WHITE BOOK

Proposals for improvement of the business environment in Serbia

2013

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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Proposals for improvement
of the business environment in Serbia

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2013

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FOREWORD

Since last year's White Book, Serbia has made a major step towards EU integration as the membership negotiation process should start in January 2014 at the latest. The FIC has been a long-standing advocate of Serbia's economic integration with the EU. We think that, despite all difficulties the EU is currently undergoing, it remains the center of gravity in Europe, and the integration process a unique opportunity for Serbia to accelerate reforms and remain committed to the adaptation of its legal framework to the needs of a competitive economy.

To obtain this positive decision from the EU, the Government showed courage and determination. It will have to continue to demonstrate these qualities in order to implement the reforms that remain necessary to allow the Serbian economy to enjoy a solid and stable growth.

As a matter of fact, despite the first signs of recovery seen in Europe this summer, the economic environment of the country will remain difficult in the coming months, and the Government needs to take decisions without any delay, sometimes difficult ones, that will boost the economy and as a consequence lead to reduction of unemployment.

The redefinition of the role of the State in the economy is certainly one of the main priorities the Government should address. The State should focus on maintaining macro-economic stability and establishing a stable, predictable, and competitive environment. At that level, the introduction of a new labour law to improve conditions for new recruitments, as well as a new planning and construction law to facilitate issuance of construction permits should be speeded up. The continuation of the fight against corruption and upholding of the rule of law would foster a much better business environment, conducive to new investment. Decisive actions are also needed both in restructuring public companies and efficient usage of scarce public resources. That would not only enhance competition, but also strongly contribute to the expected Government efforts in reducing public deficit - both through deep structural reforms on the spending side, as well as continuous work on improving collection of revenues, and shrinking the grey economy.

In the past year, the Government has recognized these key problems and shown its openness to launch a dialogue in the process of addressing them. It is now time to accelerate the reforms and to make sure new laws are properly enforced through better coordination and supervision of the public administration.

During the important and exciting period for Serbia that will start with the negotiation process, the FIC will remain committed to being a valuable partner to the Government and all other stakeholders: serious, vigilant, and supportive of all positive changes in the business environment. We will dedicate the resources and the expertise of our 130 members, representing 17.5% of the country's GDP, to help improve the business climate in Serbia, and contribute to making this process a success.

Frederic Coin
FIC President

FIC OVERVIEW

The Foreign Investors Council has entered its second decade of functioning as a strong association which gathers the biggest foreign companies with long-term interests in the Serbian market. The association which relies on one key factor – its membership, which covers a wide range of industries and joins investors from around the world, from the European Union and the United States of America, to the Russian Republic and the People's Republic of China. The association which brings together 130 companies with a 17.5%[1] direct share in Serbian GDP in 2012, which have invested more than €20 billion[2] and employ over 95,000 people[3], and whose number is still growing... The association which has one task – to formulate joint standpoints of members and give concrete proposals on the improvement of the business climate in Serbia.

At first glance, it may not appear a difficult endeavor. However, the Foreign Investors Council is a pioneer of public debate in Serbia, because within it confronts the interests of different, not always coinciding, industries, and within those industries, the views of individual companies, often mutual competitors. Through offering differing views, FIC members are trying to find the best solutions to identified problems, by comparing their mutual experiences and practices. All differences in opinion lead to the scrapping of given proposals, because the FIC is not the lever for the protection of minority interests. On the contrary, the FIC solely promotes views and suggestions which are the common denominator of a majority of its members. That is the source of the association's strength, which is not the voice of one or a group of companies, but the unified voice of 130 entities, whose operations depend on the development and growth of the entire Serbian market.

Therefore, the existence of the Foreign Investors Council is one of the important additional contributions of foreign companies to this market. Besides fresh investments, jobs, new technologies, and solid corporate governance, FIC companies choose to be members of a voluntary organisation and through an exchange of views and experiences not only from this, but also other markets, build joint proposals on how to create better business conditions for all.

The main principles of the Foreign Investors Council are transparency, equality, and predictability. We are here to promote a predictable and clear business environment which provides equal opportunities for all. We abide by these principles in our work, as well. The FIC is one of few organisations whose opinions and proposals are public and easily accessible to all, notably via the White Book project.

Each year, through a consultative process which lasts several months, the FIC membership works on preparing a comprehensive overview of the business climate in Serbia and formulating the list of recommendations for its improvement – the White Book. When the book is prepared, the FIC organises an annual public presentation and open discussion between Government officials and the FIC, with distinguished representatives of the public, business, and civil sectors in the audience.

Although the most renowned, the White Book is just one of a series of projects the FIC conducts in order to instigate vibrant discussion between members and fruitful dialogue with all relevant stakeholders. With the aim to support reform processes, the FIC organises a "Reality Check" Conference, half a year after the White Book launch, to track the execution of given recommendations and help overcome current problems by offering concrete solutions. Besides these, regular FIC activities can be divided into three segments.

The first is related to the analysis of the current situation – existing legislation and their implementation. As an example, we can highlight FIC work on the reform of labour regulations, as part of which the FIC has provided more than 25 tangible proposals on how to streamline the current system and facilitate employment.

The second is linked to active participation in the preparation of new legislation by providing comments and proposals and participation in working groups for the drafting of laws. Between the two White Book editions, the Foreign Investors Council conducted analyses of eleven draft regulations and participated in five working groups.

The third is connected to external interaction which entails systematic and regular communication with all important stakeholders, organisation of roundtables and presentations, as well as participation in relevant initiatives and forums. The Government of the Republic of Serbia and other state institutions are, by all means, our main interlocutors. However, the FIC meticulously and regularly communicates with all the other players who influence the business climate in Serbia: international organisations, the

1 Data for 2012, sources: FIC records, National Bank of Serbia, Statistical Office of Republic of Serbia

2 Data for 2013, source: FIC records

3 Data for 2013, source: FIC records

diplomatic corps, development agencies, business associations, civil society organisations, universities, etc.

The Foreign Investors Council recognises the relevance of synergy and co-operates with various organisations in order to promote a better business environment. As examples we note two activities: the "Serbia Turns to Economy - Together Out of the Crisis" conference which the FIC organised together with the Delegation of the European Union to the Republic of Serbia, the "Privrednik" business club, and the American Chamber of Commerce, in July 2013, as well as a joint initiative on inspection reform with several business associations (the American Chamber of Commerce, Naled, the Serbian Chamber of Commerce, the Serbian Association of Managers, the Union of Employers) and USAID Business Enabling Project, initiated in June 2013.

The lifeline of the FIC are its committees and task forces which gather representatives of member companies in order to analyse specific regulatory areas and formulate joint conclusions and proposals. The FIC currently has eight such forums, including seven committees, both cross-sectoral, such as Human Resources, Legal and Taxation and sectoral, like Food and Agriculture, Leasing & Insurance, Real Estate, and Telecommunications & IT. This year, the FIC has also formed the task force for payment deadlines[4], since the issue of liquidity is one of the burning issues in this market. The Foreign Investors Council establishes its committees as a response to members' interest, and therefore their number and scope is fluid and by default reflects the conditions, potential, and problems of this market.

In order to attain its goal, the Foreign Investors Council will continue to pay close attention to members' interests, stimulate active debate and diligently work on formulating recommendations for better business conditions in Serbia. Going forward, we will try to be a reliable partner to the authorities and all relevant stakeholders in the process of creating a sustainable business environment in Serbia.

4 Law on Fulfillment of Financial Obligations in Commercial Transactions

- The Foreign Investors Council was established in 2002, by 14 foreign companies, with support of the OECD, with the common idea to contribute to the improvement of the investment environment in Serbia.
- The FIC mission today states: "To actively promote a sustainable business environment through an open dialogue with the Authorities and other relevant stakeholders".

CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

In a current climate of complex environmental, social and economic issues, all actors have an important role to play - NGOs, governments, as well as the general public. Perhaps the business sector plays the most important role, not just in terms of philanthropic contributions, but more importantly in terms of the way we do business. It has become clear that partnerships between multiple stakeholders, with businesses leading the way, could contribute to developing a truly effective agenda for sustainability.

Fortunately, businesses around the world are getting more and more engaged in sustainability in all its shapes and forms. Over the last several decades, Corporate Social Responsibility (CSR) has been seen worldwide not only as the response to sustainability issues, but also as an exciting business reality that goes beyond just being a passing phase or a marketing tool - the reality that employees want to get involved in and that society and businesses are increasingly benefiting from.

Aware of the sustainability challenges of the system we live in, FIC continues to move forward in promoting good business practices while remaining firm in our commitment to bring broader changes to the way we do business and to encourage others to embrace the same business values. We strongly believe that CSR is a fundamental part of the solution, and the only possible approach if we want to ensure long-term business success and prosperity of the communities in which we operate. CSR is about continuous improvement, and should be seen as a vital component of the modern model of business excellence.

The latest global survey of the European Commission (Eurobarometer, 2013) showed that European businesses, when it comes to CSR, have acted poorly in response to the financial crisis, and as a result the Europeans have lost confidence in the business sector. In line with the wide efforts aimed at rebuilding this trust, in 2013 the Commission confirmed once again its commitment to CSR by adopting a proposal for a directive enhancing the transparency of large companies on social and environmental matters, making a step forward towards mandatory sustainability reporting. At the same time, the Global Reporting Initiative (GRI), the organization that develops the most widely used sustainability reporting framework in the world, released an updated version of the guidelines, called the G4 guidelines, with the aim of increasing the transparency and value of sustainability reporting for stakeholders, and providing a more accessible framework for organizations. In the future, both initiatives are expected to lead to the evolution of corporate reporting — towards integrated reporting and more CSR and sustainability reporters. Putting finances, corporate performance, risk and strategy in the context of sustainability is crucial for building up an overall picture of a business' long-term value.

Similar tendencies could be noticed in Serbia lately: due to the negative effects of the financial crisis resulting in budget cuts, many companies that have not remained consistent to their CSR commitments are now facing the lack of citizens'/consumers' trust, finding themselves under growing pressures to integrate sustainable practices throughout all their business operations. On the other hand, we are witnessing the improvement in reporting practices, as a rising number of companies publish their CSR reports in line with international standards and methodologies. Furthermore, as a result of the successfully implemented national CSR Certification programme initiated by the National Alliance for Local Economic Development (NALED) in 2011, CSR Certificates were awarded to the first 5 companies involved in the Certification programme: Tigar, Sunce Marinkovic, Holcim, Coca Cola HBC and Eurobank. Finally, in addition to several relevant CSR awards already traditionally presented in Serbia in the last few years, the European CSR Partnership Award, initiated in 2013 and funded by the European Commission, was delivered for the first time in Serbia, as well as in 27 other European countries. In Serbia the Award scheme was implemented by Smart Kolektiv and Business Leaders Forum (BLF), with the aim to give greater exposure and recognition to those engaged in innovative partnerships, inspiring at the same time other business actors to follow their way.

In line with our stand that in tough economic times, such as those we are currently facing, CSR should more than ever be perceived as an integral part of business strategies.

Therefore,

WE REMAIN COMMITTED TO:

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

INVESTMENT AND BUSINESS CLIMATE

WHITE BOOK BALANCE SCORE CARD

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

Most of the previous year was marked by continued economic stagnation, with an upward trend starting in the second quarter of 2013. As a result, the GDP growth now stands at about 2% at an annual rate. The other good news is the increase in exports, with two main sources: the Fiat car factory and agriculture. However, Serbia is still facing a complex set of macroeconomic problems:

- Of the highest concern is the fact that Serbia still has one of the highest unemployment rates in Europe. The rate currently stands at around 27% and 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.

- A very high inflation rate, one of the highest in Europe. Since the last White Book, inflation slowly decreased and currently stands at about 9%. However, the recent rise in the price of electricity, and a number of price increases announced for the fall, suggest that by the end of the year it could exceed 10%.

- Public spending continues to exceed fiscal revenues, leading to increased deficit and, consequently, increased indebtedness. The budget deficit reached 7% before new measures were introduced to cut budget spending and increase revenues. So far, both the cuts and the increase in revenues are holding good, and the expectation is that the deficit will be about 4.5% by the end of the year. Public debt has exceeded the 45% of GDP legal limit, and is now close to 60% of GDP, and still climbing. Recently, the Ministry of Finance proposed, and the Government accepted, four concrete measures meant to increase revenues and decrease Government spending. Experts expect the full impact of these measures to be felt in the second half of 2014. The "package" introduced by the Ministry of Finance also mentions measures to attract more foreign investment but no details are given.

- The dinar-to-euro exchange rate has been remarkably stable in 2013, which is good news for importers but not so for exporters, in view of the rising production costs.

- The share of investments in GDP is still rather low, at around 20%, and not high enough to generate a higher growth rate, or to reverse the unemployment rate.

- Thus, Serbia is facing the very complicated task of increasing production, employment and exports while at the same time reducing public expenditure.

As a consequence, the pace of recovery from the previous crisis has not been strong enough to reverse the negative labour market trends or contribute to an increase in public revenues.

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 on the rise, compared to last year. 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 develop-

ment. Recently, contacts with the Emirates have brought a number of investment projects to the table, ranging from the national airline's joint venture, to agriculture, arms production, high-tech electronic production, tourism, etc.

Serbia's credit rating remains unchanged, thus making borrowing abroad costly and the inflow of foreign investment less attractive.

By and large, banks maintained liquidity throughout the last year. There have been two bank failures but the banking system in general held. However, there is widespread illiquidity outside the banking sector, and it is still growing. The Greek and the Italian crisis did not spill over to Serbia through the Greek and Italian banks operating here.

Serbia is another step closer to the European Union after getting a (provisional) date for the start of negotiations, which are expected to commence in January 2014 at the latest. True, the exact date has not been set yet, and the European Council will have the final say in December of this year, but the whole preparatory process for negotiations has been set in motion both in Serbia and the European Union. The normalisation of relations with Prishtina and the full implementation of the Agreement signed by both parties remains the key to the opening of negotiations.

Serbia is still making good use of the regional Free Trade Agreement (CEFTA), and is a net exporter to all the signatory countries, now that Croatia has stepped out of CEFTA and into the European Union.

Over the course of last year, the business climate did not improve significantly. The goal of increasing Serbian competitiveness has not yet been reached. Opening a business still takes far too long, and involves too many instances. 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 notable, positive exception is the new legislation regarding parafiscal levies.

Furthermore, at the moment when this White Book goes to print, the Ministry of Economy announced a set of measures with the principal aim of improving the business environment. These measures include: the Law on Privatization, the Bankruptcy Law, the Labour Law and the Law on Planning and Construction.

