WHITE BOOK

Proposals for improvement of the business environment in Serbia

2012

10 YEARS

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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Proposals for improvement
of the business environment in Serbia

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2012

CONTENTS

PILLARS OF DEVELOPMENT

LEGAL FRAMEWORK

SECTOR SPECIFIC

FOREWORD

The 2012 edition of the White Book comes at a time of anniversary. We celebrate 10 years of FIC presence in Serbia with the 10th edition of the White Book. But it is also a time of a new beginning, with a new Serbian government in place since this summer. It is a good time to reflect on what has been achieved from the goals that were originally proposed, and of setting solid foundations for the future.

If we look back, the FIC has achieved its goals. It is today one of the most important business associations, with around 130 members, and almost EUR 17 billion invested in Serbia. It has become a strong organisation, with the strength coming for its members' commitments to a free market economy, and from its un-waving position when dealing with principles. Thanks to its credibility, the FIC has also succeeded in its task to help make the business environment more friendly, and today Serbia is on its path toward EU membership.

Challenges are part of each journey, and they need to be overcome. The country has changed a lot since 2002. The break-up of Serbia-Montenegro and the unilateral declaration of independence of Kosovo are events that had an impact on the business environment as well.

The world economic crisis, which has now lasted for more than four years, continues to have serious implications on the development of the Serbian economy. Foreign direct investments have decreased, and it is harder and harder to attract new flows of investment into the country. Unemployment has gone up, and in face of the crisis, restructuring of the economy, and in particular of the public sector, did not advance at the desired speed.

We express hope that the new government will deal with all these challenges and move Serbia closer to EU accession. Questions are not few, and answers are not simple. Continuing reforms will require the appropriate measures, vision and determination.

The new government has to deal with the complex equation of public debt and economic growth, to clearly define the role that the Serbian state is ready to assume in the economic arena today, to develop a strategy that is not based on public debt and is non-inflationary and to make efforts to increase the productivity gains - a priority for the near future. Continuing the reforms will have a social impact, which is not easy at a time when average salaries are low and unemployment is high.

In order to accomplish a solid economic strategy in the years to come, we have to work all together. In this process, the FIC is committed to continue being a viable dialogue partner to the government, supporting any step of the government that will bring a better, more stable, and more predictable business environment. Creating and maintaining a level playing field for all economic actors, from the public or private sector, domestic or foreign investors, and keeping promises, will bring certainty and confidence, increasing the attractiveness of the country.

The FIC has been recognised over the last decade as a serious and constructive supporter of positive changes in the business climate. We wish to keep this reputation intact and we put all our know-how and creative resources to promoting a sustainable business environment, together with the Serbian government and all other relevant stakeholders.

Costin Borc
FIC President

FIC OVERVIEW

This year, the Foreign Investors Council (FIC) is celebrating its tenth anniversary as an association that has experienced significant growth, remaining true to its purpose and goals, while at the same time demonstrating flexibility and resilience by undergoing notable changes over the past period.

From a group of 14 major foreign investors which founded the association with the support of the OECD, the FIC grew to become an independent organisation which today includes around 130 member companies, covering a wide range of sectors and industries. Data behind the FIC also serves as evidence of the development it has undergone. From an organisation which accounted for EUR 150 million in investments, 3,160 employees, and 1.24% of GDP in 2003, the FIC today gathers companies which have invested almost EUR 17 billion[1], employ more than 88,000[2], and account for 16.54% of Serbia's GDP[3]. It is worth noting that the FIC has expanded even in years of financial turmoil, signalling that it includes the healthy section of the economy, the part which society can rely on in times of crisis. And the FIC is still growing...

In 2002, the FIC was founded on the common idea of contributing to the improvement of the investment environment in Serbia. Ten years later, the FIC has modified its mission to state: *"To actively promote a sustainable business environment through an open dialogue with the Authorities and other relevant stakeholders"*. This change was made to reflect the enduring presence and long-term aspirations of the FIC and its members; but even more so to demonstrate the inclusiveness of FIC policies which respond to the needs of the overall society in which the FIC functions.

The strength and leverage of the association comes from its members, companies which continuously invest resources and knowledge in the building of the FIC advocacy platform. The FIC is an independent association with a global presence, as its members come from all over the world – from the European Union and the United States of America to the Russian Federation and the People's Republic of China. In that regard, the association leans on world-wide experiences, trying to provide policy suggestions which would have optimal results here in Serbia today.

The Foreign Investors Council serves to promote the interests of the majority, denying promotion of individual interests and goals. It forms its policies in active dialogue between member companies, with FIC committees playing a pivotal role. Formed based on members' interests, these committees reflect current priority topics, as seen by FIC membership. Over the past ten years, the FIC saw the formation, dismantling, and re-initiation of committees covering various policy areas. At present, seven committees function within the FIC: cross-sector committees, such as Human Resources, Legal and Taxation; as well as sector committees like Food and Agriculture, Leasing & Insurance, Real Estate, and the Telecommunications & IT Committee. Gathering representatives of member companies, these committees serve as forums for the exchange of experiences and views and vehicles for the creation of consensus and formulation of FIC policy proposals.

The FIC recognises transparency and predictability as main functioning principles. Endorsement of the two principles is best demonstrated by this particular project – the White Book. From an internal perspective, each year, FIC membership is involved in the extensive production and consultation process of the White Book publication as a comprehensive portrait of the Serbian business environment, supported by a list of recommendations. Externally, FIC remains one of a few organisations whose policies are available to the public eye in the form of the annual White Book publication. Moreover, the FIC organises annual public presentations of the White Book, featuring an open discussion between the Government and FIC officials, with eminent representatives from the public, business and civil sector in the audience.

Although the most renowned, the annual White Book project is just one of many activities the FIC has conducted over the past ten years. Throughout this period, the FIC has been constantly engaged in the monitoring and analysis of the regulatory framework, providing comments and proposals on numerous laws and regulations tackling all spheres of the business legislative framework. Recognised by the Government, the FIC has been an active participant in public consultations on specific laws, providing comments and suggestions. As one of the prime examples, we point out the FIC contribution to preparation of the Company Law currently in force, when in the autumn of 2010 the FIC provided more than 200 amendments to the draft law, 40% of which were adopted. If we were to single out the biggest advocacy activity so far, it would be the FIC

1 Data for 2012, source: FIC records

2 Data for 2012, source: FIC records

3 Data for 2011; sources: FIC records, National Bank of Serbia, Statistical Office of Republic of Serbia

involvement in the Comprehensive Regulatory Reform, the so-called Regulatory Guillotine, in 2009, when the association developed more than 120 proposals for streamlining administrative barriers. The success of this advocacy remained partial, as the Government endorsed 60% of FIC suggestions but implemented only one-third.

In addition to regulatory analysis, the FIC has been an organiser of public-private dialogue and here we note the most important FIC conferences, apart from the annual White Book launch events: the Conference on Corporate Social Responsibility in Serbia and Montenegro (2005); Serbia: The Investment Place of the Future Conference (2006); the Foreign Investments: Global/Regional Trends and Recommendations for Serbia Conference (2007); the Reality Check Conference (2010, 2011). Moreover, the FIC has regularly organised expert level roundtables as forums for open discussion on particular policy issues and legislative proposals.

As an association that firmly believes in constructive dialogue, the FIC has been a member of policy forums and consultative bodies aimed at driving reforms based on interaction between authorities, the business sector and academia. As an example, we mention FIC membership in two formations of the National Council for Competitiveness (2003 and 2008) and membership in the National Council for Science and Technological Development (2010).

By investing its know-how, FIC representatives continually supported initiatives to upgrade the regulatory setting and modernise institutional capacities, thus creating a basis for sustainable growth.

Understanding the power of co-operation and synergy, the FIC has been in constant dialogue with all relevant non-government stakeholders, sharing the experiences and views of the foreign investors. The FIC communication network includes international organisations, the diplomatic corps, development agencies, civil society organisations, universities, think-tanks and all other organisations which may influence the Serbian business climate. Moreover, on particular occasions, the FIC has joined forces with other business associations to create a common policy initiative towards the Government, such as several advocacy activities with the Serbian and American chambers of commerce directed at labour regulations in the period of 2008-2011.

Looking ahead, the Foreign Investors Council will keep building on the knowledge of individual members and providing common ground for the formulation of productive proposals to improve competitiveness of the Serbian market. In its pursuit of its mission and goals, the Foreign Investors Council will continue to be a reliable partner to the authorities and all relevant stakeholders in the joint effort to ensure the sustainable growth of Serbia.

CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

The modern world has been for decades faced with the demand for global, shared responsibility for development in accordance with the needs of people and nature. As one of the main drivers of global development, equally responsible for the environment and society in which it operates, the business community is being challenged to be more innovative and competitive, more productive and profitable, whilst at the same time more responsible and sustainable. Businesses have in many instances recognised the risks and opportunities that are being placed upon them and have embraced a variety of related approaches for response. Corporate social responsibility (CSR) and related concepts such as corporate accountability, corporate sustainability, and corporate citizenship are being used to more effectively integrate the economic, environmental and social objectives of our global community into corporate structures and processes; to operate more creatively and bring value-added goods and services to solve social demands; and to more meaningfully engage key stakeholders in order to build trust and develop understanding on complex social and economic issues.

It is our deep conviction that conducting business processes ethically and responsibly is the only possible way to achieve long term sustainability and results. As responsible business players, we announce once again our responsibility for continuously promoting sustainable business practices and advocating the business case for CSR to our stakeholders and networks.

Corporate social responsibility has gained increasing importance in the past few years, due to the global financial crisis, whose causes and effects threw new light on business sustainability. Recent changes within social and economic systems and the influence of social and environmental considerations on consumption and investments decisions are the factors which have mostly helped open the wide debate on CSR.

In this context, the European Commission in October 2011 released the new Communication on CSR - "A Renewed EU Strategy 2011-2014 for Corporate Social Responsibility", aimed at creating favourable conditions for sustainable growth. The European Commission has put forward a new, simpler definition of corporate social responsibility: "the responsibility of enterprises for their impacts on society", emphasising, therefore, the fact that social responsibility is not an additional element of business activities, but an essential component.

Driven by the desire to join the EU, the Serbian government adopted in 2010 the "National Strategy for Development and Promotion of Corporate Social Responsibility"; and finally, in January 2012, an Action Plan for its implementation. The implementation of the CSR strategy is under the jurisdiction of the Ministry of Labour, Employment and Social Policy of the Republic of Serbia, and as stated in the Action Plan, it is delegated to the Council for the Development and Promotion of Corporate Social Responsibility as a separate body within the Ministry, while specific tasks are appointed to the Team for Implementation, consisting of representatives of the public, business and civil sectors. Due to the fact that the election period behind us has put on hold many processes in Serbian society, the implementation of the National CSR Strategy is still not underway, and it is unclear whether the body which was founded in order to co-ordinate its implementation will keep its original mandate.

Another important initiative marked the year behind us - with the support of USAID and the Institute for Sustainable Communities, the National Alliance for Local Economic Development (NALED) initiated a unique program for certifying socially responsible companies, called "CSR Certification". The idea to develop a national program for certifying socially responsible companies was based on the need to establish and promote a set of clear standards of corporate responsibility in Serbia, in respect to both worldwide CSR trends and local specificities. During 2011, within the "CSR Certification" programme, NALED and its project partners – Smart Kolektiv and the Balkan Community Initiatives Fund – defined the indicators and elaborated the certification criteria for five different CSR aspects: environment, corporate governance, local community, employees, and the marketplace. Although the project is still in its pilot phase, and the first certificates are still to be presented, the very initiation of such a project proves how much the CSR arena in Serbia has matured over the last several years, allowing strategic and comprehensive approaches to CSR to be distinguished from ad-hoc initiatives.

A decade after the first CSR practices emerged in Serbia, today we are witnessing trends which will eventually lead to fully embedded CSR strategies, instead of a series of ad-hoc, good-will gestures, as corporate social responsibility was initially perceived. However, the majority of existing CSR initiatives of companies operating in Serbia still target social issues in local communities. Therefore, we 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, ensuring a safe and motivating work environment, promoting good corporate governance, and contributing to local economic development by strengthening SMEs in their supply chains. Only that way can we as a business community contribute to the truly sustainable future of the society in which we operate

WE REMAIN COMMITTED TO:

- Sustaining the adoption of an adequate legal framework, which will enhance and stimulate socially responsible behaviour of corporate citizens;
- Acting as best practice examples of good corporate governance and transparency in all aspects of doing business;
- Establishing and fostering a 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 of CSR;
- Advocating for the introduction of 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
Accelerate the rate of transition reforms with the dual goal of improving business conditions and bringing Serbia closer to the European Union.	2008			√
Reduce and simplify the bureaucratic procedures at both national and local level.	2011		√	
Create conditions for market competition in a well-regulated market, by providing equal rights to all competitors, and proper regulation of monopolies.	2008		√	
Intensify the fight against corruption, since this is seen as one of the most problematic factors for doing business in Serbia.	2011			√
Conduct a well-balanced economic policy that will be conducive to business and attracting investment.	2011			√

The previous year was marked by stagnation in the economy. Serbia is still facing a complex set of macroeconomic problems:

1. One of the highest unemployment rates in Europe. The rate currently stands at around 25% and, unfortunately, is still growing. Particularly worrying is the fact that over 30% of those under 30 years old are unemployed, causing Serbia to have one of the highest "brain drains" in the world;
2. The highest inflation in Europe. Since the last White Book, inflation decreased slowly during the first half of 2012, but has started increasing again and is likely to exceed 10% by the end of the year;
3. Public spending is much higher than fiscal revenues, leading to increases in the deficit and, consequently, to increased indebtedness. Public debt has exceeded the 45% of GDP legal limit, and is now close to 50% of GDP, and climbing still;
4. The dinar-to-euro exchange rate has depreciated by about 10% since the last White Book, helping fuel domestic inflation;
5. The National Bank of Serbia led a restrictive monetary policy in order to fight inflation, keeping interest rates and required reserves high with the consequence of discouraging investment;
6. Thus, the expansionary fiscal policy, combined with a restrictive monetary policy, did not produce the desired policy results of increasing production and employment;
7. Serbia is facing the very complicated task of increasing production and employment while, at the same time reducing public expenditure.

Serbia's GDP growth, planned to be 1.5%, is falling short of expectations, and will most likely be either zero, or even slightly negative. Serbia had a particularly bad year in agriculture with an estimated fall in production of close to 20%. Industrial production is also falling, by 5% compared to last year, meaning that there are less tradable goods. This, coupled with the economic slowdown in the EU, slowed the growth of Serbia's exports. After a relatively good year in 2011, Serbia is again witnessing an increasing trade deficit. The share of investments in GDP is still rather low, at around 20%, and is not high enough to generate a higher growth rate, or to reverse the unemployment rate.

As a consequence, the pace of recovery from the previous crisis is not strong enough to reverse the negative labour market trends or contribute to an increase in public revenues. The situation in the labour market is the biggest socio-economic and political problem facing the Government.

The structure of capital inflow helping 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. Foreign direct investments are much lower then in previous years. In fact, there is a net outflow of investments. Now that Fiat has started production, there are no big greenfield or brownfield investments on the horizon. The credit rating of Serbia has slipped by a notch, thus making borrowing abroad more costly, and the inflow of foreign investment less attractive.

By and large, banks maintained liquidity throughout the last year. There has been one major bank failure but the bank-

ing system in general held. However, there is widespread illiquidity outside the banking sector, and it is still growing.

Serbia took a step closer to the European Union by getting the status of candidate at the beginning of 2012. Getting a date for the start of negotiations is the next desired step, which is very unlikely to take place over the course of 2012. There are several requirements to be fulfilled for getting the date, the biggest being the normalisation of relations with Priština, reducing corruption, and improving the judiciary system.

Serbia is continuing to intensify investment oriented contacts with Russia and China. Most of the expected investments are in the transportation and energy sector and would, therefore, contribute to the improvement of the pillars of development. Serbia is also seeking help to close the budget deficit with financing from these countries. Serbia is still making good use of the regional Free Trade Agreement (CEFTA) and is a net exporter to most of the signatory countries.

Over the course of last year, the business climate did not improve. The latest Global Competitiveness Report (2012) shows Serbia holding the same unfavourable ranking of 95 among 144 countries.

In some important aspects that form the complex Global Competitiveness Index, Serbia actually slipped lower than the previous year's low ranking. For example, Serbia was ranked 107th in intellectual property protection last year but 116th this year; in burden of government regulation 134th and 136th respectively; in extent of staff training 132nd and 138th; in effectiveness of anti-monopoly policy 137th and 142nd; in extent and effect of taxation 118th and 122nd; in firm-level technology absorption 136th and 142nd; in company spending on R&D 130th and 132nd.

The goal of increasing Serbian competitiveness has not yet been reached. At some point or other, the Government started a number of initiatives designed to improve the business and investment environment. The comprehensive review of legislation (the so-called Regulatory 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 over 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 bureaucratic procedures at both the national and local level;
- Create conditions for market competition in a well-regulated market by providing equal rights to all competitors, as well as a 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 attract investment.

PILLARS OF DEVELOPMENT

The general assessment of those sectors considered as pillars of development remains the same as in previous years: the reform of these important sectors is proceeding very slowly. While it can be understood that the lack of capital is hindering major progress in the energy sector, there is no easy explanation for sectors such as real estate and construction or the changes in the labour market wherein no capital is required.

Energy

This sector has very limited improvements to show. The Energy Law has not been supplemented by the necessary by-laws; energy efficiency is still very low; and efforts to educate the public on energy efficiency are few and far between, with the price of electricity not allowing for necessary investment and the liberalisation of the oil market not resulting in price decreases, contrary to expectation. Positive developments in this sector are related to alternative energy sources such as the wind power plant in Vojvodina and the solar power plant in southern Serbia.

Of the five previous recommendations for this sector, four have recorded no progress, while only one recommendation has recorded some progress.

In the present White Book we offer eight recommendations, including the repeated request for completing the Energy Law with the necessary by-laws, increasing public awareness of energy issues, and the introduction of a price framework allowing investments in the energy sector.

Road Transport

This sector also felt the brunt of the economic recession in recent years. Road construction was lesser than planned. A lack of financial resources shifted the focus toward emergencies, rather than long term strategic projects. This opens the question of insufficient use of public-private partnerships (PPP) for funding strategic projects, particularly in view of the increased external indebtedness of Serbia. The northern section of Corridor 10 is almost complete, and the new Belgrade bridge is now operational.

There are a number of positive announcements such as the making of a Master Transport Plan for Serbia, the completion of the Belgrade bypass by the end of 2014, and the intensified efforts to speed up the construction of Corridor 11 from Belgrade to Montenegro.

There are six recommendations for this sector including efforts to speed up institutional reform, more use of private funding in transportation, and the setting up of an efficient toll system

Real Estate and Construction

This complex pillar has registered some progress over the last year. The main positive development has been the completion of the Cadastral Project. Also, three significant pieces of legislation have been passed: the Law on Restitution, the Law on Public Ownership, and the Law on Public-Private Partnership. However, their implementation is very slow and real effects are yet to be realised. Several problems remain, such as unclear and imprecise instructions, non-transparent and long procedures, inconsistent interpretations, to name but a few.

Out of a total of ten recommendations from WB 2011, only two had some progress, whereas eight had none at all.

The current WB offers 13 recommendations, mostly addressing the above stated remaining problems.

Telecommunication and IT

The most important development in the previous period was the market analysis of all relevant markets. However, positive results are expected in the forthcoming period. Additionally, the Electronic Communications Agency (RATEL) organised a public discussion on the draft Radio Frequency Allocation Plan, but due to elections the process was postponed. Mobile number portability was introduced and fixed number portability is expected by the end of 2012.

The IT industry is developing slowly, in spite of the overall slack in economic activity, and is accompanied by legal and

top

regulatory developments such as the adoption of a Strategy of Development of the Information Society in Serbia; the introduction of e-government programmes in various state institutions; and the relaxation of the regulatory regime. Looking forward, we single out two important remaining issues: the use of PPP in this area and data protection.

Of the nine previous recommendations on telecommunications, six have had some progress, while three recommendations registered no progress at all. In the present volume, we offer eight recommendations.

In this White Book we offer 8 recommendations for telecommunications and 11 for IT sector."

Human Capital and the Labour Market

The situation within this pillar is different in the sense that there is some progress when viewed from the perspective of human capital, whereas there is no progress at all when viewed from the perspective of the labour market.

The Government led, with some success, a proactive, anti-crisis policy targeted at preserving the level of employment, while at the same time creating opportunities for young researchers, as well as employment for people with disabilities and empowerment of women. But problems remain in the existence of a large gray economy; a mismatch of supply and demand of skills; and negative demographic trends.

Regarding labour-related regulation, the biggest change occurred with the conclusion of three industry-wide collective agreements. Other than that, there was no significant legislative activity.

Of last year's four White Book recommendations regarding human capital, and 28 regarding labour related regulation, none have recorded any progress. Not surprisingly, this issue of the White Book has four recommendations regarding human capital, and 27 regarding the labour market.

top

INFRASTRUCTURE

ROAD 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 towards boosting institutional reform and capacity building in the area of infrastructure, with focus on transport.	2009		√	
Upgrade the quality of the national road administration to enable it to provide an adequate institutional framework in this area.	2009			√
Increase efforts towards private sector development and increase private sector participation in the construction of major roads and railways in Serbia.	2009		√	
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.	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 "vignette" sticker system instead of the 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 existing funds have resulted in a significant de-capitalisation of the sector as well as deterioration of the quality of infrastructure and equipment. The institutional capacity has also been much weakened, as systems and procedures for planning, monitoring, and managing transport activities have been neglected or even misused.

In past years, institutions 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 years-long economic crisis impacted the construction sector most heavily, including the construction of major infrastructure, which is best shown by the data provided by Roads of Serbia indicating that in the period from 2000 until now no more than 112 km of highway have been fully completed in Serbia; i.e., 9.3 km per year. Truth be told, in this period 154 km of semi-highway and one-lane roads through Vojvodina have been built. However, the general impression remains that much better results could have been achieved with adequate organisation and political support.

POSITIVE DEVELOPMENTS

The Government announced a Transport Master Plan for Serbia, envisaging projects worth EUR 22.18 billion to be invested in infrastructure over the next 17 years, to be funded through the budget, Public Private Partnership (PPP) projects, and loans. The realisation of this plan remains for the future. For the moment, that plan includes four major projects planned for completion until 2015.

According to announcements made, the Belgrade bypass should be finished by the end of 2014, which requires that the new Government ratify a loan from the European Investment Bank (EIB) in the amount of EUR 80 million, as well as providing the rest of the cash resources in order to build the last section of the bypass. However, even then the works will not be entirely finished as the full bypass construction (meaning all six lanes) requires more than EUR 200 million.

Construction works are still underway on Corridor 10 and Corridor 11 (connecting Serbia with Montenegrin highway

Bar-Boljare). On Corridor 10, projects have been completed and ownership issues relative to expropriation (with the exception of 20 km between Gornje Polje and Vladičin Han) have been resolved; whereas with respect to Corridor 11 – despite the projects completed and expropriation regulated from Obrenovac to Ljig – there is still the issue regarding the highway section from Ljig to Preljina. Some EUR 300 million has been obtained for this highway section from the Government of Azerbaijan. Work on this section has made slower progress than planned due to unresolved issues with land owners. Another issue is the fact that expropriation funds have not been provided in this year's budget.

The north section of Corridor 10 was completed when the left lane from Horgoš to Novi Sad and Beška Bridge was built, so the works on southern sections remain to be completed in the following two years – something contingent on the finalisation of a tender procedure for the Čiflik-Pirot section in the east and Caričina Dolina-Vladičin Han and Srpska Kuća-Levosoje in the south.

There are some positive developments, as in the Spanish company FCC – which recently became the owner of the Austrian company Alpine – showing interest in investing EUR 300 million in the construction of a highway from Belgrade to Ljig; while China Road and Bridge Corporation has expressed its readiness to finance all remaining sections between Belgrade and Montenegro.

REMAINING ISSUES

Even though the Government 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 envisaged projects will not be implemented.

This raises another issue, that of insufficient participation of the private sector (PPP projects) in the development and realisation of infrastructure projects. The concession granted to the Alpine-Porr consortium for the construction of the Horgoš-Požega highway was terminated due to a lack of funding, and that was the first PPP project in Serbia. The absence of more investors who would engage in these kinds of projects may be explained by a deficient legal and regulatory framework, among other reasons. At this point, the Government has no other options but to fund construction works by borrowing. However, experts warn 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 the new PPP and Concession Law, which came into force towards the end of 2011, will bring more PPP investment in this area in Serbia; since, with this Law in place, investors 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 neighbouring countries, which has resulted in a decrease of transit tourism revenues since the bulk of the (primarily) freight transport moved to Romania and Bulgaria where road tolls are lower. The investors who would participate in PPP projects have to count on steady revenues from road tolls for a return on their investment. Serbia also failed to introduce a cheaper and more efficient system of vignette stickers implemented throughout Europe instead of road tolls. It is disturbing that every few months the road administration calls for an 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 in boosting institutional reform and capacity building in the area of infrastructure, with an emphasis on transport;
- Introduce the quality of the national road administration in order to enable it to provide an adequate institutional

framework in this area;

- Increase efforts in private sector development and 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 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.

ENERGY SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Simplification of procedures for issuing permits and approvals necessary for the development of energy projects.	2011			√
Adoption of by-laws necessary for the implementation of the Energy Law in a timely manner.	2011			√
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.	2011			√
Increasing public awareness of efficient usage of electric power and need for price increase.	2009		√	
Prepare and offer defined and developed locations to investors, including all necessary infrastructure.	2009			√

CURRENT SITUATION

The new Energy Law was adopted in the summer of 2011. With adoption of the new Energy Law, Serbia has brought its primary legislation in the energy sector in line with the EU's Second Energy Package. The Energy Law introduced significant novelties in the energy sector, especially in the area of renewable energy sources (RES). However, the full implementation of these innovations is subject to the issuance of secondary regulations, which should have been passed by December 2011. Since the Government has not yet adopted these regulations, the new solutions introduced remain inapplicable.

Novelties introduced in the RES sector have to be followed by the preparation of a bankable power purchase agreement (PPA) model in order to attract new investments in the sector. The current PPA model has been developed on the basis of regulations issued under the old law, which is not satisfactory for financial institutions.

The prices of electricity supplied to end consumers remained far below market levels, making new investments in the revitalisation of generation facilities and the supply system practically impossible. Serbia faced a significant lack of electricity and system overload in the winter 2011-12, which forced public services and the industry to temporarily idle operations.

Serbia finally liberalised the oil and oil derivatives market in 2011. However, liberalisation did not result in lower prices of oil derivatives. The then Minister of Energy and Infrastructure Milutin Mrkonjic announced in February 2012 that the Government might re-introduce limitations on the prices of oil derivatives, but specific steps have not been taken in that direction.

POSITIVE DEVELOPMENTS

The sector did not witness significant improvements in 2012.

Serbia has demonstrated a willingness to support new investments in the sector, primarily in the RES sector, but until secondary legislation for the implementation of the Energy Law is adopted, we will see only partial results.

New projects

Probably the best news in the sector was announced in May 2012, when the first construction permit for a wind power plant in Serbia was finally issued. The Provincial Secretariat for Urban Planning of Vojvodina issued a construction permit for the construction of a wind power plant, Plandiste I, with a total installed capacity of 102 MW, in Plandiste, Vojvodina. The project is supposed to result in a cut in CO2 emissions of about 330,000 tons annually starting in 2013. Plandiste I was the first clean development mechanism (CDM) project approved by the Serbian designated national authority (DNA).

Earlier in April 2012, the construction of the country's first commercial solar power plant, with an installed capacity of 2 MW, was commenced in Matarovo in southern Serbia.

Lower excise taxes on oil derivatives

Serbia decreased excise taxes on petrol and diesel fuels by approximately RSD 1.5 per litre in May 2012.

REMAINING ISSUES

Although the adoption of the Energy Law brought the necessary innovations to the energy sector of the Republic of Serbia, there are some remaining issues that need to be dealt with. For some of these issues, the experiences of countries in the region should be taken into consideration.

One of the main remaining issues is the adoption of secondary regulations that were intended to follow the implementation of the Energy Law, especially concerning the RES. The benefits introduced by the Energy Law will only be available to investors in the RES once the Government has issued separate regulations for their implementation. The new regulations should also provide more detail as to the real content of the changes introduced by the law, as well as the terms under which they may be utilised. The Government was required to pass such regulations by December 2011. However, it did not, and there is no official information on when the adoption of these regulations can be expected. As for the other items introduced by the Energy Law, though the Law required that its implementing regulations are to be adopted within one year of its entry into force – by 9 August 2012 – majority of them has still not been adopted. As the Energy Law is still implemented in accordance with the currently valid by-laws, the adoption of new regulations should be one of the priorities of legislative activities in the future.

This is especially important for areas that were not regulated in earlier versions of the Energy Law, and for that reason their application did not commence either, as is the case, for instance, with the Guarantee of origin of electricity.

Furthermore, the Regulation on incentives for the production of electricity from renewable energy sources and the co-generation of electricity and heat energy is applicable until 31 December 2012. When adopting the new Regulation, trends in the international energy market need to be taken into consideration, especially regarding the price of electricity set in the so-called "feed-in" tariffs. Also, this is an opportunity to regulate one area which has, in particular, presented a major concern for foreign investors – "available capacity", i.e. limits on the total capacity of wind and solar power plants that will be entitled to a feed-in tariff – since these limits are set unusually low compared to the European average.

Finally, the Public Supplier – the entity responsible for carrying out the activities of energy supply to the tariff buyers (and also has an obligation to purchase energy produced from RES from a privileged producer) – has not yet been appointed. In determining the Public Supplier, the government bodies must bear in mind both positive and negative experiences from countries in the region. It is preferable that the Public Supplier be a separate, newly formed company, independent of all government bodies and part of an existing publicly-held company (such as Serbian Power Industry - EPS); and the independent Public Supplier needs to have a sustainable budget sufficient to meet all obligations the Public Supplier has under the Energy Law.

FIC RECOMMENDATIONS

- Adoption of by-laws necessary for the implementation of the Energy Law, with special attention given to avoiding unnecessary mistakes due to short deadlines;
- Preparation of a bankable PPA model;
- Engagement of interested parties, i.e. investors, financiers and advisors in the sector (primarily the RES sector), in the procedure for the adoption of by-laws;
- Simplification of procedures for issuing permits and approvals necessary for the development of energy projects;
- Increasing public awareness of the efficient usage of electricity;
- The prices of electrical energy need to be re-evaluated, since it is necessary to ensure investments in new capacity and rehabilitation of existing capacity;
- Addressing special attention to defining the Public Supplier, with special regard to the sustainability of its budget;
- Adoption of the new Strategy of Energy Development of the Republic of Serbia and the National Renewable Action Plan.

TELECOMMUNICATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.).	2009		√	
Stimulating broadband services.	2008			√
Introduction of number portability in fixed telephony.	2011		√	
Encouraging the development of new telecommunications infrastructure and enabling the use of the existing alternative infrastructure for all types of electronic services.	2007			√
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.	2010		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2010			√
The regulatory body should adopt the by-laws to the Electronic Communications Law and conform them to EU standards as soon as possible.	2010		√	
Strengthening the capacities of the administration and the independent regulatory body to boost the electronic communications market.	2011		√	
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.	2011		√	

CURRENT SITUATION

According to the Electronic Communications Agency's (RATEL) official report for 2011, the telecommunication sector has contributed nearly 6% to Serbia's GDP in 2011. Given that the telecom sector is such a significant contributor to the Serbian economy, its further development should be stimulated by the new Serbian government. While telecommunication services revenues indicate that 2011 was more successful than the previous year, investment decreased by about EUR 30 million in 2011 compared to 2010.

Although the liberalisation of electronic communications was declaratively introduced by the Law on Electronic Communications in 2010 under a regime of general authorisation, the licensing system for fixed telephony was abolished only in January 2012. With this act, long-lived regulatory barriers for new fixed operators have been removed. At the moment, SBB is in the pipeline to become the first landline player under the new regime of general authorisation.

At the beginning of 2012, RATEL organised public consultations on the Draft Radio Frequency Allocation Plan. It was expected that the new Allocation Plan, introducing technology neutrality, would be adopted in the first half of 2012. The adoption of the plan was postponed due to elections, while the availability of spectrum needed for introducing new technologies will be known only after the new Radio Frequency Allocation Plan is adopted and a new strategy is formulated by the state.

The first round of market analysis aiming for a more level playing field was completed in November 2011, when RATEL issued Decisions determining operators with significant market power (SMP) and their remedies on the relevant markets. Following the market analysis, all operators, under the same conditions, could use the wholesale services of SMP operators.

Mobile number portability (MNP) was launched in July 2011 and within one year from the introduction of the service, more than 70,000 numbers switched to the network of another operator. Due to the large number of interrupted calls, all operators asked RATEL to abolish the MNP voice message. In the process of making a decision, RATEL consulted the Consumer Protection Associations in the Republic of Serbia. Finally, the decision to change the logic and switch off the voice message on default was taken in September 2012.

After Serbia gained EU candidate status, RATEL was granted observer status in the Body of European Regulators for Electronic Communications (BEREC). This could contribute to knowledge sharing and strengthening the capacities of RATEL.

Furthermore, following the example of the global Broadband Commission, in April 2012, the Ministry of Culture, Media, and Information Society established the National Commission on Broadband and Digital Development. The main aim of this new Commission is to promote broadband access in the Republic of Serbia. The body has not yet had any concrete activities to realise the aim of the body's establishment.

Some potential risks were averted in 2011. One concerns the Fund for Emergency Situations and a proposal that all operators be required to finance the Fund. Another concerns the Law on Cinematography and the idea that RATEL should be obliged to allocate 10% of its revenue for supporting the film industry. Eventually, this idea was realised and implemented through the new Law on Cinematography.

POSITIVE DEVELOPMENTS

Due to market analysis, all relevant markets have been analysed for the first time in the Republic of Serbia. It was an extensive process that has not yet shown visible positive results. The aim of the analysis was to ensure that all operators can lease infrastructure and use wholesale services according to technical and financial terms that are transparent and the same for all.

RATEL adopted a number of technical by-laws to achieve compliance with the provisions of the Law on Electronic Communications.

Mobile number portability was launched in July 2011, and fixed number portability is planned for 1 December 2012.

REMAINING ISSUES

The implementation of policy documents relevant for the development of the telecommunication industry were further delayed in 2011. The Action Plan as an integral part of the Strategy of Development of Electronic Communications until 2020 that could detail implementation of certain activities has not been proposed yet.

The May 2012 parliamentary and presidential elections put most of the activities of the line Ministry on hold. Telecommunications are now the part of the Ministry for Internal, External Trade and Telecommunications which will together deal with all the aforementioned issues.

