 2009. On the other hand, the total number of awarded contracts declined by approximately 10%. This could indicate the trend among procuring entities of procuring services and goods from already proven and reliable partners, which speaks positively in terms of the efficiency of budget spending. However, such trend is also to be considered from the competition point of view, especially with respect to the possibility of newcomers penetrating the market and/or with respect to sustainability of small and medium enterprises.

As to the issue of enhancing legal certainty and harmonising the practice of public procurement procedures, the recently introduced availability of the Commission's decisions on its web page represents doubtless a very important step. This provides practitioners with guidelines in everyday activities based on the Commission's rulings and therefore improves the predictability and expediency of protection procedures.

However, the most important step forward is the Draft Strategy on Public Procurement Development, prepared by the Ministry of Finance. The overall impression of the presented Draft Strategy is positive; it takes into account all major problems identified so far and provides reasonable guidelines for resolving them. In that respect, it is to be noted that all recommendations made in the previous edition of the FIC White Book have been taken into consideration and incorporated in the Draft Strategy. Beside such FIC recommendations, the following points of the Draft Strategy are also to be welcomed: enhancing and promoting the procurement of environmentally friendly goods and solutions, anti-corruptive measures, further professionalisation and training of public procurement officers employed by procuring entities, etc.

REMAINING ISSUES

It seems that this edition of the WB is being published in the moment when the competent authorities, aware of the shortcomings of the existing legislation and practice based on it, have initiated the necessary steps in order to improve the overall situation. In that respect, all issues mentioned as challenging in the previous edition remain, however with hope that appropriate solutions for recognised problems will be found in open dialogue between relevant stakeholders, i.e. that the prepared Draft Strategy will be subject to further public discussions, adopted and implemented.

FIC RECOMMENDATIONS

- Introduction of the obligation of procuring entities to plan procurements reasonably and to publish their procurement plans;
- Introduction of anti-corruptive measures (such as Transparency International Integrity Pact) at least in procurement procedures relating to infrastructural projects and other procurement procedures of significant value;
- Provision of measures which would stimulate the so-called "green and energy efficient procurements";
- Preventing the abuse of the negotiating procedure, which is the least transparent, through enacting appropriate amendments to the Law or through appropriate by-laws;

- Introduction of the power of the Public Procurement Office 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 limitations, etc.

PRIVATE-PUBLIC PARTNERSHIP

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009			√
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.	2009			√
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.	2009			√
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 doubtlessly lead to broader interest of the foreign investors for this concept in Serbia.	2009			√

CURRENT SITUATION

The current 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 legal instruments. Thus, most of those instruments do not cover PPP matters primarily, but foresee 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 Enterprises and Performing Activities of Public Interest;
- Law on Communal Activities;
- Public Procurement Law, and
- Energy Law, Law on Mining, Law on Games of Chance and other laws and by-laws.

Under the abovementioned laws, an activity of public interest may 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 institutionalised PPP, also possible under Serbian legislation, involves the establishment of a company held jointly by a public partner and a private partner. The joint entity thus has the task of ensuring the delivery of a work or service for the benefit of the public.

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

In late 2010, the Ministry of Economy and Regional Development launched the drafting of the Law on Public-Private Partnership and Concessions (PPP Law) in cooperation with international and domestic experts. The draft Law was avail-

able for public discussion during the summer of 2011 and it is pending endorsement by the Government and passage by the Parliament during fall 2011.

The purpose of the PPP Law is to create a favourable legal and institutional framework for promoting and facilitating the implementation of privately financed concession/PPP projects enhancing transparency, fairness, efficiency and long-term sustainability, in the development of infrastructure and public service projects in Serbia.

It aims at further developing the general principles in the award of contracts by public authorities through the establishment of specific procedures for the award of concessions and of PPP projects. The draft Law sets forth the conditions under which local and foreign legal or natural persons may be awarded a concession or a PPP contract in all the sectors that are under the jurisdiction of Serbia, pursuant to the Constitution and laws of Serbia and EU law.

As a novelty, compared to legislation currently governing PPPs, the draft Law is explicit that all PPPs and concessions in Serbia are to be governed by the following principles:

- The principle of protection of public interest;
- The principle of efficiency;
- The principle of transparency;
- The principle of fair and equal treatment of bidders;
- The principle of free access to market/competition among the bidders;
- The principle of proportionality;
- The principle of environmental protection and
- The principle of autonomous will of the parties.

The draft Law foresees the establishment of an intersectoral Commission for PPPs and concessions which should be chaired by the Minister of Economy and Regional Development. The competences of the Commission include various support activities for PPPs and concessions, such as:

- Assisting in the preparation of proposals for PPPs in order to facilitate public-private partnerships development and concession contracts;
- Information and consultation on public-private partnerships and concession matters;
- Identifying and facilitating implementation of foreign experiences as regards public-private partnerships and concessions that would be best for Serbia;
- Preparation of methodological materials in the field of public-private partnerships and concessions;
- Cooperation with other state administration institutions and non-governmental organisations in the field of public-private partnerships and concessions, etc.

The draft Law provides the rules for a situation when a PPP contract or a concession agreement is intended to cover several activities. In such circumstances, a PPP or concession is going to be subject to the rules applicable to the activity for which it is principally intended. In any case, the choice between awarding a single contract and awarding a number of separate contracts may not be made with the objective of excluding it from the scope of the PPP Law.

REMAINING ISSUES

The coexistence of 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 outsourcing a certain activity, or obtaining an operating licence) results in a lack of certainty when planning or initiating a PPP. It is expected that the new PPP law will remove some overlaps in this area. However, it is still uncertain in which manner the new PPP law will supersede all existing pieces of legislation governing this matter.

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 foreseen by the law nor recognised in the PPPs' practice in more developed systems. It is inherent in such sui generis PPP models that the possible risks that might occur during the cooperation fall out of the scope of existing regulation, thus resulting in 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. the Law on Public Enterprises and Performing Activities of Public Interest.

It is very common that a public authority entering into a certain PPP provides assets (such as real estate) as its contribution to the PPP. The incoherency and dubiety of the legislation regarding state property or local public authority's property, as appropriate, in many cases prevent further development in this field. The positive budgetary legislation also hinders further progress in this field; the inability of local public authorities to incur 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

- Harmonisation of other laws governing PPP matters with the new PPP Law;
- 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;
- Also, some amendments to existing non-PPP legislation are required: adjustments and amendments to the budgetary and taxation laws, recognising the specific needs of the PPP, would doubtlessly lead to broader interest of the foreign investors for this concept in Serbia.

TRADE LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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".	2010			√
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.	2010			√
The Market Structure Impact Study prescribed by the new Trade Law should be reconsidered.	2010			√
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.	2010			√

CURRENT SITUATION

Overview

A new Trade Law has been enacted by the Serbian Parliament in 2010. For traders, the Law applies as of 1 January 2011. This Law constitutes the basic legal framework for trading and the related inspection supervision, replacing the previous Trade Law (1993), the Law on Prices (2005) and the Law on Requirements for Trade in Goods, Services Accompanying Trade in Goods and Inspection Supervision (1996).

The ministry in charge of trade and services remains the regulatory governmental body with jurisdiction over the market and communal inspections that should be established at local self-government level. From the perspective of substantive law, the new Trade Law is more detailed and practice-oriented, introducing new institutes and significant changes.

However, due to fact that a number of its provisions require enactment of the specific by-law in order to be implemented, this Law remains largely inapplicable since most of the necessary sub-legislation is still missing.

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 set forth in detail and supplemented by new principles on discrimination prohibition, proportionality in state restrictions imposed on traders and cooperation among state bodies.

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 engage in trade in accordance with the said Law. The definition of trader also includes certain natural persons, such as farmers, traders in wild game, fish and similar and natural persons engaged in selling their used personal 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.

For the first time in Serbian Trade Law, one legislation defines special market institutions, such as: commodities markets, 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 in Goods, Services Accompanying Trade in 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 applying 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 and "special requirements" i.e. hygiene and sanitary requirements, general safety and health requirements, environmental protection requirements, technical requirements etc.

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

One novelty is that retailers are allowed to work overtime, unless otherwise prescribed by 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, have been 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 contest);
- 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.

The problem is that the term "adequate duration and frequency" of the selling incentives remains vague and suitable for discretionary interpretation by the authorities.

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.

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.

The Ministry in charge for trade enacted two by-laws required for implementation of the new Law regarding the classification of trade formats and the impact study.

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 that of the 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 required for trade formats larger than 2000 m2, it is not clear what the benefits from its introduction are, particularly taking into account the complex procedure for the realisation of investments in Serbia.

The deadlines for the enactment of by-laws are not defined by the new Trade Law and that appeared to be its major flaw, since the most important provisions of the new Trade Law are not applicable without sub-regulations.

The new Law sets forth stricter labelling requirements in Article 40 than the specific labelling legislation, which causes serious problems in practice for certain businesses.

The new Law limits the liability of the state for wrongful acts of its officials, i.e. if the damage has been caused to a business by the wrongful act of e.g. a market inspector, the liability of the state is limited to coverage of the actual damage only. The liability for lost profit is excluded.

FIC RECOMMENDATIONS

- The concept of "trade with services" should be defined separately from "specialised services", with a clear explanation which requirements, If any, specified for trade in products are also to be applied to "trade in services";
- The need to establish a Trade Advancement Centre should be reconsidered, or its competences prescribed by the new Law should 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 the protection of confidential data;
- The Market Structure Impact Study prescribed by the new Trade Law should be reconsidered;
- The criteria for selling incentives should be more precise and remove any room for potential abuse in practice by the authorities;
- The Law needs to be followed by a significant number of by-laws prescribing details required for the implementation of its provisions. Lack of a fixed deadline for completion of sub-legislation may be the major flaw of the Law, as the overall impression of the business community is that the Law remains mainly inapplicable due to lack of by-laws;
- The labelling requirements set in the Article 40 need to be adjusted to the specific labelling rules;
- The liability of the state for wrongful acts of its employees committed during implementation of the Law has to be unlimited, i.e. it should cover both the actual damage and the lost profit.

LAW ON GENERAL PRODUCT SAFETY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Enactment, as soon as possible, of the secondary legislation necessary for the Law to become fully operational.	2009	√		
Training and preparation of state enforcers, in cooperation with the EU, for the application of the Law in order to ensure effective results.	2009		√	
Speeding up the process of harmonisation of Serbian standards with those of the EU.	2009		√	
Timely performance of duties within prescribed deadlines by the Serbian Government.	2009		√	
Campaigning in order to raise the level of general public awareness of consumer rights under the new Law.	2009		√	

CURRENT SITUATION

The Law on General Product Safety has been in effect since December 2009 and represents the regulatory environment dedicated to safety and security of buyers, alongside the Regulation on the Establishment and Functioning of the Rapid Alert System for Dangerous Products, the Rulebook on the Form and Content of the Notification of Dangerous Products, and the Rulebook Setting the List of Serbian Standards on General Product Safety, adopted in August 2010.

The Law prescribes significant duties for producers and distributors, related to product safety, information procurement and publication, administrative oversight and custom issues. Breach of its major provisions is sanctioned by pecuniary fines. In essence, the aforementioned legal framework is a direct transplant of the relevant EU regulations and standards.

POSITIVE DEVELOPMENTS

The online NEPRO system of public information, as a domestic equivalent to the European *Rapid Alert Point of Exchange* (RAPEX), has been initiated. The Market Inspection acts ex officio, but also after a report, or upon RAPEX information. This system should facilitate a speedy response and public awareness of dangerous products.

In September 2010, the Market Surveillance Strategy from 2010 to 2014 was adopted, as a key strategic document for inspection authorities for, among other things, dangerous products. Relevant to this field, it foresees the adoption of a core Market Surveillance Law in 2011 and the formation of a special governmental body for coordination, including business and consumer protection representatives.

In 2010, the Market Inspection undertook 455 dangerous product controls, resulting in withdrawal of 31,367 units from the market and 981 conformity controls, resulting in 247 orders for correction and 131 misdemeanour charges.

REMAINING ISSUES

Although the functioning of the NEPRO portal is a step in the right direction, the portal itself is hardly adequate – it is unreadable, lacking in proper analysis and statistics which could enable certain issues to come into focus. Also, NEPRO is not widely known to the public, which is important if it is to serve as a central hub for information.

The different relevant actors in this field (NGOs, economic operators, Market Inspection, certified laboratories) are not connected and seldom coordinate their activities. Especially worrying is the lack of information exchange between the administrative body and the judiciary, which disables the formation of a database on misdemeanours and proper follow-up activities. There is a problem with the general perception of the inspection authorities in public, whose actions are often considered corruptible and arbitrary.

FIC RECOMMENDATIONS

- Continuous and intensive enforcement of the Law, especially in regard to effective warning to the consumers, public engagement, and regular controls grounded in reliable analytics and hotspot identification, as well as penalisation of infringers, is crucial;
- Continued training and cooperation of enforcement authorities with the EU in applying the Law, information and experience exchange and comparing best practices;
- Public campaigns to increase awareness, and appropriate trainings for economic operators;
- Development of a system for coordination and cooperation of all relevant actors on a permanent basis;
- Further development of the NEPRO portal, to bolster effectiveness and as grounds for later inclusion in RAPEX;
- Increase in capacity of the Inspection, to ensure its status as an expert, professional and independent body.

E-COMMERCE REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adoption, as soon as possible, of the envisaged secondary legislation that is required for full implementation of the new laws.	2009	√		
Organising in-depth trainings of relevant state authorities and the judiciary in order to ensure proper enforcement.	2009	√		
Organising public campaigns, endorsed by the Government, targeted at general public awareness of e-commerce legislation and promoting legal security and public trust.	2009		√	
Full liberalisation of the e-commerce market, and promotion of the new laws inside the business community.	2009		√	
Encouraging the increase in the number of processing centres in Serbia.	2009			√

CURRENT SITUATION

The legal framework for e-commerce in Serbia primarily consists of the E-Commerce Law, Electronic Document Law and the Electronic Signature Law. The Consumer Protection Law, in effect as of 2011, contains certain provisions relevant to relations regarding distance selling (including over the Internet) between traders and consumers, thus transposing the EU Directive 97/7/EC.

Although regulations covering e-commerce are in general wholesome and harmonised with EU acquis, their provisions are seldom tested in practice. The actions set out in the Strategy for Development of Information Society in Serbia, adopted in July 2010, the Strategy for Development of Electronic Communications in Serbia, adopted in September 2010 (jointly: the Digital Agenda), and the Strategy for Development of Trade in Serbia until 2012, strive to increase the significance and share of e-commerce in total transactions, as an important alternative to classic models. Certain steps to improving the e-commerce environment have been undertaken; however, many tasks still lie ahead.

POSITIVE DEVELOPMENTS

A developed legislation is positive. Electronic signatures and contracts are considered valid in Serbia, and the rights and obligations of actors have been definitely determined.

The legal framework is not deficient – problems lie in the relatively undeveloped practice, due to the low overall level of e-business in Serbia and a certain number of issues in connected areas.

The Regulation on Operations Not Evidenced through a Fiscal Register (August 2010) explicitly frees online retail trade from fiscal obligations, which represents a benefit for this business model.

In the field of e-signatures, in 2010 Belgrade based HALCOM a.d. company joined PTT, Ministry of Interior and the Serbian Chamber of Commerce as the authorised body for issuance of electronic certificates. The range of services available via electronic certificates has widened, but further expansion is expected. The e-government portal constantly offers numerous services, benefiting the citizens and commercial entities.

This year, a large expansion of online group purchase providers has been noted, as a business model enabling significant discounts for groups of guaranteed buyers. A significant number of conferences dedicated to the Internet and electronic environment in general (including the TAIEX seminar on e-commerce for state actors, but also this years' European Dialogue on Internet Governance in Belgrade), is a welcome step in raising awareness and policy formation. The varied RNIDS (Serbian Domain Name Register) and Digital Agenda Administration projects are examples

of good practice, especially the latter's work on Guides for Sellers and Buyers, and the Ministry of Agriculture and Trade's Study of the State in E-commerce with Development Guidelines, soon to be published.

REMAINING ISSUES

The existing legal framework was not truly tested in this timeframe, due to the limited share of e-commerce in Serbia. Internet penetration, especially broadband, is one of the key indicators for the development of e-commerce. Statistic data show that 50.4 percent of households in Serbia have a computer, 39 percent Internet access, and 27.6% broadband – of which, 87 percent has never engaged in e-commerce. On the other hand, while 96.8 percent of companies have access to the Internet, only about 20 percent contracts in this fashion (not including e-mail).

Peripheral problems also concern the inadequacy of distribution channels – improved, but still limited possibilities of delivery through courier service, shipping and customs issues in dealings abroad, inadequate transaction processing possibilities – including a low number of banks offering charging through cards and inaccessibility of foreign payment systems such as PayPal (although certain domestic alternatives have been developed, they are not quite appropriate substitutes), as well as a general lack of infrastructure and know-how. Certain regulations governing money laundering, customs and fiscal obligations are deficient when applied in this field, further limiting the possibilities of growth.