The other notable exception is the new drive against corruption and illegal business conduct. The Government has initiated this drive, and the prosecution has followed through with arrests and indictments. It is now up to the courts to read and interpret the law in a way which will make absolutely clear that illegal business is no longer the way to make millions before we can definitely claim that the battle against corruption is won.

FIC RECOMMENDATIONS

Unfortunately, some of the recommendations that have already been tabled in previous White Books have to be repeated 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 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.
- Conduct a well-balanced economic policy that will be conducive to business and attract investment.
- Promote exports as a key element of economic growth.

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PILLARS OF DEVELOPMENT

The general assessment of change in sectors identified as Pillars of Development is that it continues to be slower than needed, even slower than possible. Granted, the overall difficult economic situation must have a bearing on this segment of the economy. On the other hand, these sectors deserve more attention because of their multiplier effect on the growth of the entire economy and, in some cases, the relatively low financial cost of accomplishing the changes.

Transport

Generally, this sector faces numerous challenges, mostly of a financial nature. There are insufficient funds for the quicker building of roads. Nowadays, funds are also lacking for badly needed investment in road maintenance. The railway system is also in need of modernisation, both in infrastructure and rolling stock. At the time of this writing, the national air carrier has signed a strategic partnership agreement with a foreign company, after several years of loss making and reducing its fleet by more than half. River transport is under-utilised and needs modernisation.

On the positive side, the Government does have a Master Plan for Transport in Serbia, which calls for over EUR 2 billion to be invested in road, railway, river, and air transport by 2027.

The White Book 2012 had six recommendations. Three registered some progress, and three registered no progress at all.

We now offer eight new recommendations

Energy

The previous year saw further amendments to the Energy Law and a jump starting of the green energy segment through the adoption of the National Action Plan for renewable energy until 2020. Also, the ground work has been set for the expansion of the hydro energy sector through the adoption of the rules and procedures for small, private hydro plants. Efforts should now be concentrated on completing the legislative structure by passing the necessary by-laws, as suggested later on in this chapter.

The FIC offered eight recommendations in the previous White Book and we can report significant progress on one; certain progress on two; and no progress at all regarding five recommendations.

The current volume of the White Book offers eight new recommendations.

Telecommunications and Information Technology

The most important development in the telecommunications sector was the adoption of a two-year action plan for the implementation of the Strategy of Development of Electronic Communications until 2020. There are also some positive developments regarding the payment of parafiscal duties but the legislation has not been adopted at the time of this writing. On the negative side, we need to point out that there is a significant delay in the implementation of the fixed number portability.

The IT sector has seen a number of positive developments over the last year, including further development of the E-Government program at the national and local level, and the beginning of the passage of amendments to the Law on Foreign Currency Payments, as well as a rigorous monitoring of law adherence by RATEL.

The previous edition of the White Book had 19 recommendations, eight for telecommunications and eleven for information technology. Of the eight regarding telecommunications, there has been significant progress on two; some progress on two; and no progress at all on four. In the IT segment, there has been significant progress on three; some progress on five; and no progress at all on three.

The current White Book offers 20 new recommendations, ten for each sector.

Real Estate and Construction

There was no major legislative action in this period. The important legislative action was reported in the 2012 White Book. However, the implementation of important laws is

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very slow and uneven, as is the case, for example, with the Law on Restitution. Also, due to the relatively recent passage of the legislation, there was not enough time to assess the impact. There are a number of remaining problems in land ownership, construction and restitution which the current edition of the White Book offers solutions to.

There were four recommendations in this chapter in the last White Book. There has been some progress on one and no progress at all on three.

The new White Book offers 13 new recommendations.

Labour Market and Human Capital

Two pieces of legislation that have come into effect since the previous edition of the White Book are the amendments to the existing Law regarding the treatment of pregnant employees and employees on maternity leave, as well as the Law on the Prevention of Mobbing at Work. However, there are still numerous problems and inconsistencies regulating the labour market. The issue becomes even more significant, having in mind the very high level of unemployment, and bearing in mind that a good and efficient regulation of the labour market could give a boost to employment. The FIC has constantly and consistently pointed out the shortcomings and recommendations on how to overcome them.

In the White Book 2012, of all the pillars of development, this segment had by far the most recommendations – 26. Sadly, some progress has been registered on only one of them, while there has been no progress at all on 25.

In the current edition this pillar again leads in the number of recommendations with 33. Twenty-nine are related to the Labour Market and four to the Human Capital.

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INFRASTRUCTURE

TRANSPORT

WHITE BOOK BALANCE SCORE CARD

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

CURRENT SITUATION

The main transport infrastructure in Serbia comprises about 43,838 km of roads; 3,809 km of railways; 1,680 km of navigable waterways; two international airports; 12 ports; and three partially constructed terminals for intermodal traffic; all of which is the basis for further necessary development, having in mind Serbia's geographical position as a crossroads and transit area for EU citizens from Hungary, Bulgaria, Romania, and Greece; and in that regard requires modernisation of its transport networks, which implies benefits both to Serbian and EU citizens.

However, the transport infrastructure in the Republic of Serbia is increasingly hindered by a lack of funds for modernisation and maintenance of the road network, which significantly affects efficiency and road safety. While in the past five years, funds amounting between RSD 150 and 170 billion were allocated for road maintenance from the budget of the Republic of Serbia, in 2013 only RSD 9.5 billion (approximately EUR 90 million) is planned to be used for that purpose. The "Roads of Serbia" Public Enterprise has pointed out that revenues from tolls and funds from foreign loans are not sufficient to repair the damage caused during winter, thus it is necessary to provide additional financial means for road maintenance; hence the proposal for an increase of already expensive tolls.

Regarding the construction of new roads, Corridors of Serbia announced that this year at least 40 kilometres of the highway will be completed. According to the same source, EUR 1.2 billion have been secured for Corridor 10, and this funding, together with those that have been contracted for other highways in Serbia such as Pojate-Preljina, Novi Sad-Ruma, and Corridor 11, bring the overall figure to be invested to a total of EUR 2.9 billion.

Of the 330 kilometres of the Corridor 10 highway passing through Serbia, 220 have been completed and the remaining 110 are yet to be built. According to Government representatives, tendering procedures for all parts of the Corridor have been conducted or are in progress while the only part for which construction has not been contracted yet is the area of the Belgrade bypass.

Corridor 10 has been completed from Sid to Belgrade, from the state border at Horgos to Belgrade; Belgrade to Nis and Leskovac; and in the south from Levosoje to the border crossing at Presevo. What remains to be completed is the section from Nis to Dimitrovgrad; in the south from Grabovnica near Leskovac to Levosoje; the Subotica bypass to the state border crossing Kelebija, or the so-called Y–arm; and the Belgrade bypass. Works on the bypass around Belgrade were started in 1989 and its completion will take about a year and a half. It is commendable to note

the interest of companies from China, as well as companies from Azerbaijan and the Czech Republic, which have shown a serious intention to participate in the tendering for the completion of the bypass around Belgrade.

One of the main reasons for the delay in the construction of the Corridor 10 is the inefficient implementation of land acquisition procedures. According to official government data of May 2013, more than EUR 1 billion worth of loans approved by the EBRD, the EIB and the World Bank have not been withdrawn, and one of the main reasons is the incomplete expropriation of land, which hampers the work, putting at risk three sections - Vladicin Han; the Bancarevo tunnel on the eastern branch from Nis to the Bulgarian border; and Ciflik-Pirot: for which the EU has set aside around EUR 4.8 billion.

The works on Corridor 10 are planned to be completed by the beginning of 2016. Once completed, the new highway will have a positive impact on commercial and trade activities in the region and will contribute to regional development and cohesion of the wider Balkans region.

Waterways and ports in Serbia are insufficiently used and for their modernisation and reconstruction significant financial means are needed. It is estimated that EUR 300 million are needed for reconstruction and modernisation of the port system plus EUR 3 million a year for maintenance.

The Serbian government has earmarked RSD 1 billion for the overhaul of rolling stock in 2013, and contracts were signed with six overhaul companies. With these funds 238 freight cars are to be overhauled, along with 19 passenger cars, three electric multiple units, 10 locomotives (eight diesel, one electric and one steam), 55 auxiliary and working train circuits and sets of axles on 60 rolling stock units.

This is the fifth year that the Serbian government is making further efforts to assist the recovery of Serbian Railways and domestic railroad car factories, paying funds for the repair of the rolling stock.

POSITIVE DEVELOPMENTS

The first Master Plan for Transport in Serbia estimates EUR 22.2 billion of investments is needed in road, rail, water and air infrastructure in the period from 2010 to 2027 , for a total of 33 projects, to be financed from the EU's pre-accession and accession funds, from loans by investment banks, and funds from the budget of Serbia. Of this amount, EUR 14.3 billion is slated for investments, while EUR 8 billion is needed for maintenance. This plan may be adjusted depending on economic and political circumstances; and accounts for minimal and development scenarios, predicting about EUR 5.1 billion of investment in rail traffic Corridor 10, which is the main focus of this master plan. Also, it is the first time that such a document includes local roads foreseeing construction or repair of a total of 40,000 kilometres of roads until 2027.

The general aim of the master plan regarding Serbian transport is to contribute to the realisation of a larger, better, and safer transportation network that will attract new investment in the less developed areas; improve the quality of life in these areas and promote trade; as well as to contribute to the improvement of relations with neighbouring countries.

Also, recent amendments to the Law on Public Roads have abolished certain taxes for the use of public roads, because some, in practice, did not have any effect, while others had the effect of increasing initial costs of commercial buildings next to a public road, thus negatively affecting this type of investment.

When it comes to river traffic, the Ministry of Transport of the Republic of Serbia has implemented long term activities designed to provide necessary funds for the emergency rehabilitation of the waterway on the Sava River, amounting to EUR 1 million. For a complete re-hauling of all planned activities on this river connecting seven million people, it is necessary to provide around EUR 15 million in the years to come.

In respect to the railway transportation, the new Law on Railways came into force on 30 May 2013. Main objectives of the new law are to improve the efficiency of the railway system in Serbia, its integration into the market of transport services and the integration of Serbian Railways in the railway system of the EU. It is expected that the new law shall improve the efficiency of the railway system in Serbia, liberalize markets and to enable the introduction of a number of operators, which would create more competition.

In addition to above stated, Serbian Railways and Russian State Railways signed an umbrella agreement in May 2013 on the modernisation of Serbian railways. Moreover, the loan agreement, amounting to USD 800 million, was signed and has as its object the delivery of diesel trains and the construction of Serbian railroad infrastructure within the next five years. In addition to the Russian loan, it is planned that

the Republic of Serbia will provide an additional USD 141 million to participate in this project. Around USD 141 million will be earmarked for the purchase of trains and the rest will be used for the modernisation of the railway infrastructure. The project of modernisation of Serbian railways consists of several parts – the construction of the second track of the Belgrade-Pancevo railroad; six sections of Corridor 10; sections of the Stara Pazova-Novi Sad railroad; and the modernisation of a part of the railway between Belgrade and Bar. Works on the modernisation of the Pancevo-Belgrade railway and sections of Corridor 10 railways should start in September 2013 and an announcement of a tendering procedure for the selection of a contractor is expected.

REMAINING ISSUES

The challenges transport is facing are characterised by greater expectations of users in terms of better services; time loss at border crossings and tolls; congestion in the central area; and high costs.

Also in this sector, the absence of private investors is notable. Even though the Law on Public-Private Partnership, adopted in 2011, was supposed to regulate this issue and provide clear guidelines and procedures, according to which private funds could be invested, private investments in this sector have still not been realised.

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 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 the 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.
- Creation of conditions for sustainable development of the transport system through stable sources of financing.
- Increase efforts towards more efficient manner of conducting of expropriation proceedings.

ENERGY SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adoption of by-laws necessary for the implementation of the Energy Law, with special attention given to avoiding unnecessary mistakes due to short deadlines;	2011	√		

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Preparation of a bankable PPA model;	2012			√
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;	2011			√
Simplification of procedures for issuing permits and approvals necessary for the development of energy projects;	2011		√	
Increasing public awareness of the efficient usage of electricity;	2009			√
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;	2012			√
Addressing special attention to defining the Public Supplier, with special regard to the sustainability of its budget;	2012			√
Adoption of the new Strategy of Energy Development of the Republic of Serbia and the National Renewable Action Plan.	2012		√	

CURRENT SITUATION

During 2012, two amendments to the Energy Law were adopted. The first amendment came into force on 6 October 2012, and the most significant change introduced by this law is the cancelation of the state Energy Efficiency Agency, in line with the government's announcement to reduce the number of government agencies. The rights, obligations, cases, equipment, registries, employees, and appointed officials in the Energy Efficiency Agency have been taken over by the Ministry of Energy, Development, and the Environmental Protection.

In late December 2012, another amendment to the Law was adopted, by which the shortcomings of the law, identified in practice, have been remedied and the lack of clarity of certain provisions of the law has been corrected. Among these amendments, the most important were the following:

- An exhaustive list of the criteria for possible revocation of an energy license, such as undertaking legal and factual activities related to the transfer of the license to a third party, providing inaccurate or false information while obtaining the license, failure to apply for location and/or building permit within six months from the issuance of the licence, etc.;
- The temporary status of a privileged producer of electricity has been reduced from three years to two years, if wind energy is used for electricity production, and from three years to one year, if solar energy is used for electricity production;
- The government will define in more detail the categories of privileged power producers, the method of power readings for privileged producers, the duration of incentives (the incentive period) and the method of determining the incentive period, as well as the rights and obligations arising from these measures for both privileged producers and other energy entities, and the manner of calculation, payment, and collection of funds from fees and the distribution of the funds collected from the fees to encourage privileged power producers.

Furthermore, the adoption of a standardised power off-take agreement for renewable energy sources was announced to take place no later than 10 July 2013. The standardised agreement will facilitate the process of investment in the sector, hence meeting one of the most important requests set out by the investors regarding the construction of facilities for "green energy" production. However, up to now, the model contact has still not been adopted. The ministry announces even more detailed amendments to the Law, currently underway, which are to be announced for adoption in autumn 2013.