The adoption of the Draft Allocation Plan granting technology neutrality on the already allocated spectrum bands, but also stipulating the release of (freeing up) new bands that will contribute to further development of ICT in Serbia, has been delayed. There is concern that adoption will take a longer period of time and that it will not be on the priority list of the new Government.

In fixed telephony, the current level of prices for end users hardly enables visible network modernisation and investments.

In electronic communication overall, any kind of para-fiscal duties, such as the one introduced by the Law on Cinematography, should be abolished due to their potential impact on the level of investments and the growth of the entire telecommunication & IT sector.

The need for improving cooperation and coordination of activities between the line ministry and other state institutions relevant for the telecommunication field is still present. Positive developments, in terms of better cooperation between national authorities, are insignificant and an organised and planned approach is required to resolve this issue.

FIC RECOMMENDATIONS

Some recommendations remain unchanged:

- Stimulating broadband services with investment incentives/end user subsidies by the state;
- Timely introduction of number portability in fixed telephony as of 1 December 2012, as any delays would harm further competition in this area;
- Encouraging the development of new telecommunication infrastructure and enabling the use of the existing alternative infrastructure for all types of electronic services;
- The adoption of a new Allocation Plan based on the technological neutrality principle;

- Making available the frequencies used for public mobile services in Europe in a timely manner – a decision on allocating the digital dividend at 800 and extension to 900, 1800 and 2600 MHz.

Especially emphasise the following:

- Strengthening the capacities of the administration and the independent regulatory body with the purpose of growth and emphasising the role of the electronic communications market;
- Involvement of the industry in making strategic decisions;
- Making an Action Plan for the Strategy of the Development of Electronic Communications until 2020.

IT INDUSTRY

CURRENT SITUATION

Despite the fact that the Serbian IT market continues to contract on a yearly basis and is currently worth around USD 650 million, it is still not saturated and has plenty of room for growth. With the organic structure of Hardware (HW) 70.1%, Services 17.1%, and Software (SW) 12.8%, it represents one of the most vital industries in Serbia. Large local IT companies began to introduce more IT service offerings into their business portfolios, and a small, yet thriving start-up culture seems to be developing. Hardware distribution is still a major source of revenue for local companies, but the IT services segment is gaining its share and creating new revenue streams for companies, with strong potential for the enhancement of Serbian export.

POSITIVE DEVELOPMENTS

There have been quite a few positive developments in the IT sector in Serbia in recent years. More notable examples include the adoption of the Strategy for the Development of Information Society in Serbia until 2020; the introduction of an e-Government program in various state bodies, such as courts, municipalities, and police administrations; the introduction of the possibility to file and pay VAT online; and Serbia's membership in the Open Government Partnership (which implies the fulfilment of multiple requirements, such as improving the transparency of public finance, adequately regulating data protection issues, and free access to information). IT legislation has seen significant new regulation; however, it has mostly been to the benefit of liberalisation and competition in the sector. Regulations adopted by the state Agency for Electronic Communications (RATEL) have introduced nine ex-ante regulated telecom markets in Serbia, as well as the determination of appropriate SMP operators. The companies established as significant market power (SMP) operators have seen an increased regulatory burden, including stricter oversight, price controls, minimum quality of service requirements, public and transparent offers for certain services, universal service requirements, etc. On the other hand, the regulatory regime has definitely been relaxed, with a "general authorisation" replacing the licensing system of old - hardware licensing has been replaced by conformity review and the fixed telephony market has finally seen true liberalisation, including number portability (which has been a relative success for the mobile market, with around 70,000 ported numbers since the related system was put into place). The sector has seen a large amount of scrutiny from the competition authorities as well, with several investigations undertaken (including media content exclusivity and margin-squeeze practices). The social and economic aspects of IT and digital activism have also gained prominence, with social networks becoming an increasingly important communication, business, and political venue. The bolstered visibility of IT issues in society has been clearly evidenced by activities such as protests against the Anti-Counterfeiting Trade Agreement, the "Open Parliament" initiative, the digital community furore over imposing additional copyright fees on hardware, and so on.

The e-Government program in Serbia has significantly progressed over the past four years, though further improvements are necessary. Whilst there has been a development of significant tools, practice by the authorities is still somewhat wanting in restricting e-communication to forms and information being available online, with paper correspondence still often required (including trivial matters, such as information-gathering). However, the e-Government portal now hosts a variety of services and the Tax Administration seems to have made decisive steps in streamlining and expanding its IT infrastructure, so there are numerous positive developments. E-Government is a key element of the reform of Serbia's state administration. It will make administration more efficient, which will in turn attract more foreign investment. The efforts made in the past year have resulted in Serbia improving its ranking in the annual United Nations E-Government Survey by 30 spots, with its e-Government services ranking 51st out of 190 countries in the world.

Despite the fact that various digitalisation projects pertaining to the educational system in Serbia have been successfully implemented, overall results remain fairly limited. Without a systematic approach, which would include the development of proper educational applications and adequate training of teaching personnel, such programmes will have only a narrow impact on bringing the IT skills of young Serbian generations to a higher level. Deployment of basic IT HW infrastructure in Serbian schools remains far from sufficient for enabling students to keep up the pace with their EU peers.

REMAINING ISSUES:

1. IT spending was impeded by parliamentary and presidential elections, leaving the IT market with a lower growth rate than it could otherwise have achieved.
2. On the other hand, low IT spending per capita (merely 11.6% of the EU average) is a critical sign that the new government should pay more attention to IT spending, which may significantly change the structure of the Serbian economy.
3. Public-Private Partnership (in the IT area) is still at an early stage, although it might offer significant success in areas of cost improvement, especially at the municipal level. Besides such benefits, it might also provide new revenue streams for governmental institutions on various levels. Since the IT sector is seeing respectable growth figures and is enjoying certain regulatory and taxation benefits, it is often seen as a potential "cash cow" for additional taxation or financing of various government programmes or expenses (i.e. the aforementioned copyright tax, the emergency number tax, and the "crisis tax" on cellular communications).
4. Data protection remains a sore issue in IT matters, as evidenced by several high-profile and publicised cases concerning improper retention or use of data. Although the Information Commissioner's Office appears highly respected and active in the field, it appears that the judiciary and administrative organs are not entirely supportive of its efforts. There is a worrying trend for business and the freedom of expression concerning the behaviour of the Games of Chance Administration, which tried to pressure internet service providers (ISPs) to block foreign gambling websites (e.g. bwin), so as not to jeopardise its legal monopoly. This, as well as a few other acts on the part of the government (another example – a high-profile minister demanded the closure of a satirical Twitter account) could potentially signal steps towards Internet censorship.

FIC RECOMMENDATIONS

- The government should be committed to further development of an IT regulatory framework which would in turn enhance the country's appeal to foreign investors over the long term. Furthermore, the effects of legislative changes already introduced should be closely monitored and effectively implemented;
- The government should make an effort to regulate sophisticated tax questions which arise, especially in the context of software/license resale, by enacting appropriate legislative acts rather than by having the relevant Ministry issue a number of opinions on the topic;

- Quick wins and tangible results already achieved in the area of e-Government should be continued after the establishment of the new government, especially in the following areas: administrative fees, applications for various documents, and tax applications;
- Introduction of IT systems and streamlining public procurement has been a highly publicised campaign promise. Electronic public procurement would lower corruption, and make the process more transparent, competitive, and cost-effective. However, there should be vigilance concerning potential bid-rigging;
- The government should refrain from introducing any measures approaching online censorship and remain committed to an open Internet as that which is most conducive to innovation, social development and commercial interest. The government should keep an open ear and regular contact with the e-community and initiatives coming from this sector;
- In order for the sector to continue growing in crisis times, the government should refrain from imposing any burdensome taxes and encourage the development of start-ups and high technology companies;
- The new government should pay special attention to the area of e-health as a major area for improvement especially in terms of electronic records. Educating the citizens and health workers on the implementation and usage of those systems would be equally important;
- There should be further networking of administrative bodies, agencies and Ministries, e.g. the Ministry of Interior, the Tax Administration, the Ministry of Labour, the Ministry of Justice, etc.
- Attention should be given to further development of e-school programmes through active dialogue between all relevant stakeholders, principally the Ministry of Education and the ministry (or agency) responsible for ICT and IT Community;
- Finalisation of the regulatory framework necessary to enable such payment services as PayPal to enter the Serbian market, which would boost e-commerce and have positive side effects on the development of the domestic IT market;
- With regard to Serbia's membership in the Open Government Partnership, special emphasis should be placed on the transparency of the functioning of administrative bodies and the use of new technologies by these bodies.

REAL ESTATE AND CONSTRUCTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009		√	
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.	2010			√
Authorities must introduce transparency and consistency in their own work on all levels and ensure high level of control of all relevant institutions.	2009			√
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.	2009			√
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.	2009			√
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.	2010			√
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.	2009			√
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 in order to be implemented in full.	2009			√
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.	2010			√
Dialogue, communication and long-term cooperation should be established between the state, relevant ministries, local authorities and all other relevant institutions, and the FIC 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 was additionally amended in April 2011. The final impact of the Law and its amendments are modest.

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

One of the most important improvements of this Law was the introduction of conversion of land usage rights into construction land ownership (freehold) rights. The companies that acquired land in the past (through privatisation, bankruptcy or foreclosure, or based on legislation in the area of construction land in effect prior to 13 May 2003) should be able to convert usage rights into ownership rights by paying a fee equivalent to the difference between the market value of construction land and the costs of acquiring land rights. However, introduced legal solutions with regard to conversion did not produce desired results in practice. With that in mind, amendments to the Law on Planning and Construction were adopted in April 2011. The amendments were aimed at filling the gaps in the domain of construction permits issue and transfer and the conversion of usage rights to ownership rights, as well as clarifying certain provisions mostly pertaining to technical standards. Nevertheless, the latest changes have not achieved desired results.

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-collectible 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 construction land, which was for a long time 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.

By-laws regulating in more detail the conversion of the right of use to right of ownership of construction land were originally adopted during 2010. They initially provided a clearer interpretation of the conversion process. However, starting in 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 charts 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 the possibility that in a number of cases conversion is not going to be possible.

A large share of real estate in prime locations in Belgrade and other cities remains in municipal ownership and is leased, but not according to current market conditions. Such practice discourages quality retailers from entering the market and contributes 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.

The residential property management and maintenance policy 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 foreseeing a 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 co-operation with public utility companies with an option to engage some privately-owned enterprises for specific works.

Construction

The issuance 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 was the fact that the greatest part of construction land is not covered by urban plans that are a precondition for the issuance of the construction location and associated permit. By means of prescribing an obligation for local authorities to adopt respective urban plans within the term of 18 months – the new Law has improved this considerably.

However, poor infrastructure and bureaucratic procedures in public utility companies involved in this process are still major problems in construction. 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 location ownership rights have 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 the internationally recognised best practice.

In 2011, the validity of the Law on Incentives to the Serbian Construction Industry in the Period of Economic Crisis was extended to 31 December 2012. This law, praised by the government as the saviour of the domestic construction industry, and criticised by professionals for its interventionism, its negative effects for foreign investments, and its lack of transparency, did yield certain effects, mostly in state-sponsored residential projects, but its overall effects remain to be seen in the following period.

Real Estate Cadastre

The Cadastre Project in Serbia was completed in May 2012.

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

Restitution

The Law on Property Restitution and Compensation was adopted in September 2011, and has been in force since 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. Additionally, the adoption and implementation of the law regulating restitution is a condition for Serbia's accession to the EU.

The Law on Property Restitution and Compensation protects the acquired rights of individuals and private companies, while the obligation of restitution arises only in the event of individual and private companies lacking proper title to a property subject to restitution. Even though the Law on Property Restitution and Compensation prescribes the priority of natural restitution (i.e., restitution of an unjustly expropriated property), there are numerous exceptions. Therefore, it is likely that compensation will be the most commonly implemented form of restitution. Natural restitution is the obligation of the Republic of Serbia, local governments, public enterprises established by the Republic of Serbia, and socially-owned companies and cooperatives; while the disbursement of compensation is the exclusive obligation of the Republic of Serbia.

Real Estate Leasing

Amendments to the Law on Financial Leasing, starting in May 2011, introduced the option of the 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 a property by the tax authorities.

Mortgage

Following the first six years of application, the shortcomings of the Law on Mortgage have become apparent in practice. In combination with certain restrictive interpretations of provisions of the Law on Mortgage by the Cadastre Registry, this calls for material amendments of mortgage regulation in Serbia.

Just as an example, provisions of Article 49 prescribe that in the event of an out-of-court sale of mortgaged property, rights of later creditors remain "reserved" together with established practice of the Cadastre Registry in this respect lead to the sale of mortgaged property along with mortgages of a lower tier, which widely opens possibilities for misuse by the mortgagor. Other examples include the unclear status of property built on land under mortgage (i.e., there is no explicit provision providing that mortgage automatically extends to built property); issues involving project financing; the issue of (non)extension of the mortgage established over the building to the land beneath and

surrounding the building after the conversion of right to use into the freehold and similar.

Also, strict bank regulations and restrictive interpretation of provisions of the Law on Mortgage by the Cadastre Registry disable comprehensive application of the Law and thus limit the option of project financing of construction.

Agricultural land

Law on agricultural land prohibits foreign legal entities and private persons from obtaining ownership over agricultural land. Foreign investments in Serbian agriculture are mainly executed through the privatisation of agricultural companies through which foreign investors obtain a majority of shares in agricultural companies which are the owners of agricultural land. In some cases companies face problems due to a misinterpretation of the related provision of the Law on agricultural land.

The Law on co-operatives entitles newly founded agricultural co-operatives to claim agricultural land previously owned by co-operatives from current owners. The provision in question is aimed at restitution for owners of agricultural land forced to transfer their ownership to agricultural co-operatives upon socialist legislation enacted after WWII. In practice, these provisions have been misused by newly founded agricultural co-operatives claiming agricultural land of great value from privatised agricultural companies.

POSITIVE DEVELOPMENTS

The main positive development is the completion of the Cadastral Project in Serbia, after eight years of implementation.

The expectations from the adoption of a new set of laws in September 2009 (the Law on Planning and Construction, the Law on Cadastre and State Survey, the Law on Social Housing), and amendments to the Law on Construction from April 2011 were greater than the actual results. Even though the implementation and application in practice have been poor so far, the new set of laws could be a major breakthrough in the real estate market. This area is very sensitive, especially in relation to restitution, and bringing its comprehensive regulations in line with current international legislation and practices is essential to creating a favourable and attractive investment and business environment. The enactment of the Law on Property Restitution and Compensation is a big step, but we still have to see how it will be implemented.

In addition, in 2011 the Law on Public Ownership and the Law on Public Private Partnerships were adopted. These pieces of legislation may add more value to the real estate system by clarifying and simplifying the procedures involving public ownership. Given the fact that a vast amount of real estate in Serbia is publicly owned, the adoption of these laws may be viewed as a new incentive to private investors. However, the effects of these laws are yet to be tested.

Land Ownership and Real Estate

The Law on Cadastre and State Survey introduced 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 construction land – the Construction Law introduced the possibility of investors acquiring ownership under the terms prescribed by the Law.

Construction

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

The 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.

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

Restitution

The Law on Property Restitution and Compensation has been enacted and been in force since 6 October 2011. There is no considerable progress in its implementation.

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, attorneys general appeal such decisions. In many cases, appeals by attorneys general lack proper argumentation and hence only prolong the conversion process. Furthermore, in the same fashion, after the appellate procedure has been completed, attorneys generally challenge the conversion decisions in front of the Administrative Court, which then deliberates the case for an unreasonably long period of time (measured by years in some cases), and in a number of cases returns the case to the beginning, with argumentation which does not always demonstrate the expected high competence of the judiciary. This means that the state authorities are not prepared to recognise the right of ownership of construction land, consequently avoiding giving up those 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 construction 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 recent 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 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, often not feasible in practice due to the low purchasing power of a majority of inhabitants, since the owners of residential properties also have to participate in financing of works.

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.

Real Estate Cadastre

Inconsistent interpretation of relevant regulations on behalf of cadastral authorities, slow registration procedures, and additional difficulties caused by the slow decision-making by the competent ministry concerning appeals on issued decisions remain material problems in practice.

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 the conflicting interests of persons entitled to restitution and persons with acquired rights over confiscated properties (in most cases, foreign investors).

We still wait for progress in the implementation of this law. So the impact of the Law on Property Restitution and Compensation is yet to be seen. So far we have noticed that certain former owners contact current owners of the property, informing them that they will require restitution. In later stages this might give rise to litigation procedures between former owners, state, and current owners or the property.

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 the unlimited duration of a leasing contract.

Agricultural land

Provisions of the Law on Agricultural Land are restricting ownership by foreign individuals and foreign companies and prevent investments in agriculture. The strictest interpretation of this provision of the Law on Agricultural Land, in some cases, results in public accusations of foreign investors which acquired agricultural land through acquisition of agricultural companies.

Newly founded agricultural co-operatives request the restitution of agricultural land from privatised agricultural companies. The existing Law on co-operatives, which allows partial restitution of "cooperative ownership" to newly founded agricultural co-operatives, jeopardises existing investments in agriculture.

FIC RECOMMENDATIONS

- The new Construction Law impacts five very important fields: spatial planning, construction, urban construction land, restitution, and legalisation. All these fields should be separately regulated as soon as possible through systematic by-laws in co-operation with the NGO sector and major market participants;
- The problem of conversion for a fee remains, as does the problem of registration of title of ownership of construction land, due to the rigid interpretation of the Law on Planning and Construction by the Cadastre Registry. By-laws should provide a more precise interpretation of the provisions of the Law on Planning and Construction, at least by providing a common practice;
- Authorities must introduce transparency and consistency in their own work on all levels and ensure a high level of control of all relevant institutions;
- The permit 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 Law on Planning and Construction should be amended to be more adequate and stringent since they are currently limited only to pecuniary fines;
- Penalty provisions for public authorities and public utility companies should be changed from non-pecuniary to pecuniary especially in cases when investors are paying consideration for services and the services are not provided in due time. In such cases the consideration for unduly provided service should be decreased;
- The legal framework defining the relationship between investors and the main contractor should be improved in accordance with the internationally recognised best practices (including, especially, the FIDIC legacy), 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;
- The Law on Agricultural Land and the Law on Co-operatives should be amended in order to allow foreign investments in agriculture and the acquisition of agricultural land by foreign individuals and companies, as well as protect ownership of agricultural land;
- Short deadlines for registration within the Real Estate Cadastre need to be introduced and clearer guidelines in law implementation within the Real Estate Cadastre's activities need to be provided in a transparent manner, so that the cadastral procedures will become swift and predictable;
- Dialogue, communication and long-term co-operation 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

LABOUR RELATED REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Labour Law:				
System of calculation of salary is very complex and not in accordance with what most of the companies apply throughout the world. In this regard, we propose the possibility of free agreement between the employees and employers about the structure of salary and additional benefits.	2009			√
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.	2008			√
Employment-related paperwork should be simplified by introducing electronic delivery of documents and electronic data bases and implementation of the electronic signatures rules.	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			√
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.	2009			√
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 the parties should be free to contract definite term employment for whatever purpose they deem sufficient.	2010			√
The currently stipulated minimum 3 working weeks of annual vacation within a calendar year (if used in parts) should be adjusted to 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.	2010			√
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.	2010			√
We propose to establish one-month duration of suspension measure under paragraph 2 of Article 170 of the existing Labour Law.	2010			√
Given that the only "disciplinary" measure stipulated by the Labour Law is temporary removal of an employee from work, we propose that deduction of a portion of salary (up to 20% of the employee's monthly base salary) should be provided as a possible disciplinary measure.	2010			√

We propose that the employer has the right to temporarily (up to 30 working days) transfer the employee to another appropriate position with no obligation of concluding an annex to the employment contract – where so required by the needs of the work with the employer.	2010			√
The provisions of the Labour Law should be completely revised in order to adapt them to the existing management structure of all legal entities.	2010			√
The industry-wide collective agreements:				
The extended application of the industry-wide collective agreements should be nullified for reasons explained in the WB, while the relevant legal provisions that regulate the extended applicability of collective agreements should be amended, i.e. deleted in full.	2011			√
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.	2010			√
Limit the maximum unemployment benefit to the capped amount for payment of the relevant contribution. This would be fairer, socially responsible and facilitate the necessary redundancies without creating legal disputes by the redundant workers.	2011			√
The Law on Vocational Rehabilitation and Employment of Persons with Disabilities:				
The law should be terminologically coordinated with special laws in the area.	2009			√
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. Also, the list of documents required by the authorities from the employee should be reasonably decreased.	2009			√
A more efficient manner for achieving a higher employment rate of PWD would be stimulating employers to employ PWD by way of beneficial measures, rather than punishing them for non-compliance. There are business activities for whose performance it is practically impossible to employ a PWD.	2009			√
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.	2011			√
The PWD already employed before the enactment of the Law should automatically count against the quota.	2011			√
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.	2009			√
Protection of the Citizens of the Federal Republic of Yugoslavia Working Abroad:				
The Law should be harmonised with the terminology of the Labour Law and other relevant regulations and adjusted to the new business environment. In addition, swift mobility of the labour force should be enabled, with reducing administrative barriers and unnecessarily long procedures.	2009			√

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.	2009			√
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.).	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 work permits and general business conditions for staff leasing agencies (including the license fee for staff leasing agencies) should be regulated by the law, which would create legal certainty and remove the possibility of discretionary decisions being handed down in this respect.	2010			√
Shift work:				
Provision on salary increase based on shift work should be 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 salary increase is included in the employee's base salary.	2011			√
The Law on Prevention of Mobbing at Work:				
Consider the possibility of amending Article 31 of the Law. The burden of proof in court proceedings is on the employer as the defendant, which violates the one of the main legal principles is that onus probandi should be on the claimant, not the defendant.	2011			√

CURRENT SITUATION

In 2012, the most significant change in the employment legal framework was the conclusion of new industry–wide collective bargaining agreements for the chemical and non-metal industry (concluded at the end of 2011 and in force as of January 2012); for the metal industry (concluded at the end of 2011 and in force as of February 2012); and for the construction and construction material industry (concluded in February 2012 and in force as of March 2012). The application of all three industry-wide collective agreements was extended to all employers in Serbia operating in these industries, based on the decision of the Minister of Labour and Social Policy. Thereafter the tendency of replacing the formerly valid General Collective Bargaining Agreement (the "GCBA") with stipulations of industry-wide collective agreements in various industries and the extension of their applicability to all employers within specific industries continued. The formerly enacted industry-wide collective bargaining agreement (for agriculture, food, and tobacco industry and water management) is still in force, so the existence and application of the several existing industry-wide collective agreements represents a noteworthy characteristic of the employment labour framework in Serbia. All of the industry-wide collective bargaining agreements address similar issues and contain provisions similar to the formerly valid GCBA, which are not in line with the principles of a modern market economy (e.g., determining base salary based on co-efficient and the minimum wage etc.) and in certain aspects not harmonised with the Labour Law.

Other than the above, there was no significant legislative activity in the labour regulation area in 2012. Therefore, regulations which were enacted during 2010 and 2011, and discussed in previous additions of the White Book, including the Law on Vocational Rehabilitation and Employment of Persons with Disabilities; the Regulation on Employment Incentives; and the Law on the Prevention of Mobbing at Work are still in focus and represent the relevant labour framework.

The Law on Vocational Rehabilitation and Employment of Persons with Disabilities (in force as of 2009, but fully applicable as of 23 May 2010) mandates employers to employ a certain number of persons with disabilities (PWD), as well as some alternative means for the fulfilment of this obligation (transferring funds to the financing of salaries of PWD into the budget of the Republic of Serbia; fulfilling the financial obligation under the business agreement with a company that provides professional rehabilitation and employment of PWD).

The Regulation on Employment Incentives, effective as of 21 May 2011, is still in force and provides certain salary tax and social insurance contribution exemptions, applicable for up to 12 months after hiring new employees, provided the headcount does not decrease during that period. In order to qualify for these incentives, employers also need to prove they did not decrease their headcount due to redundancy as of 31 March 2011.

The Law on Prevention of Mobbing at Work 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 employers with regard to the prevention of mobbing.

Only two provisions of the Labour Law mention shift work. The first authorises the Employer to alter the work week and working hours schedule if the work is organised in shifts. The second stipulates that shift work represents grounds for a salary increase of at least 26%, unless shift work is valued in determining basic salary.

Staff leasing, although frequently used in practice (and to a certain extent tolerated by labour authorities), is still not regulated by Serbian law. As a result, there is a significant degree of legal uncertainty in this area.

POSITIVE DEVELOPMENTS

Under the new Company Law, which became effective 1 February 2012, management boards are now replaced by directors, and the new law does not prescribe that executive directors must be employed by the company. Therefore, it is finally possible to apply Article 48 of the Labour Law to executive directors and hire them based on more flexible management contracts or based on employment contracts tied to their mandate period, meaning that those contracts may be terminated automatically upon expiry or the mandate of the executive directors.

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 amendments to the Labour Law are still pending and at the time of this report there has been no progress on issues previously identified by the FIC as the most problematic, our comments given in the previous editions of the White Book remain. This edition of the White Book concentrates on the most important issues of the Labour Law that require prompt improvement, but all other comments given in previous editions of the White Book remain and are still considered as the standpoint of FIC members in relation to this piece of legislation:

1. The structure and calculation of salary is very complex and the payroll list has to be signed by the employee, which can be very technically complicated in practice;

2. Salary compensation for sick leave, national holidays, annual leave, annual vacation, paid leave, etc., is calculated on a base representing 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 has not been absent. Additionally, this results in the employers' inability to plan their budget;

3. Generally, the employment-related paperwork and records that should be kept with each employer are overly voluminous;

4. 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). On the other hand, if they sign an agreement on termination, they cannot enjoy entitlements provided by unemployment insurance;

5. The Law allows employers to offer an annex to the employment contract only in cases listed in Article 171, which does not include all cases that occur in practice and requires amendments of the agreed-upon terms of employment;

6. Fixed-term employment is limited to 12 months and conditions for it are quite restrictive;

7. The currently stipulated minimum of three 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);

8. The provisions of the current Labour Law stipulate that severance payment in the case of redundancy is based on an employee's total years of employment service. This means that a current employer terminating 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. They also enable employees to receive severance payments for several times in their life (if they are made redundant by various employers) based on the same years of working experience;

9. The length of the suspension measure of up to three working days (Article 170 of the Labour Law) is very short and inefficient in most cases;

10. 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 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.);

11. The only "disciplinary" measure stipulated by the Labour Law is the temporary removal of an employee from work;

12. Overall, the provisions of the existing Labour Law reduce 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 an increase in the grey economy;

13. The provisions regulating overtime work are quite restrictive and should be amended in a way to give more flexibility to employers to decide on the introduction of overtime work, as well as decide on the manner of compensating employees for overtime work (through increased salary or days off). This especially refers to employees at managerial positions.

The Industry-Wide Collective Bargaining Agreements (for the chemical and non-metal industry, the metal industry, and the construction and construction material industry)

The recent conclusion of industry-wide collective bargaining agreements for the chemical and non-metal industry, the metal industry, and the construction and construction material industry and extension of their application to all employers performing their activity in these industries, seems to represent the extension of the practice established by the extended application of formerly valid GCBA and industry-wide collective agreements concluded earlier in 2011 (for the construction and construction materials industry, and for agriculture, food, tobacco industry and water management). In previous editions of the White Book, the FIC discussed the adverse effects such extended application of collective agreements has for the attractiveness of business climate in Serbia. We reiterate here that the extended application of industry-wide collective agreements refers to those employers who are not members of the Association of Employers, which participates in their conclusion, and who therefore find out about the outcome of social dialogue only once these industry-wide collective agreements are published and followed by a decision by the Minister of Labour and Social Policy on the extended application to all employers in the respective areas. In this way, employers who do not participate

in negotiations and the conclusion of these industry-wide collective agreements are forced to abide by various obligations prescribed by these agreements. This raised new concerns among foreign investors (some being the largest companies in their respective industries), which had previously objected to the extended application of the GCBA and formerly concluded industry-wide collective agreements and which addressed their criticism to competent authorities on several occasions. Therefore, all arguments previously raised against the extended application of these collective agreements refer to the extended application of the recently concluded 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, something that creates additional legal uncertainty in an already unstable Serbian market; (ii) such extended application gave the industry-wide collective agreements the legal status of 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 a modern market economy (e.g., determining the base salary based on co-efficient and the minimum wage 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 duties of the employer that do not relate to protection of employees' rights.

The industry-wide collective agreement for the construction and construction material industry was concluded as the previous collective bargaining agreement in these industries (from 2011) ceased to be in force. Since it mainly takes over the contents from the previous collective bargaining agreement in these industries, already discussed in the previous edition of the White Book, this year's edition shall focus on the changes introduced by recently concluded industry-wide collective agreements for the chemical and non-metal industry, as well by the industry-wide collective agreement for the metal industry.

The industry-wide collective agreement for the chemical and non-metal industry

1. It mandates the calculation of the base salary by using the co-efficient for the specific job (an obsolete method which existed under the old law);

2. The minimal duration of part-time work is set to four hours per day. This unnecessarily limits the flexibility of both parties when concluding part-time employment, as the Labour Law enables setting shorter daily working hours for part-time work;

3. Decrease of the salary on the basis of work performance is set to maximum 20%, which represents yet another limitation to employers;

4. In the case of redundant employees, work results of employees are envisaged as the basic criterion for determining redundant employees. Moreover, it is envisaged that the employer is obliged, at the request of a representative trade union, to reconsider the redundancy program, as well as the decision on determining an employee as redundant;

5. The minimum amount of severance payment at retirement is defined differently than in the Labour Law. It amounts to three average salaries of the employee at the time of payment. However, such severance may not be lower from the amount equal to three average salaries with the employer at the time of payment, nor three average salaries in the Republic;

6. It sets out an extensive list of events which may trigger the employee's right to paid leave, as well as additional criteria for an increase of annual leave duration; and also provides certain salary items to be paid at an increased rate compared to the rates set out in the Labour Law: work on a non-working day – 120% of base salary; work on Sundays – 5% of base salary; allowance for previous years of service – 0.5% for each full year of service;

7. Food allowance is set at a minimum of 20% of minimum salary; allowance for annual leave in the amount of minimum salary; field work daily allowance in the amount of 3% 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;

8. The industry-wide collective agreement provides 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 GCBA, 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;

9. Calculation of the daily allowance depends on the duration of a business trip (employee is entitled to full daily allowance if the business trip lasts longer than 12 hours, and one-half of daily allowance if a business trip lasts more than eight hours, up to 12 hours). If a business trip lasts continuously for more than one day, in addition to full daily allowance for each 24 hours spent on a business trip, upon commencement of each additional day of a business trip, the employee is entitled to: (i) 50% of daily allowance (given that employee spent more than four and less than eight hours on a business trip on such an additional day); or (ii) full daily allowance (given the employee spent more than eight hours on a business trip on an additional day).

The industry-wide collective agreement for the metal industry

1. Base salary is calculated by using the co-efficient for the specific job, which is a rather obsolete method which existed under the old law. Also, this collective agreement sets restrictions with respect to the term of application of the negotiated base salary for the simplest work (a six-month period at most);

2. Decrease of the salary on the basis of work performance is set to a maximum of 20%, which represents yet another limitation to employers;

3. The minimal duration of part-time work is set to four hours per day. This unnecessarily limits the flexibility of both parties when concluding part-time employment, as the Labour Law enables setting shorter daily working hours for part-time work;

4. The maximum duration of a probation period is limited to three months, leaving an employer less time to assess an employee's work than it could have under the general provision of the Labour Law (which limits probation period to a maximum of six months);

5. An employer is obliged to deliver to the representative trade union, at least two times per year, a list of employees, as well as enable the trade union to check the employer's fulfilment of the obligation to register employees for social insurance. This obligation may be a cumbersome administrative burden for employers employing a lot of employees;

6. In the case of redundant employees, the work results of employees are envisaged as the basic criterion for determining redundant employees, whilst the socio-economic position of employees is envisaged as the supplementary criterion. In addition, certain categories of employees cannot be terminated on the basis of redundancy (such as women with children up to two years of age);

7. The amount of severance payment to be paid to redundant employees is determined as one-third of the average gross salary of the employee over the previous three months (or one-third of an average gross salary with the employer over the previous three months, or one-third of an average gross salary in the Republic of Serbia over previous three months, if such is more favourable for the employee) per each completed year of service – which, however, cannot be lower than 50% of the average salary in the Republic of Serbia;

8. The minimum amount of severance payment at retirement is defined differently than in the Labour Law. It amounts to three average salaries of the employee at the time of the severance payment. However, such a severance may not be lower than the amount equal to three average salaries with the employer, nor three average salaries in the Republic of Serbia;

9. It sets out an extensive list of events which may trigger an employee's right to paid leave, as well as additional criteria for an increase of annual leave duration; and also provides that certain salary items are paid at an increased rate compared to rates set out in the Labour Law: Work on a non-working day – 120% of base salary; night work – 30% of base salary; an allowance for previous years of service – 0.5% for each full year of service, etc.;

10. Food allowance is set at a minimum amount of 15% of the average monthly salary in Serbia; allowance for annual leave in the minimum amount of 75% of the average monthly salary in Serbia; daily allowance for a business trip in the country in the amount of 5% of the average salary in the Republic, etc. However, provisions related to annual leave allowance and meal allowance are suspended until 30 September 2012;

11. The procedure for termination of employment due to underperformance and/or lack of knowledge and skills is lengthy (underperformance must be evidenced over a three-month period), and is made even more complex by requiring a special commission for performance assessment to be formed. Moreover, if underperformance has been determined, the employer shall offer to the employee another suitable position, and only if there is no such position may employment be terminated on such grounds;

12. This collective agreement introduces a 30-day notice period in the case of termination of employment by the employer, whereby it is unclear whether the employee shall be entitled to such a notice period regardless of the grounds for termination of employment (which in certain cases might be contrary to the Labour Law);

13. Protection of employees' representatives after their term of office is extended to two years (instead of one year, as per the Labour Law).

The industry-wide collective agreement for the construction and construction materials industry is concluded for a two-year period, whereas the industry-wide collective agreements for the chemical and non-metal industry, as well as for the metal industry, are concluded for a three-year period.

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:

1. 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 PWD (e.g., for construction, etc.);

2. Although there is a possibility for current employees to undergo evaluation of their working ability in order to be recognised as PWD, in practice such a procedure is very complex and administratively cumbersome, as it includes submission of numerous documents by the employee and engagement of different state authorities during just one process, with somewhat overlapping powers (the National Employment Service and the Republic Fund for Pension and Disability Insurance [FPDI]);

3. In practice, a majority of employers opt for payment to the state budget instead of employment of PWD, mostly for the reason that they do not have need for additional workforce or they cannot find adequate PWD for the work required.