Lack of capacity and a limited market extent is reflected by the hesitation of large economic players to enter the e-market. The volume of business-to-business commerce is negligible. Due to transport infrastructure, inadequate business models and the aforementioned peripheral issues, trade margins are still high, and do not represent an incentive for buyers. Education and practice are the only possible answer to trust issues in the online environment, a key constraining factor in Serbia, as globally. Safety and security of data, a current burning issue worldwide, is underrepresented in online actors' practice in Serbia.

FIC RECOMMENDATIONS

- Attention should be given to increasing broadband Internet penetration and mobile Internet, the market of the future;
- Rethinking, adapting and liberalising custom regulations and minimising the discretionary authority of the examiner (who has the right to disregard official paperwork and set a tariff on the spot) should bolster e-commerce;
- The Government, in cooperation with the National Bank of Serbia and the banking sector, should explore the possibilities for forming a coherent e-payment environment;
- Public campaigns and activities, with an accent on education and security are necessary in order to raise confidence in e-commerce;
- Further networking of the administrative bodies and development of additional e-government services (tax returns, administrative fees etc.);
- Encouraging the development of aggregate services and industry-led authentication of e-stores (a white-list);
- Encouraging b2b e-commerce and promoting this business model to the large economic players.

LAW ON PAYMENT TRANSACTIONS

CURRENT SITUATION

Law on Payment Transactions (Official Gazette of FRY, No. 3/2002 and 5/2003, Official Gazette of the Republic of Serbia, No. 43/2004, 62/2006, 111/2009, 31/2011; hereinafter: "the Law") regulates payment transactions institutions, procedures and restrictions.

The Law regulates the procedure for opening and maintaining a bank account, determines payment transactions, payment orders, executing credit and debit transfers, determines liability, compensation for damage and recovery of funds with regard to payment transactions, enforcement of claims from clients' accounts, as well as penalties for breaches of the Law. Furthermore, the adopted Amendments to the Law envisages a Register of Bills of Exchange.

According to the Law, all legal entities and individuals engaging in business activity are required to open a bank account for RSD payments, to maintain funds thereon and effect payments through it in accordance with the Law and the agreement on opening and maintaining such an account, concluded with the bank.

POSITIVE DEVELOPMENTS

The Serbian Parliament has adopted Amendments to the Law (published in the Official Gazette of the Republic of Serbia, No. 33/2011 on 9 May 2011). The Amendments are effective as of 17 May 2011.

The amended Article 3, paragraph 5 of the Law stipulates that the Minister of Finance (instead of the National Bank of Serbia) is in charge of issuing a by-law regulating cash payments by legal entities and individuals engaged in business activity. In that respect, the Decision on the manner and conditions for cash payments for legal entities and natural persons engaged in business activity will be replaced with the new by-law. However, provisions of the existing Decision remain valid and legally binding provided that they are in compliance with the Amendments to the Law, until the issuing of a new by-law.

With regard to cash payments, the amended Article 32 of the Law stipulates that legal entities and individuals engaged in business activity are required to deposit all cash received within seven business days on their bank account (instead of the previous obligation set at no later than the next business day). The main goal of these changes of the Law is to minimise the administrative obligations of legal entities and individuals engaged in business activities by extending the deadline for depositing these cash payments with the Bank.

The amended Article 44 of the Law stipulates that banks are obliged to download (electronically) publicly available data from the website of the Serbian Business Registers Agency and to update its own data base within three days (previously business entities were required to report such changes to the bank).

However, business entities are still required to inform the bank in which they have an account, of any data changes that have not been registered with the Serbian Business Registers Agency, within three days from the date on which such a change occurred.

The amended Article 46, paragraph 2 of the Law stipulates that business entities may settle their mutual financial obligations by cession, assignation, compensation, but also by joining to the debt, takeover of debt and in other ways prescribed by the Law.

However, in accordance with amended Article 46, paragraph 3 of the Law, business entities whose accounts are blocked for the purpose of claim enforcement are not allowed to settle their obligations in the aforesaid manner (cession, assignation, compensation, by joining to the debt, takeover of debt, assignation of debt and in other ways envisaged by the Law), unless otherwise stipulated by the law regulating tax procedure.

The manner in which a debtor whose account is blocked may not settle obligations towards their creditors is stipulated in more detail. However, this provision will be controversial, since the National Bank of Serbia intends to interpret this prohibition very broadly.

In addition, under the amendments to Article 46 of the Law, business entities whose accounts are blocked for the purpose of claim enforcement may not settle their obligations towards employees by transfer, i.e. cession or assignation

of liabilities and/or receivables. Hence, the previously envisioned option to settle their obligations towards employees by transfer, i.e. cession or assignation of liabilities and/or receivables, regardless of the freeze on their corporate accounts, is no longer available to business entities.

Amended Article 46, paragraph 4 of the Law stipulates that compensation no longer needs to be recorded through the bank statements of the parties involved.

Article 47a introduces the Register of Bills of Exchange with the National Bank of Serbia. It is stipulated that enforced collection from the debtor's account may be executed only based on a bill of exchange registered with the Register of Bills of Exchange.

Before these amendments, debtors were issuing a great number of bills of exchange, and consequently creditors did not have real insight in the debts and financial situation of the debtor. In order to avoid that situation and increase transparency, the amendments to the Law introduced the aforesaid Register of Bills of Exchange.

REMAINING ISSUES

Application of the Law is primarily dependent on the actions of the National Bank of Serbia and Ministry of Finance, and is to be followed by certain by-laws and regulations (guidelines). Hence, relevant bodies, i.e. the National Bank of Serbia and Ministry of Finance, need to pass the respective by-laws and regulations in the near future.

FIC RECOMMENDATIONS

- Adoption of necessary by-laws in accordance with the Law to further elaborate its application, and evaluation of the existing normative framework;
- Implementation of needed regulations related to the Register of Bills of Exchange.

CUSTOMS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Increased efficiency and quality in enacting customs by-laws.	2009		√	
Better education of customs officers in terms of updating them with latest customs rules and especially training them in respect of their application.	2010			√
Learning that administration should focus on laws and not on items developed in practice.	2010			√
Strict adherence to the laws without adjusting to political demands to which the Customs are occasionally subjected.	2010			√

The legal framework governing customs procedures in Serbia consists of the Customs Law (Official Gazette of the Republic of Serbia, No. 18/2010), the Customs Tariff Law (Official Gazette of the Republic of Serbia, No. 62/2005, 61/2007 and 5/2009), related by-laws and applicable Free Trade Agreements.

CURRENT SITUATION

The Customs Law

The Customs Law came into force on 3 April 2010, regulating customs procedures, while the organisation of the Customs Administration is still governed by the provisions of the old Customs Law (Official Gazette of the Republic of Serbia, No. 73/2003, 61/2005, 85/2005, 62/2006, 63/2006, 9/2010 and 18/2010).

The Customs Law is based on the EU Community Customs Code (Council Regulation (EEC) No 2913/92, as amended). It is basically the text of the previous Customs Law (which was also based on earlier EU legislation), but with novelties such as the institute of Authorised Economic Operator, summary declarations and previous declarations, the customs broker as the indirect representative will now be the declarant and the customs debtor, etc.

Old decrees, rulebooks and decisions apply to the extent they do not oppose new Customs Law. However, it is expected that the new Customs Law will be further elaborated by decrees, rulebooks and decisions that should follow the logic of EU Implementing Regulations. Specifically, the area of Authorised Economic Operator and customs valuation need detailed secondary legislation. In the mentioned areas the Government has already enacted several implementing regulations related to duty exemptions for certain imports. Of course, additional regulations are expected to be issued for other areas also.

The Customs Tariff

Since the Serbian Customs Tariff is being annually harmonised with the EU Combined Nomenclature, the current one is valid for the year 2011.

In Serbia there are several tariff regulations that are binding:

- Decisions on Tariff Classification published in the Official Journal of the EU;
- Decisions on Tariff Classification issued by the World Customs Organisation (WCO);
- Binding Tariff Information issued by the Serbian Customs Administration, upon request, regarding classification of certain goods, in case of vagueness or uncertainty.

As regards EU and WCO decisions, official translations are regularly published in the Official Gazette of the Republic of Serbia.

Free Trade Agreements

Serbia entered into the Free Trade Agreements with the following entities/countries:

- CEFTA (regional Free Trade Agreement between Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldavia, Montenegro, Serbia and UNMIK Kosovo);

- Russia;
- Belarus;
- EU (the Interim Agreement on Trade and Trade Related Matters);
- Turkey;
- EFTA, a trade union consisting of Iceland, Liechtenstein, Norway and Switzerland.

In 2010 and 2011 Serbia did not enter into any new Free Trade Agreements.

In accordance with the provisions of the Interim Agreement on Trade and Trade Related Matters between the European Community and the Republic of Serbia that came into force on 1 February 2010, customs duties on industrial products originating in Serbia and imported into the Community were abolished.

POSITIVE DEVELOPMENTS

The Customs Law

Although every alignment of customs regulations with the EU regulations is a step forward, the Serbian Customs Administration will have to pay special attention to the development of new institutes through by-laws. In addition, the application and interpretation of novelties are always challenging, so it remains to be seen how well this task will be performed.

An important customs incentive – the exemption from customs duties on import of new production equipment under certain conditions, should stimulate investments in production and new technologies.

The requirements that the equipment has to meet to qualify for customs exemption are the following:

- The equipment has to be new;
- It cannot be produced in Serbia; and
- It has to be used in production, to expand and/or modernise existing production facilities.

These requirements are much more liberal and less restrictive than in the old Customs Law, which is why they are expected to improve production and general economic development.

The Customs Tariff

The harmonisation of the Customs Tariff with EU legislation, allows the monitoring of all currently applicable customs duty rates in a comprehensive and transparent way.

Occasionally, there are difficulties in interpreting the tariff classification. However, progress is evident and can be seen from the volume of requests submitted to Serbian Customs Administration, as well as from the Customs Administration's approach in dealing with these issues in strict compliance with the principles of the European Commission and WCO practice.

Free Trade Agreements

Free Trade Agreements signed by Serbia smooth the progress of larger scale goods trade with other markets, as well as trade liberalisation, and increase investments under favourable market conditions.

REMAINING ISSUES

The Customs Law

Generally speaking, the Customs Administration is expected to increase its efficiency by passing customs by-laws in accordance with international customs rules and to deal with issues related to the application of laws that can emerge from trade practice.

There are still difficulties in the application of the existing provisions of the Customs Law, as well as problems related to activities that have not been regulated yet.

For example, the new Customs Law effectively excludes the possibility of having customs documents corrected if excesses or shortages are determined upon customs clearance (usually these are a consequence of errors in delivery, during loading). In this way importers are automatically in violation of the law if there is a subsequent inspection by customs authorities. Clearly, relevant by-laws should be enacted in order to provide for practical solutions for situations like this.

Although the new Customs Law was enacted last year, its implementation and interpretation are still a challenge and can lead to a variety of issues and different interpretations, which is why increased quality and efficiency should be the main goal for the future.

The Customs Tariff

The Serbian Customs Tariff still has specific divisions of certain tariff codes in addition to the implemented EU Combined Nomenclature. Occasionally, there are import issues caused by this ambiguity.

Free Trade Agreements

Free Trade Agreements are usually applied without major difficulties.
The issue that is sometimes pointed out as an impediment to Free Trade Agreements' practical effects is procedure of determining the origin of goods.

It should also be noted that rules on determining the origin of goods provided by agreements with Russia and Belarus differ from the rules laid by CEFTA and the Interim Trade Agreement with the EU, so the criteria are not unified.

FIC RECOMMENDATIONS

- Increase efficiency on all levels of administration, especially in terms of resolving customs payer's appeals;
- Availability of Customs Administration management for direct meetings and discussions, particularly on difficult cases;
- Passing enough by-laws to enable the proper application of laws and avoid ambiguities in interpretation;
- Introduction of binding legal opinions of Ministry of Finance-Customs Department in relation to customs matters;
- Continuous education and training of customs officers;
- Better online system of information and introduction of online services within the customs procedure.

SIMPLIFIED PROCESS FOR EXPRESS SHIPMENTS

CURRENT SITUATION

Customs – the legal framework

The new Customs Law was enacted in March 2010 (Official Gazette of the Republic of Serbia, No. 18/2010) and it was elaborated by the new Customs Decree (Official Gazette of the Republic of Serbia, No. 93/2010). Expectations from the new legal framework for customs are high on the market, with the aim to align operations of Serbian companies with EU companies as its major foreign trade partners. Also, it is very important to ensure further progress in the implementation of the Protocol of Amendment to the International Convention on the Simplification and Harmonisation of Customs Procedures ("Revised Kyoto Convention" ratified in July 2007 – Official Gazette of the Republic of Serbia, No. 70/2007), and World Customs Organization's Guidelines for the Immediate Release of Consignments by Customs (applicable to the Serbian Customs Administration, as WCO member). All these activities represent an integral part of overall efforts on alignment with the EU.

POSITIVE DEVELOPMENTS

The new Law and Decree contain all areas relevant for the simplification of procedures, such as simplified declaration procedure (e.g. use of invoice instead of standard decla-

ration), Authorised Economic Operator status, simplified process for express shipments and others.

The Decree, in Chapter VII, Article 520 defines the following classification of express shipments:

- Items intended for personal needs (luggage), personal gifts, medicines for personal use, low value non-commercial shipments (*de-minimis*) – exempt from customs duty and VAT;
- Items containing promotional material and samples received free of charge – exempt from customs duty, but not from VAT;
- Items for which the customs debt may arise, without value limit, but that are not subject to restrictions and additional inspections;
- All other items including imports.

Article 521 enables a simplified clearance procedure for the first three groups.

Additionally, the Customs Decree (Official Gazette of RS, No 48/2010) introduced simplified procedures and duties relief for all shipments with value not exceeding EUR 25 (*de-minimis*) and for personal gifts with value not exceeding EUR 45.

REMAINING ISSUES

The new legal framework has not met expectations yet, since a great part of the real modernisation is directly dependant on the development of information systems and has not been implemented yet. Simplified declaration, Authorised Economic Operator status and simplified procedure for express shipments are not operational in practice. Implementation is pending until customs information system is developed to be able to support the processes. Linkage of Customs and companies' systems with two way data exchange is necessary to enable true trade facilitation, standardisation and simplified procedures.

Also, value thresholds for the de-minimis and shipments with a gift are creating problems in practice, forcing full customs procedure implementation for a number of shipments slightly exceeding the above mentioned threshold.

FIC RECOMMENDATIONS

Overall, Customs has made progress in terms of initial simplifications. However, the implementation of concrete simplifications specified by the legal framework, is uncertain due to the lack of proper information system support.

To ensure further progress in the customs area, we recommend:

- Efficient information systems development to enable and ensure implementation of the simplified processes, secure linkage with companies and automated clearance;
- Enable full implementation of the simplified procedures provided by the legal framework;
- Increment the value thresholds for the *de-minimis* and shipments with a gift;
- Provide more efficient and standardised education to customs personnel to ensure focus on the full new legal framework implementation in practice, thus creating a predictable environment for trade and investments facilitation;
- Switch customs officers' focus from items developed in practice to the legal framework, reduction of their discretionary rights and introduction of accountability if a consignment is held and/or inspected without any real reason derived from risk analysis.

QUALITY INFRASTRUCTURE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Enactment of the Law on Accreditation and organisation of a public campaign about economic significance of accreditation.	2010	√		
Improve activities on enactment/amendment of the remaining required technical regulations within the line ministries.	2010	√		
Completion of the IT system required for full operation of the Enquiry Point and the Register of Technical Regulations within the Quality Infrastructure Department.	2010	√		
Increase participation of business representatives in preparation of Serbian standards.	2010			√
Improve the capacities of the Institute for Standardisation by increasing the number of employees and increasing their qualifications.	2010		√	
Raising public awareness about economic reasons justifying compliance with standards as a step which facilitates putting the goods into circulation/on the market.	2010		√	

CURRENT SITUATION

The enactment of the Law on Technical Requirements for Products and Conformity Assessment, the Law on Standardisation and the Law on General Product Safety in 2009 and the Law on Metrology and the Law on Accreditation in 2010 is identified as progress in the process of harmonisation of quality infrastructure (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, 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. The new Law on Control of Precious Metals Objects has recently been passed, whereby the control over precious metals has been excluded from the Law on Metrology.

The 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 Product Safety. The Law incorporates rules set out in the European Directive 2005/95/EC on General Product Safety. 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 completed the regulatory framework in this area. The Law, which is com-

pliant with the WTO and EU rules and with the requirements set in the standard SRPS ISO IEC 17011, was passed in October 2010. The Accreditation Body of Serbia (ABS) is preparing for the fulfilment of requirements related to accreditation set by the European Directive 2008/765/EC, included in the so-called New Package of Regulations for Free Movement of Goods (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 defines the role of the ABS in line with the European practices, thus enabling its full membership in European accreditation organisations. The enactment of this Law completed the harmonisation of Serbian accreditation schemes with those applied in the EU.