In late December 2012, the National Action Plan for the use of renewable energy until 2020 was adopted, confirming the obligation and intent to increase the share of renewable energy in gross final energy consumption by 2020 to a total of 27%, in accordance with the obligations set out in the treaty on the Energy Community, signed by the Republic of Serbia. This plan provides a small reduction of feed-in tariffs for energy from solar power plants and the reason for the decrease was the reduction of prices for solar power

equipment by more than 40% since 2008. New incentive measures for wind power plants provide a new, somewhat lower tariff and increased incentive tariffs for small hydro power plants (HPP) with a capacity of up to 1 MW, and a slight reduction for larger HPPs and HPPs on the existing infrastructure, while they also introduced incentives for HPP from 10 to 30 MW. The feed-in tariff for biomass-fired power plants with a capacity of up to 5 MW was slightly reduced, and the tariff for plants with a capacity of between 5 and 10 MW was also reduced, but more significantly. At the same time, incentives for biomass-fired power plants with a capacity of over 10 MW were introduced. Prices for electricity generated from biogas were slightly reduced for power plants with a capacity of up to 0.2 MW and slightly increased for plants with a capacity of more than 1 MW. Also, incentives for power plants using animal-origin biogas for fuel were introduced. Incentive tariffs are determined every three years and may be re-examined annually.

The total installed capacity of solar power plants that will be supported with incentive tariffs is 10 MW, including 2 MW from power plants built on facilities with individual installed capacities of up to 30 kW, 2 MW from power plants built on facilities with individual installed capacities from 30 kW to 500 kW, and 6 MW from power plants built on the ground. Additionally, the total installed capacity for wind energy, for which it is possible to acquire the privileged power producer status, was increased to 300 MW until the end of 2015 and 500 MW until the end of 2020.

In early October 2013, the final public discussion on new energy strategy was held, and representatives of the diplomatic corps, international financial institutions, civil society and the Energy Community attended. Draft of Energy Development Strategy of the Republic of Serbia up to 2025 with planned intentions up to 2030 is to be adopted by the end of 2013, along with implementation strategy and action plans for each area. Increase of energy efficiency by up to nine percent, up to 2020 and the use of all potentials and resources that Serbia has are among main priorities of the Energy Development Strategy. Furthermore, draft of amendments to the Energy Law is to be completed by mid-December 2013, so the Assembly of the Republic of Serbia could adopt it by the end of the year and with these amendments, local legislations are to be harmonized with the third package of EU energy legislation. The amendments are, among other, significant because they create conditions for opening of the electricity market on medium voltage level on 1 January 2014, which will be followed by opening of the market for other customers as of 1 January 2015.

The prices of electricity supplied to end consumers still remain far below market levels, and there is no indication of when they might be harmonised.

POSITIVE DEVELOPMENTS

In the second part of 2012 and during 2013 significant progress was made in legislative activities, especially regarding the adoption of by-laws related to the "green" energy, such as the Decree on the Conditions and Procedure for Obtaining the Status of a Privileged Producer of Electricity, the Decree on Incentives for Privileged Power Producers, the Decree on the Method of Accounting and Method of Distribution of Funds Collected from the Fees to Encourage Privileged Power Producers etc.

In late May 2013 the cornerstone was laid in Beocin for the construction of the first solar power plant in Vojvodina, under a EUR 1.5 million investment. The capacity of that solar power plant will be 1 MW and it is planned to be constructed in three months and to start with its work in September. The investor is Slovakia's Prima Energy, and the power plant is at the location Tancos, with total land area of 2.5 hectares.

REMAINING ISSUES

The adoption of the amendments to the Energy Law brought the necessary innovations to the energy sector of the Republic of Serbia, but legislative activity should not be considered completed with that. There are still many areas where the legislation is not specific enough and for which by-laws adopted in accordance with the previous energy law are still in force, and this should be the focus of legislative activity, especially keeping in mind that energy and environmental protection have a significant position, not only in the plans and projections of the Government, but the local authorities as well. 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, as is the case, for example, with the Guarantee of origin of electricity.

Also, the issues regarding the efficiency and duration of procedures through which the law and by-laws are enforced are of utmost importance, both on the local and republic levels. This is more a matter of practice and commitment

of the state and local governments to achieve better co-operation with investors.

The newly adopted Decree on Incentives for Privileged Power Producers and the Decree on the Conditions and Procedure for Obtaining the Status of a Privileged Producer of Electricity have brought a lot of controversy in terms of retaining the existing limits of "excess capacity", i.e. restrictions on the total capacities of wind and solar power plants that will be eligible for the feed-in tariff. In accordance with last year's recommendation, the trends in the international energy market were taken into consideration, especially in relation to the price of electricity provided with the so called "feed-in tariff."

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.

FIC RECOMMENDATIONS

- Continuation of the existing pace of adoption of by-laws necessary for the implementation of the Energy Law, with special attention given to avoiding unnecessary mistakes due to short deadlines.
- 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.
- Closer co-operation between the government and potential investors and actively promoting investment opportunities in the renewable energy sector.
- The Public Supplier should 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); the independent Public Supplier should have a sustainable budget sufficient to meet all obligations the Public Supplier has under the Energy Law.
- Increasing public awareness of the efficient usage of electricity.
- The prices of electricity need to be re-evaluated, since it is necessary to ensure investments in new capacities and the rehabilitation of existing capacities.
- Addressing special attention to defining the Public Supplier, with special regard to the sustainability of its budget.

TELECOMMUNICATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Stimulating broadband services with investment incentives/end user subsidies by the state;	2008			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Timely introduction of number portability in fixed telephony as of 1 December 2012, as any delays would harm further competition in this area;	2011			√
Encouraging the development of new telecommunication infrastructure and enabling the use of the existing alternative infrastructure for all types of electronic services;	2007		√	
The adoption of a new Allocation Plan based on the technological neutrality principle;	2010	√		
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.	2010			√
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;	2011			√
Involvement of the industry in making strategic decisions;	2012		√	
Making an Action Plan for the Strategy of the Development of Electronic Communications until 2020.	2012	√		

CURRENT SITUATION

According to the Electronic Communications Agency's (RATEL) official report for 2012, the telecommunication sector has contributed 5.52% to Serbia's GDP in 2012. Given that the telecom sector is such a significant contributor to the Serbian economy, its further development should be stimulated by the Serbian government. Telecommunication services revenues in the amount of EUR 1.54 billion are showing a slight decline compared to 2012, when the electronic communications sector generated EUR 1.6 billion, and there is also drop of investments from EUR 56.75 million in 2011 to 51.55 in 2012.

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 and new spectrum bands to be open for mobile services, would be adopted in the first half of 2012. The adoption of the plan was postponed due to elections till October 2012 and in this way the introduction of Frequency Assignment Plans has also been postponed. The availability of spectrum needed for introducing new technologies will be known only after the Assignment Plans are adopted and a new strategy is formulated by the state. Implementation of technology neutrality stipulated in the Frequency Allocation Plan is significantly delayed given that the Plan was adopted back in October 2012 and still not implemented by June 2013. This slows down investment by operators and disables them to use current bands for new technologies for which end users will benefit (e.g. much talked-about LTE–long term evolution technology).

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 relevant markets. Following market analysis, all operators, under the same conditions, could use the wholesale services of SMP operators. The second market analysis was completed in October 2012, but between the two analyses there were no significant changes. The weakest competition is in the relevant markets covering services provided by fixed network operators due to the lack of regulation for carrier (pre)-selection and excessive prices for access to the fixed network (local loop, ducts...) and wholesale services (wholesale broadband access services).

There has been a significant delay in the implementation of fixed number portability (FNP) in Serbia. Under the Rulebook adopted in June, 2011, FNP was stipulated to start on 1 Dec 2012. However, the start has been delayed. It is envisaged that FNP will be implemented in phases starting from 1 October 2013 with full implementation expected by April 2014. According to the latest announcements, FNP will not start in phases from 1 October 2013, as that activity has been pushed back to April 2014, which further increases the unpredictability and instability of the regulatory framework.

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 the strengthening of the capacities of RATEL.

POSITIVE DEVELOPMENTS

In line with the Strategy of the Development of Electronic Communications until 2020, adopted in 2010, the Government adopted by the end of 2012 an action plan for the period of two years (2013-2014) as an integral part of the strategy that determines detail implementation of certain activities for the implementation of the Strategy of the development of electronic communications of the Republic of Serbia.

The most important activities defined in this plan encourage the development of broadband networks and services; the harmonisation of Frequency Assignment Plans with the Frequency Allocation Plan; the project of switch-over to digital TV broadcasting; the release of spectrum and allocation of the digital dividend; as well as the strengthening of the inspection of electronic communications and further development of a competitive market of electronic communications.

A positive step is the new draft Law on fees for usage of public goods which stipulates that parafiscal duties such as the one introduced in the Law on Cinematography according to which RATEL needs to contribute 10% of its yearly revenues to the Cinematography Fund should be abolished. However the law is still in its draft phase and has not been enforced through the Parliament.

REMAINING ISSUES

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 Foreign and Internal Trade and Telecommunications which will together deal with all the above mentioned issues.

The Frequency Allocation Plan, granting technology neutrality on the already allocated spectrum bands and also stipulating the release of (freeing up) new bands that will contribute to further development of ICT in Serbia, was adopted in October 2012, and was assessed by the industry as a positive step in line with EU standards and practice. However the implementation of technology neutrality to be defined in the Frequency Assignment Plan has been delayed. There is concern that the adoption of this Plan and the implementation of spectrum technology neutrality will take a longer period of time and that it will not be on the priority list of the regulatory body and Government.

In fixed telephony and Internet, the current level of prices for access to the state owned fixed network (local loop, ducts...) and wholesale services do not allow alternative operators to provide services over this infrastructure profitably.

Although the Rules on number portability on public fixed networks stipulated the start on 1 December 2012, there is significant delay in the implementation. RATEL has announced that the process of implementation of fixed number portability will be completed by April 2014. This action presents a negative step in the liberalisation process and brings legal uncertainty to local and foreign investors.

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. This is especially evident in introduction of new telecommunication services when clarifications and legal opinions are needed by a few different ministries (tax and foreign exchange issues in jurisdiction of the tax authorities and the Ministry of Finance). Tax on digital content issue and foreign exchange regime when operators intend to enable its customers to use different applications are one of the best examples of that.

FIC RECOMMENDATIONS

Some recommendations remain unchanged:

- Stimulating broadband services with investment incentives by the state.
- Introduction of number portability in fixed telephony should be implemented as soon as possible, as any further

delays would harm further competition in this area; April 2014 as a date of completion of its implementation introduces legal uncertainty, given that by Rulebook on FNP it should have been implemented on December 1, 2012.

- Ensuring access to state owned fixed network (local loop, ducts...) and wholesale services (wholesale broadband access, carrier (pre)-selection...) under reasonable terms for providing fixed telephony and broadband services.
- 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 Frequency Assignment Plans for public mobile services 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 MHz and extension to 900, 1800, 2100 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.
- RATEL should develop its status of being an independent and competent regulator, reduce the complexity of processes by increasing efficiency and supporting operators to provide services that would benefit both operators and customers, ensuring full transparency and non-discriminatory activities, and creating equal standards for all participants in Serbian telecom market.
- Providing predictability of regulatory changes in order to ensure foreseeable operating conditions and business environment to the industry.

IT INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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;	2012		√	
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;	2012			√
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;	2012		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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;	2012		√	
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;	2012	√		
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;	2012	√		
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;	2012			√
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.	2012		√	
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;	2012			√
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;	2012	√		
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.	2012		√	

CURRENT SITUATION

Despite the fact that the Serbian IT market continues with moderate growth on a yearly basis and is currently worth around USD 650 million, it is still not saturated and has plenty of room for further development. 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 (e.g. SW export) 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 possibil-

ity 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 mobile telephony market has finally seen true liberalisation, including number portability. 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.

After numerous announcements of the arrival of PayPal in Serbia, on the night between 9 and 10 April 2013, Serbia has finally been placed the list of supported countries.

The Ministry of Foreign and Internal Trade and Telecommunications apparently recognized the possibility of electronic business and trade over the Internet as an opportunity for the citizens of Serbia to perform their transactions on much easier, faster, safer and less expensive terms. The Ministry also recognized e-trade's potential to improve the economy due to better opportunities for residents, especially entrepreneurs and small businesses, for marketing their goods and services on foreign markets via electronic offer and sale, which, as a rule, includes payment through an electronic money institution.

As a result, on 17 December 2012 the Law on Amendments to the Law on Foreign Currency Transactions (Official Gazette of RS No 119/2012) was enacted, which was supposed to eliminate all obstacles for this type of business by stipulating that "international payment transactions can also be performed through electronic money institutions for the purpose of payments and collections based on electronic sale and purchase of goods and services" (Article 32, paragraph 2 of the Law), thus allowing the arrival of companies like PayPal to the Serbian market.

However, evidently the provision quoted above is far from sufficient for adequately regulating the complex area of

e-money issuance and e-money transactions. A series of secondary legislative acts, which would address the issue of electronic business and trade in a more detailed way, is yet to be enacted. In addition, the improvement of the regulatory framework, when it comes to online business in Serbia, involves adopting or amending a number of laws such as the Law on Payment Services and the Law on Accounting and Auditing. Considering that PayPal has been available in Europe since 2004, and that its operations in Serbia have been announced on numerous occasions since 2010, this development is a significant and long-awaited step on Serbia's journey of harmonization with European standards. Domestically, this development is certainly a notable first step towards meaningful liberalisation and improvement of electronic business.

REMAINING ISSUES

1. Low IT spending (just as 11.6% of EU average) is a critical sign that the Serbian Government should pay more attention to IT spending, which may influence growth of Serbian economy, in general.
2. Public-Private Partnership (in the IT area) is still at an early stage, despite the fact that 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.
3. 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.
- Quick wins and tangible results already achieved in the area of e-Government should be continued, especially in the following areas: administrative fees, applications for various documents, and tax applications.
- 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.

- 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.

- There is a need for better coordination of software and hardware acquisition procedures among the different government bodies (ministries, agencies, directorates) both within the public tender procedure and prior to it in the context of investment planning. This would help with reduction of needless duplication of IT capacities; it would help with optimization of the spending of tax payers' money, and would as a result help state bodies perform their duties in a more efficient way. Hopefully, the new Law on Public Tenders, which has introduced a centralized model of the tender procedure, should have a positive impact in this sense and its application should be followed closely.

- It is necessary to clarify the application of the withholding tax (WHT) in the IT industry because the current legislation leaves room for arbitrary interpretation by tax and other authorities. Due to the unclear legal framework, domestic IT companies find themselves in a less favourable position than foreign suppliers especially in the context of public tenders. In practical terms, this means that domestic companies' software prices are generally 10-20% higher than the prices offered by foreign companies for the same software. Since it is the government bodies who are involved in public tenders, it should be in everybody's interest for the playing field to be levelled and to help IT companies with a registered seat in Serbia to be competitive. To that end it is desirable that the international tax treaties with other countries better define software as such as is the case with the tax treaty between Serbia and the Czech Republic.