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 a residence permit, the waiting period, from the date of submitting all documents until the issuance of the residence permit, is one month. This is too long, as the foreigner is not able to import any of their belongings from abroad, start working, etc., in this period of time.

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

The Law on the Protection of 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, and time-consuming; and, as a whole, is not adjusted to the requirements of a modern market economy and removing borders on the labour market. As such, it has the counter-effect of its main purpose – that of protecting Serbian citizens employed abroad. Furthermore, without the implemented procedure, informing the competent Ministry of Labour, Employment 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 Fund 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, may lead to certain problems for employers who use this institute. Namely, there is the 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 leased staff will claim that they were actually employed within the company where they performed work, although they did not have any agreement with said company. This is usually the case when they are dismissed due to termination of business co-operation between the staff leasing agency and the company that used these services.

Shift work

Unlike ILO and UN conventions, which do not recognise shift work, but do recognise night work, as a particularly difficult kind of work, one requiring certain benefits, Serbia's Labour Law prescribes both shift work and night work as grounds for a salary increase.

Also, the existing legislative framework is scarce, incomplete and imprecise, since it does not even define the basic concept and characteristics of shift work, which is in practice a source of significant problems.

Namely, in the absence of precise regulations, the definition of shift work and cases that imply salary increase are prone to different interpretations by competent courts and the Ministry of Labour, Employment and Social Policy. State authorities have a tendency to extensively widen the field of shift work application, considering as shift work any 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-upon amount of base salary, which are formulations almost non-existent in the Serbian economy.

Since the Labour Law provides a 26% salary increase based on shift work, as well as an additional 26% increase for night work, this represents an intolerable burden for the vast majority of employers in the Republic of Serbia.

In practice, most jobs that by their nature imply regular and continuous shift changes, shift work is understood and therefore incorporated into basic salary. The obligation to explicitly stipulate this in the General Act or Labour Agreement is unnecessary.

Also, the Labour Law does not regulate cases of occasional shift work (when work is regularly done in one shift, and only occasionally requires two or three shifts), since it gives no guidelines on how to determine the basis for a 26% salary increase.

Since the definition and specific nature of shift work depend mostly on the industry in which it is done, and given that the work organisation is in the sole competence of the employer, it is more appropriate to leave the regulation of shift work up to the General Act, instead of the Law prescribing uniform rules.

Nevertheless, if this matter is regulated by Law, it is necessary to define shift work and clearly set basic conditions for increased salary payment, and thus prevent the possibility of arbitrary interpretations.

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 suggestions regarding labour relations from our previous editions 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 mandatory, but a discretionary part of salary. In this regard, the possibility of a free agreement between 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 the functioning of the labour market;

- We suggest that salary compensation during absence from work be amended; i.e., to be due in the amount of base salary increased by seniority;
- Employment-related paperwork should be simplified by introducing the electronic delivery of documents and electronic databases and implementation of electronic signature rules. As such, paragraph 5 of Article 122 of the Law (requiring the employee to sign the written certificate on the 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 employer and employee;
- We propose that the duration of 12 months for a 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 in the 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 three 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 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 an employer declaring an employee redundant solely on the years of service of said employee with said employer, and only as a last alternative would the rest of the amount of severance pay (and for the remaining number of years of employment with previous employers) be borne by the State or by the Fund for Unemployment Insurance at their own expense;
- We propose to establish a one-month 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 the temporary removal of an employee from work, and considering that deduction of a portion of salary is an effective disciplinary measure and as such foreseen by laws of some surrounding countries, we propose that said deduction of a portion of salary should be explicitly stated in the Labour Law as a possible disciplinary measure and the amount of such a deduction should 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 an 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 possibilities for the introduction of overtime work should be extended; i.e., should not be related to sudden and non-expected occurrences only. Employer and employees should be free to agree on the occasion and pur-

pose of overtime work. Employers should have the right to introduce manager allowance that would encompass compensation for overtime work performed by managers in the company.

The industry-wide collective agreements

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

The Law on Vocational Rehabilitation and Employment of Persons with Disabilities

- The law should be terminologically co-ordinated 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 than the 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 PWD would be in 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 (i.e., construction, etc.);
- The Law should enable the employer to initiate the procedure for the establishment of the disability of current employees and not leave it to employees alone;
- 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 a residence permit issuance; reduce the number of documents required during the procedure for acquiring a residence and work permit, etc.

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

- The Law should be renamed to be updated, and 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 the aim of 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 to the Labour Law, which would govern all important issues with respect thereto (such as 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 whereby the relationship between 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 issuance of a license for staff leasing agencies) should also be regulated by the law. In this way, the law would create legal certainty, thereby removing the possibility of discretionary decisions being handed down (e.g., by ministries) with regard to these important issues.

Shift work

- The proposal is to completely eliminate shift work as a basis for salary increase, thus leaving this matter to be regulated entirely by the General Act;

- The alternative solution is to stipulate dispositive norms by Law that would be applied only if the General Act doesn't regulate shift work. Salary increases should be limited by prescribing that shift work cannot represent a basis for increased salary for jobs that by their nature imply regular and continuous shift changes, and for which shift work is understood as a work condition and therefore incorporated into basic salary. Consequently, increased salary would only be paid in a certain percentage of occasional shift work, whereas the only hours of work in the second shift would represent the basis for a salary increase calculation.

The Law on the 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 defendant, which significantly violates the concept of equality between 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 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 the state.	2010			√

CURRENT SITUATION

The global economic crisis 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 a 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 2012 is 25.5%, according to the Statistical Office of the Republic of Serbia, a figure by 3.3 percentage points higher than in August 2011, showing that the rising trend of unemployment continues.

The 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 continued in 2011 – employers downsized their workforce in order to reduce costs. The Government has had to balance between a growing budget deficit and companies' needs to receive support through salary tax incentives to slow down the downsizing process.

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

In times of economic crisis, human capital becomes increasingly important. Although labour market demand has decreased, resulting in fewer job opportunities, the retention of key personnel is in the focus of HR professionals more than ever, as something 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 have been certain changes in the education system. Most universities and colleges are aware that they are in a competitive market. Because of 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

The Government of Serbia and its ministries have undertaken some measures in times of crisis. The Government has ratified the National Employment Action Plan for 2012, which is a tool for the implementation of active policy. This employment plan defines the targets and priorities of the Government's employment policy, declaring programmes and measures which are to be realised in order to achieve set targets and enable sustainable employment growth.

In 2011, the Ministry of Science provided a significant contribution towards creating opportunities and programs that included, 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 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.

Because research shows that one of the key problems of unemployment in Serbia is the low education level of people and that in this respect there is a need to improve education of the whole population, the activities of the Ministry of Education, Science and Technological Development are of great importance. This Ministry in 2012, as in 2011, made major contributions to the development of scientific staff. These activities were especially aimed at encouraging young people to engage in scientific research. In this regard the Ministry co-financed various programme activities, awarded scholarships to students, and provided a variety of programmes and documents, such as a personnel training program for scientific research for the period 2012-2015 and a scholarship programme to encourage the young and gifted for research for the period 2012-2015, etc.

In 2011 the Ministry of Labour and Social Policy, in the context of provisional activities, established a work group for the

preparation and amendment of the Labor Law. During the preparation it was sought to the fullest extent to make possible social partners agree in order to preserve existing jobs and not introduce a new financial burden to employers that would impair their status and thereby jeopardise that of their employees. In late October 2011, the Social-Economic Council of the Republic of Serbia submitted a version of the Draft Law on Amendments to the Labour Law.

During 2012, the Ministry of Labour continued activities aimed at improving the situation of people with disabilities through various projects. A number of activities and projects were also directed towards the economic empowerment of women.

REMAINING ISSUES

Due to the impact of the economic crisis, an increase in the grey market jobs 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 budget 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 sixth 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 attracting new investments.

The development of human capital is one of the most important tasks for it has a very broad impact on the country's progress. As such, 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 in the market.

FIC RECOMMENDATIONS

- Positive measures that stimulate employment should be continued;
- The education system should be improved. Regular contact between the FIC and the Government, the ministries of education and youth, as well as 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 Government 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 mentioned in previous editions, over the last few years Serbia has been facing the challenge of ensuring a coherent and effective legal framework and institutional capacities that shall sufficiently support the EU accession process. In that respect, during 2011 and 2012, the Serbian Parliament enacted a number of laws that generally satisfy the European and international standards. However, some other systemic laws and relevant by-laws are yet to be enacted. With regard to the required capacity building, even though some improvements are evident, the issues of a lack of capacity and further specialisation of the public administration and the judiciary remain crucial.

In this edition of the WB we address the most important developments and remaining issues that are yet to be resolved from the point of view of foreign investors. In most cases, the above conclusions are applicable; i.e., many laws and in particular by-laws, are still missing. Also, the institutional efficiency and legal certainty needs further improvement.

For example, in the fields of civil and commercial law, some improvements are notable, but their real effects are yet to be evaluated in practice. Namely, the Law on Enforcement Security and the Law on Public Notaries in general encourage the legal certainty and efficiency by allocating certain duties from the judiciary to private bailiffs and public notaries. In addition, application of the new Law on Civil Procedure introduced some promising improvements in terms of summoning and notification of parties and other participants in the procedure in order to prevent present abuses by the parties. These developments also address the option of electronic communication between parties and the court, in accordance with special laws. With regard to the Insolvency Law, most of the issues addressed in the previous edition remain the same. Here we may add some additional problems identified in its implementation, for example the question of differing court actions when a reorganisation plan is not fulfilled. Also, in our opinion, the adoption of amendments to the Law on Arbitration, which would comply with the 2006 UNCITRAL Model Law on Arbitration, could additionally promote arbitration as an alternative way of resolving disputes before the courts.

The important field covered in the WB relates to the laws that are of importance to both the private sector and the public sector, such as the Company Law, the Law on Capital Market, PPP and PP laws, and the Energy Law. The new Company Law is a capital, and rather complex piece of legislation, whose effects and outcome after the practical implementation of the newly introduced concepts are yet to be seen. It is still too early to judge the effects of its applications, though problems in its application have already been noticed. With regard to the capital market, among others, our recommendations relate to the Government's further actions; i.e., it should take all necessary actions to increase activities on the capital market in Serbia, including motivating foreign investors to issue dinar-denominated bonds and initiating first as well as sufficiently big initial public offerings (IPOs). The PPP and PP framework still need to be improved. In addition, as the Energy Law is implemented with the currently valid by-laws, enactment of the new by-laws should be one of the priorities in the legislative activities in the future.

To conclude, improving the legal and institutional framework for a strong rule of law and sound economic growth should be the Government's priority.

top

THE COMPANY LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced 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			√
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.	2011			√

CURRENT SITUATION

New Company Law

The new law on business entities (the "New Company Law"), adopted in 2011, became applicable on 1 February 2012. The New Company Law was adopted with the aim of overcoming certain flaws in the previous law on business entities (the "Old Company Law") that became 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 into the Serbian legal system, it also regulates existing legal institutions in a much more detailed and clear manner, thereby overcoming certain legal ambiguities in the Old Company Law. However, since this is a capital, and rather complex, piece of legislation, and the effects and the outcome of the practical implementation of the newly introduced concepts are yet to be seen, it is still too early to judge the effects of its applications, though problems have already been spotted.

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).

Since its adoption, the New Company Law has already been amended. These amendments were mostly technical corrections. In addition, some fundamental changes have been made to the provisions that dealt with negative capital, which have been deleted following much public criticism. The following are some of the key other changes.

Novelties in General

Foundation Deeds

As under the Old 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 of the Old Company Law, requiring notarisation of all amendments to a Foundation Deed for a Limited Liability Company (LLC), the new Company Law provides for a possibility to have such a requirement waived by the members of an LLC. As for a Joint Stock Company (JSC), 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 previously 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. Nullity of a Foundation Deed constitutes grounds for a forced winding up of a company.

Address for Mail Receipt

The New Company Law provides the possibility of the Company to have, aside from a registered seat, a special address for receipt of mail, subject to registration with the Company Register of the Serbian Business Registers Agency. In

addition, special rules are provided on the delivery of documents to 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 an 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 legal representative. In addition, the New Company Law provides for solutions in cases when a 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 dinars, 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, an LLC may now be registered with the Company Register even before the initial capital has actually been paid in, simplifying the registration process. Contributions in kind to an LLC can no longer be "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, as amended, has done away with the obligations of a company (LLC and JSC) to reduce its share capital if the value of its net assets is less than the value of its registered capital (negative capital). This change was introduced due to the fear that in today's economic environment, these provisions on negative capital could lead to the forced liquidation of a number of Serbian companies.

Use of Corporate Seal

A company no longer need affix its corporate seal to written communications with third parties, unless 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 are 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 Old Company Law was silent as to the consequences of a breach of this law's provisions on the proper procedure to be followed in connection with the disposing of assets of great value, the New Company Law is clear. Thus, a minority shareholder holding a stake of at least 5% may sue for annulment of the relevant disposition agreement; provided 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

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 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 members' 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" (which 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 Old 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 Old Company Law did 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 to JSCs

Public and "Non-Public" Joint Stock Companies

Unlike the Old 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 certain rules which apply to public company only.

The fact that there are two types of JSCs is predominantly derived from the new Capital Market 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) whose securities are included in trading on a regulated market or multilateral trading facility (MTF) 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 also been introduced in the regime of a company's profit allocation. The New Company Law now clearly provides that the payment of dividends is only an option that may be considered by a 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. A squeeze-out right is not subject to a requirement to first conduct a takeover process, and a squeeze-out procedure can now be commenced at a lower threshold.

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 the price paid to dissenting shareholders; i.e. the higher of (i) the book value; (ii) the 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 three-month period after the completion of a ToB, a squeeze-out of shareholders may be done at the price paid during the course of the respective ToB. Once this three-month period has lapsed, the squeeze-out may be executed at the same price paid to dissenting shareholders. The same rules apply to the rights of minority shareholders demanding a buy-out of their shares.

Market Value

The market value of the shares of a public JSC is now precisely defined (compared to the calculation formula contained in the Old Company Law). Namely, the Old Company Law contained a vague definition of the market value of shares, which gave rise to different interpretations and often unrealistic valuations. The New Company Law now

defines the "market value" of a share as the weighted average price of such a share at the regulated market or the multilateral trading facility during the six-month period preceding the date on which the decision on the setting of the market value of such a share was issued (provided that, during this 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 three months within this six-month period, at least 0.05% of all issued shares of the respective class were traded 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 Old Company Law failed to accurately regulate the process of a capital decrease in a JSC through withdrawal and cancellation of shares, which could have led 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 an option is envisaged in the Articles of Association or if the respective shareholders have consented to such a 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 a 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. Whereas the obligation to publish a merger agreement applied only to JSCs, it now extends to LLCs as well. The new law introduces the obligation for a company undergoing a merger to directly inform in writing all creditors whose claims exceed RSD 2 million.

Winding up

The New Company Law introduced rules on forced liquidation, which were lacking under the Old Company Law and made the process of the execution of forced liquidations unclear and therefore unfeasible. Thus, forced liquidation may be initiated under several clearly defined circumstances that are now explicitly provided in the New Company Law.

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

The New Company Law is in many ways a positive development with respect to better regulation of corporate governance and company related issues. 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." 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 were lacking in the Old 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 officers to represent the company are

still not consistent with the relevant provisions of the Law on Contracts and Torts. Moreover, the practice of the Serbian Business Registers Agency, which still allows registration of representation restrictions other than the requirement of a co-signatory's signature, has also added to the confusion as to whether such restrictions can be binding on third parties. However, application of the provision by which a procurist's authority can be limited by the requirement of a joint signature with a legal representative is unclear. It is not clear whether the procurist can be limited with one of the procurists/more procurists and with the signature of a legal representative at the same time or only with one of the mentioned representatives. Furthermore, it is not clear whether the limitation when a procurist is limited in their authorisations with the legal representative is considered as joint or single procura. There have been some cases when the Serbian Business Registers Agency considered this issue as collective procura and some cases when it considered it single procura.

The New Company Law did not provide for rules as to when a company's Articles of Association and other corporate acts enter into force, leaving this area subject to various interpretations. In the absence of a clear rule, there is uncertainty as to when a company's Articles of Association enter into force; i.e. whether a company's Articles of Association are subject to the opinion given by the Constitutional Court in its decision No. 328/2009, according to which a company's general acts enter into force within a period of eight days after publication.

The provisions of the New Company Law on denominating the company's share capital in Serbian dinars, although generally perceived as a positive development, created some uncertainties. This occurred, in particular, due to the practice of banks requiring a certified signed Foundation Deed for the opening of a temporary bank account, and also raised the question of whether the Serbian Business Registers Agency will accept a Foundation Deed in which the initial capital is expressed in foreign currency.

The National Bank of Serbia has still not defined a procedure for cases when shareholders decide to consider additional payments paid until 4 June 2011 as loans.

Although the new Company Law seems to clarify several matters that have proven to be problematic in the implementation of the old Company Law, it is evident that it 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 and severely regulated.

An integrated approach to the amendments of several laws and by-laws has to be taken in order to resolve existing ambiguities between the Company Law and other laws which regulate business, finances, securities, real-estate trading and development, and restitution, as well as to avoid the creation of new ones, thus diminishing the potential benefit of improvements of individual laws.

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;
- The Business Registers Agency should no longer register restrictions on powers of representation, other than the requirement of co-signing;
- The Agency for Commercial Registries should clearly state that it will accept Foundation Deeds in which the company's capital is stated in a foreign currency.

CAPITAL MARKET TRENDS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011	√		
The Draft Law on Securitisation should be submitted to the National Assembly for immediate adoption.	2009			√

CURRENT SITUATION

Since May 2011, the regulatory framework of the capital market in Serbia has undergone material changes. Namely, in May 2011, the National Assembly of the Republic of Serbia adopted a new Law on the Capital Market, replacing the criticised Law on the Market of Securities and Other Financial Instruments. At the same time, amendments to the Law on Investment Funds and the Law on Voluntary Pension Funds and Pension Schemes were passed; and in December 2012, amendments to the Law on the Takeover of Joint-Stock Companies were adopted. In addition, the Securities Commission has adopted more than 20 by-laws required for the implementation of the Law on the Capital Market.

Generally, the regulatory changes may be evaluated as positive since they are directed towards harmonisation with EU regulations and IOSCO principles, making the Serbian capital market more attractive to both domestic and foreign investors.

Unfortunately, the true test of the new regulatory framework has not yet occurred. The Serbian capital market is still too small to evaluate numerous novelties introduced by the new regulatory framework, especially the Law on the Capital Market.

The amendments made to the capital market regulatory framework in Serbia have been fitted to European standards but the effects of these amendments are yet to be seen in practice. It appears that it takes more than just regulatory reform to stimulate capital market growth in Serbia.

Nevertheless, we do believe that the regulatory reforms were necessary and hope that the new regulatory framework will eventually result in the improvement of the Serbian capital market and an increase in foreign investments.

In order to complete regulatory reforms in this field, the idea of adopting a Law on Securitisation should be revived.

POSITIVE DEVELOPMENTS

The new Law on the Capital Market, which became applicable in November 2011, introduced numerous changes which, in general, may be interpreted as positive. The new law regulates the procedure for the public offering of securities in a clearer way, which will hopefully result in first big initial public offerings (IPOs) in Serbia. Also, it is expected that the novelties introduced by the Law could reduce the costs of security issuance.

Some of the most important novelties of the Law on the Capital Market are the following:

1. The financial market was reorganised through the introduction of 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 procedures determined by the law; (ii) Multilateral Trading Facility (MTF) – 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 trading in financial instruments 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.

2. 'Public offering' has a new definition. The basic principle related to public offering is the compulsory publication of the prospectus and its prior approval by the Securities Commission, without which the offering would be considered null and void and admission to the regulated market or MTF would not be allowed, with exemptions explicitly listed in the law.

3. 'Public company', which is, inter alia, obliged to file a request for the admission of its shares to the regulated market, is defined 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 the regulated market or MTF in the Republic of Serbia.

4. Conditions to be fulfiled by the Regulated Market and MTF, and the notification about transactions, are regulated through by-laws, while the Securities Commission has the authority to supervise the market organiser and take measures provided by the Law when necessary.

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

6. The Investor Protection Fund (IPF), a new institution on the financial market authorised to protect investors whose resources or financial instruments are exposed to the risk of bankruptcy of the investment companies, credit institutions or management companies providing certain services, has been introduced.

Also, it should be mentioned that the Securities Commission has adopted required by-laws for the implementation of the Law on the Capital Market. The regulatory work of the Securities Commission has been very extensive and includes more than 20 different by-laws (mostly in the form of rulebooks).

The amendments to the Law on Investment Funds have also introduced several important positive novelties, the main being: i) 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; ii) the possibility of management companies to acquire investment units/shares in an investment fund up to 20% of the net value of the fund's assets; iii) investment restrictions for investment funds have been reduced, so the assets of 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; iv) provisions on custody bank operations are regulated through by-laws, as the Law on the Capital Market does not include relevant provisions anymore.

The amendments to the Law on the Takeover of Joint-Stock Companies were also aimed to rectify certain shortcomings of the law noticed in practice. The amendments included, among others: i) an extension of deadlines for the publication of a takeover bid and delivery of the bid to shareholders; ii) the possibility of acquiring, under certain conditions, preferential shares and shares in unlisted companies through a takeover bid; iii) defining 'acting in concert' in more detail; iv) the obligation of a bidder acquiring a share within a one-year period following the closing of the bid—for a price higher than the one offered in the bid—to pay the same higher price to the shareholders who sold the shares in the bid process, etc. The Law on the Takeover of Joint-Stock Companies no longer regulates the squeeze-out or buy-out mechanism, as these are now regulated by the Company Law.

Finally, we have to commend the initiative of the Securities Commission to co-operate more actively with capital market participants. In particular, in April 2012 the Securities Commission was the co-organiser of the successful 'Institutions, Investment, Investors' Protection' Capital Market Conference; while in May 2012, upon receiving comments from various capital market participants, the Securities Commission agreed to correct its official opinion on the necessity of the publication of a takeover bid by a majority shareholder in the case of the acquisition of one's own shares.

REMAINING ISSUES

It is still very hard to identify remaining issues as the implementation of the new Law on the Capital Market is in its early stages. There were no significant developments in the capital market since the beginning of the application of the law, so its provisions were not exposed to the real test of practice.

The Serbian capital market is still in an early stage of development with stock-exchange trade of barely above 1% of total securities trade.

So it now becomes clear that there is more than just harmonising regulations with international standards to improve the Serbian capital market, which lacks high-quality securities.

Therefore, serious efforts should be made to increase activities and expand the portfolio of available securities in the Serbian Capital Market. As for the regulatory

framework, we reiterate that Serbia still lacks the regulatory framework for securitisation. Securitisation might be a good instrument to stop further negative developments in the banking sector.

We also underline once again that pricing rules for the issuance of shares remain in the Company Law, which we deem not to be the best solution. However, the positive side is that the new Company Law has at least introduced exemptions in the case of IPOs.

Certain opinions of the Securities Commission, such as the opinion related to share option plans for employees, were too rigid.

FIC RECOMMENDATIONS

- The Government should take all necessary actions to increase activity on the capital market in Serbia, including motivating foreign investors to issue dinar-denominated bonds and initiating Serbia's first big IPOs. This means all legal and political obstacles should be removed in order to attract international financial institutions and other investors to issue dinar-denominated bonds. At the same time, the announced IPOs of big public (or former public) companies should finally be organised. In addition, municipal bonds could be issued for the financing of infrastructural and other large communal projects;
- Improvement in the co-operation of the Securities Commission and capital market participants must be continued and upgraded;
- The Draft Law on Securitisation should be prepared and submitted to the National Assembly for immediate adoption.

JUDICAL PROCEEDING

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Complete the reappointment procedure of judges.	2011		√	
Increase the number of judges and court administrative staff.	2010			√
Improve and justify the allocation of cases among courts and judges.	2011			√
Establish online databases in remaining courts.	2011			√
Promote the possibilities and advantages of alternative dispute resolution (arbitration and mediation).	2010			√
Adopt amendments to the Law on Arbitration in order to comply with the 2006 UNCITRAL Model Law on Arbitration.	2011			√

CURRENT SITUATION

The Serbian government has initiated a series of legislative reforms affecting the organisation of the judiciary and judicial proceedings. These reforms continued throughout 2011 and in the first half of 2012. 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). The process of the reappointment of judges was initiated under the Law on Judges and the Law on the High Judicial Council (Official Gazette of the Republic of Serbia, No 16/2008 and 101/2010), and, due to serious abuses, this process is still not finalised. The new Law on Enforcement and Security (Official Gazette of the Republic of Serbia, No 31/2011) and the new Law on Civil Procedure (Official Gazette of the Republic of Serbia, No 72/2011) are now being applied in their entirety, while the new Law on Public Notaries (Official Gazette of the Republic of Serbia, No 31/2011) - introducing the public notary system for the first time since World War II – is expected to become applicable as of September 2012.

The reappointment 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, as well as on the account of several hundred complaints filed with the Constitutional Court of Serbia. The review of the reappointment of judges ended on 30 May 2012. Out of 837 judges discharged from courts, less than 17% were successful with their complaints. The discharge of more than 800 judges in the said reappointment procedure, and the dismissal of a number of administrative staff in the courts, created a real problem for courts in terms of coping with case load. It also made the situation worse in terms of the overall quality and quantity of 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 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. Nevertheless, it is expected that the High Judicial Council will initiate a review of the mandates of judges appointed in 2009 and 2010.

The application of the new Law on Civil Procedure, which started 1 February 2012, and which established strict deadlines for activities of the parties and courts, was stalled in the first four months from its going into effect, due to the courts being unable to complete older (existing) cases. The new law introduced, inter alia, new rules on the service of court documents; a shortening of the evidence-producing procedure; the summoning or notifying of parties and the court via e-mail; a deadline for issuing an appellate decision; the option to use audio and video equipment at hearings; stenographers; and clear and strict deadlines to produce evidence at a hearing. It also ensured equal rights for the party applying for a legal remedy and its opponent in terms of prescribing an equal deadline to submit legal remedy and to submit the response to such legal remedy. The new law introduced a timeframe for the main hearing, as a new concept aimed at providing a better concentration of hearings in which evidence may be produced. The old Law on Civil Procedure (Official Gazette of the Republic of Serbia, No 125/2004 and 111/2009) still applies to cases initiated before the new Law on Civil Procedure came into force.

The Law on Enforcement and Security, applicable as of 17 September 2011, also ran into difficulties regarding its application. However, a new branch of the legal profession introduced by this law – private bailiffs – should provide for more efficient enforcement proceedings.

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.

The Legal Profession Act (Official Gazette of the Republic of Serbia, No 31/2011) established additional requirements for becoming an attorney at law, such as completing the Bar Academy. This Act, which went into effect 17 May 2012, also introduced the possibility for foreign attorneys to register with the Bar Association of Serbia and represent parties in Serbia.

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 does not completely conform to 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 tourist 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 a more efficient and cheaper option for dispute resolution.

POSITIVE DEVELOPMENTS

Most courts of general jurisdiction, as well as commercial courts, now have online databases showing the status of ongoing cases. However, not all the courts have useful online databases like the Administrative Court and the Constitutional Court of Serbia. Indeed, some have no databases at all, such as the Appellate Courts, Misdemeanour Courts and the Supreme Court of Cassation.

One of the expected positive developments is the initiation of work of so-called private bailiffs, who conduct their activities either as entrepreneurs or in the form of a partnership. Their role is to provide more efficient enforcement proceedings. A party may opt for the court of private bailiff to conduct enforcement proceedings once the court renders an enforcement order. Such a solution is believed to lower the number of cases decided before the court, thus making courts more efficient. The bailiffs have to fulfil special requirements, such as having passed the bailiff's exam, as well as possessing certain characteristics required by the Law and required working experience. The bailiffs have exclusive jurisdiction over cases arising from debts incurred on bills for utility services.

The new Law on Civil Procedure introduced some promising improvements in terms of the summoning and notification of 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). However, the application of these provisions is still pending since the courts do not possess the technical abilities for such activities. The concentration of the main hearing and evidence-presentation procedure are also notable improvements to a certain extent. In this regard, the court has an obligation to render a timeframe for the main hearing and for producing evidence. However, this timeframe is not very flexible, given that the course of litigation cannot always be predictable. 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 parties that abuse the proceedings. The appellate courts are also provided with a deadline to render an appellate decision – within nine months from the moment they receive case files. Finally, the parties are provided with equal rights in remedial procedures so that the deadlines to submit legal remedies are equal to the deadlines providing the response to such legal remedies.

The new Legal Profession Act established the Bar Academy attached to the Bar Chamber. The Bar Academy commenced its operations on 17 May 2012 with the purpose of ensuring improved education of attorneys.

The re-introduction of the public notary into the Serbian legal system is an especially notable positive improvement in the Serbian legal system. Public notaries will contribute to removing significant workload off the 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. They will also certify private documents; take said documents, money, securities and other movable property into deposit; and conduct other activities in accordance with the law. Public notaries will also take over jurisdiction from the 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

1. The review of the reappointment procedure of judges ended in a non-transparent manner. The reappointment of the judges initiated in 2009 seems to have made the judiciary less efficient and less independent than it was before this procedure. The High Judicial Council failed to correct mistakes from the past. The number of judges still needs to be increased and the specialisation of the work portfolio of judges should be introduced in an efficient and definitive manner. Allocation of work among courts of different jurisdictions, as well as among judges, is another issue that has yet 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 case files should be more accessible, not only to the parties, but also to the public, since insight into particular decisions is still not possible and it often happens that parties to a case cannot access the case files due to various "technical issues."

2. The new Law on Civil Procedure is introduced as a significant improvement to its predecessor, but appears to contain many flaws which could be argued to have actually reversed progress achieved by the previous law. It is still sporadically applied, since judges are mostly overwhelmed by old cases. The electronic communication between the parties and the court is still not possible due to a lack of clear regulations and by-laws in that field and a lack of necessary funds for the technological equipment for the courts. The timeframe, although potentially very promising in terms of efficient completion of litigation, is not flexible enough, since litigation is often unpredictable. The law should have, therefore, allowed more possibilities to extend this deadline. Some of the deadlines are unrealistically short, and the deadline for providing evidence is too strict which may lead to certain abuses by the parties. This is especially evident in terms of cases with a foreign element. The law will most likely come into collision with international treaties dealing with the service of the court documents – i.e., the 1954 Convention on Civil Procedure and 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters – in terms of the provisions on service of the parties with the court documents. The deadline to submit evidence only by the end of preliminary hearing should also be more flexible, given that either party may save the evidence presentation for the end of that hearing in order to prevent the other party from properly addressing/responding to such evidence. Therefore, the court must be allowed to postpone a preliminary hearing in order to provide the parties sufficient time to address/respond to all the evidence submitted by the other party. Finally, the threshold for extraordinary legal remedy revision of the final judgment is arguably set too high (EUR 300,000 or more for the claim).

3. The Law on Enforcement and Security should provide third parties having rights over the object of enforcement or security with efficient legal remedies. Also, in case of enforcement on the basis of directly enforceable instrument (e.g. invoice), the creditor is not provided with a legal remedy in the case where the court issues an enforcement order, but subsequently cancels it upon the objection of the debtor. In such event the case is simply transferred to litigation.

4. 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. These proceedings are often more cost-efficient and less time-consuming than ordinary litigation, and both are available either to foreign and/or domestic entities. However, there is room for certain improvement of the Law on Arbitration, given that it has not been updated with the latest, and 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 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 welcome.

FIC RECOMMENDATIONS

- Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions;
- Increase the number of judges and court administrative staff;
- Improve and justify the allocation of cases among courts and judges;
- Establish online databases in the remaining courts, as well as amendments to the Law on Civil Procedure in order to assure flexibility of the timeframe and deadlines for certain actions;
- Set the threshold for revision of a final judgment at a lower level;
- 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 bankruptcy proceedings together with the submission of the reorganisation plan, giving the opportunity for more companies "to survive" instead of being definitely closed.	2010		√	
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.	2011		√	
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.	2010	√		
Encouraging mediation in bankruptcy proceedings whenever possible, all with the object of cost-efficiency and overall efficiency of bankruptcy proceedings	2011		√	
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.	2010		√	

CURRENT SITUATION

The new Insolvency Law was enacted by the Serbian Parliament on 11 December 2009 and became applicable on 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 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 competencies; 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 1 July 2010, receivers are chosen by random selection from the list of active receivers for the territory of the competent Court. An active receiver is the one that has 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 a 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 competen-

cies in "professional supervision" of receivers through, for example, the issuing of 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 was 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 were 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 (starting in 2012). However, on 12 July 2012 the Constitutional Court of the Republic of Serbia rendered a Decision determining that the provisions of Articles 150-154 of the Insolvency Law, which specify a special procedure in case of prolonged inability to make payments, are not in accordance with the Constitution, so the respective articles of the Insolvency Law ceased to be effective.

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 the 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 from RSD 500,000 to RSD 10 million.

With regard to the procedure of 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 (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 the receiver profession, is additionally encouraged by a set of by-laws that have been brought into force based on the Insolvency Law.

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 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.

In White Book 2011, we drew attention to various material and technical issues in relation to the provisions of the Law regulating ex officio bankruptcy proceedings. As the relevant provisions of the Law which govern the so-called automatic bankruptcy were the subject of numerous initiatives for assessment of constitutionality based on arguments that articles 150-154 of the Bankruptcy Act violate the constitutional right to fair trial (Article 32 para, 1 and Article 35 of the Constitution of the Republic of Serbia), the right to equal legal protection of rights and to legal remedies (Article 35 of the Constitution), the principal of the peaceful enjoyment of legally acquired property (Article 58

of the Constitution), as well as the principle of equality of all forms of ownership (Article 86 of the Constitution), on 12 July 2012 the Constitutional Court of the Republic of Serbia rendered a justified decision determining that the provisions of the Law which specify a special procedure in case of prolonged inability to make payments are not in accordance with the Constitution.

REMAINING ISSUES

At the moment, unlike in the European Union (EU) (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 the 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 the model of selecting receivers 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 handle not even one bankruptcy case.

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 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).

As a result of the mentioned Decision of the Constitutional Court of the Republic of Serbia the provisions of articles 150-154 of the Insolvency Law, which specify a special procedure in case of prolonged inability to make payments, ceased to be effective. Therefore the "automatic" opening of bankruptcy over the companies which have been insolvent for a significant period of time is not possible under Serbian Law, even though such legal institute is without doubt required in Serbia. In addition, the declaration that the provisions on ex officio bankruptcy are unconstitutional opens various questions in relation to the already finished and on-going procedures. Thus it is clear that the Serbian legal system is in need of amendments to the Insolvency Law or a special law regulating "automatic" bankruptcy in case of prolonged insolvency of the companies.