Beyond the completion of the regulatory framework required for full functioning of the accreditation system in Serbia, it is also crucial to launch aggressive public awareness campaign whereby the public will be acquainted with the benefits coming from the accreditation process. Currently, the number of conformity assessment bodies 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 domestic conformity assessment bodies could perform the same services for less.

POSITIVE DEVELOPMENTS

With the enactment of technical regulations, standardisation, metrology and accreditation laws that are fully compliant with the EU and WTO rules, Serbia has been provided with a comprehensive legal system in this area, similar to those existing in European countries.

The Government has enacted the following by-laws foreseen by the Law on Technical Requirements for Products and Conformity Assessment and the Law on Metrology:

- 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 Content and Manner of Keeping the Register of Technical Regulations;
- Rulebook on Defining a List of Serbian Standards in the Area of General Product Safety;
- Rulebook on the Manner of Recognition of Foreign Conformity Certificates, Trademarks and Conformity Marks;
- Regulation on Legal Measurements;
- Regulation on the Manner of Performance of Surveillance in the Area of Metrology;
- Regulation on Certain Legal Measurements;
- Rulebook on the Manner of Appointment of Legal Entities for Verification of Measurements and on the Register of Appointed Bodies;
- Rulebook on the Conditions for Verification of Measurements.

In 2010, the Government enacted rulebooks whereby EU New Approach Directives are transposed into the Serbian legislation:

- Rulebook on Machines Safety;
- Rulebook on Electrical Equipment Designed for Use within Certain Voltage Limits;
- Rulebook on Electromagnetic Compatibility;
- Rulebook on the Safety of Elevators.

In line with the Law on Standardisation, standards are no longer mandatory, except in the situation when the relevant technical regulation incorporates a particular standard (in which case its application becomes mandatory). The Law abolished around 8,000 standards which had been 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 relevant 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 progressing towards fulfilment of 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 foresees the establishment of the Register of Technical Regulations, which is a precondition for full functioning of the Enquiry Point. Therefore, the Ministry of Economy established "TEHNIS", the online register of enacted technical regulations and technical regulations under preparation, which also contains all necessary information regarding the quality infrastructure for the business community and general public (e.g. texts of all legal documents, list of projects implemented in the area of quality infrastructure, etc.). The Enquiry Point is established as part of the unit in charge of international cooperation within the Quality Infrastructure Department.

REMAINING ISSUES

Human resources needed for the transposition of standards represent a special problem. Existing manpower in ISS is inadequate, in terms of both number and professional qualifications, to carry out the forthcoming enormous work of transposing the remaining 50% of the 19,000 harmonised European standards into Serbian standards (approximately 10,000 European standards were transposed). 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 professional translators, the ISS resorts to taking over harmonised EU standards in English and translating only the cover page and the foreword into Serbian. Implementation of such Serbian standards whose substance is in English may pose a serious problem for most Serbian companies.

Lack of public awareness of the need for accreditation remains a problem which is not 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 accelerate the process of enactment of necessary technical regulations remains a problem.

FIC RECOMMENDATIONS

- 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;
- Increase participation of business representatives in the preparation of Serbian standards;
- Improve the capacities of the Institute for Standardisation by increasing the number of employees and upgrading their qualifications;
- Raising public awareness of the economic reasons justifying compliance with standards as a step that facilitates placing goods into circulation/on the market.

FOREIGN EXCHANGE OPERATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2008			√
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.	2009			√
Enable setting-off of mutual claims in the international payment operations.	2010			√
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.	2010			√
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.	2009		√	

CURRENT SITUATION

The amendments to the Law on Foreign Exchange Operations (Official Gazette of the Republic of Serbia No. 62/2006 and 31/2011; hereinafter: "Forex Law"), came into force on 17 May 2011, with a delayed effective date for certain provisions related to exchange operations set at 1 January 2012.

Amendments to the Forex Law demonstrate the tendency of general liberalisation of the foreign exchange regime in Serbia, improvement of existing legal solutions and introduction of new categories, i.e. operations, in the Serbian foreign exchange system.

In principle, changes were made, both due to dilemmas arising in the application of certain legal provisions in practice and to harmonisation with other regulations adopted in the meantime and with recommendations of international financial organisations, such as the World Trade Organization (WTO).

FIC members were actively involved in adjusting and proposing certain changes to the Forex Law.

POSITIVE DEVELOPMENTS

Liberalisation of the foreign exchange regime

Bearing in mind the aspirations of the Republic of Serbia towards accession to the WTO, it is not surprising that the changes made in the foreign exchange regime were primarily related to the liberalisation of foreign exchange operations and thus liberalisation of foreign trade, as follows:

- The deadline for entry of foreign currency into the country on grounds of current transactions has been prolonged from 180 days to one year. By the expiry of this period, these transactions are considered to be credit transactions with foreign entities and are therefore registered with the National Bank of Serbia (NBS). The amendments to the Forex Law provide a new definition of foreign credit operations, now considered as exports and imports of goods or services for which payment has not been collected and/or made for longer than one year, as well as goods and services paid in advance that were not imported and/or exported for longer than one year from the date of advance payment. It ought to be stressed that a commercial bank can perform payment operations for

import and export of goods and services even if such activities have not been registered with the NBS by the resident. Consequently, the resident is held liable for not registering credit transactions with foreign entities, but will not be sanctioned by withholding foreign exchange payments or charges;

- The obligation to repatriate the profit realised from investment works abroad and a retained guarantee deposit for the executed works has been abolished. These restrictions were abolished to comply with the request of WTO members;
- The extension of the number of cases where payments in the Republic of Serbia can be made in foreign currency. Amendments to Article 34 of the Forex Law introduce certain new cases when payments among residents, and between residents and non-residents in the country, can be performed in a foreign currency. Such new cases include, among others, payments on the grounds of: donations, certain bank guarantees, EU aid, foreign trade and others. Also, a domestic commercial bank is allowed, upon order of a non-resident – purchaser of the goods/services to whom a bank is granting a commodity credit, to perform payments in a foreign currency to a resident – seller of goods/services in foreign trade exchange;
- Amendments to the Forex Law enable members of the European Union, OECD, international financial organisations, development banks or financial institutions founded by foreign countries to issue long-term bonds denominated in dinars, which should increase the offer of loans in dinars and stimulate investments in Serbia.

Introduction of new types of foreign exchange operations and improvement of certain provisions

Amendments to the Forex Law allow new types of foreign exchange operations, most importantly: the granting of credits and loans to residents in dinars by international financial organisations founded by foreign states, adding guarantee operations and transactions with financial derivatives to capital transactions and improved relevant provisions in this respect, specifically:

- Foreign credit operations include Dinar-denominated credits between residents and non-residents, whilst credit operations in the country are considered to be credits provided by banks to residents in foreign currency;
- All resident legal entities are able to take credits and loans from non-residents in their own name and for their own account, as well as in their own name and on behalf of a third party, and provide commercial loans to non-residents;
- Within the framework of capital transactions, guarantee operations are now included as a new type of operations that can be performed by banks, as well as by resident legal entities. The amendments to the Forex Law stipulate that a bank may issue guarantees, sureties and other types of securities between residents and non-residents, as well as obtain guarantees from foreign banks, and guarantees and sureties from non-residents based on such operations; also, resident legal entities can provide a guarantee to non-residents for operations of import of goods and services of another resident and has to obtain a guarantee and a surety from non-residents for operations of export of goods and services, or for performing works abroad to another non-resident, as well as for operations between such a resident and another resident legal entity;
- In terms of foreign credit operations, amendments to the Forex Law have introduced an innovation in bank guarantees and sureties issuing operations. Now, a non-resident may, without limitations, provide guarantees, sureties and other security instruments in favour of a non-resident creditor, based on loans taken by residents abroad;
- In terms of capital transactions, the amended Article 13 stipulates that residents (legal entities, individuals and entrepreneurs) can make payments for purchases of foreign long-term debt securities (from international financial organisations, etc.), regardless of whether these long-term debt securities were issued abroad or in the country. It is further provided that non-residents cannot invest in short-term securities in the country, regardless of whether securities are issued by a resident or non-resident.

Improvement of existing solutions

To avoid any future ambiguity, further amendments to the Forex Law define which residents and non-residents can conclude foreign credit operations in foreign currency.

The decision based on which resident individuals cannot conclude foreign credit operations still remain in force. In addition, improvements have been made in respect of the following:

- The off-setting of the debts and receivables that was not prohibited by the Forex Law, but merely represented the legal framework for further implementation of this institute in practice, has been regulated in a more detailed manner. Article 6 defines the base for off-setting debts and receivables with residents – legal entities, banks and entrepreneurs. In the meantime, the conditions for off-setting are yet to be prescribed by the Government;
- The integrated Registry of Foreign Currency Accounts has been implemented while the deadlines and ways of delivering such information by commercial banks is to be prescribed by the NBS, all in order to simplify control and possible financial investigations about the property acquired in a criminal act;
- Reporting about payments made abroad, whereby the liability has been introduced for residents, legal entities and entrepreneurs to acquire the permission from the Foreign Exchange Inspectorate for the services of money transfer in international payments. The conditions are expected to be closely regulated by the Ministry of Finance. This liability also applies to residents doing business with non-residents registered on the territories treated as so-called tax heavens;
- With regards to offences, adjustments have been made in respect of penalty provisions. These adjustments were made due to changes already introduced in respect of the material provisions in the amendments to the Forex Law. The minimum and maximum range of pecuniary fines has been increased in accordance with the new provisions of the Law on Minor Offences, (Official Gazette of the Republic of Serbia No. 101/2005, 116/2008 and 111/2009).

At the end, the provisions of the Forex Law regulating exchange operations have been amended in such a way that the issuance of the permit is transferred from the NBS to the Foreign Exchange Inspectorate.

REMAINING ISSUES

Despite the fact that amendments to the Forex Law introduced substantial innovations in the Serbian Forex practice, the solutions for overcoming practical problems will be acknowledged immediately after the adoption of by-laws. This regulatory backup framework needs to be adopted in six months starting from the date of enforcement of the amendments to the Law, except for the regulations related to exchange operations that apply until 31 December 2011.

It is expected that the following problems could be addressed with the adoption of relevant by-laws. Until these by-laws are implemented, current regulations will apply.

- Despite the fact that amendments to the Forex Law allow off-setting of debts and receivables based on foreign trade of goods and services, it is necessary to establish the regulation for the execution of these operations within short periods of time and the procedure for reporting to the Foreign Exchange Inspectorate. The open issue in practice is still whether the by-law will regulate off-setting in the case of already concluded agreements or it will be limited only to agreements concluded after the establishment of the respective by-law. Additionally, although the new amendment to Article 6 of the Forex Law, which is related to netting operations, does recognise a certain simplified type of off-setting, as it allows residents to set off their receivables/debts incurred in foreign trade operations, cross-border intercompany invoicing and netting operations in Serbia are still not or are insufficiently regulated. The new by-law (to be further elaborated in Article 6) is expected to regulate in more detail the question of netting operations and cross-border intercompany matters;
- In the matter of money transfer in foreign payment operations, the Ministry of Finance is expected to convey the related by-law. Accordingly the Foreign Exchange Inspectorate, as the competent body, should issue permits for the provision of such services;
- A register will be formed for foreign currency outflows or any unusual transactions directed to the so-called tax heavens. However, the reporting obligation will only be applicable after the adoption of relevant by-laws;
- The amendments to the Forex Law do not regulate the issuing of guarantees based on an order of a non-resident in all non-credit operations;
- The provision stipulating that guarantees, bonds and other instruments from Article 18 of the Forex Law are issued in the currency used in the basic business operation, can be seen as a potential issue, especially in cases of acquiring guarantees and bonds of a non-resident from credit transactions in dinars.

FIC RECOMMENDATIONS

- Ensure the adoption of by-laws, in order to enable the functioning of the new legal solutions in practice, in accordance with the liberalisation principle of foreign currency operations in full;
- Ensure off-setting of mutual receivables in foreign payment operations and financial derivate businesses in accordance with the by-laws and international practice and standards;
- Enable cross-border intercompany invoicing in order to simplify cross-border payments and further regulate netting operations in Serbia, which are not sufficiently regulated in the present text;
- Enable issuance of guarantees based on the order of a non-resident in the business between two non-residents in all non-credit operations;
- Re-examine the provision that guarantees, bonds and other security means from Article 18 of the Forex Law are to be provided in the currency of the basic business operation, especially in cases of acquiring the guarantees and bonds of a non-resident from credit operations in dinars.

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009		√	
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.	2009		√	
Adopt the new Law on Legal Profession.	2010	√		
Influencing the public opinion on the necessity for a more decisive and efficient action against money laundering and financing of terrorism.	2009		√	

CURRENT SITUATION

The Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of the Republic of Serbia No. 20/2009 and 72/2009; hereinafter: the "Law") provides definitions 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 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 offence.

This Law establishes the Administration for the Prevention of Money Laundering and stipulates its jurisdiction. If it suspects money laundering in a transaction, the Administration 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 the application of the Law and also to notify the Administration of potential cases of money laundering.

Amendments to the Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of the Republic of Serbia No. 91/2010) were published on 3 December 2010. The principal changes are as follows:

- Terms associated with electronic transfer of funds are specified in detail, as are obligations of persons providing electronic transfer payment and collections services;
- Special obligations are specified for the use of new technologies, as well as for unusual transactions;
- Introduction of requirement for passing the exam and acquiring license for all authorised persons in an entity which is subject to the Law;
- Provisions are introduced for the integrity of the employees to whom the provisions of this Law apply;
- New competencies are introduced for the Administration for the Prevention of Money Laundering relating to supervision of operations of particular entities which are subject to the Law;
- In accordance with these changes, there are also changes relating to specific provisions on economic offences.

In accordance with this Law, on 8 February 2010, the Government adopted the Rulebook Setting the Methodology, Obligations and Actions in Conformity with the Law on the Prevention of Money Laundering and Financing of Terrorism, as published in the Official Gazette of the Republic of Serbia No 7/10 on 19 February 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 no business should be conducted with clients from those countries, but precau-

tionary measures should be taken. Furthermore, Article 19 stipulates that the liable parties are not under obligation to deliver information to the Administration on every money transaction totaling 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 basis, 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 crime rates, countries that do not apply internationally recognised standards).

The Law establishes the responsibility of liable parties (legal entities and sole traders) to undertake the actions and measures for detection and prevention of money laundering and financing of terrorism. The lawmakers 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 Rulebook Amending the Rulebook Setting the Methodology, Obligations and Actions in Conformity with the Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of the Republic of Serbia No 41/11) was published on 10 June 2011. The principal changes in the Rulebook relate to specification of content and method for passing the professional licensing exam for the performance of tasks by authorised person and deputy of authorised person. Namely, persons authorised for performing tasks specified by the Law employed by all entities subject to the Law, will be required to pass a professional exam and will be issued a license.

As of 1 January 2012, all authorised persons in banks will be required to hold licenses. In this respect, an exam programme for authorised persons in banks has been developed. The first professional licensing exam for performing the tasks of authorised persons in banks is scheduled for 20 September 2011.

During 2011, the Administration for the Prevention of Money Laundering compiled a list of indicators for identifying suspicious transactions related to financing terrorism, as well as indicators for recognising justified suspicions of money laundering or financing terrorism, which represent guidelines for the following entities subject to the Law: lawyers and law partnerships, accountants, entities providing money transfer services, entities providing forfeiting services, postal services, tax advisors, issuers of guarantees, organisers of games of chance, auditing companies and certified auditors.

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 the European Union directives and international standards and conventions.

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

Furthermore, the Law provides for a 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 any cash transaction amounting to EUR 15,000 or more to the Administration, 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 Administration and other bodies responsible for its implementation. Standards and rules established in the European Union member states have mostly been accepted and incorporated in the text of the Law and the next step should be to find mechanisms for their implementation.

FIC RECOMMENDATIONS

- Adopt the necessary by-laws in accordance with the Law that would further elaborate its application and continuously evaluate the existing normative framework so that it would be in accordance with the international standards and rules;
- Increase the number of employees in the Administration in order to ensure its efficient operation in implementing regulations;
- Develop a system that would enable better communication between the Administration for the Prevention of Money Laundering and liable parties, as well as government, and also better cooperation with the Ministry of Foreign Affairs, Public Prosecutor's Office and courts;
- Influence public opinion on the necessity for more decisive and efficient action against money laundering and financing of terrorism;
- Organise adequate seminars and workshops in order to conduct relevant training for entities subject to the Law with a view to increasing the effectiveness of its implementation.