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 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;	2009			√
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;	2010			√
Authorities must introduce transparency and consistency in their own work on all levels and ensure a high level of control of all relevant institutions;	2009		√	
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;	2009			√
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;	2009			√
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.	2012			√
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;	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. 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;	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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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;	2012			√
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;	2012		√	
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.	2009			√

CURRENT SITUATION

The Law on Planning and Construction, adopted in September 2009, with its amendments from April 2011 and December 2012, remains the FIC's main area of interest. A year ago it was announced that the new law on this topic would be adopted, however, at the time of preparation of this White Book, the draft of the new law was not yet publicly available.

The Law is very complex, since it impacts five very important fields: spatial planning, construction, urban construction land, restitution and legalisation, thus in a certain way causing difficulties in its implementation.

Four years after its enactment, it is fair to conclude that the ultimate impact of this Law and its amendments was far below expectations.

One of the most important objectives of the Law was the privatisation of construction land in the Republic of Serbia via conversion of the usage right into the ownership right. More specifically, the Law has provided several processes for the realization of conversion procedure, the most significant of which was conversion against compensation, which provided the possibility for companies that acquired land through privatisation, bankruptcy or enforcement to convert their usage rights into ownership, subject to payment of a compensation equivalent to the difference between the market value of the construction land and the costs of acquiring land rights. However, the introduced legal solutions with regard to conversion with compensation did not yield the anticipated results in practice, even after amendments to the Law from April 2011. Due to numerous problems with the conversion procedure which occurred in practice, the latest amendments to the Law have temporarily (until 24 December 2013) enabled the issuing of construction permits (for entities that may perform conversion procedure against compensation) based on the usage right. Finally, in May 2013, the Constitutional Court of Serbia accepted the initiative for assessment of the constitutionality of the provisions of the Law on Planning and Construction governing conversion against compensation in respect of construction land and suspended the implementation of these provisions until the final decision on their constitutionality. This practically means that the procedure of conversion against compensation is suspended for an indefinite period.

Another important objective of the Law – legalisation of 1.3 million illegal structures in the Republic of Serbia – still remains fully unattained, despite extremely simplified legalisation procedure. The reasons for this could be found in the unwillingness of the state administration to effectively decide on such a large number of submitted applications. In June 2013, the provisions of the Law on Planning and Construction related to legalisation of illegal structures were declared unconstitutional, bringing this process, which was already too slow and ineffective, to a halt.

According to available information, material amendments to the Law on Planning and Construction and a separate Law

on Legalisation are being prepared and may be expected by the end of the year.

Land Ownership and Real Estate

Privatisation of urban construction land, which was previously in exclusive state ownership, foreseen under the Law on Planning and Construction from 2009 to be carried out via conversion procedure, was very slow, and at the end of May 2013, the Constitutional Court of Serbia suspended the provisions of the Law related to conversion against compensation.

Accepting the initiative for assessing the constitutionality of the provisions of the Law on Planning and Construction on conversion against compensation in May 2013, the Constitutional Court highlighted the manner of determining the compensation for conversion as problematic. Amendments to the existing Law on Planning and Construction or adoption of the new one are necessary and a general impression is that conversion of the usage right into the ownership right will no longer be applicable, at least not in its current form.

A large share of real estate in prime locations in Belgrade and other cities is still in municipal ownership and is leased, but not under the current market conditions. Such practice discourages renowned retailers from entering the Serbian market. This anomaly greatly contributes to the "grey economy", thus reducing budget revenues. Positive effects in this respect may arise from the restitution of nationalised property, bearing in mind that a significant share of business premises, currently owned by municipalities, was actually nationalised: therefore, the restitution of such nationalised property to private owners could produce positive effects on the market.

Certain problems in transactions structuring may be caused by the broad interpretation of the Law on Payment Deadlines, according to which the payments related to real estate transactions are subject to the limits provided under this Law.

The residential property management and maintenance policy has not changed since 1995, when the existing Law on Management and Maintenance of Residential Property was adopted. This Law does not foresee a model of professional residential management (this is currently a voluntary service performed by the president of the residents' council), nor is it sufficiently binding on 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 maintenance purposes.

Construction

The issuing of construction permits is still not sufficiently transparent, it is lengthy and heavily burdened with bureaucracy.

The major problem with respect to the procedure for issuing construction permits is still the fact that the major part of construction land is not covered by a relevant planning document, which is a precondition for the issuing of the location and construction permits. The current legislation has not proved to be effective in encouraging competent authorities to prepare and adopt all necessary planning documents in a timely manner.

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. Despite numerous announcements related to introducing the one-stop-shops system for investors, aimed at facilitating and shortening bureaucratic procedures, this idea has still not been implemented.

An additional problem with respect to the procedure for issuing construction permits is the fact that land ownership rights, as a rule, must be acquired before applying for a location permit, preceding a construction permit. Amendments to the Law on Planning and Construction from December 2012, have partially, but temporarily improved the situation, allowing the issuing of a construction permit on the basis of the usage right within one year of its adoption; however, these amendments to the Law are selective and cover only a group of investors to which the provisions of the law regulating privatization, bankruptcy and enforcement procedure apply, including their legal successors.

The current legislation fails to resolve property rights in respect of the land and there are very few investors and financial institutions willing to assume this investment risk. In case that new legal solutions in this respect fail to enter into force by December 2013, when it will no longer be possible to obtain a construction permit (in certain cases) based on the usage right, there is a justified fear that further development of real property will be significantly decelerated.

Additionally, the existing legal framework defining the relationship between the investor and the main contrac-

tor is not in accordance with the internationally recognised best practice.

Real Estate Cadastre

The Cadastre Project in Serbia was completed in May 2012, although there are still certain sporadic problems related to its completion due to pending appellate procedures initiated during the establishment of the real estate cadastre.

Additional problems are created by disputable and inconsistent interpretations of applicable legislation by the real estate cadastre administration, slow registration procedure and slow issuing of second-instance decisions of the competent ministry upon appeals on decisions. It is noted that the real estate cadastre administration in Belgrade is particularly inefficient, where decision making in the first instance last on average several months.

The digitalisation and regulation of cadastral plans still has not been completed and there are many inconsistencies in practice between the data contained in the cadastral operate and the corresponding cadastral plan. This slows down investments significantly, especially those related to larger surfaces of the land, i.e. larger number of cadastral parcels.

Also, non-functioning of the cadastre of utility installations creates problems in business, due to legal uncertainty with respect to property rights and inability to establish encumbrances on installations.

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.

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 in-kind restitution (i.e. restitution of an unjustly expropriated property), there are numerous exceptions and it is, therefore, likely that compensation will be the most commonly implemented form of restitution. In-kind restitution is the obligation of the Republic of Serbia, local governments, public enterprises established by the Republic of Serbia and socially-owned companies and co-operatives, while the disbursement of compensation is the exclusive obligation of the Republic of Serbia.

The Restitution Agency of the Republic of Serbia started operating in 2012. So far, the Restitution Agency has taken a rigid position, especially with respect to foreign citizens. In practice, this is reflected in inadequate interpretation of international treaties from 1950s, as well as in requests for documentation unnecessary for decision making in restitution procedures, which is, in most cases, impossible to obtain.

Besides, the Law contains numerous uncertainties and administrative and court practice will, therefore, significantly affect the final result of the restitution procedure.

Real Estate Leasing

Amendments to the Law on Financial Leasing from May 2011 introduced the option of financial leasing of property. However, the new legislative framework has not been fully developed, and so far it remains inapplicable in practice, with the exception of few business buildings obtained via leasing. The main issues related to the application of the Law on Financial Leasing arise from high costs and tax treatment of leasing, whereas it is expected that amendments to the Law on VAT, which entered into force on 1 January 2013, will provide the missing link that will encourage the real property leasing market.

Mortgage

After the first seven years of application, the shortcomings of the Law on Mortgage have become apparent in practice. In combination with certain restrictive interpretations of the provisions of the Law on Mortgage by the public real estate registries, this calls for material amendments to mortgage regulation in Serbia.

Non-existence of the security agent, an institution common in large financial transactions, represents only one of the deficiencies that require changing the Law on Mortgage.

Provisions of the Law on Mortgage related to extrajudicial enforcement via forced sale need additional elaboration that would eliminate the existing uncertainties and potential obstructions of the proceeding itself. In the meantime, an increasing number of mortgage creditors opt for court

enforcement, which is encouraged by positive experiences of enforcement via private bailiffs in accordance with the new Law on Enforcement and Security.

Agricultural Land

The Law on Agricultural Land prohibits foreign legal entities and private persons from acquiring ownership of agricultural land. Foreign investments in Serbian agriculture are mainly realised through privatisation of agricultural companies, whereby the foreign investors obtain a majority of shares in these companies, which own agricultural land. In some cases, companies face problems due to a misinterpretation of the related provisions 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 was aimed at restitution for owners of agricultural land forced to transfer their ownership to agricultural co-operatives under socialist legislation enacted after WWII. In practice, these provisions have been misused by newly founded agricultural co-operatives who do not even perform agricultural activities, claiming agricultural land of high value from privatised agricultural companies. Decisions of the Ministry of Finance and Economy in 2013 show a tendency to allow this abuse of law.

POSITIVE DEVELOPMENTS

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

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.

Construction

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

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

The Government has recently enacted the Decree establishing the Office for Quick Answers, which will perform professional, administrative and operational tasks for the Government, in order to improve the conditions for attracting foreign investments and increase efficiency in the implementation of projects significant for the state. The establishment of such office is a good initiative, but the effect of the office has yet to be seen.

Restitution

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

REMAINING ISSUES

Land and Real Estate Ownership

The application of the Law on Planning and Construction has not yielded the expected results. In addition, the already inefficient conversion against compensation system was suspended by the Constitutional Court of Serbia in late May 2013.

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

A clearly defined policy for sanctioning local authorities for non-fulfilment or untimely fulfilment of their 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.

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

The Constitutional Court of Serbia has declared as unconstitutional the entire chapter of the Law on Planning and Construction which pertained to the legalisation procedure, which totally hampered the already slow and complicated legalisation.

In 2013, the new Law on Special Conditions for Ownership Registration in Respect of Buildings Built without Construction Permits was adopted. The Law refers to a limited number of buildings (generally not business premises) that were constructed without construction permits prior to 11 September 2009, or are used without occupancy permits.

The Law provides ownership registration in respect of the illegal buildings with the real estate cadastre services, and in certain cases also in respect of the land on which such buildings have been constructed. If the land is subject to the procedure of conversion of the right of use into ownership against compensation, ownership registration under this Law is not applicable. Alternatively, if the land is owned by a third party, the owner of the illegal building may still register his/her ownership thereof (!), whereas ownership of the land may be acquired based on a legal transaction with the existing land owner. If the land owner and the owner of the illegal building fail to resolve property issues in respect of the land by 16 March 2015, the owner of the illegal building will be required, at his/her own expense, to determine the land for regular use of the building and pay to the land owner the market price for the land in question. Bearing all of the above in mind, it is reasonably expected that numerous court disputes might arise between land owners and owners of illegal buildings. Furthermore, in the title deed, an annotation will be made stating that the ownership has been registered in accordance with the abovementioned Law and such building will remain illegal until construction and occupancy permits are obtained (which is not possible at this time because of the Constitutional Court decision annulling the provisions of the Law on Planning and Construction on legalisation). In addition, regardless of ownership registration, such buildings cannot be transferred under an agreement, unless the owner obtains a certificate from the competent municipality that he/she has settled all the liabilities toward the municipality regarding the payment of development fee. "Limited" ownership, as provided by this Law, may be deemed as controversial, considering the existing concept of ownership under the Serbian Constitution and the Law on the Basis of Property Relations. The Law will be in force until 31 December 2014. Bearing all of the above in mind, the possibility of this new Law also being reviewed by the Constitutional Court cannot be ruled out.

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. The announced "one-stop-shop" concept has not been introduced yet.

Real Estate Cadastre

Inconsistent interpretation of the relevant regulations by 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.

The cadastre of utility installations has not been established yet, which creates uncertainty in property rights area and prevents the registration of encumbrances thereon.

Restitution

The Law on Property Restitution and Compensation provides the professed principle of in-kind restitution as the 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 reconcile the conflicting interests of persons entitled to restitution and persons with acquired rights in respect of confiscated properties (in most cases, foreign investors).

Progress in the implementation of this Law is still awaited. Therefore, the impact of the Law on Property Restitution and Compensation has yet to be seen. In the restitution procedure, the Restitution Agency interprets regulations in a manner that hinders or even precludes foreigners' right to restitution or compensation.

Agricultural Land

Provisions of the Law on Agricultural Land restrict 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 condemnation of foreign investors that acquired agricultural land through acquisition of agricultural companies.

Newly founded agricultural co-operatives seek the restitution of agricultural land from privatised agricultural companies. The existing Law on Co-operatives, which allows partial restitution of former "co-operative property" to newly founded agricultural co-operatives, may be subject to abuse, and Serbian authorities tend to allow these abuses. The current law and misinterpretation thereof jeopardise the existing investments in agriculture and the investors' acquired rights and thus create an adverse legal environment for future investments in agriculture.