Another significant contradiction concerning the conduct of bankruptcy proceedings is related to courts' differing bankruptcy decisions in cases in which a reorganisation plan has not been fulfiled. This primarily refers to cases wherein a reorganisation plan had been implemented for some time and certain organisational measures were taken – for example, the conversion of claims into equity and the settlement of claims of certain classes of creditors, followed by a failure to complete the reorganisation plan. Regarding this issue, one of the very delicate questions is related to the legal treatment of mortgages when, within the class of secured creditors, a reorganisation plan is voted for and adopted, stipulating the deletion of mortgages and the satisfaction of creditors' claims. Namely, the creditors who were against the measure of the deletion of mortgages and were outvoted are deprived of the respective security of their claims, which is additionally complicated in a situation in which, due to a breach of the adopted reorganisation plan, it is deemed that the bankruptcy reason has occurred, which further leads to the opening of bankruptcy proceedings and the conversions of assets into cash. Courts have made differing decisions in such situations – certain courts are of the opinion that these situations call for restitution to be made, with creditors whose claims are settled during the reorganisation process brought into a situation where

they are required to restore to the bankruptcy estate the funds they received. This is almost impossible to achieve in cases where payments are made to individuals – employees and former employees. On the other hand, 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 reorganisation. This differing practice potentially threatens and erodes the principle of equal treatment of creditors in bankruptcy proceedings but also potentially threatens the constitutionally guaranteed rights.

We also stress that the fee payable to the Bankruptcy Supervision Agency for supervision and related services under Article 3 Tariff No. 6 of the Tariff regulating fees payable for the services rendered by the Agency is too high, being set at 1% of the proceeds received by selling bankruptcy property. This is especially inadequate in cases wherein the ratio of repayment of the claims of an unsecured creditor is very low. This may even lead to situations where the Bankruptcy Supervision Agency receives a higher amount of proceeds than most of the unsecured creditors together. After all, one of the main goals of the bankruptcy procedure is to enable creditors to settle their claims in the highest portion possible.

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 a proposal for the initiation of bankruptcy proceedings, and in particular, through participation in creditors' bodies;
- Immediate enactment of the amendments to the Insolvency Law or a special law regulating "automatic" bankruptcy in case of prolonged insolvency of companies which will be in accordance with Serbian Constitution;
- Encouraging mediation in bankruptcy proceedings whenever possible, with the aim of ensuring cost-efficiency and overall efficiency of bankruptcy proceedings;
- Enhancement of receivers' professionalism to the highest level and revocation of receiver's licenses 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 offences;
- Decreasing the fee currently regulated under Article 3 Tariff No. 6 of the Tariff of the Bankruptcy Agency, or at least adjusting it so as to take into the account claim settlement ratio of unsecured creditors.

INTELLECTUAL PROPERTY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
State authorities should continue and enhance efforts to combat online copyright infringements, especially with respect to software, music and film industries.	2010		√	
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.	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			√
Enactment of the new Law on Patents.	2011	√		

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 Patents, as well as amendments made to the Law on Copyright and Related Rights. This framework mainly consists of the material laws enacted in 2009 and afterwards, 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:

1. Law on Trademarks (2009);
2. Law on Indications of Geographical Origin (2010);
3. Law on Copyright and Related Rights (2009, amended in 2011);
4. Law on Legal Protection of Industrial Design (2009);
5. Law on the Protection of Topographies of Integrated Circuits (2009);
6. Law on Patents (2012);
7. 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 individual or legal entity from identical or similar goods and/or services of another individual or legal entity. The text of the current law is in accordance with the Madrid Agreement Concerning the International Registration of Trademarks, as well as with the Protocol to the Madrid Agreement.

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 authors of literary, scientific and artistic works, computer programmes, as well as rights related to copyright: rights of performers, producers of phonograms, videograms, broadcasts and databases, and publisher's rights (rights of the first publisher of a free work and right of the publisher of printed editions).

The Law on Legal Protection of Industrial Design governs the method of acquiring the rights to the external appearance of an industrial or handicrafts product (defined as the overall visual impression 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; and the limitations in relation to the protection of such rights.

Finally, the Law on Patents 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:

1. Law on Organisation and Competencies of State Authorities in Combating High-tech Crime (2005, amended in 2009);
2. Law on Special Powers for Efficient Protection of Intellectual Property Rights (2006, amended in 2009);
3. Criminal Code (2005, amended in 2009);
4. Customs Law (2010); and
5. Law on Optical Discs (2011).

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

POSITIVE DEVELOPMENTS

The most notable positive development since the last edition of the White Book is the enactment of a new Law on Patents, as well as the amendments made to the Law on Copyright and Related Rights.

The new Law on Patents entered into force on 4 January 2012, containing provisions which are the result of harmonisation of the previous law with the Patent Law Treaty to which Serbia acceded in 2010, as well as the relevant regulations of the EU and the World Trade Organization (WTO). Its enactment has sent a strong signal to foreign investors that Serbia has applied the high international standards of patent protection, meaning their investments involving patented technology will enjoy adequate protection.

The key changes of this law include the obligation of the IP Office to deliver to the patent applicant, upon his request and prior to submitting the request for substantive examination of the application, a report on searches of national and international databases which contain the state of the art of the invention for which patent protection is sought. This allows the applicant to assess the chances of obtaining the patent prior to the payment of the fee for substantial examination, the possibility to correct the patent claims in this respect, and to make an informed decision whether to pursue patent protection abroad.

In addition, an important innovation is the prescription of the obligation of courts to interrupt the proceedings initiated by the lawsuit for infringement of a patent application, until the decision of the IP Office on the patent application becomes final, which prevents the possibility of passing judgments on violations of rights not yet been granted. In such a case, the IP Office may examine the patent application in an expedited procedure upon the request of the court.

As was the case with other industrial property laws, the Law on Patents also introduces the right to appeal the decision of the IP Office relating to patents and petty patents, which should enable a more efficient protection of applicants' rights.

The amendments of the Law on Copyright and Related Rights also entered into force on 4 January 2012, introducing certain significant changes in this area of law, especially with respect to the limitations of a copyright. Among other changes specified by the amendments, it is no longer possible for an individual to make a reproduction of an entire published book for personal non-commercial purposes without the author's authorisation and payment of remuneration, as was the case before these amendments entered into force. Now this is possible only in the case of copies of a particular book which has been sold out for at least two years.

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 co-operation between the competent state authorities and the owners of intellectual property rights (a positive example being the successful co-operation between the Tax

Administration – i.e. the Ministry of Finance – and the Business Software Alliance). However, internal organisational and possibly personnel change within the state authorities in charge of intellectual property infringement matters seem necessary in order to further lower the infringement rate.

FIC RECOMMENDATIONS

- State authorities should continue and enhance efforts to combat online copyright infringements, especially with respect to the 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.

PROTECTION OF COMPETITION

COMPETITION LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2008			√
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. The FIC and other interested stakeholders should have the opportunity to participate in the drafting process.	2010			√
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.	2011			√
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.	2010		√	
The Commission should make its practice consistent towards all undertakings. Competition advocacy certainly represents one of strong means for achieving such goal.	2008		√	
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.	2009			√
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.	2011			√

CURRENT SITUATION

Recent practice of the Serbian competition authority – i.e., the Serbian Commission for the Protection of Competition (hereinafter: the "Commission") – regarding the fines against undertakings involved in anti-competitive behaviour additionally put into focus competition rules and confirmed their importance for doing business. However, even though appropriate sanctions are required to ensure compliance with provisions of the Competition Law, the legality of some of the Commission's decisions 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 the Competition Law.

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. The Commission made a great deal of use of "new enforcement powers" given by the new Competition Law (applicable as of November 1, 2009). The total fines imposed by the Commission in 2011 amount to approximately EUR 33.31 million.

However, in many of those decisions the Commission seriously undermined the principle of legal certainty. Namely, in several cases the Commission decided to reopen the proceedings which were closed in line with the provisions of the previous Competition Law by which the Commission could not impose the fines. The sole purpose of these proceedings was imposing a fine against companies in line with the provisions of the new Competition Law. Thus, contrary to general prohibition of retroactive application of the law, the Commission applied the provisions of the new law to cases that were initiated and ended in line with the provisions of the previous law. This approach 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 another 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 actions jeopardise the principle of legal certainty in the business community, it also sent companies the 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.

Furthermore, in a few cases, the Commission tried to impose fines although the infringement had been time barred – even more so, the interpretation of the Commission as to when the statute of limitations takes place in a particular case often seems arbitrary.

In many decisions, the Commission provides a reference to the EU practice, without specifying the relevant cases, whilst 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. While guidelines on fines have been adopted, their application is still rocky at best – the Commission seldom accepts arguments made by parties, and the fines are more-or-less uniform in their amount (usually around 1-2.5%).

The Commission still has a formalistic approach when deciding on merger notifications; i.e., 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 that is the Commission's main duty. In one notable case, the Commission blocked a merger. While the case is being reviewed by the courts, it is important to note that the authority made an attempt to remedy the effects of the merger by imposing price caps, which diverges significantly from the relevant EU practice.

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 the 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 competencies given by the new Competition Law resulted in a higher awareness in the area of competition protection.

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

REMAINING ISSUES

The proceedings before the Commission still do not provide for a sufficient guarantee of all procedural rights of the parties. The Commission's serious lack of requisite economic knowledge and respective methods is still apparent. The Commission quite often fails to use basic economic tests confirmed in competition practice, and its analysis of market conditions often appears superficial, only "scratching the surface".

This is of particular importance as the new Law bestows a great deal of new powers on the Commission, so legal certainty and due processes are essential. On the other hand, judges of the Administrative Court still need comprehensive knowledge in the areas of competition law and eco-

nomics in order to be able to interpret the Commission's arguments and decisions properly. Quite often, decisions by the Administrative Court are lacking a proper statement of reasons, limiting their scope to repeating the Commission's findings, without analyzing the arguments of the parties. This is a severe deficiency, as it disables proper argumentation and development of practice and endangers the proceedings should an extraordinary legal remedy be placed. 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 a proper dialogue between 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 still not well organised and often does not provide updated information. In addition, in most of the cases, non-confidential versions of the Commission's decisions, as well as the Administrative Court rulings 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. Furthermore, while the Commission is particularly active against the private sector, it would appear that it gives much more benign treatment to state-owned or public enterprises, opting for an "educational", instead of a "fine first" approach.

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, aside from the Guidelines, the Commission needs to adopt by-laws defining certain categories core to the anti-trust framework; e.g., dominant position (as done in Bosnia and Herzegovina); the leniency procedure in more detail; and exclusion of certain types of agreements with respect to specific industries, i.e., insurance and the auto industry;
- Judges of the Serbian Administrative Court should have advanced training in both competition law and economics. All 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 the strong means for achieving such a goal;
- The Fee Schedule must decrease fees to a reasonable level in line with comparable jurisdictions such as in Croatia, Slovenia, Romania, Slovakia, Bosnia and Herzegovina, and Montenegro;
- All the Commission's instructions, notices and guidelines should be published in the Official Gazette of the Republic of Serbia and/or the Commission's website. In addition, non-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

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The adoption of the Existing State Aid Harmonisation Programme as soon as possible.	2011			√
A consistent and effective enforcement of the Law.	2011		√	
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.	2011		√	
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.	2009			√
Continued harmonisation with EU standards and established state aid control practice of the European Commission.	2009		√	
Increased public presence of the Commission (e.g. press releases and conferences, seminars and training, its own website).	2011		√	
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.	2011			√
Resolving the potential jurisdictional conflict with the Commission for the Protection of Competition with regard to the general competition protection rules.	2009			√

CURRENT SITUATION

The State Aid Control Law's application to public enterprises and so-called "undertakings in dire circumstances" was realised in the beginning of 2012, after last-minute amendments to the Rules on Granting State Aid in December 2010. As of today, 30 sessions of the State Aid Control Commission have been held in total, resolving around 200 cases.

The (last available) annual report on state aid for 2010 estimated that in that year, Serbia granted state aid in the total amount of EUR 754 million (a decrease of 9% in comparison to 2009 and 2% in comparison to 2008). This is an estimated EUR 103 per capita, and 2.64% of Serbian GDP (similar percentages, even when calculated on a lower basis, have already been criticised by the EU and the IMF in the past). Over 90% of state aid represents subsidies (68%) and tax benefits, while the remainder falls to guarantees and preferential credit. Prime beneficiaries include the agriculture, mining and transport sectors. The IMF had in 2009 warned that the lack of success in lowering subsidies is a sign of an inefficient and ill-reformed public sector.

POSITIVE DEVELOPMENTS

The amended rules on granting state aid were meant to objectify and clarify the criteria for granting aid to Serbia's enormous public sector. However, the application of the "undertaking in dire circumstances" criteria appears to leave room for abuse. Results of the State Aid Control Commission's practice in this sector shall prove vital.

Furthermore, activities of general economic interest have been identified, which the state will sponsor even if unprofitable, due to their social significance. This type of state aid represents always permissible and non-notifiable aid.

A new EU IPA project, Support to State Aid Authorities in the Republic of Serbia for the Alignment of State Aid Schemes with EU Acquis, is expected to start in the coming months. The project's aim is to support the State Aid Control Commission in aligning identified state aid schemes with the legal framework and the EU acquis.

The State Aid Commission's decisions and annual reports

are available on the Ministry of Finance's website, which is a positive example of transparency of government.

REMAINING ISSUES

Taking into account a wave of new anti-crisis and investor-attracting measures and the maintenance of all of the key state-owned economic operators, it is clear that the state continues to play an important role in the business environment in Serbia. There have been some seriously questionable decisions made by the government in this period - especially the nationalisation of the former U.S. Steel factory, the break-down of state-influenced Agrobanka and the questionable business policies of Telekom Srbija (including the buy-out of the minority shareholder). It appears that instead of consistent application of state aid and competition rules, Serbia has moved further away from market liberalisation and back to direct administration of market players.

There are still deficiencies as to the capacity of the State Aid Control Commission. There have been complaints of governmental institutions neglecting to report aid to the Commission or delaying it until the last minute before their formal adoption. 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 analysis 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 a mere publication of conclusions and reports, is not only necessary, but a legal obligation as well. Consistent application of the law, alongside particular scrutiny of public companies and other state actors is paramount. Public presence in topics relevant to state aid control is important in building recognisability, increasing awareness and improving conditions in this significant field. It is to be expected that the IPA project will assist in this regard.

The criteria for determining that a certain activity is of general economic interest, as well as of companies being granted aid, have been the subject of some controversy (especially the perennial "money drain", JAT Airways, and the news agency Tanjug, against which two independent competitors have complained).

From the institutional side, the status of the State Aid Control Commission as a governmental unit dominated by representatives of different ministries rather than an independent body can still bring its decision-making independence into question. Although certain steps have been taken, the Commission's capacity, visibility and authority are still not adequate enough for its important role.

FIC RECOMMENDATIONS

- A consistent and effective enforcement of the Law, particularly in relation to public companies;
- 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 should they fail to do so;
- 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, including utmost use of the IPA project;
- Increased public presence of the Commission (e.g., press releases and conferences, seminars and training, as well as its own website);

- Increased capacity, statistics and analysis, appropriate response and a "voice" of the Commission could have an important impact on state aid structure and general policy;
- Addressing in a timely manner and with the authority controversial decisions of the government so as to present an independent check on unlawful aid.

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
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.	2011		√	
Adoption of the National Programme for Vulnerable Consumers Protection and adoption of missing by-laws, in order to provide consistent implementation of the Law.	2011			√
Further work on harmonisation of regulations regarding consumer protection with other areas of law, and international and EU principles.	2011		√	
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.	2011		√	

CURRENT SITUATION

The Law on Consumer Protection (hereinafter: the "Law") was passed in October 2010 and has been effective since 1 January 2011. This Law is generally in compliance with the main EU's directives in the area of consumer protection.

The Law facilitates, inter alia, balance between traders and consumers (relations traditionally distorted to the detriment of consumers); announces stricter requirements to traders who must provide consumers with clear notice of the selling product; regulates consumer rights specific to contracts in tourism and real estate time-sharing, and evidence of security in the event of insolvency of a trader.

Apart from the Law, certain by-laws have been adopted. However, it is necessary to release important by-law(s) dealing with the category of vulnerable consumers and their legal protection.

Full implementation of the Law has still not been secured, and not all sector by-laws have been passed, in terms of equal relations between traders and consumers.

An institutional and strategic framework for consumer protection is gradually being created (as evidenced by consumers' associations and unions). The term "consumer dispute" has been defined, and the out-of-court settlement of consumer disputes. The prohibition of unfair contract terms and unfair business practices has been also regulated.

POSITIVE DEVELOPMENTS

Pursuant to the Rulebook on Registering Associations and Unions of Associations for Consumer Protection (adopted May 2011), the Ministry of Trade is in charge of keeping records and data. This record is active and publicly and electronically available (at the time of the release of information concerning this topic—the end of June 2012—there are 60 consumer organisations/associations kept under the registry).

The National Organisation of Consumer Protection of Serbia (NOPS) has been established and is serving as a non-profit, independent, non-governmental, non-partisan alliance of consumer organizations formed to protect the interests of consumers and protect their rights. NOPS currently gathers 24 organisations throughout the country. Apart from NOPS, certain organisations in the field also had better coordination and consumer protection advocacy.

The Ministry of Trade is a beneficiary of an EU-funded project under the heading 'Strengthening consumer protection in Serbia'. This project has announced and planned numerous activities to be conducted by 2014. The main aim of the project is to establish co-operation with all relevant market participants and improve the protection and development of consumer rights in step with EU legislation and practice.

This year, the first consumer rights fair was been organised by the ministry and the EU project, with the clear objective of strengthening public awareness of basic consumer rights. Official sector web sites (http://www.zastitapot-

rosaca.gov.rs/index.php and http://www.zapotrosace.rs/index.php) are operational and updated.

Serbia has recently become a full member of the European co-operation for Accreditation, and this is especially important in the areas of product safety, labelling and accreditation.

REMAINING ISSUES

Although solutions provided by the Law regulate many aspects of consumer protection, there are numerous legal standards and vague terms (e.g. professional care, vulnerable consumer, reasonable decision) representing a challenge for the bodies in charge, courts and consumers. The terms of 'conformity/non-conformity/guarantee' have been weakly tested in practice (to avoid any misunderstanding, we strongly support implementation of these terms under the Law).

Certain provisions of the Law are still weak or inapplicable (e.g. those relevant to complaints and duties and competence, the role of arbitrator given to consumer associations, etc.).

In accordance with the principle of satisfying consumers' basic needs, the Law specially foresees consumer protection in the sphere of services considered to be of general economic interest and introduces the special category of vulnerable consumer. As already mentioned, it is still unclear which consumers are to be considered 'vulnerable', or how they will be supported when it comes to facilitating access to general economic interest services. The National Programme of Vulnerable Consumers Protection, followed by by-law(s), is expected to be adopted by the bodies in charge. Yet we are uncertain how and when the Government will secure vulnerable consumer protection, especially during this era of economic crisis and state budget pressure.

The possibility of financial refund to dissatisfied customers is not regulated by the Law in the most favourable manner for customers; removal of defects or replacement of the product itself must first be exhausted.

The procedure for the establishment of a National Council for Consumer Protection (to be in charge of a strategy for consumer protection) is in progress. This council should join government representatives, consumers' associations, chambers of commerce, NGOs and traders. However, it is not specified when exactly this inter-departmental body will be established.

FIC RECOMMENDATIONS

- Professional training of competent bodies and courts, consumers' associations, sector organisations and other market participants; development of their mutual co-operation; stronger capacity building;
- Professional training and education of institutions/traders/consumers to be performed by full-range market participants;
- Adoption of the National Programme for Vulnerable Consumers Protection, and the adoption of missing by-laws, in order to provide consistent implementation of the Law;
- Further efforts toward harmonisation of Serbian legislation with international and EU principles (in the upcoming period, regular check-up and updates to the legislation is necessary, since new EU legislation is soon to be effective, e.g. the Directive on Consumer Rights will replace the current Directive 97/7/EC, starting in mid-2014).

PROTECTION OF USERS OF FINANCIAL SERVICES

CURRENT SITUATION

The Law on the Protection of Users of Financial Services (hereafter the 'Law') has been in effect since 5 December 2011 (except for some provisions which were 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. In this respect, it is important to note that the provisions of the Law on Consumer Protection and Law on Obligations

shall be applied with respect to the consumer protection matters not regulated in the Law.

The obvious intention of the legislature was to protect individuals as consumers of financial services, as evidenced by the fact that the Law does not apply to legal entities or entrepreneurs – it is explicitly specified that only individuals who use (or have used, or have addressed the provider of financial services in that respect) financial services for purposes not intended for their business or other commercial activity are considered users of financial services. This intention is clearly visible from Article 5 of the Law, which stipulates the following basic principles of user protection:

1. The right to an equal relationship with the provider of financial services;
2. The right to protection from discrimination;
3. The right to information;
4. The right to a determined or determinable contractual obligation; and
5. The right to protection of rights and interests.

The Law prescribes strict provisions regulating the obligations of the providers of financial services with respect to advertising of financial services; the proper provision of information to the user; determination of a variable nominal interest rate, the effective interest rate, fees and commissions; the entitlement of the user to cancel the agreement within 14 days without an obligation to specify reasons for cancellation, etc. In addition, special provisions of the Law regulate the procedure for the protection of users' rights, involving in particular the powers of the National Bank of Serbia (NBS).

The most significant changes have been introduced with respect to the requirements pertaining to the nominal interest rate, i.e. its variability. Namely, a variable nominal interest rate may consist of variable, or both variable and fixed elements, whereas the variable elements have to be those that are officially published (such as the benchmark interest rate, the consumer price index, etc.), and of such a nature that neither of the contractual parties can unilaterally influence them. Hence, it can no longer contain the non-determinable elements, such as the internal business policies and practices, change of operating terms, etc., as they are unilaterally influenced by the bank and therefore not objective. The intention of the legislature was to eliminate the practice of banks, often used in the past, to vaguely define the criteria for changing the nominal interest rate and then unilaterally raise its level.

As far as the effective interest rate is concerned, the Law prescribes that its calculation includes the current values of all incomes and expenditures with respect to a financial service. The fees and commissions, if contracted as variable, must also depend on contractual elements that are officially published and which are of such a nature that neither of the contractual parties can unilaterally influence them.

POSITIVE DEVELOPMENTS

According to the Report on the Work of the Centre for the Protection and Education of Users of Financial Services (within the NBS), in the period of 1 January – 31 March 2012 this body received 686 objections in connection with the business activities of financial institutions (91% of which were submitted against banks). Considering the fact that this number presents a 73.3% increase compared to the same period in 2011, it is obvious that this law has attracted significant attention in the general and expert public and bodies in charge.

REMAINING ISSUES

As far as the application of the Law is concerned, the key issues that seem to require further improvement are those pertaining to the professional training of employees of institutions for consumer protection and strengthening the administrative capacity to protect consumers, as well as the improvement of technical support and procurement of IT equipment for market inspectors.

FIC RECOMMENDATIONS

- Further work on the harmonisation of regulations regarding the protection of consumers of financial services with international and EU principles;
- Timely adoption of remaining by-laws required under the Law.

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 plan procurements reasonably and to publish their procurement plans.	2010			√
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.	2011			√
Provision of measures which would stimulate the so-called "green and energy efficient procurements".	2011			√
Preventing the abuse of the negotiating procedure, which is the least transparent, through enacting appropriate amendments to the Law or through appropriate by-laws.	2010			√
Introduction of the power of the Public Procurement Office 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 limitations, etc.	2010			√

Public procurements and the applicable legal framework appear to have been one of the most discussed public policy topics in Serbia during the last couple of years. However, these discussions have not enhanced the relevant framework. Compared to the previous period, the situation and trends underlined in the last edition of the WB remain unchanged. In that respect, the overall impression is that there is no progress at all.

CURRENT SITUATION

As already noted, there have been no changes in the relevant legislation in the previous period. The Law on Public Procurement (effective since January 2009) remains the legal framework for public procurement procedures. To a large extent, this Law incorporates provisions from the relevant EU directives. 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 procedures applied, depending on the nature of the procured goods and services and other relevant circumstances of the procurement in question – the open, restricted, and negotiated (with or without prior public announcement) procedures. The protection of bidders' rights, as well as 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 the procurement procedure.

POSITIVE DEVELOPMENTS

During 2011, and based on previously adopted Strategy on Public Procurement Development, the Ministry of Finance prepared and conducted a public discussion on the Draft Law on Changes and Amendments to the Law on Public Procurement. Following a broad public discussion, the Government adopted the Draft and sent it to the National Assembly. The Draft Law intended to fundamentally change the public procurement procedure as envisaged under the existing Law, encompassing some positive developments but also introducing some highly controversial changes. The intention of the Government and the Ministry of Finance not to completely change the legislative framework but to amend the existing Law in such a manner might be highly questionable and misleading. Due to political circumstances, this Draft made no further progress in the legislative procedure; and the Serbian public will most probably be faced with a brand new draft law on public procurement over the coming months.

On a separate note, comparing the data from the annual reports of the Public Procurement Office, it could be

concluded that the share of the negotiated procedure without a previous announcement - as the least transparent procedure - in overall public procurements is still quite significant (around 25% of the overall value of procured works and deliveries). Furthermore, and speaking in terms of competitiveness in public procurement procedures during 2011, it is astonishing that 40% of all public contracts were awarded through procedures where only one bid was submitted, and that the average number of submitted bids equals 3.2, compared to 3.5 in 2010 and four in 2009. This clearly indicates the trend among procuring entities to procure services and goods from a small number of economic operators, thus discouraging competition in the field of public spending.

REMAINING ISSUES

It seems that this edition of the WB is being published at the moment when the competent authorities, aware of the shortcomings of the existing legislation and practice based on it, are on the move and urgent measures are required in order to improve the overall situation. In that respect, all issues mentioned as challenging in the previous edition remain, with hope, however, that appropriate solutions for recognised problems will be found through an open dialogue between relevant stakeholders.

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 related 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;
- Introduction of measures which would prevent the abuse of bidders’ rights to legal remedies;
- Changes and amendments to the penal provisions – introduction of more severe pecuniary fines and other safeguards; longer statutes of limitation; measures which would stress personal liability; etc.

PUBLIC -PRIVATE PARTNERSHIP

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Harmonisation of other laws governing PPP matters with the new PPP Law.	2011		√	
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		√	
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.	2009		√	

CURRENT SITUATION

The Law on Public-Private Partnership and Concessions came into force at the beginning of December 2011, and for the first time explicitly introduced into Serbian legislation the notion of public-private partnership ("PPP"). It also regulates concessions, classified as a form of PPP.

The scope of a PPP defined by the PPP Law sets the limits as to which types of projects may be developed into the form of a PPP.

In that respect, a PPP is defined as "a long-term cooperation between a public and private partner for the purposes of providing financing, construction, reconstruction, management or maintenance of infrastructure and other facilities of public interest and provision of services of public interest"; whilst public infrastructure is defined as "a facility which is publicly used or is made available for the public use or public benefit". As such, the scope of the PPP Law is rather wide and it seems prima facie applicable to various projects.

Depending on the manner of regulation of relations between the private and public sector (i.e., whether regulated through internal acts of a company governed jointly by private and public partner or through public agreement), the PPP Law differentiates between two principal structures: i.e., the institutional and contractual PPP. Furthermore, the PPP Law differentiates between contractual PPPs being a concession and contractual PPP without concession elements – the main difference between the two that in a concession the private partner bears the risk associated with the commercial use of the subject of concession.

The procedure of selection of private partner is performed in accordance with the Public Procurement Law with certain specifics stipulated under the PPP Law; chiefly, the non-applicability of discrimination of foreign bidder criteria and special rules governing sub-contracting.

Apart from the PPP Law now being the main piece of legislation in this field, there are still numerous laws which need to be consulted and observed in order to implement PPP in Serbia. The most important laws being:

1. The Law on Public Companies and Activities of General Interest;
2. The Law on Utility Activities;
3. The Public Procurement Law;
4. The Law on Local Self-government;
5. The Law on Public Property; and,
6. Various laws in special sectors (e.g., Law on Railways, Energy Law etc.).

Due to the fact that the PPP Law was enacted recently, and that the bodies envisaged thereof have been recently formed, at present there are not many projects (if any) performed under the PPP Law.

POSITIVE DEVELOPMENTS

Until the adoption of the PPP Law, PPP projects were conducted on the basis of numerous inconsistent pieces of legislation which prevented their wide and successful application in practice. Concessions were regulated under the Law on Concessions, which did not have the intended positive effects, given that a number of projects performed in line with it failed.

At present both the PPP and concessions are regulated in one detailed piece of legislation – the PPP Law.

The main advantage of the PPP Law from the public side perspective is that it allows the public sector to realise a variety of projects without significantly burdening local or state budgets. Furthermore, the PPP Law aims to cover both local projects (i.e., projects within local municipalities relating to utility activities such as local transportation systems, water and sewerage, etc.) and big infrastructure projects financed by the state such as the construction of a metro system, roads, management of ports, etc.

From the perspective of private partners/investors the positive effects of adoption of the PPP Law may be summarised as follows:

1. Introduction of principles that are governing PPP projects, such as efficiency, transparency, the fair and equal treatment of bidders, free access to markets, equality of parties, autonomous will of the parties, proportionality, and environmental protection;

2. Detailed allocation of competencies between various bodies, which should ease the execution of PPP projects. One of the key bodies created by the PPP Law is the PPP Committee as an expert body which issues its opinion and assesses whether the concrete project may be realised in the form of a PPP and also provides necessary assistance during a PPP tender process;

3. Mandatory elements of the Public agreement (being applicable in the case of a contractual PPP) are stipulated in detail in the PPP Law, thus enabling the whole structure of the deal, including all rights and obligations of public and private partners, to be in one document. Additionally, the key clauses of the public agreement may not be unilaterally amended by any party, which brings a certainty of agreed terms for a private partner;

4. The PPP Law also regulates the matter of modifications of the Public Agreement in order to remedy harmful consequences of changes in the legislation after the Public Agreement is concluded - the Stabilisation Clause. The PPP Law allows modifications of the Public Agreement in case of a change of regulations after its signing which have negative consequences on the position of the private or public partner. In that case, the Public Agreement may be changed without any limitation, in order to replace the private or public partner in the position that existed at the moment of the signing of the Public Agreement;

5. The PPP Law also introduced certain exceptions to its application, the most interesting being in case of existence of an international treaty concluded by the Republic of Serbia, or in the case of financing of the project by qualified financial institutions (in which case the procedure of selection of private partner is conducted in line with the special rules of such organisations). This is particularly interesting as it opens the door for a procedure without the public tendering of PPP projects;

6. The period for which the concession may be awarded is 50 years, a significant improvement in comparison to the previous Law on Concessions which set out a maximum duration of 30 years;

7. The possibility that the private partner proposes initiation of a PPP project.

REMAINING ISSUES

The general issue regarding the PPP Law is that it is a new piece of legislation and that there are no projects in the Republic of Serbia conducted as yet based on the PPP Law.

Therefore, it remains to be seen how the PPP Law will be applied in practice and whether its implementation will attract more investment to projects on the part of the private sector; as well as whether it will sufficiently relax the limited budgetary resources of both local municipalities and the state itself.

Another concern is that the imperfection regarding the vague and sometimes inconsistent use of terminology might lead to different interpretations of the PPP Law and create uncertainties in its application. Thus, certain terms are used in the PPP Law in an inconsistent and often misleading manner. Therefore, guidelines as to the application of the PPP Law from the competent ministry would be helpful.

In addition to the aforementioned general issue, we are of the view that some other issues have to be emphasised as well at this initial stage of the application of the PPP Law.

The first issue relates to overlapping and the necessity of harmonisation between the PPP Law and the Public Pro-

curement Law. Namely the PPP Law often refers to provisions in the Public Procurement Law (e.g., for the procedure of the selection of a private partner, with some minor specifics envisaged by the PPP Law). The potential problem is that the Public Procurement Law dates from 2008 and some of its procedures are rather complex and time-consuming, something that may represent an obstacle to potential private investors. Moreover, the overlapping provisions of the PPP Law and Public Procurement Law might lead to uncertainties. Furthermore, it is not always entirely clear when exactly the rules governing concessions as provided under the PPP Law apply and when the rules that govern public procurement under the Public Procurement Law apply. However, these problems may be remedied in the near future, providing that the new Public Procurement Law, expected to be adopted soon, is harmonised with the PPP Law.

The second issue relates to the necessity of numerous regulatory bodies (primarily the PPP Committee but also other regulators) to properly, and in the same manner, interpret the PPP Law in its entirety, as well as its relations to other pieces of legislation which may be considered for particular PPP projects.

The third issue is that the PPP Law is not yet complemented with all the envisaged by-laws, notably the one regulating supervision by the Serbian Government over the performance of the Public Agreements and rights of the public and private sector in this respect. Although the Serbian Government was supposed to adopt such a by-law within 90 days of the adoption of the PPP Law, this did not happen. As such, it may send a negative signal to potential private investors.

Finally, the provision of the PPP Law enabling private partners to propose initiation of a PPP project may also be problematic from the point of view of interested private investors. Namely, the PPP Law sets out that in case the starting advantage of such a private partner in comparison to other participants cannot be neutralised (without any further elaboration of this issue, thus leaving it to the complete discretion of the public entity in charge of the particular PPP project), such party will be disqualified from the bidding process. Such a provision may discourage any private partner from proposing the initiation of any kind of PPP procedure.

FIC RECOMMENDATIONS

- Harmonisation of other laws governing PPP matters with the PPP Law, particularly the new Public Procurement Law;
- Proper communication between all relevant bodies which may be in charge of PPP projects in order to avoid different interpretations of the PPP Law. A proactive stance and approach by the PPP Committee would be especially desirable;
- Prompt adoption of any and all remaining by-laws to the PPP Law;
- The competent ministry should provide guidelines for the interpretation of the PPP Law;
- Improved communication between the central and local authorities on the potential of the PPP concept and implementation of intended projects would be most welcome;
- An exchange of experiences with PPP regulatory bodies in the EU with developed PPP legislation, as well as that of neighbouring countries, would be highly recommendable for those persons in regulatory bodies dedicated to PPP projects.

TRADE

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 which requirements, if any, specified for trade in products are also to be applied to "trade in services".	2010			√
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.	2010			√
The Market Structure Impact Study prescribed by the new Trade Law should be reconsidered.	2010			√
The criteria for selling incentives should be more precise and remove any room for potential abuse in practice by the authorities.	2011		√	
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.	2011			√
The labelling requirements set in the Article 40 need to be adjusted to the specific labelling rules.	2011			√
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.	2011			√

CURRENT SITUATION

The existing Law on Trade of the Republic of Serbia has been in force since 1 January 2011. Although if compared to the previous law, it has undoubtedly introduced certain innovations and improvements, traders are also faced with numerous defects of this Law. The primary defect is the absence of secondary legislation that would enable its enforcement in practice as well as non-compliance of existing secondary legislation with similar EU regulations.