LAW ON PERSONAL DATA PROTECTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Provide the Commissioner with better working conditions, equipment and staff.	2009		√	
Determine the supervisory bodies that would monitor the implementation of the Law and cooperate with the Commissioner.	2009			√
Adopt by-laws necessary to improve the implementation of the Law (particularly in relation to the coordination of existing databases).	2009			√
Establish better communication between the Commissioner and other state authorities, NGOs and International organizations.	2010		√	
Raise awareness of the state authorities about new ways of jeopardizing personal data, such as video surveillance, storage of biometric data and unprotected websites.	2010		√	
Conduct workshops and seminars in order to educate and raise awareness of the citizens about the protection of their rights.	2009		√	

CURRENT SITUATION

The Law on Personal Data Protection (hereinafter: the "Law") came into force on 1 January 2009 and was supposed to introduce significant novelties and changes, all in accordance with the relevant European Union (EU) rules and international standards, such as the right to respect for one's private and family life, home and correspondence provided under Article 8 of the European Convention on Human Rights and the protection of the processing and free movement of personal data within the European Union provided under the Data Protection Directive (Directive 95/46/EC). It built upon the norms set by the preceding legislation, which had been enacted in 1998, while establishing stricter and more detailed guidelines to be observed by entities collecting, processing, and maintaining personal data.

The legislator defined "personal data" very broadly so as to encompass 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. The Law does not apply to the following categories of personal data: a) data in the public domain; b) data processed for family and other personal needs and not available to third parties; c) data on members of political parties and other associations, processed by these organizations, on condition that the member provides a written statement to the effect that the provisions of the Law do not apply to the processing of his or her personal data for a certain period of time not to exceed the duration of his or her membership; d) data which a person capable of protecting his or her own interests has published about him or herself.

Each personal data controller collecting and processing personal data is obliged under the Law to submit to the Commissioner for Information of Public Importance and Personal Data Protection ("the Commissioner") a substantiated notification of its intent to establish a data collection no later than 15 days prior to establishing the collection or, as the case may be, prior to undertaking any further processing of data (unless otherwise provided by special legislation).

Under the Law, the basic premise under which personal data may be collected and processed (except for a limited number of cases) is the consent of the individual whose data is being collected, given either in writing or as an oral statement entered into the data controller's records. The consent must be given in written form when it comes to "particularly sensitive" data such as one's race, creed, ethnic origin, political affiliation, union membership, sexual identity, etc. Upon expiry of the purpose for which the data is processed and maintained, further processing is explicitly prohibited if, inter alia, at such time the person whose data

is to be processed is identified or identifiable. The Law also prohibits taking decisions with potential legal consequences on such characteristics as a person's work ability, creditworthiness, etc. solely based on automated processing of personal data pertaining to such person.

The person whose data is being processed now has extensive rights to request information on a number of issues related to processing, such as where the data is transferred, to whom it is transferred, the purpose of the transfer and the legal grounds for the transfer, and the data controller has the obligation to submit such information in writing.

As for cross-border transfers of personal data, the Law states that personal data may be freely transferred to the parties to the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. As almost all European states are members of the Council of Europe, this provision of the Law actually means that personal data may be freely transferred from Serbia to other European states. The Law further prescribes that personal data may be transferred to non-European countries (i.e. to the countries which are not parties to the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data), provided that they have in place the same level of personal data protection as that established by the aforementioned convention and subject to prior approval issued by the Commissioner. According to the Law, this level of protection is established either by a regulation or on the basis of a contract. If the intention is to transfer personal data outside of Serbia, the local entity must first be registered as a personal data controller and must obtain a data export permit from the Commissioner.

POSITIVE DEVELOPMENTS

In the light of the aforementioned, it is apparent that the Law signifies a serious step in the direction of Serbia's establishment of adequate protection of personal data and potentially the reduction of the gap between its legislation and that of the EU in this area. It is also noteworthy that the monetary fines under the Law have been raised to between EUR 500 and EUR 12,000 as compared to the previous legislation (approx. EUR 57 to approx. EUR 570).

The Law brought about the establishment of legal mechanisms, among others supervision of data collection and processing, which had not previously existed in the Republic of Serbia. Now the Commissioner has significant authority and powers in protecting and preventing misuse of personal data. The staff of the Commissioner has grown over the past year and consists of capable individuals eager to assist the members of the public in understanding and applying the Law. In addition, for the purpose of adequately enforcing the Law, the Commissioner established a Central Registry accessible to the public through the internet, which became operational on 15 May 2010. According to the latest monthly statistical report published by the Commissioner, 77 out of 212 cases pertaining to personal data were resolved by the Commissioner in June 2011, including the preparation of 32 opinions pertaining to the application of the Law. According to the same source, the total number of registered data controllers has increased to 415, whereas the total number of registered data collections has increased to 2919.

REMAINING ISSUES

Taking into account the fact that the Law is very abstract, the Commissioner issued a "Guidebook on the Law on Personal Data Protection", with the aim of clarifying certain provisions of the Law and making it more comprehensible to the general public and the data controllers. However, the aforementioned number of opinions issued by the Commissioner with regard to the application of the Law in June 2011 alone serves as evidence that significant work remains to be done in this area.

According to the Commissioner's public statements, very often state authorities remain passive even when the Commissioner acts upon a complaint of the person to whom personal data relates or warns a governmental institution about its obligations under the Law. The number of data collections registered in the Central Registry is still obviously far below the actual number of such collections which should be registered in accordance with the Law.

In practice, even though the Commissioner's staff has shown eagerness, substantial knowledge, and professionalism in assisting data controllers with fulfilling their obligations under the Law, there is also a growing sense that the

Law is sometimes applied rigidly and conservatively, which on occasion results in, for example, the application for export of personal data becoming a months-long process of negotiation with the office of the Commissioner. Such rigidity in applying the Law which, as stated above, contains certain ambiguities and is far from perfect, may result in significant administrative and legal costs on the part of data controllers attempting to fulfil their obligations under the Law while conducting their business in the same manner as their counterparts located in the European Union.

FIC RECOMMENDATIONS

- Provide the Commissioner with better working conditions, equipment and staff;
- Determine the supervisory bodies that would monitor the implementation of the Law in cooperation with the Commissioner;
- Adopt by-laws or issue precise instructions and standardised forms necessary to improve the implementation of the Law (particularly in relation to the coordination of existing databases and applying for data export permits);
- Establish better communication between the Commissioner and other state authorities, non-governmental organisations (NGOs) and international organisations;
- Conduct workshops and seminars in order to educate citizens and raise their awareness of the protection of their rights.

LAW ON DEFENCE

CURRENT SITUATION

Law on Defence is effective since the end of 2007. Although this Law is of a broader social and public interest and, in addition, it has not been enacted recently, we consider that there is a need to highlight the part of this Law regulating the relation to the business community, bearing in mind that significant obligations may be imposed on a business entity the content of which is not always clear and certain.

According to this Law, all business entities should provide information within their scope of business relevant for the defence of the State. The scope is too broad and in practice it may involve confidential information requiring particular protection.

In addition, in the case of war and state of emergency, business entities, besides a material obligation, have the general obligation to undertake defence activities related to planning, organising, preparing and training to conduct business activities under these specific conditions. They are responsible to maintain the level of production and services within their registered business activity, as determined by the defence plans and decisions of relevant authorities.

The Government determines, by decree, the business entities and business activities that are of relevance for the national defence.

In peace, these business entities are required to plan measures for their activities in state of war or emergency to ensure production and services, to secure priority production and services, and the supply of goods in accordance with the needs determined by defence plans, which is the subject of specific agreements concluded with the relevant government authority.

It is important to highlight that these companies are not allowed to change the intended purpose of the production facilities without the consent of that authority.

POSITIVE DEVELOPMENTS

Although this Law has not been a subject of discussion previously, a positive development in the implementation of this Law in relation to the obligations of business entities is the enactment of the related by-laws elaborating the general provisions of the Law, thus reducing the possibility of different interpretations as to how to determine business entities relevant for defence purposes and which obligations may be imposed in case of state of war or emergency.

Furthermore, the enactment of the Law on Protection of Confidential Information may be considered as a positive side, whereby the matter of the determination and protection of confidential information pertinent to state interest has been regulated. Also, the Law on the Protection of Trade Secrets was enacted in September 2011, which should enable better protection of confidential data.

REMAINING ISSUES

Despite the existence of certain by-laws, the criteria by which business entities may be defined as entities of importance to national defence cannot be predicted, and neither can their potential obligations in relation to national defence. In addition, the level of information required from them is quite broad and the protection of certain data is arranged mainly in relation to information relevant to national and public security, not necessarily to the data that are a trade secret and where public interest is not compromised.

FIC RECOMMENDATIONS

- Strict application of regulations concerning protection of confidentiality and monitoring of their proper use in relation to data revealed by business entities in terms of its business operations and which are not only important for public security reasons;
- Larger transparency in determining entities of importance to the national defence;
- Larger transparency in determining the kind of obligation that could be imposed on business entities, with a view to limiting the burden on private companies as much as possible.

TAX

A. CORPORATE INCOME TAX

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Introduction of by-laws that would regulate implementation of provisions of the CIT Law. Primarily, by-laws should provide guidelines with respect to transfer pricing and taxation of permanent establishments.	2010		√	
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.	2010			√
The alignment of the tax return with current and proposed changes of the CIT Law, including the tax return for foreign branches that should provide for no less favourable taxation of foreign branches compared to resident companies.	2010	√		
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.	2010			√
The introduction of a precise procedure for applying for different tax year (other than a calendar year).	2010	√		
Revisit the currently applicable rule that only paid taxes are recognised as an expense in tax return 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.	2010			√
Formulating a longer-term tax policy with respect to recognizing marketing expenses for CIT purposes as rules adopted in March 2010 (i.e. recognition of marketing expenses up to 5 percent of total revenues) were opposite of the previously stated position that marketing expenses would be fully deductible. In other words, whether currently applicable rule represents one of the anti-crisis measures of the Government of Serbia or long-term tax policy with respect to marketing expenses.	2010			

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, are applied 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 carry-forward of interest expenses not deductible due to thin capitalisation;
- With respect to tax incentives, tax credit for newly employed workers has been abolished and the criteria for granting tax credits for investment in fixed assets and the ten-year tax holiday have been tightened;
- The losses carry-forward period has been reduced from 10 to 5 years;
- A new 20 percent withholding tax on income from entertainment, sports, artistic and similar programmes and

activities performed by non-residents in Serbia has been introduced;
- Capital gains of non-residents on the sale of real estate, IPs and capital participations are subject to 20% capital gains tax (replacing the previous 20% withholding tax).

POSITIVE DEVELOPMENTS

The provisions governing the deductibility of certain expenses have been changed (advertising and promotion expenses are deductible up to 5%, entertainment expenses are deductible up to 0.5% , severance payments are deductible in the period when they are paid out, impairment of inventories are deductible in the period when 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 the 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, the methodology for establishing taxable income, the filing and payment of CIT in situations where a foreign business is not registered in Serbia, 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 has caused significant uncertainties as to the way taxpayers should handle their related-party transactions.

According to currently applicable legislation, branches of non-resident entities are not eligible for tax incentives, including tax credit for investment in fixed assets, which puts this legal form of business in a disadvantageous position compared to "standard" legal entities, in terms of tax treatment. In this respect, it should be pointed out that discrimination of permanent establishments of foreign companies vis-à-vis resident domestic companies with respect to income taxation (CIT) is prohibited by most bilateral double taxation treaties that Serbia has signed with other countries. The principle of non-discrimination should also be transposed to national law, ensuring that permanent establishments operating in Serbia (e.g. foreign branches) benefit from the same tax incentives as resident taxpayers.

Neither the CIT Law, nor other relevant legislation, provide a clear definition of underdeveloped regions, so tax incentives applying to investments in these areas also remain unclear.

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

The current version of the CIT Law still allows tax authorities to impose a three to twelve-month ban on the business activity of taxpayers who file a tax return and tax balance sheet with incorrect data resulting in reduced tax liability.

FIC RECOMMENDATIONS

Many of the existing problems in corporate taxation 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 Administration, to introduce greater flexibility in this area.

- Primarily, by-laws should provide guidelines with respect to transfer pricing and taxation of permanent establishments;

- By-laws for determining arm's length interest rate on loans between related parties are not in accordance with the provisions of CIT Law and best international practice, and should be abolished;
- The clarifications for the application and consistency in the approach of the Serbian tax authorities with respect to capital tax incentives such as a 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; The introduction of a precise procedure for applying for a different tax year (other than a calendar year);
- Formulating a longer-term tax policy with respect to the recognition of marketing expenses for CIT purposes. Namely, rules adopted during the latest amendments to the CIT Law in March 2010 (i.e. recognition of marketing expenses up to 5 percent of total revenues) were the opposite of the previously held position of the Ministry of Finance that marketing expenses should be fully deductible (this position was formulated in draft changes to the CIT Law that have been posted on the website of the Ministry of Finance since December 2008). In other words, FIC recommends that the Ministry of Finance come forward with the position whether the currently applicable rules represent one of the temporary anti-crisis measures of the Government of Serbia or a long-term tax policy with respect to marketing expenses.

However, some of the problems require amendments of the CIT Law:

- Recognizing the OECD Transfer Pricing Guidelines as an authoritative source of interpretation for transfer pricing matters that are not regulated in detail by domestic CIT legislation, and aligning the rules regarding the use of transfer pricing methods with the OECD Guidelines and best international practice (i.e. allowing the use of transactional profit methods and selection of the most appropriate method for the circumstances of a case);
- Taxation of cross-border corporate reorganisations, as the currently applicable legislation completely lacks provisions regarding the taxation of such reorganisations;
- Revisit the currently applicable rule that only paid taxes are recognised as an expense in the tax balance sheet and to align the above provision with the rules outlined in IFRS which do not impose the payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account;
- When returnable packaging is classified as a fixed asset (i.e. its useful life is longer than a year) for statutory accounts, it can neither be depreciated for tax purposes due to a low individual value of returnable packaging, nor expensed in a way that tax deduction is achieved. A rule should be introduced allowing a tax deduction for returnable packaging and other small value fixed assets which cannot be tax depreciated.

B. PERSONAL INCOME TAX

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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).	2009		√	
Introduction of a synthetic taxation system.	2008			√

CURRENT SITUATION

Taxation of individuals is governed by the Personal Income Tax Law (the "PIT Law") from 2001, which was last subject to legislative adjustments in July 2011. The new amendments introduced tax exemptions for the income of volunteers and removed the possibility of using tax exemptions when taxing salaries of the newly employed prescribed in the PIT Law if a tax relief is already used based on provisions of another legal instrument. Besides, the PIT Law, tax reliefs in the form of subsidies are granted by the Decree on Employment Incentive issued by the Government of Serbia and published in the Official Gazette of the Republic of Serbia, No 32/2011 and No 34/2011, effective from 21 May 2011.

POSITIVE DEVELOPMENTS

The provisions governing annual income tax have been applied by the tax authorities during 2011 so 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).

Double taxation of income received from abroad by inward expatriates in a situation where such income is recharged to Serbian companies is not an issue anymore. In this regard, the new guidelines of the Ministry of Finance are in line with the legislation governing taxation of income from abroad, leaving the "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) and imposing the tax obligation (i.e. tax payment, reporting of tax due and interest payment in case of latency) solely on an individual tax payer.

REMAINING ISSUES

Unclear residence rules for foreign citizens being seconded to work in Serbia and inconsistent approach on this issue by the tax authorities. The "days of physical presence" method is not applied (but formal temporary residence approval period is relevant), and calendar year is the period taken into consideration when determining residence (instead 12-month period which begins or ends in respective tax year), which is not in line with the PIT Law. Also, based on the latest guidelines of the Ministry of Finance, residence established on the basis of Double Taxation Treaty should be used for purposes of the PIT Law, too, but there is no legal ground for this approach.

The tax treatment of business expense compensation to individuals (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 is the compensation of expenses for business travel abroad, which is 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, the Serbian tax authorities continue to apply the Decree on the Compensation of Expenses and Severance Pays

to Employees in State Bodies. Not only does this practice lack grounds in the applicable laws, but it 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

- Prescribing detailed residence rules with respect to foreign citizens and applying "days of physical presence" method in each case. In addition, the PIT Law should explicitly stipulate that residence established on the basis of the Double Taxation Treaty is used for purposes of the PIT Law, too;
- The application of the cedular system of taxation of personal income remains the central problem of the Serbian system for taxing 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 a major investment into the tax authorities with respect to training, education, technology and software upgrades.

C. VALUE ADDED TAX

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2007			√
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.	2007			√

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 the clarification with respect to 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 a 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 the 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 due to a lack of reciprocity (e.g. Germany, Hungary, Switzerland).

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

The VAT Law prescribes the obligation for VAT payers to inform the tax authorities about each change in data contained in a VAT registration form, within five days from such change, when it should be the Serbian Business Registers Agency that officially informs the tax authorities about these changes.

While the Serbian tax authority has adapted itself very quickly to the VAT system and became quite proficient in the application of the VAT Law, due to a lack of a clear legislative guidance many of the provisions of the VAT Law are still subject to considerable controversy in practice (e.g. the application of "reverse charge" mechanism where the VAT Law does not prescribe the moment when a tax liability arises for the tax debtor (i.e. service recipient).

Through the changes of EU VI Directive, the provision regarding the place of supply of services has been amended. As a general rule, it is prescribed that the place of supply of services is the place where service recipient conducts its business activity. There are also exceptions to this general rule. These changes have been adopted by all EU countries and came into force as of 1 January 2010. The harmonization with the EU VI Directive is crucial as current provisions are leading to double taxation or double non-taxation of services traded between Serbian and EU taxpayers.