FIC RECOMMENDATIONS

- The Law on Planning and Construction 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 legislation in co-operation with the NGO sector.
- Conversion against compensation and legalisation to be defined by the new law(s) in a different manner that would be constitutionally acceptable, politically sustainable and implementable in practice.
- Authorities must introduce transparency and consistency in their own work at all levels and ensure a high level of control of all relevant institutions. Authorities should publish all opinions and interpretations of regulations provided on their websites.
- 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 the 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 pay a consideration for services and the services are not provided in due time. In such cases, the consideration for untimely services should be decreased.
- The legal framework defining the relationship between the investor 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.
- The Draft Law on Management and Maintenance of Residential Property should be developed 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.
- The Law on Financial Leasing must be harmonised with the current real estate regulations, in particular where it pertains to the possibility of registering an existing real estate lease in the public real estate registry, which must be clearly prescribed either by the law regulating leasing or the Law on Cadastre and State Survey.
- The Mortgage Law should be changed completely, as it contains 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 the acquired right of ownership of agricultural land.
- Shorter time limits 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 become swift and predictable. Online access to cadastral data should be unlimited and free, and the issuing of simple documents, such as title deeds and copies of cadastral plans, should be possible immediately on the spot.
- Dialogue, communication and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other organisations dealing with real estate on the other, 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:				
Forcing international companies to accept a complex salary system in Serbia, different than in other countries, creates a barrier to foreign investments. Work performance should not be mandatory part of salary and employer and employee should freely agree on the salary structure and benefits, so that salary system that stimulates work is created;	2009			√
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;	2008			√
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;	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 employer and employee;	2009			√
We propose that the duration of 12 months fixed-term employment contract is extended to 36 months. Also, such contract should not be conditional on the existence of few predetermined reasons (e.g. work on a project, increase in the volume of work etc.), as currently. The parties should be free to contract for whatever purpose they deem sufficient;	2010			√
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;	2010			√
It is important to change the calculation of redundancy severance payment by basing this amount only on the years of service of the employee with the current employer. Only as a last alternative the rest of the severance pay (for the years of employment with previous employers) would be borne by the State or the Fund for Unemployment Insurance;	2010			√
We propose to establish a one-month suspension measure under paragraph 2 of Article 170 of the existing Labour Law;	2010			√
Since the only "disciplinary" measure in the Labour Law is the temporary removal of an employee from work, we propose that deduction of portion of employee's salary should be stated in the Labour Law as a possible disciplinary measure, as it is an effective measure. The amount of deduction should not exceed 20% of the employee's monthly base salary;	2010			√

We propose that the employer has the right to temporarily (up to 30 working days) transfer an employee to another appropriate position with no obligation of concluding an annex to the employment contract (e.g. when it is necessary to carry out the work of an employee on vacation or short-term sick-leave), where so required by the needs of the work	2010			√
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 purpose of overtime. Employers should have the right to introduce manager allowance that encompasses compensation for their overtime work	2012			√
The industry-wide collective agreements:				
Extended application of industry collective agreements should be nullified and provisions on extension amended or deleted. Otherwise, the Ministry of Labour should enable restrictive compliance check before extending the application. This does not mean that employers, members of the FIC, agree with the extended application of collective agreements	2011			√
The Law on Vocational Rehabilitation and Employment of Persons with Disabilities:				
The law should be terminologically co-ordinated with special laws in the area;	2009		√	
The work ability assessment and 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 since the FPDI already has a significant workload. Also, the list of documents required by the authorities should be reasonably decreased;	2009			√
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;	2009			√
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;	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 a residence permit issuance; reduce the number of documents required during the procedure for acquiring a residence and work permit, etc.	2009			√
Protection of the Citizens of the Federal Republic of Yugoslavia Working Abroad:				
The Law should be renamed to begin with, 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;	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 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.);	2009			√
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.;	2010			√
The conditions for the issue of work permits and the content of general business conditions for staff leasing agencies (including the fee for license for such agencies) should also be regulated by the law. The law would create legal certainty and remove the possibility of discretionary decisions being handed down with regard to these issues	2010			√
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.;	2012			√
Alternative is to stipulate dispositive norms on shift work - that shift work does not enable increased salary when nature of job implies shift changes as a work condition, and incorporates this into basic salary. Increased salary would only be paid in case of occasional shift work, where hours in the second shift would be the basis for increase;	2012			√
The Law on Prevention of Mobbing at Work:				
Consider the possibility of amending Article 31 of the Law. Namely, the burden of proof in court proceedings is on the employer as 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.	2011			√

CURRENT SITUATION

The most significant change in the employment legal framework in 2013 was the enactment of the amendments to the Labour Law that came into force on 16 April this year. These amendments introduced important changes and additional rights of pregnant employees and employees on maternity leave, childcare leave and special childcare leave, as follows: (i) extending the validity of their fixed-term employment contracts (which expire during pregnancy or use of the said leaves) until the expiry of the applicable leave; (ii) the decision on employment termination is null and void if the employer knew at the moment of employment termination, or was subsequently notified by the employee (within 30 days following the delivery of the employment termination decision), that the employee was pregnant, or that the employee was using one of the said types of leave, and (iii) introducing a new 90 minutes' paid daily break or reduction of working hours by 90 minutes, for the purpose of breastfeeding, for employees who return to work prior to the expiry of one year following childbirth (if their daily working time is 6 or more hours).

More comprehensive amendments to the Labour Law, which will regulate the remaining disputable issues discussed in the previous editions of the White Book, are still pending.

The industry-wide collective agreement for the metal industry ceased to be applicable as of May 2013, owing to its termination on the part of the Association of Employers. Consequently, the number of industry-wide collective agreements which are extended to all employers in certain industries by decision of the competent minister and were analysed in the previous editions of the White Book

decreased to three – for the chemical and non-metal industry, for the construction and construction material industry and for agriculture, food and tobacco industry and water management.

The amendments to the Law on Vocational Rehabilitation and Employment of Persons with Disabilities, which mandates employers to employ a certain number of persons with disabilities (PWD), came into force on 16 April 2013. The most significant change introduced by these latest amendments is replacement of the former provision of the Law regulating alternatives to employment of disabled individuals (participating in the financing of disabled individuals' salaries in a company for vocational rehabilitation and employment of disabled individuals), as well as the provision on the payment of a penalty (triple the minimum salary per disabled individual that is not employed) where the obligation to employ disabled people is not met. Now an employer that fails to employ the required number of disabled individuals is obliged to pay 50% of the average salary in the Republic of Serbia per PWD that the employer failed to employ.

Other than the above, there was no significant legislative activity in the labour regulation area in 2013. Therefore, regulations that entered into force in the period from 2010 to 2013 and were discussed in the previous editions of the White Book, including the Law on the Prevention of Mobbing at Work, are still in focus and represent the relevant labour framework.

The Law on the 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 deals with 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 the 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.

In practice, problems also arise in relation to the concept of base salary increase on the grounds of shift work. Only two provisions of the Labour Law make reference to shift work. One authorises the employer to alter the working week and working hours schedule if the work is organised in shifts, whereas the other stipulates that shift work represents grounds for a salary increase of at least 26%, unless shift work is valued in setting the base 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 Company Law, which became effective on 1 February 2012, management boards are 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 on the basis of more flexible management contracts or employment contracts tied to their term of office, meaning that those contracts may be terminated automatically upon expiry of the term of office or dismissal of executive directors.

The amendments to the Law on Vocational Rehabilitation and Employment of Persons with Disabilities from April 2013 abolished the payment of penalties for the employers who failed to employ the required number of PWD in the amount of three minimum salaries per each PWD they failed to employ. The employers who fail to employ PWD are obliged to pay the amount of 50% of the average salary in the Republic of Serbia per each PWD they failed to employ. In this manner, the employer fulfils the obligation of employment of PWD by alternative means. This amendment certainly simplifies the employers' obligation pertaining to employment of PWD.

REMAINING ISSUES

Although certain amendments to the Labour Law have recently been enacted, the most significant problems discussed in the previous editions of the White Book still persist and their solution requires more comprehensive amendments to labour regulations. Given that regulations listed in the section below are considered particularly important for attracting and maintaining foreign investments, the FIC reiterates the following:

Labour Law

The latest amendments to the Labour Law from April this year, which provide additional protection for pregnant employees or employees on maternity leave, childcare leave or special childcare leave, are a consequence of the recent change in the practice of the authorities with respect to the protection offered to pregnant fixed-term employees from having their employment terminated. However, in certain aspects, the new provisions are somewhat unclear, which may cause uncertainties in their implementation in practice. In particular, it remains unclear: (i) if the right to protection is provided only to women who notify the former employer within 30 days following the delivery of the decision on employment termination that their pregnancy existed at the moment of termination, or if such protection is also provided to women whose pregnancy commences after the receipt of the decision on employment termination, but within the said 30 days' period after the delivery of the decision on employment termination; and (ii) if the right to 90 minutes' break or reduced working hours for breastfeeding incorporates the regular daily break (30 minutes) which is provided to all employees, or represents an additional daily break.

Since comprehensive amendments to the Labour Law are still pending and, by the time of this report, there has been no progress with respect to the issues previously identified by the FIC as the most problematic, our comments given in the previous editions of the White Book remain valid. This edition of the White Book concentrates on the most important provisions of the Labour Law that require prompt improvement, but all other comments given in the 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 are very complex and the payroll list must 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 using 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 had not been absent. Additionally, this results in the employers' inability to plan their budgets.
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 the entitlements under 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 require amendments to 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 leave (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 several times in their lives (if they are made redundant by several employers) based on the same years of work experience.
9. The length of the suspension measure of up to three working days (Article 170 of the Labour Law) is very short and, in most cases, inefficient.
10. The employer is obliged to offer the employee an annex to the employment contract even if that employee is transferred to another appropriate position only temporarily and for a very short period of time, as required by the needs of work with that employer (e.g. when it is necessary to carry out the work of an employee who is

on annual leave, short-term sick leave, etc.).

11. The only "disciplinary" measure stipulated by the Labour Law is temporary suspension.
12. Overall, the provisions of the existing Labour Law reduce flexibility in certain forms of engagement (as it does not recognise staff leasing and limits the 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 such a way as to give more flexibility to employers to decide on the introduction of overtime work, as well as to decide on the manner of compensating employees for overtime work (through increased salary or days off). This is especially relevant to employees in managerial positions.

Beside the noted provisions of the Labour Law, additional problems also arise in relation to provisions on the protection of trade union representatives, since these provisions can easily be (and in practice often are) misused, owing to the following reasons:

1. Article 188 of the Labour Law establishes the right of the president of trade union to protection from termination of employment and placement into an unfavourable position. Since the Law guarantees the employees freedom of organising themselves in trade unions and pursuing trade union activity, just by registering the trade union in the relevant registry, in theory, there is a possibility that only two employees organise a union. Practice shows that the provision of the Law providing protection to presidents of trade unions, regardless of the total number of employees in the union, enables abuse of the trade union organisation so as to protect individual interests instead of employees' interests. Thus, it happens that employees organise two-member trade unions during the redundancy procedure within the employer, whereby at least one member, as the president of the union, enjoys protection from termination of employment. Additionally, this may lead to a situation where the number of unions within one employer is quite high (number of employees/2 = maximum possible number of unions), where the president of each trade union enjoys protection, regardless of the number of trade union members.
2. The term "unfavourable position" is not clearly defined. Thus, it appears disputable if adjustment in salary, appointment to another adequate position and the like are considered as placement into an unfavourable position. We note that the need for change of salary or internal reorganisation of positions is often caused by real economic difficulties which employers face in the current business climate, as well as by the need of the work process and organisation: hence, it does not necessarily represent a way of hampering trade union activities.
3. In practice, uncertainty is caused by the issue of the protection of appointed and elected union representatives in a situation where their number is not determined by a collective agreement with the employer or by agreement with the union.

Industry-Wide Collective Agreements

In the end of 2012, the Association of Employers decided to terminate the industry-wide collective agreement for the metal industry of Serbia. After the notice period elapsed, the said collective agreement ceased to be applicable as of 2 May 2013. The FIC welcomes the termination of application of this collective agreement, although such termination did not come as a result of the FIC's recommendations stated in the previous edition of the White Book, but as a result of unilateral termination of this collective agreement, caused by numerous objections of employers in this industry.

The number of applicable industry-wide collective agreements extended to all employers in the relevant industries by decision of the line minister, after the CA for the metal industry was terminated, decreased to three – for the chemical and non-metal industry, for the construction and construction material industry and for agriculture, food and tobacco industry and water management.

In the previous editions of the White Book, the FIC discussed the adverse effects of such extended application of collective agreements on the attractiveness of the business climate in Serbia. We reiterate here that the extended application of industry-wide collective agreements pertains to those employers who are not members of the Association of Employers, which participated 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, employment and social policy on the extended application to all employers in the respective industries. Thus, employers who do not participate in the negotiations and the conclusion of these industry-wide collective agree-

ments are forced to abide by various obligations stipulated 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 General Collective Agreement ("GCA") and previously 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 collective agreements are still relevant: (i) the agreement of two parties is extended to a third party which did not participate in its negotiation, which creates additional legal uncertainty in an already unstable Serbian market; (ii) such extended application gave the industry-wide collective agreements the legal status of 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. setting the base salary based on coefficient and the minimum wage etc.).

Law on Vocational Rehabilitation and Employment of Persons with Disabilities

With respect to the 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 shortage of adequate staff; while, on the other hand, there are business activities for which it is practically impossible to employ a PWD (e.g. construction, etc.).
2. Although there is a possibility for current employees to undergo assessment 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 [NES] and the Republic Fund for Pension and Disability Insurance [FPDI]).

Law on Foreigners

Certain provisions of the current Law on Foreigners and the applicable procedures for its implementation might prevent access to temporary residence permits in a timely manner.

Firstly, the duration of the procedure for obtaining a temporary residence permit is too long (as a rule, one month). During this period, foreigners cannot bring their personal belongings from abroad and cannot apply for a work permit, which often prevents them from assuming their positions in a timely manner.

A separate problem is related to the maximum term of validity of the work permit, which is set at only one year. In line with this limitation, competent authorities often insist that fixed-term employment contracts are concluded with foreign employees. This further requires the employer to renew the identical employment contract every year, based on the renewed work permit. The process of work permit renewal represents an additional administrative burden for employers, especially since the same procedure is practically repeated, without introducing any new element in the decision-making process.

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

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 cumbersome, 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 defeats its main purpose – that of protecting Serbian citizens employed abroad. Furthermore, without the implemented procedure for notifying the competent Ministry of Labour, Employment and Social Policy of the intention of sending an employee abroad to work and its conclusion that conditions for it have been fulfilled, health insurance for employees valid abroad cannot be obtained from the Republic Fund for Health Insurance [RFHI], in accordance with the regulations of the Republic of Serbia (RS).

Staff Leasing

The staff leasing practice of companies in Serbia, although somewhat tolerated in practice owing to the lack of formal

regulation, may lead to certain problems for employers who use this concept. Specifically, such employers may be fined on the grounds that leased staff working for them 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 the said company. This is usually the case when they are dismissed as a result of termination of business co-operation between the staff leasing agency and the company that used its services.

Shift Work

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

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

Specifically, 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 tend to extensively widen the scope of shift work, considering it to be any work in which there are differences in the beginning and end of working hours, and recognising the right to increased pay on the grounds of such understanding of shift work in all cases, unless the internal document of the employer or the employment contract explicitly stipulate that the employee performs 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 virtually non-existent formulations 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 unbearable burden for the vast majority of employers in the Republic of Serbia.

In practice, in most jobs that, by their nature, entail regular and continuous shift changes, shift work is implied and therefore incorporated into the base salary. The obligation to explicitly stipulate this in the employer's internal document or employment contract 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), nor does it give any guidelines on how to determine the base for a 26% salary increase.

Since the definition and specific nature of shift work depend mainly on the industry in which it is performed, and given that work organisation is in the sole competence of the employer, it appears more appropriate to leave the regulation of shift work to the employer's internal document, 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 the 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 previously provided and still has a number of suggestions on how to improve the situation. In this respect, we reiterate the suggestions regarding labour relations from our previous edition of the White Book, and will herein elaborate and repeat only the most important recommendations on how to improve the existing legal framework and practice:

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 portion of salary. In this regard, the possibility of a free agreement between employees and employers on the structure of salary and additional benefits and establishment of a salary system that will stimulate employees' work is the basis of the functioning of the labour market.