Despite the obvious tendency of the legislators to, among other things, bring regulations closer to relevant EU regulations in this area, the Law contains a number of different solutions complicating, and often hindering, Serbia's cooperation with EU countries in trade area.

We will point out only a few specific problems that traders encounter when it comes to the implementation of this Law and other trade-related regulations.

In relation to imports of food of animal origin (particularly meat/meat products, fish/fish products), we are still facing (in the first phase of importation) the problem of non-compliance of certificates issued in most EU countries (e.g., Belgium and Greece) with certificates required for these products in Serbia. Such seemingly minor defects sometimes make it impossible to import these kinds of products. The involvement of local government bodies seems inadequate as a step toward harmonisation of the required certificates and possible solution of this problem in the future.

Even in cases when we have certificates properly issued, the next problem occurs when it comes to data that must be specified on the product or its packaging. Namely, in accordance with Serbian regulations, packages must, among other data, contain information about the veterinary control number and of the manufacturer. If such information is missing, it must be added to the packaging of the respective product prior to its transfer across the border. This seemingly simple problem slows down and complicates the importation procedure, making it sometimes

almost impossible. This problem would not exist if Serbian regulations resembled equivalent regulations in the EU which do not require this data to appear on the product or its package. Still, we would like to point out that the whole "labelling" issue is applicable to other areas of trade as well (not just food).

The procedure of importation is complicated and burdened with formalities. The duration of the importation (10 – 15 days on average) is also problematic, since usually that is too long a period for items with a limited shelf life. The procedure is the same even if the same importer in regular, short time intervals (e.g., every week) imports the same products produced in the same manner by the same manufacturer.

Furthermore, each article of import must be subject to laboratory analysis and it has to be classified under a specific category in accordance with the applicable rules. However, if the product has such a composition that makes it impossible to have it classified under any of the categories recognised under Serbian rules (despite being freely sold in the EU territory) prior to its marketing, it would be prohibited to market the respective product. In that situation, the importer is faced with a dead end – ordered articles remain trapped and they may neither be imported nor returned to the supplier.

Differences between the trading terms and conditions within the EU and those applied in Serbia are numerous. In addition to those mentioned above, let us present a few examples:

In Serbia, "end of shelf life" specifications must be accurately determined and clearly specified on the package itself. Within the EU, "end of shelf life" is often shown in the form of a framework expiration date or the period by which the product shall be usable after opening. Furthermore, a difference also exists with regard to provisions related to international payment transactions (which have as the mandatory prerequisite the existence of an agreement entered into between a resident company obliged to effect the payment and a non-resident company receiving the payment). These are not the only differences that slow down, burden and sometimes completely disable the performance of a trade activity involving an international element.

POSITIVE DEVELOPMENTS

The Law has a tendency to enable free and undisturbed trade and its development. Its basic principles are the prerequisites for the achievement of that objective. The obligation remains to make the Law applicable through enactment of its secondary legislation so that it gives clear guidelines to the state authorities and business community with ensured legal safety in this area.

Further on, the work on a new draft law on trade is in progress, and hopefully it could bring us some new and positive solutions.

REMAINING ISSUES

Since our law does not recognise the category of "private brand products" – even though these products deserve a special place and their conditions are different from those required for other products – it is necessary to provide relevant regulation that would take care of this matter. In the practice of EU countries regarding these products, they do not require the name of the manufacturer to be specified on their labels. Some companies even consider this information confidential and do not want to disclose their sources. Article 40 of the Law on Trade exhaustively lists all the elements that a declaration/label must contain, which include: information on the name and type of goods, composition and quantity, as well as other information in accordance with specific regulations and the nature of the product, but particularly information on the manufacturer and the country of origin, date of manufacture and expiration date, the importer, quality (class), as well as warnings of possible dangers or harms the goods may cause. Due to the fact that private brand products are manufactured for the trader who markets these products under its mark and guarantees the quality thereof with its own authority, it is reasonable to ask why it is necessary to specify the name of the manufacturer engaged by the trader to produce a specific product.

Non-resolution of this problem has traders forced to decide to suspend the importation of specific products, and that was hardly the intention of the legislator, which intended to provide a ground for market growth and development.

Furthermore, elimination of the defects regarding the import of products as described within the "Current situation" section would enable the efficiency and speed needed, saving time and money both to businesspeople and the government. It would be enough to enable products to cross the border without the label carrying the mentioned informa-

tion (veterinary control number and the manufacturer info), provided that the labels, containing all relevant information (including ones previously mentioned), be put on the products after their import but prior to their placement in stores. Also, when importing goods: quantity of sampling is a big question mark. Shouldn't this be quantified somehow by product and time? Although it is up to customs authorities to define/suggest possible terms for this procedure, its definition has a big influence on trade and goods flow. Then again, if the pallet is opened/unstrapped for sampling, the goods receiver will have it declared as "damaged upon receipt", causing further negative impact.

In addition, we should be persistent in asking for clarification on what the newly established Centre for Trade Development should be doing. Why should they be another obstacle in obtaining the building permit? Article 45 of the Law on Trade states that for trade formats with total sales and warehouse space of over 2,000 m2 of gross floor area, the study of the impact on the structure of the market is made. The Study of the impact with approval from Article 47 (paragraph 2, item 3) of this Law is an integral part of the documents submitted with the request for a building permit in accordance with the regulations governing the construction of buildings making up the trade format in paragraph 1 of this article.

Worldwide, there are destinations well known and recognised by consumers, specifically because you can find various "traders" at one place. It's called consumer behaviour, and no such centre can ever change this behaviour, by arranging retailers where they consider to be the most appropriate location.

One of the incentives prescribed by new regulation is "recognition of documents" (foreign laboratories, test reports and certificates, declarations of conformity), but the problem is that the amount of co-operators between the EU and Serbia is so small that it couldn't cover such a vast business area, as trade certainly is. In home furnishing business, for example, there is only one laboratory in Serbia (and it doesn't recognise any foreign documentation).

FIC RECOMMENDATIONS

- Devote more attention to by-laws because the lack of by-laws makes the Trade law largely inapplicable in practice;
- Harmonisation with EU regulations is needed;
- Obtaining training for the state authorities in relation to the implementation of the Law in every-day life;
- Simplification of the importation procedure;
- Providing clear guidelines on the contents of the documents accompanying goods;
- Providing special regulation for private brand products;
- Enabling harmonisation through policies, standards and guidelines;
- Taking a uniform position on the interpretation of regulations.

INSPECTION CONTROL

There are several inspections whose work affects business conditions (for example in trade), but only sanitary and phytosanitary inspections will be in focus within below text.

CURRENT SITUATION

Competencies in the area of sanitary and phytosanitary inspections are split between the two relevant ministries as per the Food Safety Law, adopted in 2009, and the Law on Health Safety of Products for General Use, adopted in 2011. The Phytosanitary Inspectorate, including Veterinary and Agricultural Inspectorates, of the Ministry of Agriculture, Forestry and Water Management, is responsible for official controls of food and feed of animal and plant origin in primary production, processing, trade, import, transit, and export. The Sanitary Inspectorate of the Ministry of Health is responsible for control of foods, dietary products, additives, aromas, enzymes of non-animal origin and of all types of potable water. The Sanitary Inspectorate of the Ministry of Health is also responsible for control of products for general use, including cosmetic products.

The FIC considers that the enforcement of sanitary and phytosanitary border measures applying to food and beverage industry, as well as sanitary border measures applying to cosmetic products, is inconsistent and unpredictable, representing a barrier to trade and therefore breaching the principle of the free movement of goods.

POSITIVE DEVELOPMENTS

As of 1 January 2012, chemicals and biocides are no longer subject to the Border Sanitary Inspection, a result of the entry into force of the Law on Products for General Use, the Law Amending the Law on Chemicals, and the Law Amending the Law on Biocides (Official Gazette of the RS 92/11).

REMAINING ISSUES

A key problem identified by the FIC is the enforcement of border inspection procedures that is unpredictable due to arbitrary application of the relevant legislation as per the following:

1. Number of samples taken, sampling procedures, costs of laboratory analysis, and the time needed for such vary significantly;
2. Even though the costs of laboratory analysis are covered by the importer, sanitary or phytosanitary border inspection officials have the discretion to determine the laboratory to process the samples. Costs of analysis vary significantly across different laboratories;
3. The timeframe needed for border inspection and the validation process is not stipulated and varies based on factors unknown to the importer. Sanitary and phytosanitary border inspection and validation processes are often time-consuming and therefore importers cannot predictably plan business operations in Serbia;
4. Even though samples taken from the original packages often damage the goods and packaging being imported, it is the importer who bears the financial burden of this possible loss or destruction;
5. Imported products are subject to double control: pre-market (border) control by border sanitary inspection, but also in-market control by sanitary inspection on the market;

A specific problem in the food and beverages industry:

6. Sanitary and phytosanitary border inspection and validation processes for imported food and beverage goods are not identical. In fact, the procedures for the two inspection services vary significantly both in terms of costs, timeframes, and mechanisms implemented on the ground.

FIC RECOMMENDATIONS

According to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) that is obligatory for all members, including Serbia as an aspiring WTO member, sanitary and phytosanitary inspection procedures must not constitute a means of arbitrary discrimination or a disguised barrier to trade. Therefore, the FIC recommends the following:

- Establishment of uniform rules on sanitary and phytosanitary border inspection procedures for food and the beverage, cosmetics, and tobacco industries (tobacco leaf, non-tobacco material, and cigarettes), notably with regard to the number of samples taken per each shipment of goods, costs of laboratory analysis and a detailed

timeframe for completion of border inspection procedures;

- Consistent implementation of uniform rules on sanitary and phytosanitary border inspection procedures for the food and beverage industry, excluding the possibility of arbitrary interpretation.

These measures would greatly enhance the process of the importation of food and beverages and cosmetic products, lift de facto barriers to trade, and boost the business climate in Serbia.

CUSTOMS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Increase efficiency on all levels of administration, especially in terms of resolving customs payer's appeals.	2011		√	
Availability of Customs Administration management for direct meetings and discussions, particularly on difficult cases.	2011		√	
Passing enough by-laws to enable the proper application of laws and avoid ambiguities in interpretation.	2009			√
Introduction of binding legal opinions of Ministry of Finance-Customs Department in relation to customs matters.	2011		√	
Continuous education and training of customs officers.	2010			√
Better online system of information and introduction of online services within the customs procedure.	2011			√

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 was enacted in March 2010, regulating customs procedures, while the organisation of the Customs Administration is mostly 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, simplified customs procedures (a part is further elaborated later), 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 to which they do not oppose the new Customs Law. However, it is still 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 areas 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 as well.

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 2012. In Serbia, there are several tariff regulations that are binding:

1. Decisions on Tariff Classification published in the Official Journal of the EU;
2. Decisions on Tariff Classification issued by the World Customs Organisation (WCO);
3. Binding Tariff Information issued by the Serbian Customs Administration, upon request, regarding the classification of certain goods, in case of ambiguity 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 Free Trade Agreements with the following entities/countries:

1. EU (the Interim Agreement on Trade and Trade Related Matters);
2. CEFTA (regional Free Trade Agreement between Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Serbia and UNMIK Kosovo);
3. Russia;

4. Turkey;
5. Belarus;
6. EFTA, a trade union consisting of Iceland, Liechtenstein, Norway and Switzerland.

Since 2009, Serbia has not entered 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

Every alignment of customs regulations with the EU regulations is a move in the right direction. With the introduction of the institute of Authorised Economic Operator, a step forward was made and goodwill was expressed to facilitate trade, with additional emphasis on export. A company that is granted this special status is now able to conduct customs clearance on its own premises, within a regulated timeframe. The clearance is processed with automated two-way data exchange minimising personnel involvement and increasing predictability and efficiency.

The exemption from customs duties on imports of new production equipment is an important customs incentive that should stimulate investments in production and new technologies. The requirements that the equipment has to meet to qualify for customs exemption are the following:

1. The equipment has to be new;
2. It cannot be produced in Serbia; and
3. 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 those envisaged under the old Customs Law, which is why they are expected to improve production and contribute to the 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 the 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 bring predictability to trade relations and facilitate trade with large trading partners, which are also important potential investors.

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, as well as 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 practical solutions for these situations.

The IT applications of the Customs Administration have exhausted their potential and now present a major limitation for increasing import and export. Transition to the new IT platform is crucial and needs to be executed as soon as possible.

The import of pharmaceutical products for personal use is forbidden for private individuals as of June 2011. This limitation was implemented without regard to doctors' recommendations and patients' needs, which led to the dissatisfaction of patients who cannot find prescribed medicines on the local market.

On 29 February 2012, the Customs Administration annou-

nced new rules for issuing customs guarantees for bonded transport, which proved to cause delays. According to the new regulations, the prerequisite for issuing a guarantee is an analysis and written permission from the Customs Administration, which can take up as much as a period of more than three months to acquire.

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 the 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 out by CEFTA and the Interim Trade Agreement with the EU, so the criteria are not unified.

Additionally, it should be taken into account that any further liberalisation at the times of crises may lay an additional burden on the weak Serbian economy and remaining production facilities. Therefore, any new trade liberalisation of particular sectors intended by the Government should be clearly communicated with the interested industries, pursued only upon industries' consent and based on a positive impact assessment of the relevant sectors.

FIC RECOMMENDATIONS

- Increase efficiency on all levels of administration, especially in terms of resolving customs payer's appeals;
- Passing by-laws to enable the proper application of laws and avoid ambiguities in interpretation;
- Improvement or replacement of Customs IT system (ISCS);
- No further trade liberalisation should be pursued without industries' consent and positive impact assessment of relevant sectors;
- Continuous education and training of customs officers;
- Better online system of information and introduction of online services within the customs procedure;
- Minimising usage of paper documentation and transferring to available electronic communication.

SIMPLIFIED PROCESS FOR EXPRESS SHIPMENTS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Efficient information systems development to enable and ensure implementation of the simplified processes, secure linkage with companies and automated clearance.	2011			√
Enable full implementation of the simplified procedures provided by the legal framework.	2011			√
Increment the value thresholds for the de-minimis and shipments with a gift.	2011	√		
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.	2011			√
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.	2011			√

CURRENT SITUATION

The legal framework

As previously mentioned, the new Customs Law was enacted in March 2010 (Official Gazette of RS, No 18/2010) and it was elaborated by the new Customs Decree (Official Gazette of RS, 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 their 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 RS, No 70 / 2007), and World Customs Organization's Guidelines for the Immediate Release of Consignments by Customs (applicable to the Serbian Customs Administration, as a WCO member). All these activities represent an integral part of overall efforts for 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 declaration), 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:

1. 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;

2. items containing promotional material and samples received free of charge – exempt from customs duty, but not from VAT;

3. items for which the customs debt may arise, without value limit, but that are not subject to restrictions and additional inspections;

4. 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 duty relief for all shipments with value not exceeding EUR 25 (de-minimis) and for personal gifts with value not exceeding EUR 45. Later, upon recommendation given in the White Book 2011, the value thresholds were increased to EUR 50 for de-minimis and to EUR 70 for a shipment containing gift (Official Gazette of RS, No 74/2011).

REMAINING ISSUES

The new legal framework has not met expectations yet, since a great part of the real modernisation is directly dependent 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 the Customs and companies' systems with two-way data exchange is necessary to enable true trade facilitation, standardisation and simplified procedures.

Also, some of the enabled simplifications are not applicable to all interested parties. In November 2011, simplified export clearance process for shipments up to EUR 1,000 has been defined for postal traffic (act: 148-03-030-04-6/7/2011). However, the simplification is applicable only to the public postal operator while there is no similar procedure for private postal operators.

FIC RECOMMENDATIONS

Overall, the 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 the implementation of simplified processes, secure linkage with companies and automated clearance;
- Enable full implementation of the simplified procedures provided by the legal framework;
- Define simplified export clearance process for shipments up to EUR 1,000 applicable to all postal operators;
- 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.

GENERAL PRODUCT SAFETY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011		√	
Continued training and cooperation of enforcement authorities with the EU in applying the Law, information and experience exchange and comparing best practices.	2009		√	
Public campaigns to increase awareness, and appropriate trainings for economic operators.	2009			√
Development of a system for coordination and cooperation of all relevant actors on a permanent basis.	2011			√
Further development of the NEPRO portal, to bolster effectiveness and as grounds for later inclusion in RAPEX.	2011			√
Increase in capacity of the Inspection, to ensure its status as an expert, professional and independent body.	2011		√	

CURRENT SITUATION

General Product Safety has been specifically regulated in Serbia since 2009, under a special law and corresponding acts for its implementation. Additionally, 2011 saw the adoption of the Law on Market Surveillance.

This legal framework, coupled with supplementary legislation (i.e., the Consumer Protection Law, Law on Contracts and Torts, etc.) prescribes significant duties for producers and distributors related to product safety; information procurement and publication; and administrative oversight and customs issues. Breach of major provisions thereof is sanctioned by pecuniary fines. In essence, the aforementioned legal framework represents a more-or-less direct transplant of the relevant EU regulations and standards.

POSITIVE DEVELOPMENTS

The new Law on Market Surveillance regulates co-operation and information exchange with the European Union; the framework for market surveillance activities and measures; the general rules on controlling products entering the market and conformity requirements; and co-ordination between relevant stakeholders (including establishment of the governmental Product Safety Council) – all of which should serve as the legal foundation for the implementation of the Serbian market surveillance strategy and work of the appropriate inspection authorities.

Implementation of the new EU IPA project concerning consumer protection should also provide an overview and check-up of general product safety rules and practice.

REMAINING ISSUES

An online NEPRO system of public information – the domestic equivalent of the European Rapid Alert Point of Exchange – has been established with the intention of informing consumers about dangerous products. However, over the previous year the system did not fulfil this objective. The NEPRO is neither well-known nor visible in the media. It also does not relay RAPEX warnings; and for the entire year of 2011, it only posted 10 notifications (mostly of very local relevance), which is a far cry from having any significant impact on the market. No improvement of the system regarding approachability, statistics, or analytics has been implemented. This failure is even more pronounced when compared with other successful government portals, as well as the launch of a new, centralised consumer protection site.

There is a general lack of publicity and transparency of the work conducted by authorities in charge of product safety control. This leads to additional concern about awareness, and a negative perception of the authorities, the latter often seen as corruptible and arbitrary, refusing to sanction "bigger players" whilst putting too great a burden on lesser market players. The different relevant players in this

field (NGOs, economic operators, Market Inspection, certified laboratories) do not seem to co-ordinate their activities despite several semi-formal venues, like the aforementioned Council); nor do they work in a cohesive system as opposed to an ad-hoc basis. 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. The most worrisome fact is the apparent clog in the market inspection. In the year leading up to elections, the government shifted from free-market mechanisms to instituting various measures of direct market control, the most notorious of which was the Decree on Maximum Trade Margins for various "critical" products. Resources of the administrative bodies are spent on controlling this and other similar measures, as easier to implement, while seemingly placing a lower emphasis on inadequate information provided by traders or dangerous products placed on the market.

FIC RECOMMENDATIONS

- The 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;
- Public campaigns to increase awareness, and appropriate training for economic operators;
- Development of a system for co-ordination, information exchange and co-operation of all relevant players on a permanent basis, with concrete and effective activities and results undertaken;
- Proper development of the NEPRO portal and improvement of the administrative body's visibility in the public, as well as in its overall capacity;
- Abandoning direct market interference measures in favour of controlling competition infringements, general product safety, and information given to the consumers.

E-COMMERCE REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Attention should be given to increasing broadband Internet penetration and mobile Internet, the market of the future.	2011		√	
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.	2011	√		
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.	2011	√		
Public campaigns and activities, with an accent on education and security are necessary in order to raise confidence in e-commerce.	2009	√		
Further networking of the administrative bodies and development of additional e-government services (tax returns, administrative fees etc.).	2011		√	
Encouraging the development of aggregate services and industry-led authentication of e-stores (a white-list).	2011			√
Encouraging b2b e-commerce and promoting this business model to the large economic players.	2011		√	

CURRENT SITUATION

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

Informal estimates have indicated a possible increase in the number of e-commerce transactions in Serbia of about 50% in 2011 (from around 100,000 to 150,000), with a turnover of RSD 1.6 billion. However, the e-commerce channel definitely accounts for less than 10% of the total trade turnover, and more likely around 1-5% overall. While growing, this sector is still comparatively small.

POSITIVE DEVELOPMENTS

There are no major issues or uncertainties with the legal framework - electronic signatures (there are various certified issuers) and contracts are considered valid in Serbia; there are developed mechanisms for consumer protection in distant selling (above-store level); and there are fiscal and tax benefits for e-commerce activities. Recently, even VAT applications can be filed online. With broadband access improving (competition in the sector has significantly intensified, with new market entrants challenging established incumbents and offering high-quality fibre-optic services), the commercial use of social networks (ubiquitous in Serbia) increasing and mobile internet gaining a solid foothold, e-commerce should continue to grow as a convenience, even in troubled economic times.

In the previous year, e-commerce has been bolstered by significant in-roads made with the relaxation of customs and import/export rules (including raising the limit of packages which are not subject to customs fees) and different means of raising public awareness, including campaigns and publishing various guidelines and instruction manuals by the government to educate both e-traders and consumers. The Serbian Post Office has started offering additional shipment services that are expected to improve and simplify exports, especially for the small and medium-sized enterprise (SME) sector.

Great expectations are placed on the new Law on Electronic Currency currently being drafted by the National Bank of Serbia (NBS). While e-payment systems are an ongoing problem, with many significant foreign platforms (most notably, the Apple Store and PayPal) still sidestepping Serbia, improvements, dealing with some revisions to the money-laundering and fiscal rules, have been put in place. The development

of efficient and accessible e-payment mechanisms would greatly benefit e-commerce in general.

The various projects for improving the e-commerce environment, primarily spearheaded by the Digital Agenda Administration, are examples of good practice, especially the aforementioned publication of guides for sellers and buyers and the Ministry of Agriculture and Trade's study of the current state of e-commerce in Serbia. These represent solid foundations for the new government to further build upon, especially since the areas relevant for e-commerce have been unified under a single body by the new administration.

REMAINING ISSUES

The existing legal framework could not be said to have been extensively tested in this timeframe, due to the still limited share of e-commerce in Serbia. Official statistics show a slight improvement over the past year on all fronts: 52.1% of households in Serbia now have a computer (an increase from 50.4%), 41.2% have Internet access (an increase from 39%), and 31% have broadband Internet (an increase from 27.6%). Still, around 81.9% of Internet users have never engaged in e-commerce, which is an improvement of about five percentage points over the previous year. On the other hand, while 97.2% of companies have access to the Internet, only around 20-25% contract in this fashion (however, it is encouraging that about 80% use e-government services).

A 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 (b2b) commerce is inadequate. Due to transport infrastructure, faulty business models and certain peripheral issues, trade margins are still high and do not represent an incentive for buyers. Education and practice are the only possible answer to issues of trust in the online environment, a key constraining factor in Serbia, as well as globally. Data safety and security, a burning issue worldwide, is still not catered to enough in online stakeholders' practice in Serbia, and there have been several very public instances of important personal data being compromised.

FIC RECOMMENDATIONS

- It could be beneficial to e-commerce if certain forms of specific insurance were developed for the safety of transactions, including improved payment processing, but also more conventional forms of insurance;
- The Government, in cooperation with the NBS and the banking sector, should explore the possibilities for forming a coherent e-payment environment by making the new Law on e-currency robust and applicable;
- Continuous public campaigns and activities, with an accent on education and security are necessary;
- Further networking of the administrative bodies and development of additional e-government services 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

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adoption of necessary by-laws in accordance with the Law to further elaborate its application, and evaluation of the existing normative framework.	2011		√	
Implementation of needed regulations related to the Register of Bills of Exchange.	2011		√	

CURRENT SITUATION

The Law on Payment Transactions (Official Gazette of the 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 transaction institutions, procedures, and restrictions.

The Law regulates the procedure for opening and maintaining a bank account, as well as payment transactions, payment orders, executing credit and debit transfers; it determines liability, compensation for damage and the recovery of funds with regard to payment transactions, and the enforcement of claims from clients' accounts; and it envisages penalties for violations of the Law as well as 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 dinar payments, as well as maintain funds and effect payments through it, in accordance with the Law and the agreement on opening and maintaining such an account, concluded with the bank.

There are 21 related by-laws currently in force.

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 have been in effect since 17 May 2011.

Following adoption of the Amendments to the Law in 2011 (published in the Official Gazette of the Republic of Serbia, No 33/2011 on 9 May 2011), the following six by-laws were adopted during 2011 and 2012:

1. The Decision on determining cash payment transactions which can be performed by an agent and conditions for these transactions (Official Gazette of the RS, No. 60/2012);
2. The Decision on detailed terms, contents and manner of keeping the register of bills of exchange and mandates (Official. Gazette of the RS, No. 56/2011);
3. Decisions on the manner of and conditions and fees for taking data in electronic form on the status and other changes concerning legal entities and individuals registered with the Business Registers Agency (Official. Gazette of the RS, No. 56/2011);
4. The Decision on the manner of cash flow management (Official Gazette of the RS, No. 89/2011);
5. The Decision on the performance of enforced collection from the account of the client (Official Gazette of the RS, No. 47/2011);
6. The Rulebook on the terms and conditions for dinar cash payments of corporations and individuals performing business activities (Oficial. Gazette of the RS, No. 77/2011).

Particularly important was the adoption of the Decision on detailed terms, contents and manner of keeping the register of bills of exchange and mandates, which further elaborates provisions of the Law that regulate the register of bills of exchange and authorisations.

Namely, the Decision sets forth detailed terms and conditions under which the National Bank of Serbia shall keep the register of bills of exchange and mandates issued by debtors to their banks and creditors, the contents of the register and the manner of deleting entries from such register.

In line with the Law and the Decision, subject to registration are solely bills of exchange with due date after 1 June 2012. If these bills of exchange are not recorded in the Register, they may not be executed by enforced collection.

Furthermore, the new Rulebook on the terms and conditions for dinar cash payments of corporations and individu-

als performing business activities was issued by the Ministry of Finance, replacing the National Bank of Serbia's Decision on terms and conditions for cash payments of legal entities and individuals engaged in business activity.

The Rulebook sets forth terms and conditions for cash payments of legal entities and natural persons engaged in business activity.

According to the Rulebook, legal entities and individuals engaged in business may withdraw from their accounts a daily amount of RSD 150,000 without submitting supporting documentation to the bank.

Article 32 of the Law stipulates that legal entities and individuals engaged in business activity are required to deposit all cash received into their bank account within seven business days. However, the Rulebook prescribes that this seven-working day period limitation does not apply to cash withdrawn from the account for paying bills in cash without the submission of supporting documentation to the bank. That means that legal entities and individuals doing business can keep on hand the withdrawn cash to pay the "small" bills, even if it is not spent for more than seven days.

With respect to the application of Article 46, which regulates the settlement of financial obligations of business entities whose accounts are blocked for the purpose of enforced collection, according to the official rulings issued by the Ministry of Finance, business entities whose accounts are frozen for the purpose of enforced collection of taxes may, as an exception from the general rule, in case of payment of salaries and similar liabilities, settle their obligations towards third parties by cession or assignment of liabilities and/or receivables.

REMAINING ISSUES

Official rulings issued by the Ministry of Finance, with respect to the application of Article 46 of the Law, are not in line with the formulation provided by the Law.

FIC RECOMMENDATIONS

- A full application of regulations related to the Register of Bills of Exchange;
- Amendments to the Law with respect to Article 46 in a manner making the official interpretation of this article in line with the formulation of this article.

QUALITY INFRASTRUCTURE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Organisation of a public campaign about economic significance of accreditation.	2011		√	
Improve activities on enactment/amendment of the remaining required technical regulations within the line ministries.	2010	√		
Increase participation of business representatives in the preparation of Serbian standards.	2010		√	
Improve the capacities of the Institute for Standardisation by increasing the number of employees and upgrading their qualifications.	2010		√	
Raising public awareness of the economic reasons justifying compliance with standards as a step that facilitates placing 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 Safety of Products in 2009, and the Law on Metrology and the Law on Accreditation in 2010, are identified as progress in the process of harmonisation with the infrastructure of quality (metrology, standardisation, accreditation, and conformity assessment) and market surveillance pursuant to the EU and international rules.

The Law on Technical Requirements for Products and Conformity Assessment and the Law on Standardisation are harmonised with World Trade Organization (WTO) and European Union (EU) rules. Serbian technical regulations and standards enacted in accordance with these two laws essentially transpose EU directives (in the case of Serbian technical regulations) and EU standards (in the case of Serbian standards) into domestic legislation.

The Law on Technical Requirements for Products and Conformity Assessment provides a legal framework for the transposition of European directives of the new (global) and the old approach, unless technical requirements and compliance assessment procedures for products are governed by special laws. In addition, this Law provides a legal framework for national technical regulations for products not encompassed by those acts harmonised at the EU level.

The Law on Standardisation defines the status of the Institute for the Standardisation of Serbia (the ISS is now a public facility) as pursuant to European standardisation rules, and therefore criteria were met for full membership of the ISS in European standardisation organisations. This Law also clearly differentiates between "general standardisation", covering the widest scope of users, from so-called "industrial standardisation", applied in specific fields (rail, air and river traffic, defence, and the like).

The Law on Metrology which was enacted in May 2010, regulates issues related to measures and measuring requirements in a manner compliant with EU rules, in particular with the so-called "New Package of Regulations for the Free Movement of Goods" enacted by the European Commission in August 2008. This Law resolves the existing conflict of competencies with regard to the enactment of metrological regulations; authorisation of metrological laboratories; and surveillance of their work. The control over precious metals has been extracted from the Law on Metrology based on the Law on Control of Precious Metals Objects passed in 2011.

The Market Inspection Department within the Ministry of Foreign and Domestic Trade and Telecommunications (in charge of carrying out market surveillance) has finalised the preparations for the full and adequate implementation of the new Law on General Safety of Goods. The Law incorporates rules set out in the European Directive on General Product Safety 2001/95/EC, and assumes the EEC Directive on products appearing to be other than what they are (87/357/EEC) in its entirety. This Law entered into force in December 2009. Two by-laws necessary for the implementation of the Law were also prepared: the Rulebook on the Notification of the Competent Authority about Dangerous Products or Suspected Serious Risks Imposed by Industrial Products Placed on the Market; and the Regulation of 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 in October 2010, which is compliant with the WTO and EU rules, and with the requirements set in the standard SRPS ISO IEC 17011, completed the regulatory framework in this area. In addition to its establishment, activity, bodies and financing, this Law also regulates the accreditation of conformity assessment bodies (those involved in the examination, calibration, controlling and certification of products, processes, management systems, and persons). The adoption of this Law also ensured the harmonisation of the accreditation system with rules set out in the Regulation (EC) 765/2008 of the European Parliament and of the Council determining the requirements relative to accreditation and market surveillance.

Beyond the completion of the regulatory framework required for the full functioning of the accreditation system in Serbia, it is also crucial to launch an aggressive public awareness campaign by which the public will be acquainted with the benefits coming from the accreditation process. Currently, the number of conformity assessment bodies accredited in Serbia remains modest. Due to this situation, it is frequently necessary to hire foreign accredited conformity assessment bodies whose services present unnecessary costs to the economy – this when the domestic conformity assessment bodies could perform the same services for less.

POSITIVE DEVELOPMENTS

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

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

1. The 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;
2. The Regulation on the Manner of Appointment and Authorisation of Conformity Assessment Bodies;
3. The Regulation on the Manner of Recognition of Foreign Conformity Certificates and Conformity Marks;
4. The Rulebook on the Manner of Marking of Products with the Conformity Mark and the Usage of Marks;
5. The Rulebook on the Content and Manner of Keeping the Register on Technical Regulations;
6. The Rulebook on the Defining of a List of Serbian Standards in the Area of General Safety of Goods;
7. The Rulebook on the Manner of Recognition of Foreign Conformity Certificates, Trademarks, and Conformity Marks;
8. The Regulation on Legal Measurements;
9. The Regulation on the Manner of Performance of Surveillance in the Metrology Area;
10. The Regulation on Certain Legal Measurements;
11. The Rulebook on the Manner of Appointment of Legal Entities for the Verification of Measurements and on the Register of Appointed Bodies;
12. The Rulebook on Conditions for the Verification of Measurements;
13. The Regulation on the Manner of Reporting and Providing Information of Technical Regulations, Conformity Assessment, and Standards;
14. The Regulation on the Amount and Manner of Paying Fees for the Verification of Measurements, Metrology Expertise, the Examining of Measurement Types, the Examination of Pre-Packaged Products and the Measuring and Other Operations in the Field of Metrology;
15. The Rulebook on the Types of Measurements Requiring Verification and Time Intervals for their Periodic Verification;
16. The Rulebook on Amendments to the Rulebook on the Manner and Conditions for the Verification of Measurements;
17. The Rulebook on the Termination of Certain Rulebooks.

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

organisations.

The ISS started a process of adaptation of EN standards in 2008. The plan is that by the end of this year (2012), 80% of EN standards will have been adopted by different committees of the ISS.

Serbia is also en route to fulfilling its obligations arising from WTO Technical Barriers to Trade Agreement (TBT), which are also incorporated into 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, various other international organisations, and any other stakeholders in this area. The Law on Technical Requirements for Products and Conformity Assessment also envisages the establishment of the Register of Technical Regulations, which is a precondition for the full functioning of the Enquiry Point. Therefore, the Ministry of Economy established "TEHNIS", the online register of enacted technical regulations; as well as technical regulations in preparation, which also contain all necessary information regarding the quality infrastructure for the business community and general public (e.g., the texts of all legal documents, list of projects implemented in the area of quality infrastructure, etc.). The Enquiry Point is established as the part of the unit in charge for international co-operation within the Quality Infrastructure Department.

REMAINING ISSUES

Human resources needed for the transposition of standards represent a special problem. The existing manpower in the ISS is inadequate, both in 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 have already been 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.

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

A lack of public awareness about the need for accreditation remains a problem, but one eliminated with the enactment of the new Law on Accreditation, as it does not prescribe mandatory accreditation.

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

Although a large number of EN standards have been adopted by the ISS, the harmonisation of technical regulation (old approach directives) with adopted EN standards has still not started. This is very important, especially now that the Accreditation Body of Serbia has become a full member of the European Co-operation for Accreditation (EA) and signatory to the Multilateral Agreement (MLA). The signatory to the MLA actually means that mutual trust and acceptance of reports and certificates issued by Serbian accredited CABs (testing laboratories, medical laboratories, calibration laboratories, inspection bodies and certification bodies performing certification of products) will be achieved and that the Serbian accreditation system will be made equivalent to those of other countries who are signatories to the EA BLA/MLA.