In addition, the EU VI Directive prescribe that supply of services without consideration is treated as taxable supply only if these supplies are rendered for personal needs of founders, employees or non-business purposes. The VAT Law is not harmonised with the above provision of the EU VI Directive (especially with regards to supply of services without consideration; namely, the VAT Law prescribes that supply of any services without consideration is treated as taxable supply, which is the opposite of the EU VI Directive provision).

At the moment, based on the interpretation issued by the Ministry of Finance, shared services centre place of supply is determined based on the general rule of the VAT Law i.e. taxable where the service provider conducts its business activity. In the EU countries these services have always been taxable in the place of service recipient. Such position of the Ministry of Finance seriously jeopardises potential investment endeavours of multinationals aiming to select Serbia as their European call centre hub.

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 registered office in Serbia to register for VAT purposes;
- The Tax Administration should issue comprehensive guidelines for the application of provisions of the VAT Law to address various issues which have repeatedly been the source of problems in practice;

- The VAT Law should be revised to ensure that when there is a change of data maintained by the Serbian Business Registers Agency and data specified in the VAT registration form identified upon VAT payer registration, the Serbian Business Registers Agency should inform the tax authorities on such changes within five days from the day of issuing the Decision on data amendments.
- The rule for the place of supply of services should be revised in accordance with the Sixth VAT Directive;
- Further, the provision of services without consideration should be revised i.e. the provision of services without consideration should be determined as taxable supply only if these supplies are provided for personal needs of company founders, employees or for non-business purposes as stipulated by the EU VI Directive;
- For "reverse charge" mechanism it should be précised that tax debtor/service recipient is obliged to calculate VAT either in the moment: 1) when an invoice is received for the goods or services provided by a foreign entity or 2) when an advance payment is made to a foreign entity, depending on circumstances that occurred earlier.

D. TAX PROCEDURE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Tightening the deadlines for the issuance of decisions of the Tax Authority.	2008			√
Clarification of the relationship of the penal provisions of the TPTA and those prescribed by the individual tax laws.	2008			√
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.).	2009			√
Introduction of the "binding opinions" in the Serbian tax system whereby such rules would be binding upon the entity requesting the opinion and the tax authorities, as this would introduce a greater level of certainty for Serbian taxpayers.	2008			√

CURRENT SITUATION

The regulatory framework governing tax procedure in Serbia is set by three main laws:

- The Law on Tax Procedure and Tax Administration (Official Gazette of the Republic of Serbia No. 80/2002, last amended in July 2010, the "PTA Law");
- The Law on General Administrative Procedure (Official Gazette of the Republic of Serbia No. 33/97, last amended in May 2010, the "GAP Law");
- The Law on Administrative Disputes (Official Gazette of the Republic of Serbia No. 111/2009).

A tax procedure is a special type of administrative procedure that is governed primarily by the PTA Law. The PTA Law regulates in detail the organization and functioning of the Tax Administration and procedures for the assessment, control

and collection of tax. The PTA Law also prescribes general tax misdemeanours insomuch as they are related to the breach of obligations under this Law (special misdemeanours in specific tax-related areas are prescribed by the tax laws governing these particular areas). The general rules of the GAP Law apply to the tax procedure where a certain issue is not regulated by the PTA Law. The Law on Administrative Disputes governs the terms of procedure for judicial review of administrative resolutions issued by the Tax Administration in the second instance (i.e. decides on cases taken against decisions that were handed down by the Tax Administration in the second instance).

POSITIVE DEVELOPMENTS

There were no significant changes in the regulatory framework governing tax procedures in 2011.

REMAINING ISSUES

- The existing regulatory framework governing tax procedure still does not provide sufficient protection to taxpayers against voluntary decisions of tax authorities;
- The tax authorities routinely fail to respect the deadlines for the issuance of decisions on appeals lodged by taxpayers;
- In recent periods, inspectors of the Tax Administration have shown a tendency to directly contradict written opinions issued by the Ministry of Finance on certain specific tax issues. Even though the opinions of the Ministry of Finance are not binding in a strictly legal sense, this is currently the only tool available to taxpayers to obtain some instruction from the relevant authorities as to how certain controversial tax issues should be treated;
- Serbian courts do not have a sufficient level of specialization and expertise to decide on tax disputes. The time needed to issue a court decision is too long – typically a tax-related court cases take more than one year to resolve. In addition, the courts almost never decide on the merits of the case. They usually remand the case back to be redeliberated by the Tax Administration or simply confirm the decision without giving sufficient reasoning for such a ruling. Under these circumstances, judicial control of the decisions of the Tax Administration is basically meaningless.

FIC RECOMMENDATIONS

- Introduce the presumption of a positive decision in the case of a failure by the Tax Administration to issue their decision within statutory deadlines;
- Eliminate legal uncertainty: the relevant tax authorities, the Tax Administration and the Ministry of Finance, should coordinate their actions and design mechanisms for the establishment of a joint practice in the interpretation and application of tax laws. In addition, Serbian tax laws should introduce binding opinions which would be issued by the Tax Administration;
- Special tax departments should be established within the Administrative Court and the judges there should be exposed to more training with regard to understanding tax issues.

E. LATEST DEVELOPMENTS IN THE SERBIAN TAX SYSTEM

CURRENT SITUATION

The Law on Financing Local Government (hereinafter referred to as "LFLG") determines sources of local municipality financing. Following the provisions of LFLG, a number of local municipalities enacted local decisions in order to introduce new duties or to influence the tax base calculation. In addition to the LFLG, the Parliament of Serbia enacted several laws introducing various duties, which may be understood as a new concept of taxation – introduction of new taxes through specific laws that are not tax laws (e.g. Emergency Situation Law, Tobacco Law, Law on Water, etc.). Although these laws were enacted, companies in Serbia could not foresee the full impact of new taxation due to the lack of by-laws. As an example, the Emergency Situation Law, enacted on 6 January 2010, introduced a State Fund to be financed mainly from payments made by companies conducting certain activities in Serbia. However, in March 2011 the Ministry of Interior enacted a by-law regulating deadlines and accounts for payments.

POSITIVE DEVELOPMENTS

The Government of Serbia finally abolished the 10 percent tax on the use of mobile phones that was introduced in April 2009 as a way of battling the negative effects of the world economic crisis on the state budget.

REMAINING ISSUES

The introduction of new taxes and duties 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.

A number of new duties are introduced by non-tax laws which, in our view, do not contribute to the desired transparency of the Serbian taxation system.

Lack of by-laws or late enactment of relevant by-laws may influence cash-flow planning of companies and certainty of the Serbian tax system.

Financing of local municipalities is not yet regulated in a systematic way since the LFLG only regulates the types of local taxes and does not provide any thresholds or guidelines for determining the amount of taxes.

FIC RECOMMENDATIONS

- The FIC believes that any new tax burden to businesses and individuals in Serbia should be introduced through tax laws that should be shaped by the Ministry of Finance and not by Funds, Agencies or other Ministries.

ENVIRONMENTAL REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009	√		
Consolidate regulatory framework through adoption of by-laws on environment protection information system and waste management;	2009		√	
Engage and train local authorities' staff in applying environmental regulations in order to develop local self-management capacities, including municipal environmental inspectors.	2010		√	
Introduce economic instruments, adopt monitoring system and deposit-refund system for packaging.	2010		√	
Reinforce the capacities of local governments for the purpose of preparing local environmental action plans.	2008		√	
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.	2009			√
Adopt and harmonise emission regulations with the EU acquis, especially thresholds for emissions into the air.	2009	√		
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.	2009			√
Introduce economic incentives for investments in environmental protection (clean production, pollution decrease, energy efficiency, waste reduction, eco-innovations, etc.).	2010			√
Design special regulatory and economic instruments as incentives for enterprises to apply regulations for environment protection.	2007			√
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.	2010			√
Further engagement and training of local authorities' staff in issuance of IPPC Permits and environmental impact assessment procedures.	2009		√	

CURRENT SITUATION

For the purpose of further implementation of environmental protection legislation enacted in 2009, the Government of the Republic of Serbia adopted a series of legal documents in the previous period. The most significant documents adopted during the last and current year relate to waste management, regulation of thermal treatment of waste and management of certain waste flows and types. The Regulation on the Ecological Network was adopted.

Regarding air protection, a regulation on pollutant emission limit values was adopted.

Municipalities have got the possibility of entering a competition through the "Exchange 3" programme for obtaining financial resources from the EU for the improvement of the communal waste recycling process and education of the population and children of pre-school and school ages.

The Waste Management Law, as well as the Law on Packaging and Packaging Waste, provides for the management of empty containers according to national and international standards and regulations. Each company has concluded a contract with an operator to fulfil the obligation of collecting 5% (in 2010) and 7% (2011) of empty containers, but this does not ensure that an adequate quantity of PPPs (plant protection products) containers have been collected.

Although announced at the beginning of 2011, the Law on Rational Use of Energy has not been passed yet and its adoption is being awaited in order to create conditions for rational and efficient use of energy.

POSITIVE DEVELOPMENTS

The package of rulebooks and by-laws adopted in the previous period, related to waste management, especially dangerous waste, constitutes significant progress and the basis for regulation of waste flows in Serbia. In addition to the already existing by-laws that stipulate waste tyres management, rulebooks governing the following areas rulebooks have been adopted: the modality of waste oils management; electrical and electronic waste management; used batteries; used vehicles; fluorescent lamps containing mercury; destruction of medicines; waste containing asbestos; medical waste. The following rulebooks have also been adopted: on the collection of alternative raw materials and on proceeding with machines and waste containing PCB. All these legal documents enabled more comprehensive application of the Waste Management Law.

Significant progress has been made by numerous local communities as regards local waste management plans; also, several regional plans have been adopted. In general, the ecological awareness has increased on all levels. Waste separation programmes have been introduced in individual households, with waste disposal into designated locations (containers for PET, paper, tins and other types of packaging). Some local communities are developing waste separation and recycling via participation in donor programmes.

There has also been certain progress in thermal treatment of waste: cement plants in Serbia have started co-incineration of communal waste and waste oils in addition to waste tyres. Excellent cooperation has been established with the Ministry of Environment, Mining and Spatial Planning in this area, and in July 2011 the first IPPC permit was issued to a cement plant in Serbia.

The intention is that the concerned companies, together with the Ministry of Environment, Mining and Spatial Planning, establish a company that would be responsible for collection of dangerous waste (PPP containers) and its export to a location outside of Serbia, for incineration.

Regarding air protection, the Government of the Republic of Serbia has adopted a by-law on pollutant emission limit values, harmonising these values with the limit values prescribed by the European Union. The Regulation on the Methodology of Data Collection for the National Greenhouse Gas Emission Inventory, as well as the Regulation on the Methodology of Data Collection for the National Inventory of Accidentally Released Persistent Organic Pollutants have also been adopted.

Finally, the Serbian Government has enacted by-laws enabling exemption of certain radioactive sources from regulation and control. This pertains to low ionizing radiation sources. The Agency for Nuclear Safety and Ionizing Radiation Protection has already started issuing approvals for exemption from control.

REMAINING ISSUES

- Legal documents created the conditions for regulation of waste flows in Serbia and implementation of the National Environmental Protection Programme. However, local communities' capacities in terms of financial and human resources are not sufficiently developed to provide for adequate application of these regulations;
- The process of adopting local waste management plans is still in progress in order to provide planning documen-

tation in all municipalities in the Republic of Serbia;
- The follow-up and reporting system is not sufficiently developed to complete the national and local register of pollution sources;
- Develop the stimulus for investments in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, ecological investments, recycling, etc.);
- Support and understanding on the part of the Government, Ministry and institutions interested in the environment in order to develop management of non-hazardous and hazardous waste;
- Need to establish a programme aimed at training users in, and the promotion of, proper rinsing of empty containers;
- Develop the facilities for thermal treatment of waste, especially hazardous waste;
- Regulate mining waste management, which is not covered by the Waste Management Law;
- Develop public partnership in the area of environmental protection;
- The process of obtaining the IPPC permit should be accelerated and operators should be able to obtain it within reasonable time.

FIC RECOMMENDATIONS

- Adoption of the Law on Rational Use of Energy;
- Create local and regional waste management plans;
- National plans for special types of waste management;
- Training of employees in municipalities in implementation of ecological regulations with the goal of developing local capacities for waste management, including municipal ecological inspectors;
- Further education of citizens related to environmental protection, waste management and communal waste recycling;
- Avoid unnecessary regulation (deposit system, that would not help in PPPs container collection, but only make agricultural products more expensive) by getting support for Containers Management Programme from the Ministry of Environment;
- Seek commitment of all stakeholders to participate in the Programme – for farmers, this means willingness to return containers, for retailers, distributors and/or manufacturers, willingness to collect and willingness to contribute to costs, to try to adopt best practices, based on industry's experience from across the world and to be cost-efficient and continually seek and implement cost reduction opportunities;
- Introduction of ecological, biodegradable packaging material;
- Introduction of follow-up systems, as well as a deposit for packaging material;
- Support of new and acceleration of the existing procedures of obtaining IPPC permits, as well as training of local authorities' staff in issuing such permits;

- Support the foundation of new and development of existing enterprises engaged in production and/or services in the environmental protection sector, and support the foundation of new and development of existing enterprises engaged in energy generation from alternative sources;
- Introduce economic incentives for investments in environmental protection (clean production, pollution decrease, energy efficiency, waste reduction, eco-innovations, etc.);
- 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 conductive to private sector investment and growth.

SECTOR SPECIFIC

FOOD AND AGRICULTURE

This chapter provides input on particular regulatory issues in domain of food and agriculture. Sequence of topics is not based on their importance, but rather on their scope.

1. SANITARY INSPECTION

CURRENT SITUATION

The issue of Sanitary Inspection of chemicals, food and tobacco during the import procedure is having a negative impact on foreign and domestic investors, leading to higher costs and loss of time. The FIC considers that the measures implemented represent an additional pre-market control and are contrary to the principle of free movement of goods and as such are a trade barrier.

The requirements for the above mentioned product groups as to Human Health during the importation process, are stipulated under the following laws and by-laws:

- The Law on Health Safety of Food and Products for General Use;
- Rulebook on the Conditions Regarding Health Safety of Food and Products for General Use that May be Placed on the Market;
- Rulebook on the methods for determining pH values, quantity of toxic metals and non-metals and microbiological correctness of products for personal hygiene, facial and body care and beautification products;
- Guidebook on the Manner of Taking Samples for the Analysis and Super analysis of Food and Products for General Use;
- The Law on Sanitary supervision.

The Importing entity prior to custom-clearance is required to request from the sanitary inspectorate the inspection of the shipment with the aim of checking whether it is in accordance to the health standards set in the technical regulations and the costs of laboratory analysis and determination of the health safety is covered by the importer. The procedure makes the import trade restrictive, lengthy and is unpredictable which leads to a less favourable investment climate and restricts free trade.

REMAINING ISSUES

Each shipment of chemicals, food and tobacco is inspected and must obtain a validation of health safety. The time frame needed for the inspection and validation process is not stipulated and varies based on factors unknown to the importer.

The cost of laboratory analysis and determination of health safety is covered by the importer and the sanitary inspectorate official determines to which laboratory the samples should be send for analysis and what the cost will be.

There are no standards as to the number of samples taken and the price range for analysis varies.

Samples taken from the original packages, damages the goods and packaging. The importer carries the losses of the destruction and sales.

FIC RECOMMENDATIONS

- The Law on Foreign Trade Transactions prescribes that measures and technical requirements may be applied on imports of goods in order to protect human life and health, though clearly outlining that such measures and requirements may not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries, or a disguised and additional restriction of importation.
  Therefore, the Sanitary Inspection procedure should not constitute a means of arbitrary discrimination or disguised restrictions on trade;

- We therefore propose to not delay relevant shipments entering the Serbian territory and to instead conduct spot analysis rather than analyzing every delivery before entering the country;
- This means shifting from pre-market controls or Inspections towards In-Market Controls or Inspections;
- We also recommend that the Sanitary Inspectorate establishes uniform rules as to the number of samples taken and the costs of the analysis.

These measures would greatly enhance the process of importation, lift trade restriction and contribute to a more positive investment climate for foreign Investors.

2. REGULATION ON LABELLING, PRESENTATION AND ADVERTISING OF FOODSTUFFS

CURRENT SITUATION

The existing Rulebook on Labelling and Marking of Packaged Foodstuffs, adopted in 2004 (Official Gazette SCG, No. 4/2004, 13/2004 and 48/2004; hereinafter: Rulebook) is essentially outdated and not compliant with the EU directive covering this area (2000/13/EC), which impedes free circulation of foodstuffs, imposes unequal conditions of competition and, finally and most importantly, impedes the provision of adequate and accurate information to consumers.
The Rulebook, stricter in some areas than the EU directive, does not contain any reference to other important areas of foodstuffs presentation and advertising to consumers. In addition to this, since the Rulebook was adopted in the previous federal state, the responsible ministry no longer exists, meaning that there is essentially no "ownership" of the Rulebook, which is read and interpreted on an ad hoc basis and even more broadly by different laboratories or Inspectors within the Ministry of Agriculture, with no official interpretation of the text available.