- We suggest that salary compensation during leave from work be equal to the amount of the 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. In that regard, Article 122, paragraph 5 of the Law (requiring the employee to sign the written certificate on the payment of each salary) should be repealed.

- Employees protected from termination by reason of redundancy should have the right to consent to such termination, in which case they would be entitled to unemployment benefits.

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

- We propose that the legal limit of 12 months for a fixed-term employment contract 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 such limitations should be abolished and that the parties should be free to contract for whatever purpose they deem appropriate.

- The currently stipulated minimum three working weeks of annual leave 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 tying the amount of severance payment in the case of an employer making an employee redundant solely to the years of service of the said employee with the said employer, and only as a last alternative would the rest of the severance payment (namely for the remaining number of years of employment with previous employers) be borne by the State or by the NES at their own expense.

- We propose to establish the limit of one month for the suspension measure under Article 170, paragraph 2 of the existing Labour Law.

- Given that the only "disciplinary" measure stipulated by the Labour Law is temporary suspension, and considering that deduction of a portion of salary is an effective disciplinary measure and as such foreseen by laws of some surrounding countries, we propose that the said deduction of a portion of salary should be explicitly provided for 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 it is necessary to carry out the work of an employee who is on annual leave, short-term sick leave, etc.), where so required by the work process with the employer.

- The possibilities for the introduction of overtime work should be extended, i.e. should not be related to sudden and unexpected occurrences only. The employer and employees should be free to agree on the occasion and purpose of overtime work. Employers should have the right to introduce manager compensation that would include compensation for overtime work performed by managers in the company.

- Regarding the new provisions on the protection on pregnant employees or employees on maternity leave, childcare leave or special childcare leave, the following should be defined: (i) that the decision on employment termination will not be void if the pregnancy commences after the delivery of this decision to the employee, and (ii) that 90 minutes' daily break/working hours reduction by 90 minutes for breastfeeding, encompasses the regular daily break during working hours, and that there is no right to an additional daily break.

- It is required to define more precisely and amend the provisions on the protection of trade union representatives, as follows:
  (i) Establish the right to protection for presidents of representative trade unions only or stipulate the minimum number of trade union members required in order for the president of such trade union to be eligible for protection.
  (ii) Define more precisely what is considered as placement into an "unfavourable position".
  (iii) Explicitly stipulate that in a situation where a collective agreement or an agreement with the union on the number of trade union representatives who enjoy protection has not been concluded, appointed or elected trade union representatives are not protected.

Industry-Wide Collective Agreements

- Bearing in mind that industry-wide collective agreements for the construction and construction material industry and for agriculture, food and tobacco industry and water management expire in 2014, the issue of extended application of the CAs to all employers in the relevant industry will come into focus again, if new CAs are be concluded in these industries.

- The extended application of industry-wide collective agreements should be abolished for reasons stated above, while the relevant legal provisions regulating the extended applicability of collective agreements should be amended, i.e. repealed 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 introducing their 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.

Law on Vocational Rehabilitation and Employment of Persons with Disabilities

- The working ability assessment and issuing of a decision on assessed working ability should be performed by the same body in order to accelerate 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 stimulating employers to employ such persons by way of incentives.

- The Law should enable the employer to initiate the procedure for the establishment of current employees' disability, rather than leave it to employees alone.

Law on Foreigners

- Obtaining 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 issuing a residence permit; reduce the number of documents required during the procedure for acquiring a residence permit, etc.

- Work permit term of validity should reflect the need of the employer officially confirmed by the term of the employment contract (which may be concluded even for an indefinite term).

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

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

- Alternatively, this Law should be repealed 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 amendments 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 such a manner that the relationship between the leased staff and the users of staff leasing services should not result in the creation of an employment relationship.

- The conditions for the issue of operating permits and the content of general business conditions for staff leasing agencies (including the fee for issuing operating permits to staff leasing agencies) should also be regulated by the law. The law would thus 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 grounds for salary increase, thus leaving this matter to be regulated entirely by the employer's internal document.

- An alternative solution is to stipulate by Law the discretionary norms that would apply only if the internal document does not regulate shift work. Salary increases should be limited by prescribing that shift work cannot constitute grounds for increased salary for jobs that, by their nature, entail regular and continuous shift changes and for which shift work is implied as a working condition and therefore incorporated into the base salary. Consequently, salary increased by a certain percentage would only be paid in cases of occasional shift work, whereas only the hours worked in the second shift would constitute the basis for salary increase calculation.

Law on the Prevention of Mobbing at Work

- Consider the possibility of amending Article 31 of the Law. Specifically, 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 that stimulate employment should be continued;	2009		√	
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;	2008			√
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;	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 2012. Reduced economic activity and consumption worldwide brought about a reduction in exports and economic activity in Serbia, and the reduction in income of the Serbian population resulted in a decline in demand for domestic and imported goods. Such trends in the real sector inevitably lead to reduced demand for labour, as a measure which derives from the economic activity. In a market economy, reduced demand leads to a decline in employment or to a reduction of wages, a reduction in the number of hours worked or a combination thereof.

According to the Statistical Office of the Republic of Serbia, the unemployment rate in Serbia in 2013 is 26.1%, or 0.6 percentage points higher than in August 2012, 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 2012 – employers downsized their workforce in order to reduce costs. The Government has tried to balance the growing budget deficit and companies' needs to receive support through tax incentives to slow down the downsizing process. Yet, unemployment grew by 0.6% compared to the preceding year.

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

In times of economic crisis, human capital becomes increasingly important. Although labour market demand has decreased, resulting in fewer job opportunities, the retention of key personnel, as a vital factor for surviving the crisis, is in the focus of HR professionals more than ever. Therefore, mature companies put even more effort into defending their best talent, 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 the times of crisis. In October 2011, the Government endorsed the National Employment Action Plan for 2012, which is a tool for the implementation of active employment policy. This employment plan defines the targets and priorities of the Government's employment policy and identifies programmes and measures to be realised in order to achieve the set targets and enable sustainable employment growth.

The Government of Serbia has adopted an education development strategy until 2020. This strategy is concerned with identifying goals, objectives, directions, instruments and mechanisms of development of the education system in the Republic of Serbia in the next ten years; in other words, it attempts to shape the development of this system in the best way known to us. The circumstances in which this strategy started developing are almost entirely different from those in which education in Serbia developed in the modern era. Two centuries ago, Serbian education thrived on the waves of the Enlightenment shaped by scientific advances and emerging industrial revolution. Today, education in Serbia faces a number of challenges of scientific, humanistic, social and other development, with great technological changes, the real revolution, globalisation and the general mobility of everything that can move, from capital to cultural patterns. With all the layers of the past preserved, society in the Republic of Serbia is dramatically different today than it was two centuries ago, and the circumstances in which the Republic of Serbia is developing are even more different from those in which the modern Serbian state emerged.

Since research shows that one of the key problems of unemployment in Serbia is the low education level of people and that in this respect it is necessary to improve education of the entire population, the activities of the Ministry of Education, Science and Technological Development are of great importance. In 2012, as in 2011, this Ministry 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 2012, the Ministry competent for 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. 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. Young researchers/scholars are involved 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.

In 2011, the Ministry of Labour and Social Policy, in the context of its legislative activities, established a working group for the preparation of amendments to the Labor Law. During the preparation, it was sought to reach an agreement among social partners as far as possible, in order to preserve existing jobs and avoid imposing a new financial burden on employers that would impair their status and thereby jeopardise that of their employees. In late October 2011, a working Draft Law on Amendments to the Labour Law was submitted to the Social and Economic Council of the Republic of Serbia.

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

The Ministry of Labour, Employment and Social Policy launched the Twinning project ''Preparation of Labour Market iIstitutions of the Republic of Serbia for the European Employment Strategy',' aiming to accelerate labour market reforms in line with European standards and enhance the impact of the national employment policy.

The project is funded by the EU IPA 2011 funds and implemented with partners from the EU – Ministry of Labour, Employment and Health of the Republic of France and the French National Employment Service, Ministry of Labour, Family and Social Affairs of the Republic of Romania and the National Employment Agency of Sweden.

In addition to employees and managers of the Employment

Department, the National Employment Service (NES) and local employment councils, representatives of the social partners and other stakeholders will be involved in project implementation.

The project commenced in May 2012, the foreseen duration is 24 months and the total cost of the project is EUR 2 million.

The project experts, representatives of the French, Romanian and Swedish labour market institutions, will help to enhance the knowledge and skills of employees in the labour market institutions at the national level. The support will be continued in order to complete the process of harmonisation of the Serbian employment legislation and prepare the administration for cooperation instruments used during the pre-accession process.

REMAINING ISSUES

Owing to the impact of the economic crisis, an increase in the grey labour market 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 precisely 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 matched to the business community. By doing so, the gap between education and employers' competency requirements 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 the countries with the oldest populations in the world. Also, the population is increasingly concentrated in the northern part of the country. The Government has recognised these trends, but the situation has not improved. This situation will further reduce chances of certain parts of Serbia attracting new foreign 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 job creation 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 regard, we must continuously promote the development of human resources as the main driver of development of society and the state.

LEGAL FRAMEWORK

Despite a certain slowdown of legislative activity in the electoral context during 2012, the general conclusion is that Serbia has continued aligning its legislation to the requirements of the EU. Several new laws, as well as amendments to the existing laws have been adopted since our last edition of the White Book. In addition, the Serbian Government and other competent authorities enacted many by-laws required for the correct application of the new laws enacted during 2010 and 2011. However, significant further efforts are needed in order to implement the national legislation. The strengthening of the administrative and judicial capacity should remain a priority.

One of the systematic laws adopted in 2012, and applicable as of 1 April 2013 is the new Law on Public Procurement. The said law introduces many novelties, but its practical outcomes have yet to be seen. Adoption of the amendments to the Energy Law in 2012 brought the needed innovations to the energy sector of the Republic of Serbia. However, there are still many areas where the legislation is not specific enough and for which by-laws adopted in accordance with the previous Energy Law are still in force, and this should be focus of the legislators. As regards environmental protection, even though some progress has been achieved by the adoption of the Law on Efficient Use of Energy and the abovementioned amendments to the Energy Law, certain activities such as trade in waste and the development of the waste market are still to be regulated. Also, the record-keeping and reporting system are not developed enough to complete the national and local register of pollution sources. Incentives for investing in environmental protection should be advanced. The existing PPP legal framework is still not effective and needs further improvements, which would include amendments to the law from 2011 and adoption of the relevant by-laws.

A positive signal is that at the end of 2012 one more "wave" of significant changes in regulations on foreign exchange operations occurred. More specifically, by amendments to the Law on Tax Procedure and Tax Administration, the Foreign Exchange Inspectorate ceased to operate and its jurisdiction was transferred to the Tax Administration. Furthermore, in 2012, the National Assembly adopted significant amendments to the Law on Foreign Exchange Operations. The trend of gradual liberalisation of capital movements was continued with amendments to the regulations on foreign exchange transactions, with simultaneous elimination and simplification of certain administrative procedures in order to reduce costs for companies and citizens.

Regarding IP rights, by amendments to the Law on Copyright and Related Rights from 2012, the manner of determining and payment of the fee to the holders of copyright and related rights for public communication of musical works was changed. Also, competences of the Commission for Copyright and Related Rights were transferred to the IP Office. The amendments to the Law on Trademarks from 2012 are mainly of a technical nature, but some of them pertain to the conditions for trademark protection of a mark and to the protection of rights in civil proceedings in case of infringement.

As regards the judiciary, little progress was made, as it is not yet obvious whether the new legislation, adopted in the previous period with the aim to improve the efficiency of the judicial system, is giving results. The working group which should consider amendments to the Law on Bankruptcy should be formed with the aim to eliminate the issues in the implementation of the Law on Bankruptcy that were noted in practice.

Amendments to the Law on Protection of Competition from 2009 have been discussed; however, they are not sufficient to provide a clear and predictable legal framework, and in particular to enhance the implementation of the competition rules. As regards state aid, professed operational independence of the regulatory authority is not sufficient; for example, a change in the law is needed to ensure the status of an independent body for the State Aid Control Commission.

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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			√
The Business Registers Agency should no longer register restrictions on powers of representation, other than the requirement of co-signing;	2012	√		
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.	2012	√		

CURRENT SITUATION

A new Law on Business Companies (the "Company Law") was adopted in 2011, with the aim of overcoming certain flaws in the previous version of the law. Now, as we are in the second year of its application, many of the provisions of the new Company Law have been tested in practice. Certain problems have already been dealt with, however, since this is a major and rather complex piece of legislation, the full effect of its implementation still remains to be seen. It will likely need to be further refined and modified as Serbia progresses.

POSITIVE DEVELOPMENTS

Overall, the new Company Law is in many ways a positive development with respect to better regulation of corporate governance and company related issues. It introduced a number of helpful novelties into the Serbian legal system – the most important one involving corporate governance structures, whereby, both limited liability companies (LLCs) and joint stock companies (JSCs) may choose to have either a one-tier (shareholders' assembly and directors) or two-tier (shareholders' assembly, supervisory board and directors) corporate governance structure.

The changes to the provisions on share capital have also been helpful, since share capital may now be denominated only in dinars, which resolved 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). Furthermore, an LLC may now be registered with the Company Register even before the initial capital has actually been paid-in, which has simplified the registration process. The provisions of the Company Law on denominating the company's share capital in Serbian dinars, although generally perceived as a positive development, created some uncertainties especially at the beginning of the application of the New Company Law. Some of these problems have been solved in practice due to the fact that both the banks and the Serbian Business Register Agency ("SBRA") have eased the requirements, thereby facilitating a smooth company registration process.

The new law now clearly gives shareholders the possibility to make "additional payments" without raising the equity contributions. Furthermore, it has clarified that "additional contributions" provided under the previous company law are to be treated as shareholder loans. As for the provisions on applicable jurisdiction, the 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. A new set of rules for squeeze-out and buy-out procedures was introduced. Also, the market value of the shares of a public JSC is now precisely defined (compared to the calculation formula contained in the previous Company Law).

Although there were no major legislative changes to the Company Law in 2012, there have been some positive developments in the practice of the SBRA. For example, the SBRA has done away with its previous practice whereby it allowed registration of restrictions on a corporate representative's authority to sign, other than the notation of a requirement of a co-signatory. This new practice is now fully in accordance with provisions of the Company Law providing that representation restrictions other than the

requirement of a co-signatory's signature are not binding on third parties. Another positive development was that SBRA managed to establish a solid practice and has adopted guidelines in dealing with certain situations which were not well regulated under the Company Law. This was the case, for instance, with the guidelines for procedures in case of return of additional payments.