FIC RECOMMENDATIONS

- Organisation of a public campaign raising awareness of the economic significance of accreditation;
- Improve activities on the enactment/amendment of the remaining required technical regulations within the line ministries;

- Improve the capacities of the Institute for Standardisation by increasing the number of employees and improving their qualifications;
- Raising public awareness about the economic reasons justifying compliance with standards as a step facilitating the placing of goods into circulation/on the market;
- Start with the harmonisation of technical regulation (old approach directives).

FOREIGN EXCHANGE OPERATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011	√		
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.	2010		√	
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.	2011			√
Enable issuance of guarantees based on the order of a non-resident in the business between two non-residents in all non-credit operations.	2011			√
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.	2011			√

CURRENT SITUATION

Following the adoption of amendments to the Law on Foreign Exchange Operations, Official Gazette of RS, No 62/2006 and 31/2011 (hereinafter: the "Forex Law") that came into force on 17 May 2011, the competent authorities passed a number of by-laws thoroughly regulating the implementation of newly adopted legal provisions.

In principle, and apart from facilitating the application of newly established legal provisions in practice, these by-laws also enabled a further harmonisation of the Forex Law with other regulations adopted in the meantime, as well as with recommendations of international organisations, such as the World Trade Organization (WTO).

However, although the prescribed six-month period as of the entry into force of the Forex Law has expired, there are still by-laws to be adopted by the competent authorities in order to complete the amendment process.

POSITIVE DEVELOPMENTS

The Ministry of Finance and the National Bank of Serbia (NBS) adopted a set of by-laws, including: (i) the Decree on offsetting on the grounds of foreign credit transactions, (ii) the Decision on the recording of foreign credit transactions, (iii) the Decision on terms and conditions under which the foreign exchange market operates, (iv) the Decision on terms and conditions of performing foreign exchange operations, (v) the Decision on terms and conditions of performing foreign credit transactions in dinars, (vi) the Decision on terms and conditions for payment operations in effective foreign currency, (vii) the Decision on performing operations with financial derivatives, (viii) the Decision on temporary measures for preserving the financial stability of the Republic of Serbia, (ix) the Decision on information related to foreign currency accounts of residents which commercial banks submit to the NBS, etc. The most relevant of these will be described below in terms of their basic content.

Decree on offsetting on the grounds of foreign credit transactions

The Government of Serbia adopted the Decree on offsetting on the grounds of foreign credit transactions to thoroughly prescribe procedures, conditions, competent authorities and entities entitled to perform these operations. In particular, the said Decree provides:

1. That the following can be subject to offsetting (i) all foreign credit transactions reported to the NBS that involved non-residents after 28 April 2002, (ii) export and import operations, (iii) direct investments or real estate investments of non-residents in the Republic of Serbia and/or of residents abroad;
2. Among other conditions, that offsetting is allowed between a resident and a non-resident entity or between a resident and non-residents if those are alien-

ated entities pursuant to the Company Law;
3. The list of documents to be submitted to the Ministry of Finance together with a request for approval of offsetting by the said authority;
4. The competent authorities involved in the procedure of approval of offsetting and obligation to inform the NBS and the Foreign Exchange Inspectorate on the decision of the Ministry of Finance.

Decision on recording foreign credit transactions

Through this Decision, the NBS prescribes in detail the manner of recording foreign credit transactions performed by banks, legal entities, entrepreneurs, and branches of foreign legal entities, and reporting them to the NBS. Also, this Decision provides the terms and conditions for recording and documents to be submitted as part of the recording procedure.

Further, this Decision regulates the requirements for reporting to the NBS those transactions that are related to the export/import of goods and services that have not been paid or that have not been paid within one year from the date of export/import, as well as the same transactions related to goods and services that were paid in advance but were not exported/imported within one year from the payment date.

Decision on terms and conditions of performing foreign credit transactions in dinars

The NBS Decision provides terms and conditions under which an international financial organisation, development bank or financial institution founded by a foreign state can approve a credit or loan in dinars to a resident bank, legal entity or entrepreneur. Also, it specifies the conditions under which a resident bank can grant credits in dinars to a non-resident. Furthermore, the Decision prescribes that such lending must be reported to the NBS in accordance with the Decision described in item 2 above.

Decision on terms and conditions for payment transactions in effective foreign currency

The NBS adopted this Decision in accordance with changes to the Forex Law related to additional cases in which payments in the Republic of Serbia can be made in foreign currency. It primarily determines the persons authorised to make or receive payments in foreign currency, and requirements for the approval of such payments. It further determines the procedure for the payment of pecuniary means thus acquired to the bank account and the list of documents to be presented to commercial banks as the legal grounds for such payments, i.e. an agreement, invoice, statement of the authorised person, general customs declaration, etc. The Decision further sets the following list of cases/grounds allowing a resident legal entity, entrepreneur or a branch of a foreign legal entity to receive payments in foreign currency:

1. On the grounds of exports of goods and services that cannot be charged through a bank, up to the amount of EUR 15,000 per transaction;
2. On the grounds of the sale of goods at international airports and duty-free shops and for providing catering services outside customs control;
3. On the grounds of sale of fuel and lubricants and equipment and reception of foreign airplanes and ships;
4. On the grounds of the sale of travel fare and food and other products to the travellers in international transport;
5. On the grounds of sale of travel fare in international transport for the account of a non-resident;
6. On the grounds of toll charges for foreign registration plates.

Decision on information related to foreign currency accounts of residents reported by commercial banks to the National Bank of Serbia

This NBS Decision recommends that commercial banks inform the NBS in electronic form on the opening or closing of residents' foreign currency accounts, as well as any changes to residents' existing foreign currency accounts, immediately or by the end of the working day on which such actions take place. At the same time, the Decision provides that the NBS has to store the data thus collected in the integrated registry of foreign currency accounts.

Decision on performance of financial derivative transactions

This Decision sets forth the terms and conditions and the manner in which banks, residents and non-residents may perform payments, collections and transfers in respect of trading in financial derivative instruments – derivative transactions as well as netting and reporting on derivative transactions.

Residents may perform transactions with financial derivatives that are standardised and traded on the regulated market and/or multilateral trading facility abroad, and non-residents may perform transactions with financial derivatives that are standardised and traded on the regulated market

and/or multilateral trading facility in the Republic of Serbia.

The Decision allows performing transactions with financial derivatives being traded and/or transactions made outside of the regulated market and/or multilateral trading facility, for the purpose of hedging against the exchange rate risk, interest rate risk, securities risk, commodity price risk and stock market index risk. Such financial derivative transactions are to be performed in accordance with a standardised master agreement on financial derivatives, which is customary in business practice.

REMAINING ISSUES

Despite the fact that amendments to the Forex Law introduced substantial innovations in the Serbian Forex practice and that these innovations were additionally regulated by adopted by-laws, the solutions provided do not fully correspond to international standards set in this field.

Although the banking and finance sector is generally well maintained, regulations related to financial instruments with a foreign element (loans/additional payments/credit facilities/non-resident accounts) are still heavily regulated and often unclear.

General principles in future policy making should be oriented to the further liberalisation of financial instruments and Forex regulations and the adjustment of applicable legislation in this area, which is often interlinked with other laws:

1. A register for foreign currency outflows or any unusual transactions directed to the so-called tax havens is yet to be formed;
2. Amendments to the Forex Law do not regulate the issuance of guarantees based on an order of a non-resident in all non-credit operations;
3. The provision stipulating that guarantees, bonds and other instruments from Article 18 of the Forex Law are issued in the currency used in 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

- Modernise codes of payment and adjust them to today's transactions;
- Ensure that the offsetting of mutual receivables in foreign payment operations and financial derivative operations is fully in accordance with international practice and standards;
- Allow cash-pooling between companies;
- Enable cross-border inter-company 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 the issuance of guarantees based on the order of a non-resident in transactions between two non-residents in all non-credit operations;
- Enable netting between affiliated companies globally;
- Ease reporting obligations (from the opening of a simple bank account to the registration of loans);
- Adjust and harmonise applicable legislation in this area, and resolve issues that are still unclear.

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 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.	2009		√	
Increase the number of employees in the Administration in order to ensure its efficient operation in implementing regulations.	2011		√	
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.	2009		√	
Influence public opinion on the necessity for more decisive and efficient action against money laundering and financing of terrorism.	2009		√	
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.	2011		√	

CURRENT SITUATION

The Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of the Republic of Serbia Nos 20/2009, 72/2009, hereafter 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 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.

The 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 liable parties to relevant state authorities so they can undertake actions and measures within their competence. Nevertheless, other state authorities are obliged to monitor the application of the Law and as well as 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:

1. Terms associated with the electronic transfer of funds are specified in detail, as are obligations of persons providing electronic transfer payment and collection services;
2. Special obligations are specified for the use of new technologies, as well as for unusual transactions;
3. Introduction of a requirement for authorised persons in an entity subject to the Law to pass an exam and acquire a license;
4. Provisions are introduced for the integrity of employees to whom the provisions of the Law apply;
5. New competencies are introduced for the Administration for the Prevention of Money Laundering relating to supervision of operations of particular entities subject to the Law;
6. 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, 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 the 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; only that precautionary measures should be taken. Furthermore, Article 19 stipulates that liable parties are not under obligation to deliver information to the Administration on every money transaction totalling EUR 15,000 or more in the case of a daily sale of goods and services.

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

1. Customer risk (e.g., a transaction with no economic basis: politically exposed persons and businesses that undertake large cash transactions);
2. Service risk in connection with a business activity (possibility of money laundering in performing some business activity);
3. Country risk (e.g. countries with high crime rates and 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 relationships 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 an authorised person and deputy of an 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 thereafter be issued a license.

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

During 2011 and 2012, the Administration for the Prevention of Money Laundering also organised professional licensing exams for other entities subject to the Law: companies providing audit and accounting services; companies providing factoring and forfeiting services; leasing companies; companies which manage investment funds; insurance companies; and broker-dealer companies. During 2012 all other persons authorised for performing tasks specified by the Law employed by all entities subject to the Law were required to pass a professional exam and issued a license.

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; certified auditors; and insurance companies.

The Administration for the Prevention of Money Laundering adopted Guidelines for the Assessment of Risk of Money Laundering and Financing of Terrorism for most entities subject to the Law. Based on them, all legal entities are required to adopt internal acts on risk assessment, based on the guidelines mentioned above.

POSITIVE DEVELOPMENTS

The Law on the Prevention of Money Laundering and Financing of Terrorism introduces innovations in the domestic legal system to be aligned with European Union directives and international standards and conventions.

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

Furthermore, the Law provides a restriction for receiving cash in an 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 in which the reason for suspicion was first discovered.

REMAINING ISSUES

The 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 European Union member states have mostly been accepted and incorporated into the text of the Law and the next step should be to find mechanisms for their implementation. In 2011 and 2012, activities and demands of the Administration for the Prevention of Money Laundering toward entities subject to the Law were increased, but there is still a lack of co-operation and adequate seminars or workshops by which to conduct relevant training and increase knowledge related to implementation for employees in entities subject to the Law.

FIC RECOMMENDATIONS

- Develop a system that would enable better communication between the Administration for the Prevention of Money Laundering and liable parties, as well as the government, and better co-operation with the Ministry of Foreign Affairs, the Public Prosecutor's Office and the 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 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 in cooperation with the Commissioner.	2009			√
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).	2009		√	
Establish better communication between the Commissioner and other state authorities, non-governmental organisations (NGOs) and international organisations.	2010		√	
Conduct workshops and seminars in order to educate citizens and raise their awareness of 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 innovations 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 EU provided under the Data Protection Directive (Directive 95/46/EC). It built upon the norms set by preceding legislation enacted in 1998 whilst establishing stricter and more detailed guidelines to be observed by entities collecting, processing, and maintaining personal data.

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. Even though the Government was supposed to enact a separate regulation detailing how personal data should be protected and stored within six months from the date the Law came into force, no such regulation has been enacted yet.

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 a 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. Furthermore, the data controller has the obligation to submit such information in writing. In fact, according to statistics published at the website of the Commissioner for Information of Public Importance and Personal Data Protection ("the Commissioner"), 12 requests for protection of rights submitted to the Commissioner were resolved in May 2012.

As for cross-border transfers of personal data, the Law states that personal data may be freely transferred to parties of 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 countries 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, therefore, obtain a data export permit from the Commissioner. In practice only one such permit has been published on the Commissioner's website thus far.

POSITIVE DEVELOPMENTS

The Law brought about the establishment of legal mechanisms, including 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 members of the public in understanding and applying the Law. According to the latest monthly statistical report published by the Commissioner, 120 out of 315 cases pertaining to personal data were resolved by the Commissioner in May 2012, including the preparation of 47 opinions pertaining to the application of the Law. According to the same source, the total number of registered data controllers has increased to 667, whereas the total number of registered data collections has increased to 4,145 (a 42% increase compared to last year).

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 data controllers. However, the aforementioned number of opinions issued by the Commissioner with regard to the application of the Law in May 2012 alone serves as evidence that significant work remains to be done in this area.

The number of data collections registered in the Central Registry, despite the significant increase in terms of percentage points compared to last year, 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 within 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 whilst conducting their business in the same manner as their counterparts in the EU.

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 co-operation 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;
- Update the "Guidebook on the Law on Personal Data Protection" taking into account all relevant Commissioner's practices as well as court practice related to the implementation of the Law.

TAX SECTION

In the following section FIC members have elaborated on key issues in the Serbian taxation system for each type of tax. It is extremely important to pinpoint one major issue of the Serbian tax system as a whole. Namely, the main obstacle in the Serbian system is a lack of consistency in the application of existing legislation and inconsistent interpretation of the same tax rules by different tax offices. Even though the importance of upgrading the legislation is imperative, inconsistencies and inappropriate interpretations of existing legislation have been the main cause of problems for taxpayers. This issue is of key priority in any discussion on tax reform in the Republic of Serbia.

A. CORPORATE INCOME TAX (CIT)

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Primarily, by-laws should provide guidelines with respect to transfer pricing and taxation of permanent establishments.	2010			√
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.	2011			√
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.	2010	√		
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).	2010			√
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. 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.	2010			√
Some of the problems require amendments of the CIT Law:				
Aligning the rules regarding the use of transfer pricing methods with the OECD Guidelines and best international practice	2011			√
Taxation of cross-border corporate reorganisations, as the currently applicable legislation completely lacks provisions regarding the taxation of such reorganisations.	2011			√
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.	2010			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011			√

CURRENT SITUATION

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

The latest changes to the CIT Law were adopted on 29 December 2011. The amendments were published in the Official Gazette of the Republic of Serbia, No 101/2011 of 30 December 2011. The amendments were mainly aimed at achieving certain specific tax policy objectives. No significant changes were introduced to the process and method of CIT assessment itself.

POSITIVE DEVELOPMENTS

The latest amendments to the CIT Law help create conditions for more efficient operations of free-trade zones and a more efficient process of restructuring for companies, while also stimulating the development of a market for government debt securities.

The most significant changes in this respect are listed below:

1. The beneficiaries of free trade zones are entitled to tax reductions for 100% of calculated tax, provided that only manufacturing activity is performed in the free trade zone in question. If the taxpayer does not conduct business only in the zone, tax relief is determined only for profit generated in the zone based on performed production activities.
2. Interest paid to non-residents on the basis of debt securities issued by the Republic of Serbia, an autonomous province, local government or the National Bank of Serbia is not subject to Serbian withholding tax.
3. Bad debt write-offs performed in the course of the financial restructuring process, in accordance with the Law on Voluntary Financial Restructuring, is considered deductible for CIT purposes.

REMAINING ISSUES

1. 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, and the filing and payment of CIT in situations when a foreign business is not registered in Serbia, etc.;
2. According to the 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 the 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 Serbia has signed with other countries.
3. 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;
4. Small-value fixed assets capitalised for accounting purposes (i.e. returnable packaging) can neither be depreciated for tax purposes due to low individual value, nor expensed in a way that tax deduction is achieved. Such a rule is unjust toward taxpayers, as expenditures in this respect are required for performing their business activity.
5. Deductibility of marketing expenses is limited to 5% of a taxpayer's total revenues. The nature of certain industries is such that it requires significant investments in marketing. This often results in non-deductible marketing expenses. Such treatment is unjust toward taxpayers, as expenditures in this respect are necessary for performing their business activity.

6. Article 16 of the CIT Law treats the transfer of receivables to off-balance sheet (write-off receivables) as taxable, unless proof of unsuccessful collection through the court proceedings is provided. However, court proceedings take a long time and often do not result in a successful collection of receivables, particularly in the case of private individuals. In this respect, taxpayers have no economic incentive to participate in lengthy and expensive litigation. On the other hand, taxpayers perform such write-offs in order to present their business books as truthful in accordance with International Accounting Standards and International Standards for Financial Reporting. In this way, taxpayers are burdened with higher CIT liability as a result of the requirement to comply with the relevant accounting regulation.
7. Tax authorities have a tendency to interpret regulations related to accounting and tax treatment of royalties in a manner different from provisions of the relevant legislation (i.e. Law on Accounting and Auditing and International Accounting Standards [IAS], specifically IAS 38) and generally accepted interpretations of the professional community.
8. The interpretations of the Ministry of Finance which are to be used for withholding tax purposes in some cases differ from provisions of the relevant double tax treaties and the best international practice. This is especially related to acquiring the right to use software for one's own purposes. Such interpretations result in a higher tax burden for taxpayers, which is not in line with the rights provided in the relevant double tax treaties.
9. The CIT Law does not contain a single provision governing the taxation of investment funds. The result is the distortion of the tax neutrality of investment funds and different forms of investment funds, in particular closed-ended and open-ended funds;
10. Taxation of cross-border corporate reorganisations is needed, as the currently applicable legislation completely lacks provisions regarding the taxation of such reorganisations;
11. 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 filing 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 an arm's length interest rate on loans between related parties are not in accordance with the provisions of CIT Law and the best international practice, and should be abolished. This especially having in mind the recent opinion in which the Ministry of Finance expressed its position that beneficial provisions of a double taxation treaty can be applied solely to the portion of the interest that can be considered as under arm's length in accordance with the rule in question;
- The tax return form for foreign branches should be aligned with the provisions of the CIT Law so that it provides for no less favourable taxation of foreign branches compared to domestic companies (i.e. the utilisation of tax incentives for foreign branches should be allowed); as well as the introduction of a precise procedure for applying for a different tax year (other than a calendar year);
- Aligning domestic practice with respect to the definition of royalties for withholding tax purposes in line with the best international practice and definitions applied in the relevant tax treaties (especially related to the treatment of acquiring the right to use software for one's own purposes);
- It is necessary to align interpretations of the tax authorities regarding accounting and tax treatment of royalties

with the relevant legislation in this area. This is especially related to interpretations of the relevant accounting regulations, specifically IAS 38.

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

- Recognising the OECD Transfer Pricing Guidelines as an authoritative source of interpretation for transfer pricing matters not regulated in detail by domestic CIT legislation, and aligning the rules regarding the use of transfer pricing methods with the OECD Guidelines and the 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);
- When low-value fixed assets are capitalised for CIT purposes, they can neither be depreciated for tax purposes due to their low individual values, nor expensed in a way that tax deduction is achieved. A rule should be introduced allowing a tax deduction for low value fixed assets which cannot be tax depreciated;
- Provisions of the CIT Law regulating deductibility of marketing expenses should be amended in a way to allow a full deductibility of marketing expenses;
- Provisions of CIT Law regulating the deductibility of written-off receivables should be aligned with the requirements of relevant accounting legislation;
- 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;
- Taxation of cross-border corporate reorganisations, as the currently applicable legislation completely lacks provisions regarding the taxation of such reorganisations. Provisions regulating this area should be introduced in the CIT Law;
- 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;

B. PERSONAL INCOME TAX

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011		√	
Cedular system of taxation of personal income remains the central problem for taxing individuals. Serbian Government should consider the introduction of a synthetic system which would require investment into the tax authorities, education and software upgrades.	2008			√

CURRENT SITUATION

Taxation of individuals is governed by the 2001 Personal Income Tax Law (the "PIT Law"), 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 exempting the salaries of the newly-employed from the tax, if tax relief is already used based on provisions of another legal instrument.

Within regular business activities of banks, there is a number of non-performing loans for which banks after correction of the value of receivables perform the accounting transaction of transferring these receivables from on-balance to off-balance. The transfer of such receivables from the balance sheet to the off-balance sheet represents purely an accounting category, and it is not related to a bank's recovery treatment of such receivables. The bank collects these receivables in accordance with its defined business policy, either by initiating court procedures or through out-of-court activities.

The Ministry of Finance issued a few opinions regarding this issue suggesting that the transfer of a receivable from the on-balance to the off-balance sheet equals the write-off of a client's debt, which presents income for a private individual, and, as such, is taxable in line with Article 85 of the Personal Income Tax Law.

POSITIVE DEVELOPMENTS

1. By issuing an official opinion, the Ministry of Finance tried to resolve the issue of the tax treatment of acquiring liquidation residue following a liquidation procedure. When the founder of a company is an individual, the person's income is treated and taxed as capital income, just as the founder is a legal entity. Changes to the PIT Law on this matter are expected.

REMAINING ISSUES

1. Unclear residence rules for foreign citizens being seconded to work in Serbia and the tax authorities' inconsistent approach to this issue. 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 of a 12-month period which begins or ends in the respective tax year), which is not in line with the PIT Law. Based on instructions from the Ministry of Finance, the Tax Administration is taking into consideration the rule that residence established on the basis of a Double Taxation Treaty should be used for the purposes of the PIT Law as well, though there is no legal ground for this approach;

2. 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, 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 regulating this matter, the Serbian tax authorities continue to apply the Decree on the Compensation of Expenses and Severance Pays to Employees in State Bodies. The Ministry of Finance and the Ministry of Labour and Social Policy issued a few opinions that confirmed that the Decree should be applied by companies and not only by state bodies. However, we are of the opinion that, like the Decree itself, the instructions are not in line with Serbian legislation.

FIC RECOMMENDATIONS

- Prescribing detailed residence rules with respect to foreign citizens and applying the "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 be used for purposes of the PIT Law;

- Changes to the PIT Law should be made regarding the matter of liquidation residue. Liquidation residues should be stated in the Article defining capital income according to which the explanation of the Ministry of

Finance on this matter would have legal grounds;

- 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 in the tax authorities with respect to training, education, technology and software upgrades;
- Defining by regulation that the transfer of receivables to the off-balance sheet does not imply debt relief (in line with the Obligations Act) unless there is written confirmation from the creditor on debt relief toward the debtor. Additionally, to regulate said taxation of debt relief is pursuant to the Property Tax Law and the tax on inheritance and gifts;
- The PIT Law should make a clear distinction between the compensation of business expenses, which do not represent income of individuals and cannot be subject to taxation, and compensation of personal expenses, which should be taxed.

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 registered office in Serbia to register for VAT purposes.	2007			√
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.	2007			√
The VAT Law should be revised to ensure that the VAT payer does not have an obligation to inform the Tax Authorities on change of date provided in VAT registration form when change relates to data maintained by the Serbian Business Registers Agency.	2011			√
The rule for the place of supply of services should be revised in accordance with the Sixth VAT Directive.	2011			√
VAT treatment of services rendered without consideration should be revised i.e. it should be deemed that only application of goods without consideration for non-business purposes is taxable supply, as stipulated by the EU VAT Directive.	2011			√
It should be precised that reverse charge mechanism should be applied only at 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.	2011			√

CURRENT SITUATION

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

POSITIVE DEVELOPMENTS

The amendments to the VAT Law introduced in 2007 have refined and clarified many of the legislative provisions which have proven to be controversial in practice. Examples of these include clarification concerning the issuance of invoices for services with unlimited duration; prescribing the taxable base for contributions in kind; and introducing VAT exemption for services rendered by investment funds and voluntary pension funds management companies, etc.

REMAINING ISSUES

1. 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, resulting in situations whereby foreign companies do not have any means to recover VAT paid in Serbia. Namely, the 18% or 8% VAT paid to their Serbian suppliers is an additional cost for any foreign company without direct operations in Serbia (without a legal presence). Not only does this solution distort the neutrality of VAT, it also discriminates against foreign companies over Serbian taxpayers. In addition, this rule also discriminates against local suppliers since foreign companies prefer to engage non-Serbian suppliers in order to avoid suffering Serbian VAT. 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 a least cash flow effect on the budget (i.e. foreign companies that are registered for VAT would start calculating output VAT instead of the current situation whereby Serbian VAT applicable to services rendered by foreign companies is calculated by service recipients trough "reverse charge mechanism", which is cash-neutral);
2. In addition, the lack of a 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);
3. The rules relevant for the implementation of the VAT Law are scattered over numerous by-laws, instead of summarised in one act;
4. 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; whereas it should be the Serbian Business Registers Agency that officially informs the tax authorities about such changes;
5. While the Serbian tax authority has adapted itself very quickly to the VAT system and became quite proficient in the application of VAT Law, due to a lack of clear legislative guidance many of the provisions of the VAT Law are still subject to considerable controversy in practice {e.g. the application of the "reverse charge" mechanism wherein VAT Law does not clearly prescribe the moment when a tax liability arises for the tax debtor (i.e. service recipient)};
6. Through the changes in the EU VAT Directive, the provision regarding the place of the supply of services has been amended. As a general rule, it is prescribed that the place of the supply of services provided to another taxable person (business-to-business "B2B" 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 on 1 January 2010. Harmonisation with the EU VAT Directive is crucial as current provisions are leading to double taxation or double non-taxation of services traded between Serbian and EU taxpayers;
7. In addition, the EU VAT Directive prescribes that the application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or their disposal free of charge or, more generally, their application for purposes other than those of his business, should be treated as a supply of goods for consideration, where VAT on those goods or the component parts thereof is wholly or partly deductible. Therefore, in general, only free of charge application of goods for non-business purposes is taxable as a supply of goods for consideration. The VAT Law is not harmonised with the above provision of the EU VAT Directive. The VAT Law prescribes that supply of any services without consideration is treated as taxable supply, which is the opposite of the EU VAT Directive. In practice, tax authorities' and the Ministry of Finance's interpretations of whether certain activities create supply of service without consideration are very extensive (e.g. free of charge assignment of finance lease contract

from lessee to another person etc). This provision could create a huge administrative burden to taxpayers since they should issue a VAT invoice also for taxable supplies without consideration. Reverse charge should also be applied to services received free of charge. It is questionable what is the taxable amount for a huge range of services for which there is no comparable market price (e.g. specific marketing or IT services provided by the company within the multinational group etc);

8. VAT legislation provides a zero rate for the entering of goods into free zones as well as for transportation and other services directly linked with the entering of goods into a free zone. Therefore, supplies of goods and services within free zones are taxable at the rate of 18% or 8%. This rule discriminates against suppliers established in free zones. They are obliged to charge VAT while suppliers established outside the free zone apply zero rate.
9. VAT legislation provides that any entity whose turnover in the previous 12 months, or forecast turnover for the following 12 months, exceeds RSD 4 million should register for VAT. Voluntary registration is possible if turnover ranges from RSD 2 million to RSD 4 million. In addition, an entity will be deregistered from VAT if turnover generated in the calendar year does not exceed RSD 2 million. The Ministry of Finance's interpretation is that services taxable outside of Serbia should not be included in turnover required for VAT registration although nowhere in the VAT legislation is it defined that turnover excludes this type of services. Based on this interpretation, companies that render for example IT, marketing, or consultancy services to foreign customers, cannot register for VAT in Serbia and consequently cannot claim back any Serbian input VAT. This interpretation seriously jeopardises the potential investment endeavours of multinationals aimed at selecting Serbia for their business.

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 a 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. Changes of regulation should not impose an additional administrative burden on taxpayers, such as: the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc.;
- 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 of such changes within five days from the day of issuing the Decision on data amendments. In other words, a VAT payer should not have an obligation to inform tax authorities about changes of data maintained by the Serbian Business Registers Agency;
- The rule for the place of supply of services should be revised in accordance with the EU VAT Directive;
- The provision of services without consideration should be revised and harmonised with the EU VAT Directive; i.e., the application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or their disposal free of charge or, more generally, their application for purposes other than those of his business, should be treated as a supply of goods for consideration, where VAT on those goods or the component parts thereof was wholly or partly deductible;
- For a "reverse charge" mechanism it should be clarified that the tax debtor/service recipient is obliged to calculate VAT either at 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;

- The VAT Law should be amended with respect to tax treatment of supplies of goods and services within a free zone. These supplies also should be subject to zero rate VAT;
- With respect to turnover required for VAT registration, it should be clarified that supplies taxable outside Serbia are included in the VAT registration threshold.

D. TAX PROCEDURE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Introduce the presumption of a positive decision in the case of a failure by the Tax Administration to issue their decision within statutory deadlines.	2011			√
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.	2008			√
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.	2011			√

CURRENT SITUATION

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

1. The Law on Tax Procedure and Tax Administration (Official Gazette of the Republic of Serbia, No. 80/2002, latest amendment from January 2012, the "PTA Law");
2. The Law on General Administrative Procedure (Official Gazette of the Republic of Serbia, No. 33/97, last amended in May 2010, the "GAP Law");
3. The Law on Administrative Disputes (Official Gazette of the Republic of Serbia, No. 111/2009).

The tax procedure is a special type of administrative procedure and is governed primarily by the PTA Law. The PTA Law regulates in detail the organisation 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 the PTA Law (special tax misdemeanours in specific tax areas are prescribed by the tax laws governing these tax 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 the 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 the tax procedure in 2011.

REMAINING ISSUES

1. The existing regulatory framework governing tax procedure still does not provide sufficient protection to taxpayers against voluntary decisions of tax authorities.
2. Rules around tax-related criminal acts still do not take into consideration the size and volume of taxable activities of taxpayers and apply the same threshold to a small store and the biggest companies in the Republic of Serbia.
3. The tax authorities routinely fail to respect the deadlines for the issuance of decisions on appeals that have been lodged by taxpayers.
4. In the recent period, 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.
5. Serbian courts do not have a sufficient level of specialisation and expertise to decide on tax disputes. The time needed to issue a court decision is too long - typically a tax-related court case takes more than one year to resolve. In addition, courts almost never decide on the merits of the case. They usually remand the case back to be decided again by the Tax Authority or simply confirm the decision without giving sufficient reasoning for such a ruling. Under these circumstances, the judicial control of the decisions of the Tax Administration is basically meaningless.

FIC RECOMMENDATIONS

- The introduction of a presumption of a positive decision in the case of a failure by the Tax Administration to issue its decision within the statutory deadlines;
- To eliminate legal uncertainty relevant tax authorities, the Tax Administration and the Ministry of Finance should coordinate their actions and adopt mechanisms for the establishment of 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 with judges exposed to more training with regard to the understanding of tax issues.

ENVIRONMENTAL REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adoption of the Law on Rational Use of Energy.	2009			√
Create local and regional waste management plans.	2009		√	
National plans for special types of waste management.	2009			√
Training of employees in municipalities in implementation of ecological regulations with the goal of developing local capacities for waste management, including municipal ecological inspectors.	2009	√		
Further education of citizens related to environmental protection, waste management and communal waste recycling.	2011	√		
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.	2011			√
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.	2011			√
Introduction of ecological, biodegradable packaging material.	2011		√	
Introduction of follow-up systems, as well as a deposit for packaging material.	2010		√	
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.	2011			√
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.	2009			√
Introduce economic incentives for investments in environmental protection (clean production, pollution decrease, energy efficiency, waste reduction, eco-innovations, etc.).	2010			√
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.	2010			√

CURRENT SITUATION

Serbia continued implementation of environmental acquis during 2011 and 2012, with the Government adopting numerous legal documents. The adopted legislation relates mostly to hazardous chemicals. In addition, by-laws introducing incentives for the use and reuse of waste as a secondary material, production of energy, and production of plastic bags were also enacted.

The Republic of Serbia developed a partnership with Environment Agency Austria through a Twinning Project which started in February 2011 in order to provide effective enforcement of environmental regulations and improve the capacity and effectiveness of the Serbian environmental inspection at the national, provincial and local level and improve co-operation with relevant stakeholders. Several seminars and workshops were held for environmental inspectors, operators, and other stakeholders on inspec-

tion concerning waste Seveso facilities, integrated pollution prevention control (IPPC), and other matters.

The Law on Waste Management and the Law on Packaging and Packaging Waste allow empty container management in accordance with national and international standards and regulations. Each company signed a contract with an operator which undertakes to collect 5% (in 2010) and 7% (in 2011) of empty containers. But the current legislation does not provide for an adequate collection of containers of plant protection products (PPPs). In 2012, each company that sells products on the market is required to collect 16% of the packaging material for recovery and 13% for recycling. In 2011, specific targets for recycling were met and calculated through municipal waste collection. Although there are indications that some operators are working to establish a model of care for the industrial packaging waste, including the containers of PPPs, a systemic solution in Serbia has yet to be established.

POSITIVE DEVELOPMENTS

The most important by-laws adopted over the past year pertain to regulating conditions and measures to be undertaken when dealing with dangerous chemical and biocidal products. Accordingly, the Serbian Government enacted by-laws enabling effective enforcement of the 2009 Law on Chemicals and the Law on Biocidal Products, which regulate procedures for approval and registration as well as for the keeping of chemicals and biocides. The newly introduced by-laws prescribe conditions for the keeping of dangerous chemicals in storage; the classification, packaging, advertising of chemicals; the registration of chemicals; and the keeping of evidence on chemicals and biocidal products. In addition, the Law on Chemicals and the Law on Biocidal Products underwent some minor changes in terms of defining the competent authority for the enforcement of these laws; namely, the Ministry of Natural Resources, Mining and Spatial Planning.

There is progress in the thermal treatment of waste: cement plants in Serbia, in addition to scrap tires, have also started the co-incineration of municipal waste and waste oil. Excellent co-operation with the Ministry of Natural Resources, Mining and Spatial Planning was achieved in this area, and in July 2011 the first integrated permit (IPPC) for a cement plant in Serbia was issued; a second in June 2012. However, the thermal treatment of hazardous packaging waste was not implemented and waste has not been taken over from PPPs for several reasons, such as a lack of permits and adequate preparation lines for this type of waste (receiving only "two-dimensional" material).

Significant progress has been made in the raising of ecological awareness in the public, particularly through the "Let's Clean up Serbia" campaign. In addition, as a consequence of raised ecological awareness and trainings of environmental inspectors in the enforcement of environmental regulations, the number of misdemeanour procedures has decreased in the period from 2009 to 2011. The Environmental Protection Agency remains fully operational and its performance is improving while the Environmental Protection Fund continues to be active.