POSITIVE DEVELOPMENTS

Unfortunately none.

REMAINING ISSUES

The stricter nature of the Rulebook directly impedes free movement of goods, especially regarding soft drinks, where it directly conflicts with the EU directive. The provision of the Rulebook stipulating that no soft drink, syrup or powdered product label may show an image of fruit creates an uneven playing field for domestic producers who export their products, as well as those importing them, as it forces them to completely change their packaging design for the Serbian market, comparing to other territories. Also, it creates a paradox in the market, where any kind of product with fruit aroma or scent (including washing machine detergents, beers, candies, even air refreshers) may show images of fruit, but products such as refreshing soft drinks actually containing fruit – may not.

On the other hand, the Rulebook does not cover the area of presentation and advertising of foodstuffs at all, making it possible for producers to claim unsubstantiated characteristics of their products, often attributing them medicinal properties, which is directly prohibited by the EU Directive on Labelling, Presentation and Advertising. The area of mineral waters is an illustrative example, as the Serbian market is abundant with waters claiming or making references to medicinal attributes with properties that help prevent, treat or cure human diseases, which is directly prohibited by the EU legislation.

Undertaking measures outlined in the recommendations below will lead to increased consumer information and

protection, which is the prime consideration for any rules on the labelling of foodstuffs. Disclosing the exact nature and characteristics of the product enables the consumer to make his choice in full knowledge of the facts, thus creating the fewest obstacles to free trade. Last but not least, industry would be supported by introduction of EU-compliant labels, already accepted in countries of the region, thus boosting export due to diminished obstacles.

FIC RECOMMENDATIONS

- Adopt and urgently implement an EU-compliant rulebook on labelling, presentation and advertising of foodstuffs. This would diminish and, desirably, eliminate the differences between the laws, regulations and administrative provisions between Serbia and the EU member states to advance free circulation of foodstuffs and abolish unequal conditions of competition;
- Approximation of these by-laws would contribute to smooth functioning of both internal market and trade with EU countries;
- As mentioned in other chapter of the White Book, urgently establish the National Reference Laboratory as an authority for matters of conflicting data and analyses of claims made on labels, especially when they refer to any kind of functionality of products.

3. SUBSIDIES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 and changing the structure of subsidies to quality classes in order to promote efficient production.	2010			√
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.	2010			√

CURRENT SITUATION

The subsidies policy has been and is likely to remain a significant economic assistance tool of the Serbian as well as many EU members' state policies. A fact that illustrates the importance of the subsidies policy in the EU is that the EU spent EUR 57 billion on agricultural development in 2010, of which EUR 39 billion was spent on direct subsidies. The subsidies as an economic instrument should aim 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 in

production. We have to take into consideration that export subsidies will be abolished with Serbia accession to the WTO, which implies that export competitiveness increase should be supported via subsidies for farmers and equipment.

Despite the fact that, in many agricultural sectors, the efficiency of production is below the EU average, the Serbian agriculture sector recorded a trade surplus in previous years as well as in the first half of the current year. We believe that there is a lot of potential in agricultural sector in Serbia, but without stronger Government support in terms of subsidies, productivity will not improve. Productivity may be low both in the sense of low yield per land unit or head of cattle (for example milk) and low productivity of land and capital. The reason for low productivity is poor breed composition, low level of land irrigation, low utilisation of inputs and seed on the one hand, and obsolete equipment, technology and infrastructure on the other.

REMAINING ISSUES

The Ministry of Agriculture and the Government adopted the National Agricultural Programme (NAP) in October 2010. The document is the first national programme for agriculture referring to the period of 2010–2013 and represents a summary of legislative, institutional and financial activities of the Ministry of Agriculture, however without clear references to the exact planned amounts of spending or at least percentages of change compared to the current or some other years.

FIC RECOMMENDATIONS

- As part of further development of the NAP, adopt four-year strategies for all major sectors of agricultural production, setting mid-term subsidy policies;
- Adopt regulations promoting quality standards in agricultural production (for example Global GAP and HACCP for milk) and changing the structure of subsidies by quality classes in order to promote efficient production;
- Where they remain as an economic assistance tool, subsidies should be available for all legal and natural persons under equal conditions, regardless of ownership structure or past or present growing areas, in order to secure transparency of the process, rewarding of efficient producers and recognition of specialisation and professionalisation of farming.

4. REGISTRATION PROCESS OF PLANT PROTECTION PRODUCTS (PPPS)

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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).	2010			√
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.	2010			√

CURRENT SITUATION

The current Law on Plant Protection Products was 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. It 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 refer back to the previous Law on Plant Protection (Official Journal of the FRY No. 26/98) from 1998.

This decision brought us to the situation that newly registered PPPs may contain one or more technical actives along with their impurities of uncertain (eco)toxicological concern, since they may have never been tested in order to be proven safe for human health and the environment.

More than 900 PPPs are registered in Serbia at the moment, with the majority (approximately 600 product brands) 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 destination markets for Serbian food exports.

What does the process of registration of PPPs in the EU look like?

The Commission directive governing the inclusion or non-inclusion of active ingredients in its Annex I is published in the Official Journal of the European Union. If the primary notifier wishes to add an additional source of the same technical active, or any other applicant wishes to apply for inclusion of a new source not yet evaluated at the EU level, he would have to prove that his technical material is equivalent to the reference source.

If the new source presents a similar or lesser hazard compared to the reference source, the new source may be considered equivalent to the reference source. Also, equivalence of technical materials must be proven in case there is a change in the manufacturing process and/or quality of starting materials, and/or a change of the manufacturing location, and/or addition of one or more alternative manufacturing locations.

In Serbia, no such process exists; all the technical materials are only required to comply with EU Annex I minimum published purity (based on evaluated sources), i.e. the active ingredient content must not be lower than specified by the Annex I decision or specified by FAO. The actual impurity profiles are not taken into account.

At the same time, there is an additional paradox to this situation, that if a research & development (R&D) company would need to renew the registration certificate of its product, the validity could be extended only until 31 December 2013, while newly registered products using R&D products as a reference obtain their registration for the period of up to 10 years.

POSITIVE DEVELOPMENTS

The Ministry of Agriculture, Trade, Forestry and Water Management has proven to be open for communication with the aim of establishing an expert-level working group and is open to cooperation with stakeholders from the agriculture sector on a frequent basis in order to learn more on administrative barriers to doing business (meeting held on 26 April 2011).

REMAINING ISSUES

The International R&D plant protection industry needs 10 years to develop one new product and invests roughly EUR 250 million over this R&D period. It provides the necessary data (dossiers) to prove that product is not only efficient for the recommended use, but also safe to crop, farmer, end user and the environment if used in accordance with the label. Serbian companies and some generic producers 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 to these companies over the international R&D companies and does not create a favourable investment climate.

Although at the meeting with the representatives of the Ministry of Agriculture, Trade, Forestry and Water Management held 26 April 2011, the Ministry said that they were open to cooperation with stakeholders from the agriculture sector on a frequent basis in order to learn more on administrative barriers to doing business, however, in the discussion on specific topics, the Ministry suggested that a consensus between domestic and foreign companies on concrete solutions would be a precondition for reforms.

This clearly shows that not only is the Serbian legislation in conflict with international EU and WTO standards, but its harmonisation is also dependent on the consensus within the industry.

The F&A Committee remains of the opinion that the role of local authorities is essential and cannot be replaced by any companies' agreements. Local authorities are leading in creating a fair business environment. Accordingly, such principles as food and users' safety should not, in our opinion, be based on consensus of all market players, but must follow international standards with an active role of state authorities.

FIC RECOMMENDATIONS

- The aim is to implement European standards into the domestic Serbian legislation, in terms of the efforts of the Republic of Serbia to fully harmonise its regulations with the EU and the World Trade Organization (WTO);
- The FIC advocates full harmonisation with EU standards and proper implementation of the PPPs registration process in the Republic of Serbia in order to ensure food safety for consumers and fair competition between international and domestic companies, while at the same time creating favourable market conditions for foreign investments, by bringing into force all the articles of the new Law on PPPs immediately and starting a revision of the existing registrations.

5. QUALITY STANDARDS IN MILK AND JUICE PRODUCTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2010		√	
Urgent establishment of National Reference Laboratory as prescribed by the Law on Safety of Food is necessary.	2010			√
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.	2010			√
The 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.	2010			√

CURRENT SITUATION

Quality standards in general are the issue that concerns the whole food industry and the 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 the 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 the EU legislation. 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 fact that milk production is treated as a social business is reflected in the Food Safety Law passed in 2009 and the Rulebook on Raw Milk Quality, also adopted in 2009.

POSITIVE DEVELOPMENTS

Unfortunately, there were none.

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.

The Food Safety Law clearly prescribes the foundation of the National Reference Laboratory as a supervisor over the existing accredited laboratories, but it has not been established yet. Consequently, full implementation of the Rulebook on Raw Milk Quality, as a good starting point for the production of high-quality milk, is not possible, which leads to numerous negative implications for the milk market.

When it comes to implications for the juice and nectars market segment, the implementation of the existing legislation remains the biggest problem. Part of the existing legislation is still not EU-compliant (Rulebook on Foodstuff Labelling), while the adopted version of the Rulebook on the Quality of Juices and Nectars (although mostly compliant with EU legislation) does not contain a

critical part defining parameters for determining identity and authenticity of fruit in juices and nectars, nor a guideline for such parameters (due to the specific form of the regulatory system in Serbia, which does not recognise recommendations). This opens the space for inconsistence of content with label, mostly in the area of stating fruit species used in products.

This directly creates an uneven playing field between producers, jeopardising the right of consumers to complete and accurate information on the product, and misleads consumers. Last but not least, this practice disadvantages the local fruit producing industry in terms of fruit quality standards, limiting its potentials for export. These issues should also be addressed through the Law on Consumer Protection and Law on Advertising.

As is the case with milk production, the National Reference Laboratory would significantly advance certainty and trust of consumers and create a level playing field.

FIC RECOMMENDATIONS

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

- Urgently establish the National Reference Laboratory (NRL) as prescribed by the Food Safety Law and provide for its complete independence. Aditionaly, it is important to provide the NRL with professionals and experts as soon as possible, so that it can ensure the fulfillment of all tasks foreseen by the Law. Initially, for such purpose, it would be apropriate to use the possibility of financing by EU pre-accession funds. The NRL should be oriented in such a way that it can be supported by fees from its own clients and stakeholders, which would be defined by the Law;
- Full implementation of the Rulebook on the Quality of Juices and Nectars;
- Adopt the Rulebook on Foodstuff Labelling, in accordance with the EU legislation;
- Consider adopting amendments to the Law on Consumer Protection and Law on Advertising to address poor implementation of Serbian and EU standards in actual production and sanction deceptive advertising;
- The FIC considers that lessons learned from the process of improvement within the areas of milk and juice production can be used throughout the food production sector.

6. RECLASSIFICATION AND RELABELING OF CHEMICALS

Why do we need to classify and label chemicals?

We need to provide end users with clear information on dangerous properties of chemicals (substances and mixtures) to be able to protect human health and environment. This is the reason for setting clear and harmonised rules in international (and national) trade of chemicals.

By setting a legal framework, we can classify chemicals in classes of danger according to the same clearly defined criteria, and label them to warn the end user about the dangerous properties of chemicals and safety measures that need to be taken.

CURRENT SITUATION

Legal framework for classification, packaging and labelling of chemicals in the Republic of Serbia

Content of the labels (declaration and instructions for use) for plant protection products (PPPs) is regulated by two rule books, the Rule Book on Classification, Labelling and Marketing of Chemicals (Official Gazette of RS, No 59/2010) and the Rule Book on Methods for Monitoring Pesticide (Official Gazette, No 63/2001).

Producers and importers are required to classify, label and pack all the chemicals, including PPPs, in accordance with the existing regulation(s).

Rule Book on Classification, Labelling and Marketing of Chemicals, stipulates that we must change all the labels by 1 October 2011, both for the newly imported or produced chemicals, including PPPs, and the products that are already on the market.

The Rule Book on Methods for Monitoring Pesticide states in Article 37: "The declaration and instructions for use are prepared in accordance with Article 69 of the Plant Protection Act (Official Gazette of FRY No. 24/98) and must be consistent with the certificate issued for placing products on the market."

In order to change the labels, we first need to change the existing certificates issued by the Ministry of Agriculture for about 900 PPPs that are registered in Serbia, which can hardly be completed by October 2011.

After that, we should change both the declarations and instructions for use for PPPs that have already been imported and are in our warehouses or on the market. This is impossible, given the number of distributors, agricultural pharmacies, cooperatives and other entities.

We have to keep in mind that PPP labels are also required to have:

- A declaration, printed directly on the packaging or affixed to it, and
- Instructions for use, usually in the form of booklets, either attached to the declaration or inserted into individual cases together with the packaging.

Once a PPP is packed, any change of either declaration or instructions for use is practically impossible, and would require a repackaging of the PPP and destruction of the remaining packaging.

POSITIVE DEVELOPMENTS

The Ministry of Agriculture has posted the instructions for amendments to the PPP Certificate on its website on 10 June 2011.

REMAINING ISSUES

- Relabelling packaging of PPPs that are already on the market or in our warehouses or destroying the packaging that could not be relabelled;
- Destruction of already printed labels, currently on stock at producers' level;
- Possible consequences if process of PPP certificates' amendment not completed before the Ministry of Agriculture and therefore there was no possibility to change labels for products that we import after 1 October 2011.

FIC RECOMMENDATIONS

- Request the Ministry of Environment to extend the deadline for the adoption of the rule book in the case of PPPs, due to the complicated procedure of labels' change;
- Request the Ministry of Agriculture to speed up the amendment of certificates, once they have been submitted.

7. LIVESTOCK BREEDING (OR LIVESTOCK PRODUCTION)

CURRENT SITUATION

Livestock breeding is the indispensable foundation for the production of animal-origin products such as meat, milk and eggs. The level of agricultural development of any country is measured by the share of livestock production in the overall agricultural production. In Serbian agriculture, the current livestock production accounts for 30% of the gross revenue, which is unsatisfactory and far from the share of about 55% in the past.

The total number of livestock farms (different in size) is about 790 000, and the overall revenue of the sector was USD 1.6 billion in 2010, which is USD 105 million less than the year before.

The main reason for concern in livestock production is the long-lasting decline in the number of livestock head. In the past decade, that number has decreased by 2–3% every year. The decrease in the number of head of livestock of all species directly reflects on the decrease of meat production. Even though EU quotas have been in effect for a couple of years now, the entire sector is not capable of delivering enough meat, especially the "baby beef" category as the traditional brand.

POSITIVE DEVELOPMENTS

Measures of a proper livestock policy should target market-oriented producers. The most important financial source in livestock breeding is subsidies. After initial RSD 700 million, the budget for livestock breeding was increased to RSD 1.2 billion. Faced with limitations in financing livestock production, some local communities have launched their own programmes for supporting local producers (e.g. Jagodina, Ub, Bogatic), which can be a good example for the others. Also, the free trade agreement with Russia, Belarus and Kazakhstan should contribute and motivate a revival of large-scale livestock production.

REMAINING ISSUES

The accession to the EU and WTO will bring competition, market liberalisation and less protection, higher quality standards, reduction of Government support and export subsidies. In order to be competitive in such circumstances, it is necessary to transform livestock production both for the domestic and foreign markets quickly and efficiently.
The achieved improvement of foreign trade conditions, including CEFTA, will be useless if there is not enough livestock produced for export. Therefore, any further decrease of the number of livestock should be stopped as a matter of urgency.

FIC RECOMMENDATIONS

- An increase in the number of head of livestock could be achievable by introducing measures for the improvement of production potential of certain livestock species and breeds. Beside standard selection measures, it is necessary to adopt advanced genetic knowledge for developing successful breeding programmes;
- Application of new technologies for improving the production potential of breeds and quality is not possible without proper financing. Therefore, it is necessary to provide more favourable loans, i.e. lower interest rate and longer grace period;
- In parallel with improvements in the economies of scale of livestock production, it is crucial to implement relevant quality and food safety standards based on good agricultural practice and acquis communautaire. In addition to

food safety, it is important to provide a traceability system on the farms to ensure that livestock products could be traced from primary production to the consumer. Adopting such criteria could leverage more opportunity for export, especially to the EU countries, and contribute to overall competitiveness;

- Livestock production has a long production cycle in livestock breeding; therefore, in order to succeed, it is crucial to provide the related measures in the long term.