The Securities Commission has also shown some positive developments in the way that it deals with certain shortcomings of the Takeover Law. For example, when confronted with the issue of whether the annulment of company's "own shares" triggers the obligation to launch a takeover bid, the Securities Commission ultimately found that although such an obligation is necessary in order to afford better protection to minority shareholders, the law itself clearly does not require such an obligation. The Securities Commission further noted that amendments of the law are necessary and announced that it would initiate the amendments.

REMAINING ISSUES

Since its adoption, the new Company Law was amended to fix a few technical errors. Nevertheless, the Company Law still contains a certain number of technical flaws that are likely to cause confusion in their application. Therefore, further clarifying legislative changes are needed.

Namely, the Company Law contains a number of inconsistencies. Certain general provisions contained in the first section of the law titled "Initial Provisions" are not fully aligned with the more specific provision contained in the section of the law dealing with the particular form of a company. As a result, certain competences of corporate bodies and the procedures that they must follow still remain somewhat unclear; e.g. it is still not clear which corporate body in a JC may grant a procura and which body decides in cases of conflict of interest of shareholders. Also the process and deadlines for payment of initial capital for a JC are still ambiguous.

There are other drafting inconsistencies, such as the provision prohibiting a single-member LLC from acquiring its own share that is not in accordance with the Company Law's provisions on mergers.

Certain corporate procedures do not have clearly defined rules, making their application extremely difficult and in certain cases even impossible. For example, the procedure of a forced buyout of shares has created many practical uncertainties, since it is unclear at what point in time must the share price be determined and by whom, and what is the validity period of a decision on a forced buyout.

As discussed earlier, 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 a number of problems in its application. Namely, SBRA converts all the amounts of the paid-in capital from EUR amounts into RSD at the exchange rate valid at the time of the payments. Due to the fluctuations of the exchange rate, this practice has led to the situation where the amounts of registered paid-in capital contributions do not match the total amounts of the paid-in capital. It also happened that the amounts of capital contribution did not reflect the respective share each shareholder has in the company.

The new Company Law introduced new rules on forced liquidation, which were lacking under the law. However, these new rules have unfortunately still left a level of uncertainty and loopholes. So much so that the former Ministry of Economy and Regional Development issued an opinion stating that the application of these provisions of the new Company Law should be postponed. Although such opinions of the ministries are not binding, the SBRA has been abiding by this opinion thus refusing to apply the provisions of the new Company Law on forced liquidations. Although FIC has on many occasions also pointed out the inadequacy of the provisions dealing with forced liquidation, the shortcomings of the law should be fixed by amendments to the law rather than deciding not to apply certain provisions by ministerial decree.

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. Furthermore, the actual application of the Company Law provision that states that a procurist's authority can be limited by the requirement of co-signing with another authorized representative has proved to be problematic in practice, as 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 above mentioned representatives. Furthermore, it is not clear whether the limitation of the representation power of the procurist by

the co-signing requirement with another legal representative is considered as a joint or single procura. In some cases the SBRA considered this issue as a collective procura and in other cases as a single procura.

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 new Company Law still leaves 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.

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 has evidently introduced several new concepts and regulated 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, holistic approach is required to reconcile ambiguities among the Company Law and the various other laws that regulate business operations, finance, securities, real-property and other related areas.

FIC RECOMMENDATIONS

- Limited liability partnerships (LLPs) should be expressly permitted.
- 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 of the Law on Contracts and Torts.
- Corrections of technical flaws in the Company Law should be made to eliminate inconsistencies, and provide clear procedures and competencies.

CAPITAL MARKET TRENDS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2012			√
Improvement in the co-operation of the Securities Commission and capital market participants must be continued and upgraded;	2012	√		
The Draft Law on Securitisation should be prepared and submitted to the National Assembly for immediate adoption.	2009			√

CURRENT SITUATION

The regulatory framework of the capital market in Serbia has undergone material changes two years ago. 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. In December 2011, amendments to the Law on the Takeover of Joint-Stock Companies were adopted. In addition, the Securities Commission has adopted a number of 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, two years after a thorough legislation reform, the new regulatory framework has not yet found a practical use, even though it would be the only appropriate measure of success. 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.

However, in practice, certain problems were identified in the implementation of legislation governing the capital markets due to non-compliance of a number of separate regulations that directly or indirectly regulate the capital market, which were adopted at different times. This problem was recognized by the relevant ministry and thorough preparation of amendments to the regulations governing the capital market is in progress to complete their harmonization.

So, the general conclusion regarding the capital market in Serbia remains the same this year, meaning that it takes more than just regulatory reform to stimulate capital market growth in Serbia. Nevertheless, we do consider that the regulatory reforms were necessary, and hope that the new regulatory framework, accompanied by economic measures that are to be introduced will eventually result in the improvement of the Serbian capital market and an increase of foreign investments.

The idea of adopting the Law on Securitisation seems to have been completely abandoned.

POSITIVE DEVELOPMENTS

The 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 in Serbia. Also, it is expected that the novelties introduced by the Law could reduce the costs of security issuance.

In addition, it should be mentioned that the Securities Commission adopted required by-laws for the implemen-

tation 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. Namely 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.

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.

It should be mentioned that 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.

As a final point, we have to commend the initiative of the Ministry of Finance and Economy to form a Working Group in March 2013 tasked with amending regulations on securities in order to examine all laws governing securities, and to propose appropriate amendments in order to ensure the harmonisation of regulations in the domain of securities and eliminate identified problems occurring in practice because of discrepancies. It is particularly positive that the Working Group is very large and consists of representatives from all relevant government authorities, as well as representatives of associations whose members are active participants in the capital market. Amendments to the regulatory framework based on the results of the Working Group are expected during the autumn session of the National Assembly.

REMAINING ISSUES

Identifying all remaining issues that may occur during implementation of the new Law on the Capital Market is still very difficult as there were no significant developments in the capital market since the beginning of its implementation, and therefore its provisions could not be thoroughly assessed through practical application.

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

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

The capital market in Serbia is still a shallow and insufficiently liquid market. Municipal bonds are still rare, and even 2 years after the adoption of the Law that brought a clearer legal framework relating to the initial public offering, still not a single initial public offering has been conducted.

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 initial public offerings.

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, state and municipal bonds could be issued for the financing of infrastructural and other large communal projects.

- Improvement in the cooperation of the Securities Commission and the competent Ministry and capital market participants is visible. We strongly encourage such a positive change and wish to emphasize that this cooperation must be continued and enhanced.

- The Draft Law on Securitisation should be prepared and submitted to the National Assembly for immediate adoption.

JUDICIAL PROCEEDINGS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions;	2012		√	
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 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;	2011			√
Set the threshold for revision of a final judgment at a lower level;	2012			√
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 conducted a series of legislative reforms affecting the organisation of the judiciary and judicial proceedings. These reforms partially continued throughout 2013. 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, 101/2010, 31/2010 state law, 78/2011 state law and 101/2011). The process of the reappointment of judges was initiated under the Law on Judges (Official Gazette of the Republic of Serbia, No 116/2008, 58/2009); Decision of the Constitutional Court, 121/2012 and 124/2012 – Decision of the Constitutional Court); and the Law on the High Judicial Council (Official Gazette of the Republic of Serbia, No 16/2008, 101/2010, and 88/2011); and, due to serious abuses, this process is still not finalised. The process is made pointless even further by the decisions of the Constitutional Court on the basis of which the High Judicial Council issued decisions on the number of judges which implemented decisions of the Constitutional Court by performing the selection of unelected judges to permanent judicial function. By this act 303 judges were returned to their judicial function. The new Law on Enforcement and Security (Official Gazette of the Republic of Serbia, No 31/2011 and 99/2011 – other law) and the new Law on Civil Procedure (Official Gazette of the Republic of Serbia, No 72/2011 and 49/2013 – Decision of the Constitutional Court) are now being applied in their entirety, while the new Law on Public Notaries (Official Gazette of the Republic of Serbia, No 31/2011, 85/2012 and 19/2013) - introducing the public notary system for the first time since World War II – was expected to become applicable as of September 2012, but later amendments postponed this until September 2014.

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 account of several hundred complaints filed with the Constitutional Court of Serbia. The review of the reappointment of judges ended on 30 May 2012. 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. An already problematic situation got further complicated with the return of judges to their judicial functions by decisions of the High Judicial Council, without any previous plan, which has caused problems once again with the pre-assignation of the cases and delays in the proceedings. It also made the situation worse in terms of 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.

a. Dispute Resolution

The application of the new Law on Civil Procedure, which started 1 February 2012, and which established strict dead-

lines for activities of the parties and courts, was stalled in the first four months from 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 Law on Civil Procedure ("Official Gazette of RS", no. 125/04 and 111/09) shall continue to apply to proceedings initiated before the entry into force of the new law. However, if before the enactment of this law the first instance judgment or decision about termination of proceeding before the Court of First Instance was passed further proceedings will be conducted according to current regulations.

The Law on Public Notaries, which governs the organisation and activities of public notaries, should have become applicable as of 1 September 2012, but the latest amendments to this Law pushed back the application to 1 September 2014. The activities of public notaries are currently performed by courts.

The Legal Profession Act (Official Gazette of the Republic of Serbia, No 31/2011 and 24/2012 – Decision of the Constitutional Court) established additional requirements for becoming an attorney-at-law, such as graduating from the Bar Academy. This Act, which went into effect 17 May 2012, also requires one to pass the attorney-at-law exam as a condition for registering with the Bar Association, whereas the requirement to apply for the attorney-at-law exam is the successful completion of the Bar Exam. The Law 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 2010 UNCITRAL Model Law on Arbitration, which prescribed many amendments. 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.

b. Enforcement

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

POSITIVE DEVELOPMENTS

Most courts of general jurisdiction, as well as commercial courts, now have online databases showing the status of ongoing cases. It is notable that the database has been improved in terms of precision and functionality, while it still does not warrant full confidence. 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.

a. Enforcement

One of the expected positive developments is the start of work of the so-called private bailiffs, who conduct their activities either as entrepreneurs or in the form of a partnership. The first group of private bailiffs started work on 31 May 2012, and for the first results in this area more time will be needed. Their role is to provide more efficient enforcement proceedings. Procedurally, already in the motion on enforcement, the creditor is obligated to decide whether enforcement will be conducted by the Court or by private bailiffs. A party may opt for the court or a private bailiff to conduct enforcement proceedings once the court renders an enforcement order. If private bailiffs are chosen to conduct the enforcement, a party may opt for a private bailiff only from the territory where the enforcement will be conducted. 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 (i.e., the Law Faculty diploma) and required working experience (minimum 2 years). Bailiffs have exclusive jurisdiction over cases arising from debts incurred on bills for utility services.

b. Dispute Resolution

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). With this new law it is possible to record a hearing via devices for audio and video recording. However, the application of these provisions is still pending since the courts do not possess the technical abilities for such activities. Under the law, it is prescribed as a rule that a litigation procedure is conducted by a single judge unless otherwise prescribed by the law. This regulation does away with the lay judges from the judge panel. 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 the liability of judges for breach of discipline, and 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 - and it is noteworthy that there is also potential liability of the judges for breach of this deadline. Finally, 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 (15 days for appeal and response on appeal).

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 same effect is expected from the attorney-at-law exam, where candidates must prove their knowledge from the Code of Professional Ethics, Tariff of Fees and Expenses, the Legal Profession Act, and Statute of the Bar Association of Serbia.

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 the removing of a significant workload from 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 of judges ended in a non-transparent manner. The reappointment of 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 specialisation of the work portfolio of judges should be introduced in an efficient and definitive manner. The 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.' There is a general impression that the whole procedure of judicial reform was quite politicized and conducted without any vision and long-term plan.

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 courts. The timeframe, although potentially very promising in terms of efficient completion of litigation, is not flexible enough, since litigation is often unpredictable, and legal possibilities for extending deadlines are insufficient. The law should have, therefore, allowed more possibilities to extend these deadlines. 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. The impression can be gained that the new law aims to speed up the procedure with certain preclusive deadlines, and to put the merits of the matters at a disadvantage compared to the short procedural time limits which may ultimately have the result of impairing justice. Finally, the threshold for extraordinary legal remedy revision of the final judgment is arguably set too high (EUR 100,000, and EUR 300,000 for commercial disputes). Revision of the final judgment is also allowed, even when the threshold is not high enough if revision is needed for the consideration of legal matters of general interest or for the unification of judicial practice or for providing the new interpretation of law (Special revision). There is the impression in the general sense that these additional conditions for revision are still insufficient.

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. Even if the conditions for submitting the legal remedies in enforcement procedure are now stricter, in practice courts are still behaving as if the old law were in force. In such an 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, 2010 UNCITRAL Model Law on Arbitration rules, especially pertaining to interim relief, the absence of written form and possibility to have an even number of arbitrators. 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 2010 UNCITRAL Model Law on Arbitration contains explicit rules on electronic arbitration agreements and more detailed provisions on interim measures. Also, UNCITRAL in 2010 abolished the requirement for the written form of the arbitration agreement and introduced the possibility of the number of arbitrators being even (not just one or three arbitrators as before). 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 2010 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.
- 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 2010 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 a proposal for the initiation of bankruptcy proceedings, and in particular, through participation in creditors' bodies.	2011		√	
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;	2012			√
Encouraging mediation in bankruptcy proceedings whenever possible, with the aim of ensuring cost-efficiency and overall efficiency of bankruptcy proceedings;	2011			√
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;	2010		√	
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.	2012		√	

CURRENT SITUATION

The Law on Bankruptcy became applicable in January 2010, and since then there have been no material changes to the insolvency regulatory framework in Serbia.

According to the data announced by the Bankruptcy Supervision Agency of the Republic of Serbia, a total of 2,385 bankruptcy procedures are under way. In the year 2013, the number of initiated bankruptcy procedures was significantly decreased. Compared to the previous year, when approximately 80 procedures per month were initiated, starting from this year, the average number of initiated procedures per month is 10.

The above-mentioned decrease of the number of initiated procedures can be partly interpreted as a consequence of a minor recovery of entire economy, but, mostly it was caused by the fact that, as we noted in the previous edition of the White Book, the Constitutional Court of the Republic of Serbia rendered in July 2012 a justified decision determining that provisions of the Bankruptcy Law which regulate a special procedure in case of a prolonged inability to make payments (automatic bankruptcy) are not in accordance with the Constitution. Due to this decision by the Constitutional Court, a special procedure that led to the closure of numerous companies and their deletion from the Commercial Register governed by the Business Registers Agency ceased to be effective.