Finally, in terms of energy efficiency, the Serbian Government provided significant funds for subsidised loans for the restoration of private facilities. The process of adopting local waste management plans is still in progress in order to provide planning documentation in all municipalities in the Republic of Serbia.

REMAINING ISSUES

1. Legal framework for the trading of waste and development of a waste market has not been established.
2. The follow-up and reporting system is still not sufficiently developed to complete the national and local register of pollution sources.
3. Incentives for investments in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, ecological investments, recycling, etc.) are yet to be introduced.
4. Enactment of local waste management plans has not been finalised.
5. The need to establish a programme aimed at training users in, and the promotion of, the proper rinsing of empty PPP containers; along with the triple rinsing of containers of plant protection products with inspection as part of the collection process.
6. Regulate bio-waste, mining waste management and sewage sludge, which is not covered by the Waste Management Law.
7. Public partnership in the area of environmental protection has not developed.
8. The process of obtaining the IPPC permit and Waste Management Permit should be accelerated and operators should be able to obtain it within reasonable time.

FIC RECOMMENDATIONS

- Support of new and acceleration of existing procedures in obtaining IPPC permits and Waste Management Permit, as well as training local authorities' staff in the issuing of such permits;
- Support the foundation of new and the development of existing enterprises engaged in production and/or services in the environmental protection sector, and support the foundation of new and the 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 conducive to private sector investment and growth;
- Encourage the establishment of partnerships between public and private participants, together with local authorities, in helping implement the Government's waste management policy, which is a prerequisite for establishing a relevant program that would provide the framework for further investments and growth in the private sector;
- Develop facilities for the thermal treatment of waste, especially hazardous waste. Alternatively, establish a company, in co-operation with the Ministry of Energy, Development and Environmental Protection, which will be responsible for the collection and transport of PPP containers to a location outside of Serbia for incineration;
- Introduction of follow-up systems, as well as a deposit for packaging material;
- Further training of employees in municipalities in the 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;
- Adoption of the Law on the Rational Use of Energy;
- Continue the enactment of local and regional waste management plans;
- Adoption of national plans for special types of waste management.

SECTOR SPECIFIC

top

FOOD AND AGRICULTURE

1. SANITARY AND PHYTOSANITARY INSPECTIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011			√
We 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.	2011			√
Shifting from pre-market controls or Inspections" towards "In-Market Controls or Inspections.	2011			√
We recommend that the Sanitary Inspectorate establishes uniform rules as to the number of samples taken and the costs of the analysis.	2011		√	

CURRENT SITUATION

Competencies in the area of sanitary and phytosanitary inspections are split between the two relevant ministries as per the Food Safety Law adopted in 2009. Phytosanitary, Veterinary, and Agricultural Inspections of the Ministry of Agriculture, Forestry and Water Management are responsible for official controls of food and feed of animal and plant origin in primary production, processing, trade, import, transit, and export. Sanitary Inspection of the Ministry of Health is responsible for the control of foods, dietary products, additives, aromas, enzymes of non-animal origin, and of all types of potable water.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

The key problem identified by the FIC is the enforcement of border inspection procedures, which is unpredictable due to the arbitrary application of the relevant legislation as per the following:

1. Sanitary and phytosanitary border inspection and validation processes for imported food and beverage goods are not identical. In fact, the procedures of the two inspection services vary significantly in terms of costs, timeframes, and mechanisms implemented on the ground;
2. Number of samples taken, sampling procedures and costs of laboratory analysis vary significantly not only between sanitary and phytosanitary border inspection services, but also within the inspection service itself, depending on the specific inspector on duty who often has discretion to decide on the abovementioned issues arbitrarily;
3. Even though the costs of laboratory analysis are covered by the importer, sanitary or phytosanitary border inspection officials have the discretion to determine the laboratory processing the samples. In addition, costs of analysis vary significantly across different laboratories;
4. Sanitary and phytosanitary border inspection and validation processes for food and beverage goods are time-consuming; and therefore importers cannot predictably plan their business operations in Serbia. The timeframe needed for border inspection and the validation process is not stipulated and varies based on

factors unknown to the importer;
5. Even though samples taken from original packages often damage the goods and packaging being imported, it is the importer who bears the financial burden of possible loss or destruction;
6. The FIC considers that enforcement of sanitary and phytosanitary border measures applying to food and beverage industry is inconsistent and unpredictable, representing a barrier to trade and thereby breaching the principle of the free movement of goods.

FIC RECOMMENDATIONS

According to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) that is obligatory to all members, including Serbia as an aspiring WTO member, sanitary and phytosanitary inspection procedures must not constitute a means of arbitrary discrimination or disguised barrier to trade. Therefore, the FIC recommends the following:

- The establishment of uniform rules on sanitary and phytosanitary border inspection procedures for the food, beverage and tobacco industry (tobacco leaf, non tobacco material and cigarettes), notably with regard to the number of samples taken per each shipment of goods, as well as the costs of laboratory analysis and a detailed timeframe for the completion of border inspection procedures;

- The consistent implementation of the uniform rules on sanitary and phytosanitary border inspection procedures for the food and beverage industry, excluding the possibility for arbitrary decision-making by specific inspectors.

These measures would greatly enhance the process of importation of food and beverage products, lifting de facto barriers to trade and boosting the business climate in Serbia.

2. NATIONAL REFERENCE LABORATORY

CURRENT SITUATION

The Food Safety Law (Official Gazette No.41/09), adopted in 2009, provides the grounds for harmonisation with EU regulations, in particular Directive 178/2002/EC, as well as compliance with the Agreement on Application of Sanitary and Phytosanitary Measures of the World Trade Organization (WTO).

The Law stipulates the forming of a National Reference Laboratory Directorate in order to perform following activities:

1. Co-operation with the reference laboratories of other countries;
2. Ensuring the establishment of uniform criteria and methods, and the implementation of standards for the operation of authorised laboratories;
3. If necessary, the organisation and monitoring of comparative testing between official national laboratories;
4. The exchanging of information from national laboratories of other countries to the Ministry and authorised laboratories;
5. The providing of expert and technical assistance for the implementation of co-ordinated control plans to the Ministry;
6. The implementation and/or development of testing methods based on international standards, with mandatory validation;
7. The establishment of a quality control system for both authorised laboratories and its own use;
8. If relevant, the providing of services for the confirmation of analysis and super-analysis for the purposes of authorised laboratories;
9. The providing and implementation of statistically

developed control and results monitoring within the authorised laboratories;
10. The organization of comparative testing for authorised laboratories for the purposes of the unique application of methods applied;
11. The providing of services of statistics and an information system to the authorised laboratories;
12. The training of authorised laboratory staff;
13. The preparation of national guidelines for the sampling and handling of samples for the purposes of the execution of a reliable diagnosis;
14. The preparation, maintenance, and distribution of reference material;
15. Participation in international comparative testing.

Additionally, the National Reference Laboratory should have a role in the organising and establishing of the application of uniform methods, criteria, and guidelines for the performance of activities of laboratory testing and a monitoring programme on the territory of the Republic of Serbia, to be performed by those laboratories that have been delegated such activities. Although the Food Safety Law stipulates entry into force in 2009, and by-law enactment within two years of Law adoption, the National Reference Laboratory exists only formally as a Directorate of the Ministry, without a real function and role in Food Safety control.

REMAINING ISSUES

As a main cause of delay in the full formation of a National Reference Laboratory, insufficient funds for equipment have been stated.

As a result, the abovementioned 15 activities are not applied at all in accordance with Food Safety Law, increasing administrative and time costs. This causes additional obstacles in daily business activities and creates trade barriers.

However, although a European Union Delegation to Serbia has dedicated a twinning project, Capacity Building within the National Reference Laboratories Directorate in May 2011, in order to fund this cornerstone institution in Food Safety control, no progress has been made since, and the twinning project is on hold again, this time due to headcount increase restraints.

FIC RECOMMENDATIONS

A National Reference Laboratory would have a very important role in the food chain network as the national centre of professional excellence and should become the pillar of food safety control in the country. As such, the food and agriculture industry depend largely on its proper functioning in order to have a controlled food chain; a level playing field in the market; and ensure consumer protection in this sensitive category.

- The FIC recommends giving this topic utmost priority within the Ministry of Agriculture, Forestry and Water Management's plans for the future, as funds have already been secured;

- Furthermore, we recommend that the Ministry of Agriculture, Forestry and Water Management define, make, publish, and apply by-laws supporting the Food Safety Law – as initially planned: within two years after the adoption of the Food Safety Law – in the shortest possible time (by the end of 2012), which would ensure the proper conditions for full application of the Law.

3. REGULATION ON LABELLING, PRESENTATION AND ADVERTISING OF FOODSTUFFS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011			√
Approximation of these by-laws would contribute to smooth functioning of both internal market and trade with EU countries.	2011			√
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.	2011		√	

CURRENT SITUATION

The Rulebook on Labelling and Marking of Packaged Foodstuffs (Official Gazette of SCG, No 4/2004, 13/2004 and 48/2004) stipulates that no soft drink, syrup, or powdered product label is allowed to show a picture of fruit. This prohibition is not in line with the relevant EU Directive on Labelling, Presentation and Advertising of Foodstuffs (2000/13/EC), which does not forbid pictures of fruit on product labels. In practice, a number of soft drink producers breach the Rulebook on the Labelling of Packaged Foodstuffs by depicting pictures of fruits on their labels without sanctions by law enforcement authorities. Furthermore, the Rulebook on the Labelling and Marking of Packaged Foodstuffs does not cover the area of presentation and advertising of foodstuffs at all, de facto allowing producers to claim unsubstantiated characteristics of their products.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

The ban on showing pictures of fruit on soft drink labels creates an uneven playing field both for exporters and importers forced to change labels for the Serbian market, thus generating additional costs for economic operators and hampering the competitiveness of the Serbian economy. The ban on showing pictures of fruit refers to soft drinks only and thus creates a paradox in the market whereby any kind of product with a fruit aroma or scent (including washing machine detergents, candies, even air fresheners) may show images of fruit, whereas only soft drinks that actually do contain fruit cannot.

The lack of regulation on the presentation and advertising of foodstuffs de facto leaves room for producers to attribute unsubstantiated functional or medicinal properties to their products, a practice strictly prohibited by the EU Directive on Labelling, Presentation and Advertising. The practice of claiming unsubstantiated characteristics of products directly contradicts the consumer information and protection policy of the EU, which should represent prime consideration of any rules on the labelling of foodstuffs. Disclosing the exact nature and characteristics of the product enables the consumer to make his choice with full knowledge of the facts.

The majority of soft drink producers breach the Rulebook on the Labelling of Packaged Foodstuffs by depicting pictures of fruits on their labels without sanctions by law enforcement authorities. A protracted lack of

enforcement measures creates incentives for producers to a free ride through non-compliance. This situation seriously hampers a level playing field and puts those producers that do comply with the Rulebook in an unfavourable position.

Overall, these unfair practices hamper the exports of domestic soft drink products, punish law abiders, and create an uneven playing field for potential investors, while at the same time stimulating non-compliance and environment which is not in line with EU policies.

FIC RECOMMENDATIONS

- Adopt an EU-compliant Rulebook on the Labelling and Marking of Packaged Foodstuffs by eliminating the ban on showing pictures of fruit on soft drink labels and by regulating the area of presentation and advertising of foodstuffs. The adoption of legislation that will introduce EU-compliant labels will simultaneously boost export potential of local producers by diminishing obstacles to free trade;
- Consistent enforcement of the Rulebook on the Labelling and Marking of Packaged Foodstuffs by the relevant authorities.

4. SUBSIDIES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
As part of further development of the NAP, adopt four-year strategies for all major sectors of agricultural production, setting mid-term subsidy policies.	2010			√
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.	2010		√	
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.	2010			√

CURRENT SITUATION

The subsidy policy has been and is likely to remain a significant economic assistance tool of the Serbian as well as many EU members' state policies. 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 the fact that export subsidies will be abolished once Serbia joins the World Trade Organization (WTO), which implies that export competitiveness 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 three months of the current year. If we take into consideration the first quarter of the current year, we see that Serbia recorded a trade deficit of over EUR 1.6 billion, while the agricultural sector posted a EUR 197 million trade surplus in the same period. Having in mind the aforementioned data, the Serbian Government should recognise the agricultural sector as one of key drivers of growth and consequently provide the sector with predictability in terms of a long-term strategy, which is a main precondition for stable operations and a further enhancement of Serbia's agriculture trade balance. We believe that there is a lot of potential in the agricultural sector in Serbia, but without stronger Government support in terms of a clear long-term strategy for subsidies, the sector's 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 the poor breed composition, a low level of land irrigation, and a weak utilisation of inputs and seed on the one hand, and obsolete equipment, technology, and infrastructure on the other.

POSITIVE DEVELOPMENTS

One of positive improvements during 2012 was the refocusing of the subsidy system from payments per surface (ha) to payments per unit of product (kg). Such a change brought back the incentive for farmers to focus on delivering the product and yield.

Another positive signal given during 2012 was in the form of indications and statements by the Government and the Ministry of Agriculture that strong consideration exists for the adoption of medium to long-term subsidy policies. As in this and previous White Books, such a recommendation remains one of the cornerstones of effective and rapid development of agriculture in Serbia.

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

- Adopt four-year strategies for all major sectors of agricultural production, setting mid-to-long-term subsidy policies;
- Adopt regulations promoting quality standards in agricultural production (for example Global GAP and HACCP for milk) and change 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 entities and individuals under equal conditions, regardless of the ownership structure or past or present growing areas, in order to secure transparency of the process, rewarding of efficient producers, and the recognition of the specialisation and professionalisation of farming.

5. REGISTRATION PROCESS FOR PLANT PROTECTION PRODUCTS (PPPS)

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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).	2010			√
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.	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, Trade, Forestry and Water Management (hereinafter: the "Ministry"). 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), passed in 1998.

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

The majority of the pesticides registered in Serbia at the moment would not be granted registration in the European Union and other destination markets for Serbian food exports.

The Ministry of Agriculture, Forestry and Water Management and the Health and Safety Executive, the Chemicals Regulation Directorate (UK), have started a Twinning project SR/08/IB/AG/01: "Harmonisation of national legislation with EU legislation for placing on the market and control of Plant Protection Products and implementation of new legal provisions", financed by the European Union. There are three phases of this project (already started and should end at the time of expected EU accession, 2020-2021) that should ensure that products containing non-EU approved active substances will be removed prior to accession; registered products containing active substances compliant with EU requirements and any necessary restrictions related to the active substance approval should be applied prior to accession; and a programme to authorise products according to EU standards needs to be developed and implemented prior to accession.

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.

In Serbia, no such process exists; all technical materials are only required to comply with the 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. Note that so long as no Compliance Checks are carried out with all secondary applicant

products, Serbia will not be in line with the EU legislation.

POSITIVE DEVELOPMENTS

Despite the fact that the Ministry has proven to be open for communication, unfortunately the only positive development in this period was that there was a new Rulebook on the label and instructions for use (Declaration) for Plant Protection Products (PPPs), adopted on 29 March 2012.

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 a product is not only efficient for the recommended use, but also safe to crops, farmers, end users, 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.

During the course of the twinning programme, any implementation periods for changes must be applicable to all registration holders in Serbia. Transitional measures have to be met by all companies on the Serbian market from the same time period. New legislation should be introduced on 1 January 2014 and be applicable by law to all holders, with penalties for failure to comply: i.e., revocation of authorisations. This will be in line with EU countries. Changes in the legislation or even new legislation will be necessary to adapt the proposed plan for alignment.

The FIC F&A Committee remains of the opinion that the role of local authorities is essential and cannot be replaced by any company's agreements. Local authorities are leading the charge 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 follow international standards with an active role played by state authorities.

Criteria for the recognition process – recognising EU authorised products in the near future – needs to be properly and clearly defined.

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, whilst simultaneously creating favourable market conditions for foreign investments by bringing into force all the articles of the new Law on PPPs immediately and starting a revision of the existing registrations;
- New by-laws in line with the new Law on PPPs that would enable efficient registration, inspection, sales, import and use of pesticides in agriculture and forestry.

6. QUALITY STANDARDS IN MILK AND JUICE PRODUCTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2010			√
Full implementation of the Rulebook on the Quality of Juices and Nectars.	2011		√	
Adopt the Rulebook on Foodstuff Labelling, in accordance with the EU legislation.	2011			√
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.	2010			√

CURRENT SITUATION

Quality standards in general are issues that concern the entire food industry and the Serbian market in particular and therefore 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 EU legislation, although the legal framework for milk and dairy products production has been compliant with similar regulations in the European Union. 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

In the field of juice production, the Rulebook on the quality of fruit juices, concentrated fruit juices, powdered fruit juices, fruit nectars, and similar products (Official Gazette of the RS No. 27/2010, 67/2010, 70/2010; corr. 44/2011 and 77/2011) is compliant with relevant EU directive.

In the field of milk and dairy products production, the following have been adopted: the Rulebook on general and special conditions of hygiene of the foodstuffs in any stage of production and trade (RS Official Gazette, No 72/2010); and the Rulebook on veterinary-sanitary conditions, namely general and special conditions of hygiene of foodstuffs of animal origin, as well as conditions of the hygiene of foodstuffs of animal origin (RS Official Gazette, No 25/2011), which is fully compliant with the EU Regulation and fully conformed with earlier Regulation on raw milk quality (RS Official Gazette, No 21/2009). Furthermore, regulation on milk product quality and starter cultures (RS Official Gazette, No 33/2010) is also in use.

REMAINING ISSUES

Although there is the legal framework for high quality milk production, due to milk production at farms with a small number of cows, it does not fully reflect the actual require-

ments in raw milk production in Serbia. The basic reason of insufficient implementation of the requirements prescribed in the stated Rulebooks is the non-existence of a National Reference Laboratory for raw milk quality assessment. This would contribute to the entire quality of raw milk being placed on the market to be tested by the methods of the same accuracy and assessed in compliance with the standards stated in the Rulebooks. Presently, raw milk at buy-off is tested by methods of diverse accuracy, placing producers into an unequal position.

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

The Rulebook on product labelling and marking, though enacted in 2004, has not been fully compliant with EU regulation in this area. The preparation of a new Rulebook on labelling is in progress and will be compliant with EU regulation and should contribute to greater protection of the interests of consumers.

When it comes to implications for the juice and nectar 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 such recommendations). This paves the way for inconsistency 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 receive accurate information on the product, and misleads consumers. Last but not least, this practice puts the local fruit producing industry at a disadvantage 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. Additionally, it is important to provide the NRL with professionals and experts as soon as possible, so that it can ensure the fulfilment of all tasks foreseen by the Law, and more closely define the place, role and obligations of the National reference laboratory for the safety of foodstuffs;
- Initially, for such purpose, it would be appropriate to use the possibility of financing by EU pre-accession funds as well as an EU Twinning project of food safety and animal welfare to Serbia. 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;
- For the purpose of implementation of the unique system of raw milk quality assessment, the establishment of the National Reference Laboratory or the laboratory for raw milk quality testing should be supported;
- Adopt the Rulebook on Foodstuff Labelling, in accordance with the EU legislation;
- Full implementation of the Rulebook on the Quality of Juices and Nectars;

- Consider adopting amendments to the Law on Consumer Protection and the Law on Advertising addressing the 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.

7. RECLASSIFICATION AND RELABELING OF CHEMICALS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011	√		
Request the Ministry of Agriculture to speed up the amendment of certificates, once they have been submitted.	2011		√	

INTRODUCTION

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 the 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 based on hazard classes 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

There is a new Rulebook on labelling and instructions for use (Declaration) for Plant Protection Products (PPPs), with specific requirements and risk and safety phrases for humans and the environment and the method of handling the empty containers of PPPs (published in the Official Gazette of the RS, No. 21/12 of 21 March 2012.), which came into power on 29 March 2012.

This Rulebook is in line with Directive 91/414/EEC; Annex IV – Standard phrases for special risks for humans or the environment; Annex V – Standard phrases for safety precautions for the protection of humans or the environment; and Commission Regulation No 547/2011 - implementing Regulation No 1107/2009 as regards labelling requirements for plant protection products.

From the stewardship point of view, these changes are welcome, as they focus on the safe use of PPPs, for the end user as well as the environment. It also regulates a field of work where we have had a lot of uncertainties until now (unclear responsibilities of the ministries).

POSITIVE DEVELOPMENTS

The new by-law is in line with the EU legislation.

REMAINING ISSUES

Relabeling packaging of PPPs according to the new rulebook.

FIC RECOMMENDATIONS

- The Ministry of Agriculture, Forestry and Water Management needs to continue adopting additional by-laws, in accordance with the EU legislation.

8. LIVESTOCK PRODUCTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011			√
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.	2011		√	
It is crucial to implement relevant quality and food safety standards based on good agricultural practice and acquis communautaire. Also, it is important to provide a traceability system on the farms. Adopting such criteria could leverage more opportunity for export and contribute to overall competitiveness.	2011		√	
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.	2011			√

CURRENT SITUATION

Livestock production is an important branch of agriculture in the Republic of Serbia and has always had a leading role in contributing to the subsistence of the domestic population. Livestock production provides necessary products used in the diet of the local population (meat, milk, eggs) and also provides basics for the development of certain industries (the food industry, machinery industry, pharmaceutical industry, etc.). Also, livestock production is expected to provide products which satisfy standards of quality and food safety.

The level of development of livestock production is a direct projection of the level of development of overall agriculture of the country. In the structure of gross created value participation, crop production in Serbia is 58% while the participation of livestock production is only 42%. In the EU, this ratio is 70% vs. 30% in favour of livestock production.

In spite of extremely favourable natural conditions in Serbia, in comparison to countries with highly developed agriculture, Serbia is significantly underdeveloped by all standards of measurement of livestock production (number of conditional heads, overall volume of livestock products, etc.) Reasons for such a negative trend in livestock production are: disparity of prices; loss of market; lack of export (it is not possible to provide quantities for quotas of products which can be exported); a reduced standard of living standard in the domestic population as a whole; ruined relationship between primary production and processing industry;

monopoly on the side of processors (and buyers of the live animals); inefficient agricultural policies of the state; etc.

Existing livestock funds represent a significant development resource for the improvement of the genetic qualities of animals, as well as technology and organisation of such production, though the number of animals is very low in comparison to the available areas of arable land (0.25 conditional heads per 1ha in Vojvodina; 0.34 conditional heads per 1ha in Central Serbia; or 0.3 conditional heads per 1ha in the whole of Serbia, while there are 0.9 conditional heads per 1ha in EU countries).

POSITIVE DEVELOPMENTS

Serbia has been granted candidacy for membership in the EU. This means that livestock production has to adjust and prepare for a unified and well developed market without trading barriers.

Serbian agriculture can count on RSD 30.3 billion in the budget for 2012 (RSD 2.9 billion more than in the previous year). Most of these funds will be dedicated to support development of livestock production. Farmers can count on subsidies for milk in the amount of RSD 5/l and heads registered in the public register in the amount of RSD 25,000D/head remaining (as announced previously by the line ministry).

Serbia, as a country, is entitled to participate in all European conferences dealing with relevant subjects in the role of an observer; and for a few years now there has been a Department for International trading and certification within the competent Ministry for agriculture; as well as a Directorate for Veterinary Affairs which, among others, has a scope of work directed towards the harmonisation of domestic legislation with EU legislation.

REMAINING ISSUES

At the time Serbia enters the EU market, domestic livestock production will face new challenges; i.e., competition in the market; reduced possibility of protection from imports; implementation of standards (HACCP, ISO, GLOBAL GAB etc.); reduced level of domestic support, and others. Some of the items that require more immediate attention are:

1. Subjective and incoherent interpretation of the rules, laws, by-laws and regulations in different regions and by inspectors individually. This would make business easier and more straightforward for big producers that operate in several jurisdictions in Serbia in which they encounter problems mentioned above. This implies the education of inspection and surveillance services and the rendering of unique rulebooks and interpretation of legislative requirements across the board;
2. Production of food which satisfies the safety needs of consumers;
3. Development of a general, co-ordinated, and integrated national system for disease control and monitoring;
4. Introduction of modern technologies in the selection and reproduction and improvement of the animal genetic pool;
5. Popularisation of organic production;
6. Increasing the technological level of production to achieve competitiveness in the world market.

FIC RECOMMENDATIONS

- Laws and by-laws must be applied in a uniform manner across the board and without exceptions;
- State bodies have to introduce protective measures for livestock producers (milk producers in particular) to protect them from excessive fluctuations of prices of crop products used as food for livestock;
- It is necessary to establish a group of experts who would establish a sustainable development strategy in the long term through close contact with farmers;
- Increase of exports to the EU has to be supported by the application of quality standards including traceability practices and good farming practice.

TOBACCO INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011	√		
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.	2010			√
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.	2008		√	
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.	2011		√	

CURRENT SITUATION

In spite of the severe economic crises, the tobacco industry remains one of the strongest and most stable sectors of the Serbian economy, contributing 14% of total Government revenues, according to a Ministry of Finance projection for 2012, and 2.6% of Serbia's GDP. Three leading global tobacco companies have established their production capacities in Serbia, while the level of foreign investments in the tobacco industry has exceeded EUR 1.2 billion, clearly demonstrating 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.

POSITIVE DEVELOPMENTS

In the last year, the adoption of the new Excise Tax Law (Official Gazette 101/11) was the biggest positive development. The decrease of the ad valorem and increasing of the specific excise tax element, together with the introduction of Weighted Average Price (WAP) as the EU-aligned reference point and providing a two-year excise calendar, are steps toward a smooth and gradual harmonisation with the respective EU directive (2011/64/EU).

REMAINING ISSUES

1. The Law on Advertising adopted in 2005 heavily restricts tobacco advertising. Furthermore, some of its provisions are not precise enough, allowing arbitrary interpretation and posing difficulties in the implementation of the Law for relevant government inspections and the industry. The draft of a new Advertising Law contains further restrictions in line with the related EU Directive and the best regulatory practices in EU Member States, and it clarifies critical provisions. In addition to this, the FIC fully supports a balanced and smooth introduction of the regulation in the area of tobacco as well as a smooth harmonisation with the respective EU directives. However, any new regulation or change in the existing regulation such as the adoption of the Action Plan for the implementation of the Strategy for Tobacco Control, new Advertising Law, or government input at the fifth session of the Conference of the Parties (COP5), which takes place in November in South Korea, may have serious consequences on the whole tobacco chain starting from leaf tobacco farmers, production, government revenues, employment, the retail and hospitality sector, etc.
2. The Law on Excise Taxes, with its calendar and increased excise duties in 2012 and 2013, respectively, represents a step further in harmonisation with the related EU Directive. Bearing in mind the importance of the cigarette excise tax policy and its predictability for Government

revenues and the tobacco industry, it is very important to implement the current envisaged excise calendar by the end of the planned calendar (31 December 2013). In addition, the health-related Budget fund charge, introduced by the Tobacco Law in 2005, makes public finances less transparent and contrary to positive EU member state practices and IMF principles, and thus needs to be integrated into the Excise Tax Law.

3. The lack of regulation in the area of fiscal forestalling seriously detriments the value of the domestic tobacco industry as well as Government revenues. Bearing in mind the size of the current forestalling, we strongly believe that it is in mutual interest of the Government and the domestic tobacco industry to regulate this area as soon as possible.
4. Any change in the area of Serbian customs treatment of tobacco and tobacco products (CEFTA and SAA related or any new bilateral FTA), without consensus of the local tobacco industry, can have serious consequences for the predictability of the domestic regulatory environment and serious consequences for employment and macroeconomic stability and threaten the position of Serbia as a favourable destination for investments.

FIC RECOMMENDATIONS

- The regulator has to set forth clear rules in tobacco advertising and tobacco control that would be effectively enforced and that would create a level playing field for all market participants. It is important that regulators recognise the national implications of regulatory measures they consider by employing a complete assessment of the science base as well as an accurate assessment of wide socio-economic consequences thereof. Given the complexities of certain regulatory solutions, the expertise of the tobacco companies may prove especially important in developing technically viable, practically workable, and enforceable regulations;

- Prior to the adoption of any regulatory and fiscal measure by the Serbian Government, transparent dialogue and consultations with the tobacco industry and all third parties that would be affected by these measures (leaf tobacco farmers, retailers, hospitality sectors, suppliers etc.) must first take place. Regulators should hold public consultations and complete meaningful assessments of any regulatory proposal in the early stages of its development. The FIC supports open and transparent dialogue between regulators and the tobacco industry, just like any other industry, following the principles of transparency, participation, openness, accountability, effectiveness, and compatibility with EU legislation;

- The FIC recommends no changes to the Law on Excise Taxes and its stipulated and pre-determined dynamics of planed excise increases. Any changes of the agreed excise calendar articulated in the Excise Tax Law or any new excise increase would seriously undermine the predictability of the regulatory environment and lead to the creation of a black market, a loss of state revenues, and the distortion of the domestic tobacco industry. In addition, the Government should consistently pursue transparency of tobacco taxation ensuring that all fiscal charges on tobacco products are directed solely through the Law on Excise Taxes;

- The health-related Budget fund charge, introduced by the Tobacco Law in 2005, should be integrated into the specific excise element within the Law on Excise Taxes, in line with EU practices;

- Bearing in mind the size of fiscal forestalling as such, the FIC believes that regulation of this area should come in phases (maximum 45 days uplift in 2013 and 30 days uplift in 2014 and beyond) in order not to jeopardise Government revenues but, at the same time, generate value on the domestic tobacco market. Any radical regulation in this area might lead to a significant one-off impact on the Government budget;

- Serbia should keep the current customs regime in the area of tobacco. Any potential change of the current customs treatment of tobacco and tobacco products or granting any other concession for imports of cigarettes from EU Member States or to any other third party would have enormous consequences for the Serbian economy, budget and trade deficit, employment, macroeconomic stability, etc. Also, such a Government decision would be contrary to Section 3.1. of the CEFTA Action Plan adopted in 2007, which is the foundation for the predictability of the whole tobacco industry chain.

INSURANCE SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011		√	
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.	2010		√	
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.	2010			√
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.	2009			√
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.	2009			√

CURRENT SITUATION

Life and non-life insurance

Insurance companies and their activities are mainly regulated and governed by the Insurance Law, adopted in 2004, as amended, and related by-laws adopted by the National Bank of Serbia (NBS). Other relevant legal sources are the Law on Compulsory Car Insurance and the By-law on Voluntary Health Insurance adopted by the Government of the Republic of Serbia. The lateral relevant legal source is the Traffic Safety Law. The NBS is the competent authority for the issuance and withdrawal of insurance companies' licenses and for conducting supervision in the insurance sector. It also extends its opinions on the laws regulating this area. The Ministry of Finance and Economy is the competent authority for drafting amendments to major laws. The Ministry of Interior is competent for drafting and implementing the Traffic Safety Law.

The following are regulated by the Insurance Law:

1. Licensing of insurance companies – mandatory requirements related to assets, organisation, internal documents, policy, and business plans;
2. Common organisation requirements for insurance companies - requirements related to the foundation document and Statute, the mandatory bodies (General Shareholder Assembly, Management and Supervisory Boards, and General Manager), and "relevant and appropriate" requirements for their appointment;
3. Issues related to actuaries and internal audit;
4. Reinsurance;
5. Activities of insurance agents and brokers and related licenses;
6. Supervision of insurance activities by the NBS.

The following is regulated by the Law on Compulsory Car Insurance (hereafter referred to as the "CI Law"):

1. Basic contractual elements in the CI Law;
2. Association of insurers and its authorities;
3. Procedures for price limitation (including the Association of Insurers and the NBS);
4. Legal framework of the CI policies.

The following is regulated by the By-law on Voluntary Health Insurance:

1. Authority of the Ministry of Health for the issuance and withdrawal of licenses for voluntary health insurance;
2. Mandatory priority of the social components in health insurance (no client can be denied insurance);
3. Conditions for participation in voluntary health insurance, even though one set of conditions has already been met when licenses were issued to companies for dealing with that type of insurance – the duality will continue to create confusion.

Pursuant to the provisions of the current Insurance Law, an insurance company is not allowed to deal concurrently with life and non-life insurance. Likewise, insurance companies can be involved in insurance and reinsurance activities only. The period of adaptation related to the separation of the activities – until December 31, 2011 – was provided to existing composite insurance companies. New companies are to state their field of operation at the time of their founding. The Government of the Republic of Serbia proposed amendments to the Insurance Law, which seek to limit the existing inequality between the companies which separated their insurance activities and those which remained composite. There is a major legal insecurity related to the final legal framework pertaining to this issue.

Overview of the insurance market

There are 27 active insurance companies in Serbia. Of these, 23 deal with insurance only and four with reinsurance only. New foreign insurers have entered the market either through acquisition or under greenfield investments.

Based on data for the first quarter of 2012, compared to the same period in 2011, the insurance market reported an overall growth of 3.89%, equivalent to RSD 14.9 billion.

The market structure also shows some signs of change. The share of gross life insurance premiums written is at 16.55%. This rate is encouraging but still low compared to the majority of European countries.

In connection with non-life types of insurance, in 2011 car insurance was a leading insurance product. Car insurance is an important market segment, related to both Casco insurance with a market share of 12.21%, and compulsory car insurance with a 26.65% share. The long-awaited Compulsory Insurance Law has also been adopted. In the course of almost a year of its implementation and practice, the Law has shown some improvements as well as some weaknesses related to the regulation of CI sale, which is one of the most delicate issues on the market.

The market is still very concentrated because the three biggest insurers in Serbia still have a combined market share of a little over 65%.

Contributing to a great extent to the total premiums written in Serbia are insurance companies with majority foreign ownership. They account for the majority market share of life insurance related to premiums written.

Legislation-wise, the year 2010 and the first half of 2012 were years in which the NBS put forth additional efforts regulating CI markets. The NBS is still developing a system for consumer (insured client) rights protection.

Modification of the Insurance Law and public debate

The proposed draft of the Insurance Law presented by the Working Group, composed of representatives of the National Bank of Serbia and the Ministry of Finance of the Republic of Serbia, on 4 April 2012 broadly defined discretion of the National Bank of Serbia and provided by-laws regulating important issues in a large number of Articles, as follows: 30, 33, 42, 43, 63, 89, 104, 134, 140, 141, 155, 156, 167, 189, 204, 236, according to the original version of the said draft (http://www.nbs.rs / internet/cirilica/20/nacrti.html).

The draft of the law provides an alternative to Articles 286 to 288, leaning towards abolishing the obligatory division of life insurance and non-life insurance operations.

Articles 181 to 183 of the draft of the Insurance Law provide the procedures and actions that precede the conclusion of an insurance contract.