TOBACCO INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2008		√	
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.	2009		√	
Ear-marked tax on tobacco products as health-related Budget fund charge undermines the operating environment for investors and makes public finance less transparent and contrary to IMF recommendations and positive EU practices. All fiscal charges on tobacco products should be directed specifically through Law on Excise.	2010			√
The Government should take a negative position on the adoption and implementation of the Guidelines for the implementation of FCTC's Articles 9 and 10, thus preventing significant distortions in the tobacco market, tobacco production and processing, and the production and export of cigarettes.	2010			√

CURRENT SITUATION

The tobacco industry is one of the strongest and most stable sectors in the Serbian economy, contributing to over 12 percent of total Government revenues and nearly 2 percent of Serbia's GDP. Three leading global tobacco companies have established their production capacities locally, while the level of foreign investments in the tobacco industry exceeded 1.2 billion EUR, which clearly demonstrates 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 gradually heading towards alignment with the relevant EU directives, is crucial to ensure sustainability and further industry development.

In that respect, the additional excise tax increase in December 2010 that altered the excise tax calendar articulated through the Excise Tax Law, which was supposed to be in place by end of 2012, was made without consulting with the industry, thus causing uncertainty and unpredictability for the industry.

POSITIVE DEVELOPMENTS

In the past year, the most important positive development for all stakeholders including the hospitality sector and the Government was the adoption of the new Law on Protection of Population from Exposure to Tobacco Smoke regulating smoking in public places. FIC welcomes the adoption of a balanced solution that is already effectively enforced.

REMAINING ISSUES

As a result of the current Excise Tax Law, Serbia has some of the cheapest cigarettes in Europe and is a potential source of outflow of cigarettes towards EU member states. This is a potential reputation risk, particularly relevant to the prospects of Serbia's candidacy for EU membership. FIC strongly supports the adoption of a new long-term excise calendar in order to ensure gradual, smooth and timely harmonisation with EU requirements and on the other hand predictability of regulatory environment. FIC believes that the dialogue between the Government and the industry from the early stages of tobacco excise tax planning and regulatory policy development is very important for the predictability of the regulatory environment.

The current health-related Budget fund charge in the Tobacco Law makes public finances less transparent and contrary to EU member states positive practice and IMF recommendations. 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.

The Law on Advertising adopted in 2005 heavily restricts tobacco advertising. Still, some of its provisions are not precise enough, thus allowing arbitrary interpretation and posing difficulties in the implementation of the Law. The new draft Advertising Law contains further restrictions in line with the relevant EU Directive and best regulatory practices in EU member states and brings clarity to critical provisions. FIC is strongly in favour of the immediate adoption of the new Advertising Law, drafted by the Ministry of Agriculture and Trade.

Accession to the European Union is a key strategic political and economic goal of the Republic of Serbia. This process entails the progression of the Serbian fiscal and regulatory frameworks toward full harmonisation of Serbian legislation with EU *acquis*. In this context, Serbia's tobacco regulatory framework will continue to evolve towards the EU, while the provisions and recommendations of the Framework Convention on Tobacco Control (FCTC) will also be taken into consideration. EU's principles of consultation are based partly on the recognition of the need for specific experience, expertise or technical knowledge in the development of regulations that are effective, technically viable, practically workable, enforceable and with minimal unintended consequences. In many areas, the FCTC itself recognises that local conditions will determine the ability of a country to adopt a regulatory recommendation.

FIC RECOMMENDATIONS

- The new Excise Tax Law should progress towards a smooth and gradual long-term harmonisation with the EU, having in mind consumer affordability, regional developments and risks of illicit trade growth. The Government should re-examine the excise tax policy, by decreasing the proportional element and increasing the specific element and introducing more effective minimum tax mechanism in line with new EU methodology. In this way, Serbia's budget would have stable and constantly growing revenues from cigarettes and would be less dependent on the pricing strategies of tobacco companies. Finally, the new excise tax policy should lead to certainty and predictability of fiscal environment, which is a key prerequisite for all foreign investors, along with political stability;

- Another important issue to be taken into consideration is the earmarked tax on tobacco products. FIC strongly believes that all fiscal charges, including this tax, should be directed only through the Law on Excise, as is the practice in the EU member states;

- Urgent adoption of the new Advertising Law drafted by the Ministry of Agriculture and Trade. FIC believes that the regulator has to set forth clear rules in tobacco advertising that would be effectively enforced and that would create a level playing field for all market participants. We believe that the new draft of the Advertising Law contains reasonable further restrictions of tobacco advertising and brings more clarity to tobacco products advertising, particularly with reference to Article 64 of the current Law (articles 87–90 of the new draft Law). Hence, FIC urges the Government to submit the new draft Law on Advertising to the Parliament for immediate adoption;

- The regulators should engage in public consultations and make a complete and accurate assessment of all regulatory proposals in the early stage of the regulatory development process. FIC firmly stands behind its belief that it is of the utmost importance that local regulators understand the national implications of regulatory measures they are considering by employing a complete assessment of the science base, as well as an accurate assessment of wide socio-economic consequences thereof. Given the complexities in certain areas of regulation and the expertise of the tobacco companies, it is especially important to develop a regulation that is technically viable, practically workable and enforceable. Furthermore, FIC strongly supports open and transparent dialogue between regulators and the tobacco industry, just like for any other industry, following the principles of participation, openness, accountability, effectiveness and coherence adopted by the EU.

INSURANCE SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Parliament should adopt the proposed changes to the Law on Insurance that would enable divided insurance companies to decrease unnecessary administration cost.	2010			√
The Government of Republic of Serbia (MoF and Ministry of Interior) in conjunction with NBS and insurance companies, should reform the legal frame for vehicle registration which is the sole reason for domination of technical services and agencies for vehicle registration. The available models in Europe are more efficient for citizens, insurance industry and state administration.	2010			√
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.	2009			√
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.	2009			√

CURRENT SITUATION

Life and Non-Life Insurance

Insurance companies and their activities are governed and regulated mainly by the Insurance Law, adopted in 2004, as amended subsequently, and related by-laws issued by the National Bank of Serbia (NBS). Other relevant legal sources are the Law on Mandatory Third-Party Liability Insurance and By-Law on Voluntary Health Insurance issued by the Government of the Republic of Serbia. A relevant legal source is also 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. The 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 memorandum 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 licences;
- Supervision of insurance activities by the National Bank of Serbia (NBS).

The Law on Mandatory Third-Party Liability Insurance (hereinafter: MTPL Law) regulates:

- Main contractual elements in an MTPL insurance contract;
- Association of Serbian Insurers and its competences;
- Price limitation procedures (include Serbian 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 can be denied services);
- Conditions for participating in voluntary health insurance, though one set of conditions has already been met when the companies were granted licences for providing such insurance services – this duality will constantly generate confusion.

Pursuant to the provisions of the existing Insurance Law, an insurance company is not permitted to engage in both life and non-life insurance activities. Also, insurance companies may engage in insurance or reinsurance activities only. An adjustment period to split 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. There is high legal uncertainty, in terms of what the final legal framework in this area will be.

Insurance Market Overview

There are 27 insurance companies operating in Serbia, of which 23 perform only insurance activities and 4 perform only reinsurance activities. New foreign insurers have been entering the market both through acquisitions and Greenfield operations.

In 2011, based on first quarter data compared to the corresponding period in 2010, the insurance market registered a total increase of 1.

The structure of the market also shows signs of change. The contribution of life insurance to total written premiums is 16.55%. This figure is encouraging but still low compared to most European countries.

Regarding non-life lines of insurance, automobile insurance is still the leading insurance product in 2011. Automobile insurance is an important market segment, both in terms of own damage (Casco) with 12.21% and mandatory third-party liability (MTPL) insurance with 26.65%. The long-awaited new MTPL Law has been adopted. In almost a year of practice it has shown certain improvements, but also weaknesses in the regulation of the MTPL sales frame, which is one of the most sensitive topics on the market.

High concentration of the market is still present, as the three largest insurers in Serbia still account for a combined market share of slightly over 65%.

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

On the regulatory side, 2010 and the first half of 2011 witnessed additional efforts to regulate the MTPL market by NBS. NBS has continued developing a system for the protection of consumer (insureds') rights.

POSITIVE DEVELOPMENTS

- The insurance market preserved its financial stability.

REMAINING ISSUES

- Nothing has been done in line with FIC recommendations;
- In 2010, the National Bank of Serbia enacted its Decision on Specific Criteria and Manner of Calculating Mathematical Reserves and Profit Share Reserves, a decision that has certain elements that imply retroactivity in the legal system and will negatively impact business of all insurance companies providing life insurance. While limitations embedded in the decision are consistent with the practices of developed economies, this is not the case with the retroactive implementation of those limitations on contracts concluded years before the Decision has been enacted;
- Regardless of whether the deadline for existing composite insurance companies to split into life and non-life insurance will be extended or whether that obligation will be abolished altogether, there are no explicit regulations allowing companies that have legally separated their business lines to perform certain functions on a shared basis. This status is unfavourable bearing in mind the amount of costs arising from separated business operations on a regular basis. The Government has proposed amendments to the Law on Insurance, but the proposal has not been put into parliamentary procedure for more than a year;
- MTPL sales channels have not been reformed by the MTPL

Law and Law on Traffic Security and the absolute domination of technical services and agencies for vehicle registration has been confirmed. It is estimated that between 25% and 30% of MTPL premium has been spent on these sales channels. Thus, this issue remained the main risk generator for the insurance market solvency. The citizens are faced with obsolete administration procedures that are increasing: public spending of the state, spending of insurance companies for superior one-stop-shop sales channels and eventually solvency risks for some domestically owned insurance companies whose instability would jeopardise trust and achieved results in this market. NBS is investing substantial efforts to tackle the situation, albeit without legally reframing and removing systemic incentives for risky behaviour of major MTPL market participants. On top of all the 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 – the security of vehicles;

- Present legal solutions regarding health insurance enacted by the Government in 2008 and 2009 effectively closed the market for commercial insurers to develop and place their own insurance products, by imposing health insurance standards unacceptable to all except the state health fund positioned as a direct competitor to the insurance industry. FIC proposed a solution for the current situation limiting voluntary health insurance, but no improvement has been made;
- NBS is heavily regulating the market, supervising insurance terms and conditions together with tariffs, unlike in most EU countries where technical reserves are the focus of supervision, while terms and conditions and tariffs are fully determined by companies. Insurance models present on the local market are mostly based on named perils insurance 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 the so-called underwriting model and ultimately to the development of the insurance market. FIC proposed a solution for the current system, but no improvement or interest for reform has been shown.

FIC RECOMMENDATIONS

- The National Bank of Serbia should revoke elements introducing retroactivity in the Decision on Specific Criteria and Manner of Calculating Mathematical Reserves and Profit Share Reserves, adopted in 2010;
- The Parliament should adopt the proposed changes to the Law on Insurance that would enable insurance companies that have split their activities to decrease unnecessary administration costs;
- The Government of the Republic of Serbia (its Ministry of Finance and Ministry of Interior) should, jointly with NBS and insurance companies, reform the legal frame in vehicle registration that is administratively too complex and, in the current situation, the sole reason for domination of technical services and agencies for registration of vehicle. There are available models in Europe that are more efficient, with minimum administration and more efficient results for citizens, insurance industry and state administration;
- Reform of health insurance legal framework 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 to technical reserves and granting insurance companies full power 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

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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	2009		√	
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.	2010			√
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.	2009		√	
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.	2009		√	

CURRENT SITUATION

Serbia's private security sector employs over 30,000 people and has over 150 active security companies, but even today Serbia is the only country in the region and in Europe without a specific law on private security for decades.

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; also, there is no licensing of security officers – no official pre-employment screening and vetting; most of the companies have no insurance coverage for professional liability; no mandatory training and education programmes, etc.

Government is one of the biggest users of private security services; yet, it holds a contradictory position with regard to public procurement of security services for the purposes of state authorities or public enterprises. Namely, the Government is highly interested in having enterprises and citizens duly pay taxes and social contributions and its policy thereon is rigorous. However, when it comes to the above-mentioned public procurement of security services, the most common criterion is the lowest bid, and in most cases the procuring entity (the Government or a public enterprise) does not pay attention to whether the selected bidder has paid all due taxes and contributions, whether its employees are paid regularly and what their labour status is, etc.

In this manner, accepting "the most advantageous" 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 advantageous" bidder are lower than the amount of revenues that the Government could collect if it were to regularly collect all taxes to which the bidder is subject under the law).

This issue deserves heightened attention by the state authorities themselves, but also by the Association of Private

Security Companies, which should declaratively sanction its members if conducting illegal business (blacklisting).

Active promotion of the Serbian SRPS A.L2.002 national standard, which has been developed as a result of cooperation between the Quality Centre within the Serbian Chamber of Commerce (SCC) and the Institute for Standardisation of Serbia, is still in progress. As stated in the promotional text, "this is the first national standard adopted in the last 50 years on the 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 SCC 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, emphasising the fact that there was no transposition of European or international experiences puts these efforts in a negative context.

POSITIVE DEVELOPMENTS

Over the past 12 months, there has been significant progress towards final regulation of the private security sector: the Draft Law on Private Security has been developed within the Ministry of Interior, a dialogue between the public and private sectors has been initiated, several public discussions have been held and a mixed working group has been established and has drawn important conclusions on the Draft Law on Private Security. According to the latest information, the finalised draft version of the Law was sent to the relevant Government committees, with the expectation of commencing the adoption procedure by the end of 2011.

Additional positive aspects are in that the world and European associations gathering private security companies and security professionals are present in Serbia through local representatives (Confederation of European Security Services (CoESS), which is an umbrella organisation for all European national private security associations, as well as ASIS International – the pre-eminent organisation for security professionals, leading the global security standards initiative).

Both associations with their international credibility and long-standing expertise have expressed willingness and readiness to help and support both local associations and the competent national authorities in Serbia to work towards adoption of a specific law governing private security and to harmonise such legislation with the complex European environment and practices in the field of private security.

REMAINING ISSUES

The forthcoming Law should be fully harmonised with the EU standards and create a positive environment for further investments into Serbia's private security sector.

The key comments referring to certain provisions of the Law, which were stated during public consultations, are that if not amended in accordance with sector and market needs, those elements could result in problems. Therefore, the following recommendations address such key issues in a timely manner in order to contribute to the efficiency of the Law implementation.

FIC RECOMMENDATIONS

- Continue with monitoring of the preparation process for the introduction of the Law on Private Security, while continuously insisting that the Law should be harmonised with the European models of legislation as far as possible, but adjusted to local specific features; licensing of the companies should be handled by the Government (Ministry of Interior) or a government agency in order to avoid monopolisation of this sector and conflict of interests;

- The GOAL of Law adoption is legislative regulation, but not taxation of security industry; therefore, the principle of economy must be taken into account, which means having reasonable costs that would certainly, at the end of the process, be borne by the recipient of security services;

- During the implementation of the Law, it is necessary to carry out a pragmatic legislation of the security industry, meaning that it is necessary to set a reasonable time schedule and deadline for training and licensing of security officers and companies. One practical suggestion, which would to a large extent amortise the strong financial impact on the security industry and speed up the process of implementation of the Law, would be that all persons employed on an open-ended basis, working for more than one year and meeting the legal prerequisites for the performance of security tasks, should automatically receive the basic license, valid for the period of 3 years (transition licence);

- The Law must ensure equality for all participants in the market; the Law must not include possible discriminatory elements or special privileges for entities attempting to obtain particular prerogatives through the Law, such as the Accreditation Body of Serbia, the Institute for Standardisation of Serbia, the Chamber of Commerce, associations, because such solution – beside conflict of interests – results in new dilemmas, such as internationalisation vs. localisation;

- National standards are not to be imposed on economic operators because it certainly leads to localisation of the industry; the market and enterprises must not be misled into believing that those standards are mandatory, especially when it comes to tender procedures, where the emphasis should be on the bidders proving the legality of their business;

- The Government should encourage close cooperation between security sector stakeholders (both public and private sectors), while consulting large private security investors that can present their experiences and best practices from other EU countries where they operate, in order to create a stimulating environment for further investment. Investors are willing to invest in Serbia in the development of security industry, which will be able to export security services and workforce in the forthcoming years.

LEASING

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Initiating amendments to the Law on Financial Leasing and enabling funding of immovable property.	2009		√	
Initiating amendments to the VAT Law and treating interest rate as a financial service.	2009			√
Amendments to the Law on Financial Leasing should not limit the duration of a leasing contract.	2009	√		
Amendments to the Law on Corporate Income Tax should equalise the investments made through leasing with other types of investments.	2009			√
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.	2010	√		
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 .	2010			√

CURRENT STATUS

The development of leasing in Serbia dates from the beginning of 2003, when the Law on Financial Leasing was adopted. The introduction of this Law enabled the registration of 9 leasing companies at first, followed by a very intensive development of leasing activities in Serbia in the next few years, which resulted in the present number of 17 leasing companies. The leasing companies currently operating in Serbia are mainly affiliates of distinguished financial institutions, which are leaders in the sphere of banking and financial business in the markets of Central and South-East Europe. These groups have applied their knowledge and high corporate business standards to the Serbian market as well.