Voluntary health insurance

Based on data available as of December 31, 2011, the share of health insurance premiums in Serbia (RSD 971,764,000) in the total insurance premiums (RSD 57,314,003,000) is only 1.70%. The fact that the share of health insurance in the total insurance premiums on December 31, 2010 was approximately 1.81% clearly indicates a limited health insurance market. In addition to that, requests for this type of insurance have been made by the same legal entities for years. The reason for such a lack of interest, in addition to the economic crisis, is to be found in the tax rule by which

the health insurance premium paid by the employer is subject to taxation. The voluntary health insurance product is related to the compensation of costs incurred as a result of a client's treatment for injury or a disease.

Tariff system and the underwriting model

The NBS regulates the market with severe measures supervising the general insurance requirements and tariffs, which is not the case in the majority of the EU countries where technical reserves are the focus of supervision and the general requirements and tariffs are completely in the authority of the company. The existing insurance models on the market are mainly based on the aforementioned risk insurances and tariffs, which is not the case in the majority of the EU countries. The increased demand for new insurance products, and those customised for specific clients (frequently initiated by foreign investors) puts pressure on insurers in Serbia to extend their offer; this will lead to the so-called "underwriting model" and, finally, to the development of the insurance market.

The majority of insurers in Serbia already use, for some specific types of insurance, pricing rating tools and foreign reinsurers, so the quoted premium should be in line with the requested coverage in order to ensure that the reinsurance coverage is obtained for the undertaken risk.

Some types of insurance, such as the Air-Force insurance, depend directly on the quotation of a foreign reinsurer; i.e., on the premium rate obtained by said foreign reinsurer due to very high insurance limits (amounts) where almost overall risk is borne by foreign reinsurers. A similar situation lies with the insurance of works on big infrastructure projects, and property insurance of large companies (international companies in Serbia, in particular) from "all risks", etc.

Reform of the regulatory framework pertaining to vehicle registration as the only reason for the domination of technical inspection and vehicle registration agencies, along with transparency of insurance/provision costs of such type of insurance

In addition to the rather positive developments in the insurance industry recorded in 2011, when the gross premium written was 1.40% higher compared to the previous year (with the growth of the gross life insurance premium written at 6.84% and the growth of the gross invoiced non-life insurance premium written at 0.32%), the structure of the gross premium written by types of insurance is still unfavourable, since car insurance is still the leading non-life insurance product. The share of car insurance (Autocasco) in the total non-life insurance premium written was 15.17% in 2011, while the share of compulsory car insurance (CI) was 39.54%, which, when put together, is 54.71% of the total gross non-life insurance premium written.

The three biggest insurers in the Republic of Serbia (Dunav Insurance, Delta Generali Insurance and DDOR), have a total share in the gross insurance premium of 63.14%, while the total share of those three insurers in the gross car insurance (CI and AC) premium written is 58.20%, thus making the market very concentrated.

Except certain activities undertaken in 2011 in the insurance area by the NBS as the regulatory body to reduce problems burdening this segment of the insurance market, little else has been done. The regulatory changes made in previous years, and the adoption of by-laws completing the implementation of the adopted regulatory solutions, did nothing to stop the domination of technical inspection and vehicle registration agencies as the leading channels for selling car insurance policies. Their "negotiation" capacities remained the same irrespective of the regulatory restrictions of the agency commission to be legally paid to the agents – 5% of the invoiced insurance premium. The actual commission paid on the insurance market, however, is much bigger, ranging from 20% to 30%, paid out through various fictitious forms. The reason for such behaviour is the fact that other types of insurance are underdeveloped and that the main sources of solvent financial resources and maintenance of solvency of insurance companies are the financial resources collected from the insurance premium of those two types of insurance (CI and AC). During the previous two decades, during which period the problem was indentified, several dozen agreements and decisions were signed and several agreements and consensuses were made between the insurance companies of the Association of Insurers of Serbia (before that of Yugoslavia) and those not included in the Association. The objective was always the same: reduction of commission provided to insurance agencies. The race for extended portfolio and high competition in a small market soon led to companies giving up on their agreements and the race for commissions would start over again.

The fact that over the last ten years the number of technical inspections increased several times did not help to reduce insurance commissions for auto insurance, nor did the regulatory modifications introducing increasingly more and more stringent requirements for techni-

cal inspection performance and payment of commission. Because of the relatively disorderly and undeveloped insurance market, insurance companies involved in selling these types of insurance are forced into riskier behaviour. They are confronted with the dilemma: stop and pull out of the implementation of this type of insurance (because if they comply with legally regulated representative commission in the gross amount of 5%, they will operate with a modest insurance portfolio) or defer to unfair competition following the trends of representative commissions, taking the chance that the NBS, as the regulatory authority, will sanction such behaviour.

The amendments to the legislation, which attempted to minimise the issue of high representative commissions, did not achieve much. The 50% limit on calculated overhead allowance that can be paid to the automobile liability insurance representative, which accounted for 11.45% of gross premiums, was not enforced in practice. The new legislation modified this percentage to 5% of gross premiums written, which in spite of the measures taken by the NBS and the sanctions of late 2011, also was not enforced by most of the Insurers licensed for the implementation of this type of insurance.

POSITIVE DEVELOPMENTS

Compared to the recommendations from the White Book, there were no significant improvements.

That being said, the insurance industry did manage to keep its financial stability.

REMAINING ISSUES

Modification of the Insurance Law and public debate

The broadly defined discretion of the regulatory body in the draft of the Insurance Law can lead to major problems in the application of the law, because this way predictability in the resolution of certain issues and regulation of the insurance market is lost, and it is one of the fundamental values of the rule of law.

The draft of the law provides an alternative to the articles of the law leaning towards abolishing the division of insurance operations into life and non-life. This puts the companies that have fulfilled that legal obligation and divided their insurance business into life and non-life in a disadvantageous position in the market in comparison to composite insurance companies. Therefore, it is necessary to allow the existing companies operating separately to consolidate, and include provisions to consolidate functions and solve the tax issue between the business of life and non-life insurance in companies that have fulfilled the legal obligation and divided insurance business into life and non-life insurance (Article 59 and Article 160), ensuring equal participation of all companies in the insurance market.

Adequate resolution of the issue of regulation of the insurance contract by the law regulating the status issues is not defined. Therefore, it would be preferred to pass a Law on Insurance Contracts, especially considering that a large number of EU member states resolved issues of contractual relations, and issues of preliminary notifications of the clients, exactly via a separate Law on Insurance Contracts.

Voluntary health insurance

The basic problem with this type of insurance is the tax treatment of this product in collective contracts; that is, corporate contracting. A large number of companies have decided against buying this product because of steep costs that have to be paid to insure their employees, burdening gross employee earnings costs. Tax burden prevents the growth of this socially very important type of voluntary insurance.

Modifications of the Law on Personal Income Tax would define the exemption from calculating taxes on income; that is, on the voluntary health insurance premium, which the employer is under obligation to pay.

Modifications of the Law on Compulsory Social Insurance would define the modifications in currently valid legal regulation limiting the amount of the monthly premium (since the Voluntary health insurance has no savings attributes, but is instead pure risk insurance).

Modifications of the Law on Corporate Income Tax would define the costs of the payment of voluntary health insurance premium by the employer as an expense for tax purposes.

Another problem with this type of insurance is the procedure of compliance with legislation. All changes in the General Conditions (and the accompanying rules) must first be verified by the Ministry of Health as defined by the Decree

on Voluntary Health Insurance. The compliance process itself takes a long time (up to a couple of months), creating a problem for the insurers when dealing with tailor-made applications for this type of insurance, and in particular with requests by multinational companies that have insurance programs (employee benefit). Since this type of insurance is the insurance of the costs of treatment, and therefore may be a means to develop private medical practices, processes and modifications to General and Special Policy Conditions, it must have the same status with regulatory bodies as all the other types of insurance.

The development of this product would confirm the intention of the Ministry of Health to carry out reforms in citizen health care and health insurance, and the contracting of Voluntary Health Insurance by employers would reduce the risk of occupational diseases and illnesses related to work.

Reforming the legal framework in the vehicle registration, which is the only reason for the dominance of technical inspection and vehicle registration agencies as well as transparency of insurance costs/acquisition costs for this type of insurance

Regarding reduction of the representative commission in automobile liability insurance, there are several potential dilemmas:

1. The regulatory body should apply the existing legal authorisations and penalties provided promptly and indiscriminately, but if selection is done it should be done in such a way that the measures are imposed where they will have the greatest preventative effect on the insurance market;
2. Amendments of legislation in the regulations governing the issue of insurance (Insurance Law, the Law on Compulsory Insurance in Traffic and related by-laws), and regulations governing traffic safety (Law on Road Safety, Rules of examination of the technical state of vehicles and other related by-laws), both of which could be harmonised.

Amendments to these regulations could allow for:

1. Strengthening of alternative distribution channels of insurance policy (independent outlets, Internet policy sales, bank tellers); that is, the development of new forms of internal and external sales;
2. Possibility of car registrations on the business premises of insurance companies., as well as in certain EU countries;
3. Changes in the number and timelines of mandatory technical checks for newer vehicles in accordance with the good practice of other countries in the region; that is, the discrepancy between the insurance expiry date and registration date;
4. A review of methods and amounts of the representative commission did not, in the past, lead to market discipline, but instead had a negative effect in the form of cost increases of the representative commissions through fictitious maintenance costs, electricity, telephone, marketing services and the like, all of which lead to a real increase in costs, and to concealment of actual acquisition costs; that is, to non-transparency in the business of some insurance companies, as well as to the establishment of insurance company related legal entities registered for business services for the "technical testing and analysis" of vehicles.

FIC RECOMMENDATIONS:

- Correct the articles from the original draft of the Insurance Law (http://www.nbs.rs/internet/cirilica/20/nacrti.html) – No. 30, 33, 42, 43, 63, 89, 104, 134, 140, 141, 155, 156, 167, 189, 204, 236 – relating to the adoption of by-laws and broadly defined discretion of the regulatory body; and in the law itself solve the issues or set a deadline for the adoption of by-laws. Ensure consolidation of companies that divided insurance business into life and non-life. Amend articles 59, 160 and 181, 182, 183, and pass a special law on insurance contracts;

- It is recommended to pass modifications and amendments to the Decree on Voluntary Health insurance that would enable the adoption of new terms and tariffs, or modifications and amendments to existing ones, in line with procedures that exist in other types of insurance; that is, to submit adopted documents to the NBS, without prior consent of the Ministry. Modify and amend the following legislation in order to stimulate development of private health insurance:

a). The Law on Personal Income Tax (Article 14.b and Article 21);
b). The Law on Compulsory Social Insurance (Article 13);
c). The Law on Corporate Income Tax (Article 9).

- The Government of the Republic of Serbia (the Ministry of Finance and Economy and the Ministry of Internal Affairs), together with the NBS and insurance companies, should reform the legal framework for registration of vehicles, currently too complex administratively – itself the only reason for the dominance of technical inspection and vehicle registration agencies. There are models available in Europe that are more efficient, with minimal administration and more efficient results for citizens, the insurance industry, and public administration;

- Focus on the monitoring of technical reserves that will give all authority to insurance companies to regulate the general conditions of insurance and the transition from the model of tariffs to "underwriting" models in order to stimulate new processes and practices both within insurance companies and the regulator itself.

LEASING

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Abolition of statutory reserve for financial leasing.	2011	√		
Initiation of amendment to the provision of the Law on Corporate Income Tax.	2009			√
Initiation of amendment to the Law on Value Added Tax, where it concerns interest taxation.	2009			√
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.	2010			√
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.	2011			√
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.	2011			√

CURRENT SITUATION

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 nine leasing companies at first, followed by a very intensive development of leasing activities in Serbia over 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, leaders in the world of banking and finance in Central and South-East European markets. These groups have applied their knowledge and high corporate business standards to the Serbian market as well.

A continued decrease in the leasing market occurred in 2009 and 2010, resulting in a 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, with 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 an 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 by corporate companies. Initiation and continual efforts to adopt changes within the framework of the leasing industry would contribute to additional gain of current values with the national and international business entities.

POSITIVE DEVELOPMENTS

The following was done over the course of 2011:

1. Obligation of a financial leasing provider to keep statutory reserve funds has been abolished.
2. 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 the economy and spur the growth of the leasing industry over the forthcoming period.
3. The amendment to the Law on Financial Leasing abolished the minimum term for the conclusion of leasing contracts.
4. The entry into force of the Law on Enforcement and Security facilitated the enforcement procedure in cases of leasing and a leasing contract, thus becoming an enforceable judicial instrument.

REMAINING ISSUES

1. Initiation of an amendment to the provision of the Law on Corporate Income Tax, or a different interpretation of the same provision ("a taxpayer that invests into fixed assets within own registered business activity will be entitled to a tax credit in the amount of 20% of the investment made, provided it does 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 said tax credit. It has been proposed that investments into fixed assets through financial leasing be recognised as a tax credit, 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 contract's validity and repayment period, the pertaining part of investment for each calendar year should be recognised to a taxpayer. In case the contract on financial leasing is terminated during the repayment period, a taxpayer would be obliged to calculate, show in the tax return, and pay the tax on the date of submission of the tax return for the next tax period, in the amount that would have been paid if tax credit had not been used, indexed from the date of submission of the tax return for the tax period in which the right to a tax credit was gained until the date of the disposal of the asset to the rate of the retail price growth according to the data of the state authority in charge of statistics;

2. Initiation of an amendment to the Law on Value-Added Tax, where it concerns interest taxation. It is necessary to equalise the tax treatment of interest in financial leasing with tax treatment of interest in the banking sector. For this reason, we propose abolishing VAT on the part of the leasing fee related to interest;

3. The request of the leasing sector for a dialogue with tax authorities with respect to setting the business rules of operating leasing activities in Serbia should be accommodated. We think that clear definitions of the business rules for operating leasing would improve competitiveness of the national economy, both for future investments and the regular performance of economic activities of existing corporate companies; also, in this way further approximation of the business environment to the one existing in surrounding countries and in the European Union countries would be continued;

4. Organisation of task forces and meetings between the representatives of the Ministry of Finance and Economy 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 lessee, also transferring to the lessee the rights to possession and use of the subject of leasing, explicitly with the aim of performing activities in accordance with the law (it is a financial intermediation activity), thus gaining the right to the recovery of input tax;

5. Amendments to the Law on Corporate Income Tax, published in the Official Gazette of the 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 a creditor having the status of a related entity, the amount of interest and pertinent fees on credit are recognised to a taxpayer 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 taxpayer's own capital. We wish to initiate an amendment to Article 62 of the Law on Corporate Income Tax and amendment to Article 6 of the Rulebook on Tax Balance Sheet Contents for the following reasons:
   a) 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 with respect to the method of recognition of interests from related entities in case of borrowings from parent banks;
   b) The abovementioned methodology is not favourable because interests are not recognised in their entirety in the majority of cases, nor they are recognised in small amounts. The parent banks have better access to the money market, which means that for this reason leasing companies also get better interests than in the case of direct borrowings from external creditors. Such a treatment has a destimulating effect on parent 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.

6. Initiation of an amendment to the Decision on public car parks of local self-governance where the Lessee would be considered the user of the public car park in the case of vehicles given in financial leasing. Based on the Decisions on public car parks in the cities and municipalities in Serbia, users of public car parks are mainly drivers or owners if drivers are not identified. Those Decisions further envisage that in case the users of public car parks violate the provisions of these Decisions by not paying a parking ticket, they are obliged to pay an additional ticket. If a vehicle is under financial leasing, Decisions on public car parks do not take into account financial leasing transactions and thus additional tickets are sent to leasing companies even though users of such vehicles are financial leasing beneficiaries. According to the Law on Financial Leasing, Article 2, financial leasing is defined as a financial transaction performed by the Lessor and means that the Lessor, by keeping the ownership right to the subject of the leasing, transfers to the Lessee at the certain period of time the authority of keeping and using the subject of leasing, with all risks and benefits related to the ownership right. On the other hand, according to the Law on Road Traffic Safety, Article 316, Paragraph 1, if a motor vehicle or a trailer vehicle is the subject of a financial leasing, lease contract, or business and technical co-operation arrangement, and the respective information has been recorded in the registration card, the provisions of the tortious liability of the owner of a vehicle stipulated by this Law shall be congruently applied to a person operating a vehicle under above stated conditions. Accordingly, it is clear that the above stated decisions are not in line with supreme legal acts of the Republic of Serbia – the laws which stipulate financial leasing transaction – since otherwise those decisions would have to envisage a special rule for vehicles given in financial leasing, and thus the Lessee is considered the user of the public car parks. In that way, Decisions on public car parks throughout Serbia would be in accordance with the substantive content of laws which regulate financial leasing and be in line with the legal system of the Republic of Serbia. On the other hand, leasing companies would not be burdened by a large number of court proceedings conducted against them for the collection of additional tickets based on decisions of local self-governments, which are not in accordance with the legal system of the Republic of Serbia;

7. Initiation of the amendment to Article 10 of the Law on Financial Leasing where the Lessor could represent in insurance cases. The leasing companies should be enabled to represent in insurance operations, like commercial banks, since in amendments to the Law on Financial Leasing the operation of leasing companies is adjusted to commercial banks in terms of management bodies and risk monitoring and measurement, risk management and internal control system. Moreover, leasing companies are business-associated with insurance companies since most of leasing companies envisage compulsory Casco insurance of the subject of leasing at the insurance company as necessary condition for the conclusion of the Contract on financial leasing. By enabling the leasing companies to represent in insurance operations, they would have an easier manner of work with clients in a way that all documentation for the approval of financial leasing and issuance of insurance policy could be done in one place in the leasing company when signing the Contract on financial leasing. On the other hand, the leasing companies could then expand those types of operations in order to allow the stability of this type of operation in the conditions of the world economic crisis, based on the potential profit of insurance mediation;

8. To regulate the operative leasing by the Law. Reasons are the following:
   a) Operative leasing makes up 30% of total placements of leasing companies operating in Serbia. It is a financial product (off-balance sheet financing), present everywhere in the world as another way to procure and use fixed assets. Due to its off-balance nature, it is highly sought by companies. Individuals often choose operative leasing due to the absence of legal limitations on the debt level, though there are internal rules of leasing companies pertaining to debt level;
   b) The regulation of operative leasing creates a safer and more transparent business environment. In operative leasing, there are significant obligations on the part of companies and individuals. The current situation leads to ambiguity and uncertainty of the treatment of this product concerning both clients and leasing companies. The application of international accounting standards (IAS 17) and the proper presentation of financial statements on both sides is unclear, the economic environment is uncertain because ambiguities

are used for temporary budget revenues though it is the time when VAT will be paid since total obligation is undisputed;

c) By extending the jurisdictions of the National Bank of Serbia (NBS) to this type of leasing as well, one part of the financial flow would be included in the NBS surveillance and control, which would lead to even greater safety of the financial system. The NBS has long considered that the occurrence of operative leasing is the consequence of stiff limitations which apply to financial leasing (primarily for individuals). The regu lation of operative leasing could result in an equalising of the rules for both types of leasing;
d) Operative leasing is currently offered through an inappropriate form of leasing. Operative leasing is much closer to financial leasing than to classic leasing. The separation of operative from financial leasing according to accounting standards is done based on eight criteria, which best shows how similar these products are;
e) The importance of better regulation of operative leasing worldwide has been recognised and thus international accounting bodies have prepared the draft changes of IAS 17 directed at the presentation of total operative leasing in the financial statements of clients (abolition of off-balance). It is the best evidence that operative risk is a financial product. The competent institutions in Serbia will probably be interested in regulating and supervising after this change of accounting standards;
f) The manner of definition of operative leasing shall be defined as leasing in which all risks and benefits are transferred to the client. Testing of that basic principle of separation of financial and operative leasing can be conducted based on criteria from IAS 17. As they are descriptive, it is important to additionally specify and quantify them. The most important is to define the maximum allowed level (in percentages) of repayment of the initial value of the subject of lease during the contract period, as well as maximum level of duration of the leasing contract in relation to the economic lifecycle of the subject of lease.

9. Have the Insurance Law comply with the Law on Financial Leasing – the 1996 Insurance Law stipulated the obligation of insurance organisations to found by their contributions a Guarantee Fund whose funds would, among other things, be used for the compensation of damage caused by motor vehicle, aircraft or other means of transportation for which the contract on compulsory insurance was not concluded. The same Law defined that the Guarantee Fund of the Association of Serbian Insurers has the right to legal recourse, upon payment of the compensation of damage by the owner of the means of transportation for the paid amount of damage, interest and costs. Seven years after the Insurance Law was passed, the Law on Financial Leasing came into force and it defined the operation of financial leasing and financial mediation conducted by the Lessor. The Law on Financial Leasing implies that the Lessor, by keeping the ownership rights to the subject of leasing, transfers to the Lessee, over a certain period of time, the authorities of keeping and using the subject of leasing with all risks and benefits related to the ownership rights, and that the Lessee pays a leasing fee. Also, according to the same Law, the Lessee is responsible for damage caused by using the subject of leasing contrary to the agreement or purpose of the subject of leasing, regardless of whether the subject of leasing was used by him, a person working upon his order or another person whom he allowed to use the subject of leasing;
10. However, the Insurance Law was not aligned with the Law on Financial Leasing, which introduced a completely new legal operation in the legal system of the Republic of Serbia, which according to the definition of the rules of responsibility for the use of the subject of leasing is in conflict with the existing rule of the right to legal recourse of the Guarantee Fund of the owner of the means of transportation. The fact that the Lessor is not in a position to affect the behaviour of the Lessee or other parties using the subject of leasing and to prevent the use of the means of transportation in traffic without the agreement reached on compulsory insurance, as long as the subject of leasing in the ownership of the Lessee, has been completely neglected;
11. In the current situation, leasing companies face legal recourse requests by the Guarantee Fund of the Association of Serbian Insurers, which they can reject by referring to the Law on Financial Leasing; while on the other hand, the Guarantee Fund, despite understanding the essence of dispute, has no legal possibility for the legal recourse of paid amount of damage to address any other person apart from the owner of the means of transportation and possibly its driver, based on the system of subjective responsibility by the damager for the compensation of damage.

FIC RECOMMENDATIONS

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

- Initiation of an amendment to the provision of the Law on Corporate Income Tax;
- Initiation of an amendment to the Law on Value-Added Tax concerning interest taxation;
- The request of the leasing sector for a dialogue with tax authorities in respect of setting the business rules of leasing operations in Serbia;
- The organisation of task forces and meetings between representatives of the Ministry of Finance and Economy 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 acceptable for both parties;
- Initiation of an amendment to Article 62 of the Law on Corporate Income Tax and an amendment to Article 6 of the Rulebook on Tax Balance Sheet Contents;
- Initiation of an amendment to the Decision on public car parks of local self-governance, wherein the Lessee would be considered the user of a public car park in the case of vehicles given by way of financial leasing;
- Initiation of an amendment to Article 10 of the Law on Financial Leasing whereby the Lessor could represent in insurance cases;
- Operative leasing should be regulated by the law as leasing in which not all risks and benefits are transferred to a client;
- The Insurance Law shall comply with the Law on financial leasing in terms of provisions on the right to legal recourse of the Guarantee Funds upon the payment of damage caused by a means of transport for which the contract on compulsory insurance was not concluded, of the owner i.e. registered user of the means of transport.

PRIVATE SECURITY INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009			√
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.	2011			√
During the implementation of the Law, it is necessary to carry out a pragmatic legalisation 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.	2011			√
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, because such solution – beside conflict of interests – results in new dilemmas, such as internationalisation v. localisation.	2011			√
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.	2010			√
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.	2009			√

CURRENT SITUATION

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

This lack of legislation in the private security sector is causing serious problems in the functioning of this market, making for an active source of corruption. The Government is not licensing security companies; and without security industry criteria in place, anyone can set up and run a security company. There is also no licensing of security officers – no official pre-employment screening and vetting; and most of the companies have no insurance coverage for professional liability; no mandatory training and education programmes, etc.

The 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 public enterprise)

does not pay attention to whether the selected bidder has paid all due taxes and contributions, or 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, but also by the Association of Private Security Companies, which should declaratively sanction members conducting illegal business (blacklisting).

Active promotion of the Serbian SRPS A.L2.002 national standard, which was developed as a result of co-operation 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 that was not created by transposing European or international standards into Serbian standardisation. It is a result of the effective work of the 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 experience puts these efforts in a negative context.

POSITIVE DEVELOPMENTS

During 2011, there was significant progress towards the final regulation of the private security sector. The Draft Law on Private Security was developed within the Ministry of Interior; a dialogue between the public and private sectors initiated; several public discussions held; and a mixed working group established which drew important conclusions on the Draft Law on Private Security. According to the latest information, the finalised draft version of the Law sent to the relevant committees of the Parliament was withdrawn and therefore its future status is unknown.

Additional positive aspects include the fact that global 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 the 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 the monitoring of the preparation process for the introduction of the Law on Private Security, while continuously insisting that the Law should be harmonised with 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 the Law's adoption is legislative regulation, not taxation of the 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 LEGALISATION of the security industry, meaning that it is necessary to set a reasonable time schedule and deadline for the 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 the 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 licence valid for a period of three years (a TRANSITION LICENSE); the experience of some countries in the region shows that despite high unemployment disproportionate costs of training and licensing make private security industry activity unattractive for both foreign investors and potential workers;

- 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, and other associations, because such a solution – aside from a conflict of interest – results in new dilemmas, such as INTERNATIONALISATION vs. LOCALISATION;

- National standards are not to be imposed on economic operators because it 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 co-operation between security sector stakeholders (both public and private sectors), while consulting large private security investors that can present their experiences and best practices from the other EU countries in which they operate, in order to create a stimulating environment for further investment. Investors are willing to invest in Serbia in the development of a security industry which will be able to export security services and its workforce in forthcoming years.

HOMECARE PRODUCTS AND COSMETIC 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
COSMETICS: 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.	2010			√
CHEMICALS AND BIOCIDES: 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.	2010	√		
We suggest defining a set of technical requirements, stipulated by the Serbian legislation, for which control would not be implemented as it is now.	2010		√	
COSMETICS: In preparation for the prospective establishment of a market surveillance system, reshuffling the inspection towards the market is necessary.	2010			√
CHEMICALS AND BIOCIDES: In preparation for the prospective establishment of a market surveillance system, reshuffling the inspection towards the market is necessary.	2010	√		
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.	2011	√		
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.	2011			√

As of 1 January 2012, chemicals and biocides are not subjects to the Border Sanitary Inspection any longer, which has come as the result of the entry into force of the Law on Products for General Use, the Law Amending the Law on Chemicals and the Law Amending the Law on Biocides ("Off. Gazette of RS 92/11").

REGISTRATION OF CHEMICALS AND BIOCIDES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Introduce a procedure defining the "systematisation" – steps of communications which are to start when submitting material, in order to track the process.	2011	√		
To some degree, to accept registration from EU countries.	2011	√		
To align the level of detail required in the dossier on chemicals with the relevant documents in EU countries.	2011	√		
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).	2011		√	

During 2011, Agency of chemicals made efforts to bring registration of chemicals into daily life of local companies. Activities made to improve preparation of the dossiers like: establishing groups of chemicals to be registered, customers lists not needed for the dossiers etc., together with tutorials and templates on the internet site made the yearly obligation a bit easier to finish. Yearly obligation of the companies have become easier to be fulfilled by reducing of the amounts in comparison with previous year, enabling payments in several quotes along with earlier preparation of the final calculation.

HAZARDOUS PACKAGING WASTE MANAGEMENT

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011		√	
Establishment of companies and bodies dealing with waste and hazardous waste treatment/waste recycling/waste-to-energy projects in communities and industry clusters.	2011		√	
Develop and enhance a nationwide collection system for recyclable wastes (paper, glass, plastics, and bio).	2011	√		

CURRENT SITUATION

Considering the challenges facing society, Packaging Waste Management is more important than ever.

In the past, the Serbian Government adopted two laws referring to this area: the Law on Waste Management; and the Law on Packaging and Packaging Waste.

The Law on Packaging and Packaging Waste (Official Gazette of the RS, No 36/09) defines the responsibility of importers and producers to collect packaging waste from end users, but offers the possibility to delegate this obligation to one of the national packaging waste operators,

albeit without regulation for hazardous packaging waste.

According to the Law on Packaging and Packaging Waste, national packaging operators are not strictly obliged to deal with hazardous packaging waste; so importers and producers are forced to deal with hazardous packaging waste according to the Law on Waste Management.

The main obstacles for companies are a lack of operators for hazardous packaging waste who have an integrated license, followed by high costs. Consequently, there are a great number of companies facing the problem of acting in accordance with the Law on Waste Management (Article 25) and the obligation of producers and importers to take over hazardous packaging waste from the end users.

The non-existence of a plant for treatment of hazardous waste forces importers and producers to export hazardous packaging waste. It is an expensive and a long term procedure.

The collection of packaging of hazardous waste from households is planned to be done separately by local municipalities through the local waste management plan.

POSITIVE DEVELOPMENTS

A new Law on Packaging and Packaging Waste was drafted, introducing the obligation for the national packaging waste operators to deal with hazardous packaging waste in the interests of their clients.

The result of this solution will be a more efficient collection and transparent flow of hazardous packaging waste.

The packaging waste operators participated in improving the Draft version of the Law on Packaging and Packaging Waste, some of them making their first steps ever in dealing with hazardous packaging waste.

Among others, Kozmodet[1], the association of detergents and cosmetics producers and importers, through two of its members, was involved in the Working Group for the amendment of the Law on Packaging and Packaging Waste related to hazardous packaging waste.

REMAINING ISSUES

There are not enough operators in Serbia that are ready and obliged to actively participate in the mutual mission which consists of collection and treatment of hazardous packaging waste.

The environmental inspection is doing its job very strictly but possibilities for a practical solution regarding hazardous waste are very limited. More support and understanding from inspectors are needed until the draft law becomes operative and results are available for analysis.

1 KOZMODET is an association of leading manufacturers and importers of detergents and cosmetics products. It is a member of A.I.S.E. (the International Association for Soaps, Detergents and Maintenance Products) and an associate member of Cosmetics Europe, The Personal Care Association.

FIC RECOMMENDATIONS

- The government should encourage operators to establish a system with sub-operators and support the building of a network for the treatment of hazardous waste. Without Government support, a lack of infrastructure for collection and the lack of companies licensed for treatment of hazardous waste will remain a problem for which we have neither the capacity nor the authority to solve.

COSMETIC INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011		√	
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.	2010			√

CURRENT SITUATION

Cosmetic products are regulated together with other products for general use (food contact materials, packaging materials, toys and products which come into contact with the skin).

The Law which regulates cosmetic products, regarding their safety, is the Law on Health Safety of Products for General Use (Official Gazette of the RS, No 92/2011). This Law came into force in December 2011. The competent authority responsible for the implementation of this Law is the Ministry of Health.

There are several laws which are general and cover broader areas, but which also may be applied to cosmetic products. These laws are the Law on Trade, the Law on General Product Safety, and the Law on Consumer Protection. They are within the scope of the Ministry of Foreign and Domestic Trade and Telecommunications.

Resulting from the application of all the abovementioned regulations, imported cosmetic products are subject to control by the Border Sanitary Inspection (Ministry of Health), and all cosmetic products (imported and Serbian) are subject to in-market control by both the Sanitary Inspection (Ministry of Health) and Trade Inspection (Ministry of Foreign and Domestic Trade and Telecommunications).

POSITIVE DEVELOPMENTS

The main positive development is the adoption of a new Law on the Health Safety of Products for General Use, after two decades of old regulation. The new Law induces harmonisation of technical requirements referring to products for general use. Those requirements will be regulated through separate by-laws. Several working groups were formed and initiated their own work on the preparation of by-laws within the Ministry of Health. The separate by-laws should be written for food contact and packaging materials, cosmetic products, toys, and products intended to come into contact with the skin.

In 2007, a draft of the amended Rulebook on the Conditions Regarding Health Safety of Food and Products for General Use that May be Placed on the Market was prepared. This draft was the starting point for the Working Group responsible for the by-law on cosmetic products.

REMAINING ISSUES

There are two major issues. The first refers to the organisation of the control process and the second to technical requirements for cosmetic products.

Imported cosmetic products are still subject to pre-market (border) control, but also to in-market control. This type of control process is not in harmony with EU regulations and practices.

As for technical requirements for cosmetic products, work on harmonisation with corresponding EU regulations has to be finalised.

FIC RECOMMENDATIONS

- As for the organisation of control process, it is our recommendation that competent authorities should focus more on in-market control, a practice in European countries. Import control should be mainly focused on product information file (product dossier), and, where necessary, laboratory checks of the product;
- Regarding technical requirements, regulated by by-laws, these have to be in accordance with all applicable EU regulations. In the EU, cosmetic products are regulated by Cosmetic Directive (76/768/EEC). In July 2013, this Directive will be replaced by the Cosmetic Regulation (1223/2009). Both regulations have to be considered when the process of harmonisation of Serbian cosmetic regulations takes place, respecting dates of application set in EU regulations. In addition, several other applicable EU regulations have to be considered;
- It is very important to be in harmony with other, more general Serbian laws, which may be applied to cosmetic products. Once the by-law specifically regulating cosmetic products is adopted, all other, more general laws have to leave enough space and not pose additional restrictions.

SEPARATION OF CERTAIN CLEANING PRODUCTS IN RETAIL STORES

CURRENT SITUATION

Since 17 May 2012 cleaning products classified as "irritants" have had to be placed on separate shelves in the stores with certain instruction for consumers ("Regulation on detailed conditions for the keeping of dangerous chemicals in the sales area and a way of marking that space", (RS Official Gazette, No 31/11 and 16/12).

Although the by-law is clear in terms of which products are included, precise information about how to execute the separation process is not provided by the by-law and there are no clear directions for shelving.

This separation of those cleaning products classified as "irritants" is a unique solution in Serbia, one not in harmony with EU regulations and practices for products classified as "irritants". These types of cleaning products – classified as "irritants" based on the currently valid Law on Chemicals (RS Official Gazette, No 36/09) – do not even require a special type of packaging as the safety profile of these products does not justify such provisions.

POSITIVE DEVELOPMENTS

As of 1 January 2012, the Sanitary Border Inspection for chemicals and biocides (including cleaning and hygiene products) has been removed, the main positive development in terms of importing chemicals and biocides. We expect this positive measure to be expanded to other categories of non-food fast moving consumer goods in the future.

REMAINING ISSUES

The by-law about detailed requirements for keeping hazardous chemicals in the sales area can be qualified as a trade barrier imposing additional (unjustified) restrictions on trading and selling of cleaning and hygiene products in retail. With the new EU Law on Classification and Labelling of products coming into force on 1 January 2015, the negative impact will be even higher.

FIC RECOMMENDATION

- Cleaning and hygiene products labelled as "irritants" should be treated as they are in EU countries, where such limitations are not in place.

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top

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