A continued decrease of the leasing market marked 2009 and 2010, which resulted in surplus of solvency with leasing companies. In the first half of 2011, an 18% increase of the value of leasing contracts was recorded, compared to the corresponding period in 2010. This fact indicates a recovery of the leasing market and has an optimistic effect on future tendencies. All system changes affecting the development of leasing as a form of financing (allowed funding of real estate business, abolition of the minimum term for the conclusion of leasing contracts), as well as absence of minimum deposit, made leasing a serious competitor to other available sources of funding on the national market. Further improvements in the field of leasing development are still necessary, in spite of these positive changes, taking into account the fact that leasing is a very important source of mid-term and long-term funding, because it is an economically efficient solution for the procurement of funds required for business of corporate companies. Initiation and continual efforts to adopt novelties within the framework of leasing industry would contribute to additional gain of current values with the national and the international business entities.

POSITIVE DEVELOPMENTS

The following was done in the course of 2011:

- The amendment to the Law on Financial Leasing was adopted, allowing the funding of real estate business by means of leasing. It will enable the recovery of this segment of economy and growth of the leasing industry in the forthcoming period;

- The amendment to the Law on Financial Leasing abolished the minimum term for the conclusion of leasing contracts;
- The entry into force of the Law on Enforcement and Security facilitated the enforcement procedure in the cases of leasing and a leasing contract thus became an enforceable judicial instrument.

REMAINING ISSUES

The following proposed measures will be necessary in order to facilitate the recovery of the leasing market in Serbia:

- Abolition of statutory reserve for financial leasing. Within the framework of the research we conducted in the European Union countries, which are members of Leaseurope, we found out that there was no obligation on the part of financial leasing provider to keep statutory reserve funds. With the aim of harmonising the operations of the leasing sector in Serbia with that in the European Union member states, we propose that the decision on the obligation of leasing providers to keep reserve funds on a separate account opened with the business bank be quashed;
- Initiation of amendment to the provision of the Law on Corporate Income Tax, or different interpretation of the same provision ("a 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 that purchase fixed assets through financial leasing will also be entitled to the said tax credit. It has been proposed that investments into fixed assets through financial leasing be recognised as a tax credit and in the value of paid-up principal of financial leasing in the calendar year for the current tax period. Since a financial leasing contract has a term of several years, during the validity and repayment of the contract, the pertaining part of investment for each calendar year should be recognised to a tax payer. In case the contract on financial leasing is terminated during the repayment period, a tax payer would be obliged to calculate, show in the tax return and pay the tax as from the date of submission of the tax return for the next tax period, which he would have paid if he had not used a tax credit, indexed from the date of submission of the tax return for the tax period in which he gained the right to a tax credit, until the date of disposal of the asset, to the rate of retail price increase according to the data of the state authority in charge of statistics;
- Initiation of amendment of the Law on Value Added Tax, where it concerns interest taxation. It is necessary to equalise the tax treatment of interests in financial leasing with tax treatment of interests in the banking sector. For this reason, we propose abolishing VAT on the part of the leasing fee related to interest;
- The request of the leasing sector for a dialogue with tax authorities in respect of setting the business rules of operating leasing activities in Serbia should be accommodated. We think that clear definitions of the business rules of operating leasing would improve competitiveness of the national economy, for both further investments and regular performance of economic activities of the existing corporate companies; also, in this way further approximation of the business environment to the one existing in the surrounding countries and in the European Union countries would be continued;
- Organisation of task forces and meetings between the representatives of the Ministry of Finance of the Republic of Serbia and the leasing sector, with the aim of defining the tax treatment of transfer of title to real estate based on financial leasing, which would be acceptable for both parties. The representatives of the leasing sector share the opinion that the purchase of new buildings subject to VAT is done for the purpose of their transfer to the lesee, also transferring to the lesee the rights to possession and use of the subject of leasing, explicitly with the aim of performing the activities in accordance with the law (it is a financial intermediation activity), thus gaining the right to recovery of input tax;
- Amendments to the Law on Corporate Income Tax, published in the Official Gazette of RS No 18/2010, as well as Article 6 of the Rulebook on Tax Balance Sheet Contents, established the methodology according to which, in case of a debt to the creditor having the status of a related entity, the amount of interest and pertinent fees on credit are recognised to a tax payer as expenditures in the tax balance sheet, namely as credit received from the related entity in the amount equalling four times the value (or, for banks, ten times the value) of the tax payer's own capital. We wish to initiate amendment of Article 62

of the Law on Corporate Income Tax and amendment of Article 6 of the Rulebook on Tax Balance Sheet Contents for the following reasons:

- In view of the specific features of the leasing industry in relation to other corporate companies, where the largest part of balance sheet sum consists of credits, we think that leasing companies should have a more favourable treatment in respect of the method of recognition of interests from related entities in case of borrowings from the mother banks;
- The abovementioned methodology is not favourable, because interests are not recognised in their entirety in the majority of cases, or they are recognised in small amounts. The mother banks have better access to the money market, which means that for this very reason leasing companies also get better interests than in the case of direct borrowings from external creditors. Such a treatment has a de-stimulating effect on mother banks crediting leasing companies, and thus also on the development of the Serbian economy, because additional costs are paid by the end-user, i. e. by the lessee.

FIC RECOMMENDATIONS

- Abolition of statutory reserve for financial leasing;
- Initiation of amendment to the provision of the Law on Corporate Income Tax;
- Initiation of amendment to the Law on Value Added Tax, where it concerns interest taxation;
- The request of the leasing sector for a dialogue with the tax authorities in respect of setting the business rules of operating leasing activities in Serbia;
- Organisation of task forces and meetings between the representatives of the Ministry of Finance of the Republic of Serbia and the leasing sector, with the aim of defining tax treatment of transfer of title to real estate based on financial leasing, which would be acceptable for both parties;
- Initiation of amendment to Article 62 of the Law on Corporate Income Tax and amendment to Article 6 of the Rulebook on Tax Balance Sheet Contents.

HOMECARE PRODUCTS AND COSMETICS INDUSTRY

SANITARY INSPECTION MEASURES UPON IMPORTATION OF DETERGENTS AND COSMETICS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Stimulation of the projects related to the dealing with hazardous waste in Serba and increasing the number of operators.	2010		√	
Creation of the necessary environment and increasing participation in the voluntary activities, especially among local producers, like in EU countries.	2010		√	
Adoption of by-laws concerning hazardous waste.	2010		√	
Introducing an in-market control and monitoring instead of the current pre-market sanitary clearance of each product.	2010			√

CURRENT SITUATION

The legislative framework that sets forth the requirements on imports of products for general use has not been amended yet. This is not in conformity with a basic idea of the EU market – the free movement of goods. The set of regulations that refer to the previously mentioned area consists of:

- Law on Health Safety of Food and Products for General Use;
- Law on Health Supervision of Food and Products for General Use;
- Rulebook on the Conditions Regarding Health Safety of Food and Products for General Use that May be Placed on the Market;
- Guidebook on the Manner of Taking Samples for the Analysis and Superanalysis of Food and Products for General Use;
- Law on the General Administrative Procedure.

POSITIVE DEVELOPMENTS

The Draft Law on Health Safety of Products for General Use has been launched. According to present knowledge, it will contain no provisions regulating detergents and home care products which are already included within the framework regulating chemicals and biocides. This means that they will be subject to provisions that exclude sanitary inspection upon imports of each and every shipment, which so far represents a trade barrier if conducted in such manner.

REMAINING ISSUES

The current legislation (Law on Chemicals, Law on Biocides, Law on Trade, Law on Consumer Protection and Customs Law with the related bylaws, etc.) comprises an initial framework for market surveillance in the domain of detergents and cosmetics, but cooperation between the competent bodies and across borders in exchanging information remains to be established.

Taking the above into consideration, we can conclude that the lack of implementation of the existing mechanisms, as an initial phase of the fully fledged market surveillance system to come, is a remaining problem.

FIC RECOMMENDATIONS

- In addition to the ongoing process of harmonisation with/transposition of EU legislation, we advocate a solution that may involve a transitional phase-out of sanitary border control. A set of interlinked activities and measures to ensure that products placed on the market comply with all the requirements of health and safety protection will prioritise and push forward the principles of market surveillance;
- We suggest defining a set of technical requirements, stipulated by the Serbian legislation, for which control would not be implemented as it is now;
- In preparation for the prospective establishment of a market surveillance system, reshuffling the inspection towards the market is necessary;
- As imported goods are registered pursuant to the Law on Biocides or the Law on Chemicals, the Authorities are officially informed by the producer of their chemical composition. Therefore, it is unnecessary to perform laboratory analyses of each shipment upon import;
- In this light, we also propose the drafting and enactment of the Law on Market Surveillance and the Law on Inspection Surveillance, although inspection control is already part of the Law on Trade.

REGISTRATION OF CHEMICALS AND BIOCIDES

CURRENT SITUATION

In the previous year, the Serbian Parliament passed amendments to the following laws of interest for the chemical and homecare products industry:

- Law on Chemicals, Law on Biocides, Law on Strategic Environmental Impact Assessment and Law on Waste Management.

On the other hand, the Chemicals Agency adopted many by-laws, among them:

- By-laws pursuant to the Law on Chemicals: Rulebook on the Content of the Security List, List of Classified Substances, Rulebook on Restrictions and Prohibitions of Production, Marketing and Use of Chemicals that Pose an Unacceptable Risk to Human Health and the Environment, Rulebook on the Import and Export of Certain Hazardous Chemicals, Rulebook on Permits for Carrying Out Activities and Permits for the Use of Hazardous Chemicals, Guidebook Setting Preventive Measures for Safe Keeping, Storage or Use of Dangerous Chemicals, Rulebook Amending the Rulebook on the Classification, Packaging, Labelling and Advertising of Certain Chemicals and Products in Line with Globally Harmonised Classification and Marking, Rulebook on Keeping Records on Chemicals, Rulebook on Detailed Conditions for Keeping Hazardous Chemicals in the Sales Area and the Manner of Marking That Space;
- By-laws pursuant to the Law on Bioicides: Guidelines for the Assessment of Biocides on the Basis of the Technical Dossier, Rulebook on Keeping Records of Biocides, Rulebook on Certain Hazardous Biocides that May Not Be Marketed for General Use.

POSITIVE DEVELOPMENTS

With the adoption of the new laws and by-laws in the previous year, further improvement was achieved with regard to

the harmonisation with the EU legislative framework in the field of registration of chemicals and biocides.

The Chemicals Agency is still developing as the institution responsible for the implementation of adopted laws.

The newly established Help Desk is a quick way to get answers to questions, noting the excessive emphasis on written communication.

Other positive developments are the shortening of time to the Agency's response with regard to biocides and the ongoing updating of the legislative framework, (i.e. a new template for main information on a biocidal product and active substance has been issued, in line with the amended by-law). On the other hand, the Agency still requires certain information according to regulations no longer in effect, which is time consuming.

The acceptance of the European experience on the part of the Agency is commendable, as well as the taking of appropriate steps based on those experiences.

REMAINING ISSUES

Generally, not all requests for additional documentation were sufficiently precise, they are too general and unspecified.

The Agency's responses regarding the amendment to the submitted materials are very slow. For example, the request for additional information about the reported amounts placed on the market in 2009 was not sent until March 2011.

The request for submission of technical files of surfactants is not a necessary procedure in the EU member states. According to the regulations, the proof of registration in the EU should be sufficient. The dossier on chemicals is more detailed than in the EU countries.

Lack of cooperation and information exchange between state bodies: the Medicines and Medical Devices Agency of Serbia, the Customs Administration, the Agency, Sanitary and other inspectorates, etc.

FIC RECOMMENDATIONS

- Introduce a procedure defining the "systematisation" – steps of communications which are to start when submitting material, in order to track the process;
- To some degree, to accept registration from EU countries;
- To align the level of detail required in the dossier on chemicals with the relevant documents in EU countries;
- Establishing cross-sectoral cooperation in order to exchange information between state bodies (the Medicines and Medical Devices Agency of Serbia, the Customs Administration, the Chemicals Agency, Sanitary and other inspectorates, etc.).

COSMETIC INDUSTRY

CURRENT SITUATION

Legislation in the area of cosmetic products has not been changed in Serbia in the past few decades.

Cosmetic products are regulated together with other products for general use (food contact materials, toys, tobacco and household products). The law which is still in application is the Law on Health Safety of Food and Products for General Use (Official Journal of SFRY No. 53/91), which was last amended in 2009, when food was excluded from its scope.

Regulations that refer to the safety of cosmetic products are within the purview of the Ministry of Health.

On the other side, there is a set of laws that cover broader areas, but also include cosmetic products. These are:

- Law on Trade;
- Law on General Product Safety;
- Law on Consumer Protection.

These laws are within the purview of the Ministry of Agriculture, Trade, Forestry and Water Management.

As a result of all abovementioned regulations, imported cosmetic products are subject to control by the Sanitary Inspectorate of the Ministry of Health during import (before placing the product on the market), and all cosmetic products are subject to in-market control by both the Sanitary Inspectorate (Ministry of Health) and the Market Inspection (Ministry of Trade).

POSITIVE DEVELOPMENTS

A new Draft Law on the Safety of Products for General Use has been prepared and, according to the Serbian European Integration Office Action Plan, should be adopted by the Government by the end of this year. After the passage of the law, it is expected that the whole range of by-laws will be adopted.

Draft amendments to the Rulebook on the Conditions Regarding Health Safety of Food and Products for General Use that May be Placed on the Market was also prepared. The amendments were made to articles referring to cosmetic products. At that time, the majority of the text was harmonised with the Council Directive relating to Cosmetic products (76/768/EEC). This presents a good basis for the preparation of a by-law on cosmetic products, which should be completely harmonised with the current EU legislation.

REMAINING ISSUES

The process of changing the regulations relating to cosmetic products has to be finished. Besides that, having in mind that EU legislation in this field is constantly being amended, the future by-law has to be flexible enough to follow the EU legislation and be amended accordingly.

FIC RECOMMENDATIONS

- It is very important to avoid overlapping of regulations that refer to cosmetic products. This means that, once the by-law specifically regulating cosmetic products is adopted, all other, more general laws have to leave enough space and not impose additional restrictions. A good example where overlapping has been avoided successfully is the Law on General Product Safety, which states: "This Law applies to all products which are considered products under this Law, except for products for which specific regulations define their safety";

- As for the type of control, it is our recommendation that competent authorities should focus more on in-market control, which is a practice in European countries. Import control should be mainly focused on product information file (product dossier), and, only where necessary, laboratory checks of the product.

SUSTAINABILITY

CURRENT SITUATION

Operating in a sustainable and socially responsible manner is becoming more and more important in view of the challenges facing society today, such as climate change or limited availability of raw materials. On the one hand, products and processes have to be considered in terms of achieving a balance between economic, ecological and social goals. On the other hand, it is just as important to review the entire value chain, that is, the entire life cycle of a product.

In the past, the Serbian Government has adopted many

laws of interest for the chemical and home care industry related to sustainability, among them:

- Law on Environmental Protection;
- Law on Waste Management;
- Law on Packaging and Packaging Waste.

It is worth mentioning that the industry in Serbia also took responsibility through an association-led approach by founding KOZMODET in order to drive voluntary industry initiatives with regards to household chemicals.

KOZMODET is an association of leading manufacturers and importers of detergent and cosmetic products. It is a member of A.I.S.E. (International Association for Soaps, Detergents and Maintenance Products) and associate member of COLIPA (The European Cosmetic, Toiletry and Perfumery Association).

POSITIVE DEVELOPMENTS

It should be noted that one of the most important documents in terms of European integration in the field of environment, Draft of the National Environmental Approximation Strategy of the Republic of Serbia, has been prepared. This document discusses the legal, economic and institutional aspects of the process of European integration in the field of environment. The prepared Draft Strategy will be the basis of accession negotiations in connection with the environment topics.

Within the European Union, different voluntary initiatives of our industry, with guidance of A.I.S.E., have presented several environmental beneficiary projects such as LSP (Laundry Sustainability Project), which has significantly improved the impact of detergents on the environment, creating environmental benefits. In order to understand the initiative for sustainable development better, LSP has been presented to KOZMODET members as well.

REMAINING ISSUES

The following laundry sustainability initiatives and product resource efficiency projects with sustainable detergent as the final product in compliance with all laws were not implemented in the Serbian market yet:

- sustainable production with encouraging reduction of the use of chemicals and packaging, thus significantly reducing the volume of chemical and packaging waste;
- sustainable consumption by encouraging consumers to modify the way of using detergents with regard to the environmental and natural resource savings (e.g. electricity, water, etc.).

These initiatives are voluntary and open to all companies. Furthermore, they generate economic, social and environmental benefits for the industry and society as such.

Waste treatment, waste separation and waste water treatment seem to be in a very early phase in terms of execution.

FIC RECOMMENDATIONS

- Encourage the household chemicals industry to quickly follow European trends and speed up the process of achieving significant reduction of chemicals and waste during production and consumption;
- Establishment of companies and bodies dealing with waste and hazardous waste treatment/waste recycling/waste-to-energy projects in communities and industry clusters;
- Develop and enhance a nationwide collection system for recyclable wastes (paper, glass, plastics, and bio).

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