POSITIVE DEVELOPMENTS

Although said decision of the Constitutional Court has left room for various interpretations in relation to the automatic bankruptcy procedures that were already finalised and procedures which were on-going at the time when the Decision was rendered, subsequent practice of competent courts and the Business Registers Agency is now generally consistent and may be evaluated as positive.

Namely, the most important issue was the possibility to revive and reregister the companies deleted from the Commercial Register, i.e. to annul the decision of the competent Court based on which a bankruptcy procedure against a company was opened and closed, in what led to the deletion of the company from the Commercial Register. Numer-

ous shareholders of companies which were closed as part of the automatic bankruptcy procedure, as well as creditors of such companies, expressed interest for the revival of closed/deleted companies, given that their rights had been violated since one of potential consequences of the automatic bankruptcy was the transfer of property of deleted companies to the State.

Following the Decision of the Constitutional Court, all interested parties were entitled to protect their rights by the direct application of provisions of Article 61 of the Law on the Constitutional Court, which provided that proposals for the revision of a final or legally binding individual act adopted on the basis of a law or other general act, determined by a decision of the Constitutional Court not to be in compliance with the Constitution, may be submitted within six months from the day of the publication of the decision in the Official Gazette of the Republic of Serbia, unless more than two years have passed between the delivery of the individual act and the submission of the proposal or initiative for initiating a procedure. In numerous cases, creditors or owners of erased companies exercised this right. Competent courts, which previously had made respective decisions in accordance with cancelled provisions of the Law on Bankruptcy, generally accepted proposals for a revision of their respective decisions if such proposals were submitted within the above mentioned deadline defined by the Law on Constitutional Court. On the basis of such new decisions, the Commercial Register of the Business Registers Agency of the Republic of Serbia also amended decisions on erasing companies, and such companies received the status of active companies.

REMAINING ISSUES

Notwithstanding the fact that the Law on Bankruptcy became applicable as of January 2010, there are still numerous unclear issues regarding its interpretation, which have been causing problems for all parties involved in the bankruptcy proceedings. In order to harmonise practice of all Commercial Courts in the country, at the end of 2012, judges of the Commercial Court of Appeal tried to identify most relevant problems in practice and offered their stands. Although such an initiative is generally positive, some of the adopted stands, in our view, may raise further issues in practice.

Namely, one of the most important new stands of the Commercial Court of Appeal, which is especially interesting for commercial banks – the most usual creditors in bankruptcy proceedings – is the right of a creditor that has a collateral over some part of a debtor's assets, but does not have a direct receivable toward the debtor (this collateral was established over the debtor's property in order to secure a receivable which creditor has toward a third party). This situation is very common in practice for commercial banks, because banks accept to secure their receivables not just by collaterals over assets of the principal debtor from the credit agreement, but also by a collateral established over the property of guarantors, or some other third parties that allowed establishing such a collateral – related companies often provide mutual guarantees and collaterals to each other. According to the official practice of the Commercial Court of Appeal, such creditors do have a right to collect their receivables from the amount received upon the sale of the property under collateral, but such creditors should not be considered as secured creditors in the bankruptcy proceedings.

Thus, such creditors are not obliged to submit their claims to the bankruptcy administrator by the deadline provided by the Law on Bankruptcy – they only have to inform the bankruptcy administrator about their right. However, a more important consequence of this stand might be a future interpretation of rights of such creditors by Commercial Courts – rights to participate in discussion and the adoption of the Plan of Reorganisation (in the event that such a plan is submitted). The recent practice of some Commercial Courts and their unusual and opposite stands showed that rights of such creditors have to be clarified and defined in order to avoid situations in which commercial banks, which mostly hold mortgages over debtors' real estate, whose value represents 90% of the total value of all debtors' property, but do not have direct receivables toward debtors, cannot take part in voting for the proposed Plan of Reorganisation, which might be completely against their interests, because, according to the judicial stand, a bank does not have the formal status of a secured creditor, in accordance with provisions of the Law on Bankruptcy. Since commercial banks require a security of their position and a certainty of their treatment in a possible bankruptcy procedure, it will be very important to get the clear stand on this situation. Otherwise, commercial banks will most probably try to avoid this kind of security (collateral over the property of third parties), which might directly lead to a decrease of approved loans, because in situations when the granted amount of credit is significant, princi-

ple borrowers most usually do not have sufficient property for appropriate security of the bank's receivables.

Furthermore, it has been noticed that since last year, the number of bankruptcy proceedings in which a Plan of Reorganisation was prepared and submitted has increased. Another trend that emerged in the past year was an increased number of bankruptcy proceedings initiated by debtors on the basis of a pre-packed plan of reorganisation. Unfortunately, recent practice has shown that debtors mainly exercised this right in order to obstruct the procedure and to avoid or postpone debt repayment. Debtors usually postpone debt repayment until the moment one of their creditors files for initiation of the bankruptcy procedure. Immediately thereafter, within just several days, debtors also initiate bankruptcy proceedings and simultaneously submit a pre-packed Plan of Reorganisation and at the same time search for a solution to reach a settlement with the creditor that initiated the bankruptcy procedure – often creditors that accept to withdraw their request for the opening of the bankruptcy procedure receive the compensation in the form of additional collaterals of their rights (most usually by third parties which are not directly related to the debtor in order to avoid possible contesting by other creditors).

From there on, the debtor gains certain control of the course of the procedure. Unfortunately, debtors more often than not use pre-packed Plans of Reorganisation to prolong the procedure and postpone the opening of bankruptcy rather than to create an appropriate solution to their financial obligations toward creditors. Most of pre-packed Reorganisation Plans were drafted in a way that even imperative requirements of the law were not obeyed. Because of that, creditors spend several months evaluating the received plans and preparing and submitting all of their remarks. Finally, a significant number of these reorganisation plans were not adopted since creditors were not interested to vote for them. At the same time, as long as the discussion and voting for a pre-packed Plan of Reorganisation is in process, a bankruptcy procedure cannot be opened at the request of creditors and shareholders of the debtor are still in a position to control the debtor's operations – this period is usually used for disposing of the company's assets, which later on may be subject to contesting by creditors, though this requires time and costs, while contesting might be extremely difficult if the disposing was done in a sophisticated manner. Statistics shows that in the year 2013, the average time required for the adoption of a pre-packed Plan of Reorganisation was five months starting from the day when the plan was submitted by a debtor. Practice also shows that there are situations in which hearings for final voting for a Plan were postponed five times due to procedural reasons.

An especially sensitive part of bankruptcy proceedings in situations when a pre-packed Plan of Reorganisation has been submitted is the creation of classes of creditors for the purpose of voting. In order to ensure the adoption of the Plan, considering the fact that Plan shall be deemed adopted if all classes of creditors duly accept the Plan, debtors are usually trying to create classes in their best interest which will guarantee that possible disagreeing creditors will not be in majority in any class. It is also a very common situation that debtors fail to disclose that some of creditors are their related entities. This method of creation of classes is usually not in accordance with positive legislation and therefore creditors have to protect their rights and to insist on the application of the Law. According to statistics for the year 2013, every second court decision on the confirmation of the adopted pre-packed Plan of Reorganisation is subject to appeal. According to the same statistics, a comparison between regular Plans of Reorganisation and pre-packed Plans of Reorganisation shows that pre-packed Plans of Reorganisation are more often adopted, but also that they are more often subject to appeal than the regular Plans.

An additional situation which occurs in practice is that upon the adoption of a pre-packed Plan of Reorganisation it turns out that some creditors were not included in the Plan and that they were not invited to submit their remarks to the plan or to vote on the Plan. Commercial Courts took a stand that creditors whose receivables were not included in the pre-packed Plan of Reorganisation and who have a sufficient proof of their receivables against the debtor are entitled to protect their rights through the separate litigation procedure against the debtor. But, notwithstanding the fact that the rights of such creditors will be based upon the verdict reached in the litigation procedure, settlement of their receivables toward the debtor can be exercised only in accordance with terms and conditions of the pre-packed Plan of Reorganisation. The consequence of such a stand is that the Court in the litigation procedure will have to determine the rights of these creditors in the way these rights should have been determined by the pre-packed Plan of Reorganisation in the event that the debtor initially had included receivables of these creditors in the Plan.

FIC RECOMMENDATIONS

- A Working Group which should consider the amendments of the Law on Bankruptcy should be formed with the aim to eliminate the issues in implementation of the Law on Bankruptcy that were noted in practice.
- 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.
- Judges should be educated and encouraged to use available legal means in order to prevent the debtors to misuse reorganisation plans which damage the creditors.
- Encouraging creditors to take a 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.
- 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 the Serbian Constitution.
- Encouraging mediation in bankruptcy proceedings whenever possible, with the aim of ensuring cost-efficiency and overall efficiency of bankruptcy proceedings.
- 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 account the 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 the 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		√	

CURRENT SITUATION

The intellectual property legal framework has generally remained the same as it was a year ago, with the exception of amendments made to the Law on Copyright and Related Rights and to the Law on Trademarks. This framework mainly consists of the substantive 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 to a large extent harmonised 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 substantive provisions regulating intellectual property in Serbia:

- Law on Trademarks (2009, amended in 2013);
- Law on Indications of Geographical Origin (2010);
- Law on Copyright and Related Rights (2009, amended in 2011 and 2012);
- Law on Legal Protection of Industrial Design (2009);
- Law on the Protection of Topographies of Integrated Circuits (2009);
- Law on Patents (2011);
- 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.

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.

Finally, the Law on Protection of Business Secret regulates the legal protection of information which presents business secret (especially financial, economic, business, scientific, technical, technological and production data, studies, tests, research results etc.) from all acts of unfair competition.

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

- Law on Organisation and Competencies of State Authorities in Combating High-tech Crime (2005, amended in 2009);
- Law on Special Powers for Efficient Protection of Intellectual Property Rights (2006, amended in 2009);
- Criminal Code (2005, amended in 2009 and 2012);
- Customs Law (2010, amended in 2012); and
- Law on Optical Discs (2011).

The institutions that protect intellectual property rights are the Intellectual Property Office (hereafter referred to 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 developments since the last edition of the White Book are the amendments made to the Law on Copyright and Related Rights and to the Law on Trademarks.

The latest amendments to the Law on Copyright and Related Rights entered into force on 25 December 2012, among which the most notable ones pertain to the change of the manner of determining and payment of the fee to the holders of copyright and related rights for public communication of musical works, as well as those abolishing the Commission for Copyright and Related Rights and transferring its competences to the IP Office.

The amendments to the Law on Trademarks entered into force on 7 February 2013 and are mainly of a technical nature, but some of them pertain to the conditions for trademark protection of a mark and to the protection of rights in civil proceedings in case of infringement.

It should also be noted that, in addition to the activities of the Tax Administration in the control of legality of software used by companies and sole traders, as of January 2013 the Ministry of Foreign and Internal Trade and Telecommunications has also begun undertaking more serious control of software legality in retail channels.

REMAINING ISSUES

Despite the fact that the 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. 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;	2010			√
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;	2011			√
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;	2010		√	
The Commission should make its practice consistent towards all undertakings. Competition advocacy certainly represents one of the strong means for achieving such a goal;	2008		√	
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;	2009			√
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.	2011			√

CURRENT SITUATION

Recent practice of the Serbian competition authority – i.e. the Serbian Commission for the Protection of Competition (hereinafter: the "Commission") – and the relevant courts regarding the fines for undertakings involved in anti-competitive behaviour additionally brought the competition rules into focus and confirmed their importance for doing business in both 2012 and 2013. However, even though appropriate sanctions are required to ensure compliance with the provisions of the Competition Law, the legality of some of the Commission's decisions has been seriously (and in certain cases successfully) challenged by the professional public. This has undermined 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 Commission's new Council, appointed in October 2010, have drawn much attention and, consequently, raised public awareness of the importance of the protection of competition. The Commission made a great deal of use of "new enforcement powers" granted to it by the new Competition Law (applicable as of 1 November 2009). The total fines

imposed by the Commission in 2012 amount to approximately EUR 16.5 million.

Most notably, the highly contested issue of retroactive application of the law seems to have been resolved in favour of market participants who argued against such application of the law. The successful resolution of this issue will certainly serve to enforce the principle of legal certainty in the business community, while sending a signal that leniency applicants should benefit from immunity filings. Accordingly, many local and foreign investors will start considering making leniency filings with the Commission again, thus potentially boosting the benefits for Commission from potential whistleblowers. As a result, it should be noted that, in one particular case, the Commission was forced to actually pay a significant amount as interest on the collected fine.

In many decisions, the Commission makes 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 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% of the total turnover generated in the preceding year).

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, but the notifying party subsequently withdrew the notification and resubmitted it to the Commission on the same day due to repeated tender procedure. The Commission eventually conditionally approved this concentration, having imposed a structural measure (obligation to sell one of the production plants) and reporting obligations on the notifying party.

The court practice has been mixed with regards to confirming the Commission's decisions and the Commission (in its 2012 Annual Report) sharply criticised the courts' tendency to leave out the detailed reasons for ordering a repeated procedure.

However, not all the courts' 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.

It is also noteworthy that the Commission submitted an initiative for amending the Competition Law, in accordance with its interpretation of the European Commission's assessment of the status of Competition Law in Serbia. The proposed amendments mostly deal with making the Commission's life easier by extending certain time limits (e.g. the statute of limitation for initiating proceedings for breach of competition is to be extended from 3 to 10 years) and abolishing the Commission's obligation to pay interest in case of revoked decisions on pecuniary fines. The amendments also contain a novelty with regards to establishing the existence of a dominant position on the market (the burden of proof is now supposed to always be on the Commission) but the proposed text of the amendments does not set this rule out with precision. The proposed amendments are currently undergoing general assembly procedure and it is likely that they will be adopted in their current form, which will certainly leave much to be desired as most of the novelties to be introduced by the amendments are burdened with imprecision and general lack of guidance/ interpretative instruments.

POSITIVE DEVELOPMENTS

The application by the Commission of its broader competencies given by the 2009 Competition Law, as well as the Commission's activity in proposing a revision of the Competition Law, resulted in higher awareness in the area of competition protection.

In addition, even though the periodically published opinions and decisions of the Commission generally improve the current legal framework and ensure a better understanding of competition rules, greater effort should be invested in the publication of current (and comprehensive) guidelines and recommendations by the Commission.

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, but this situation should improve as the Commission has hired several economists in the past year. This will, hopefully, also motivate the Commission to use economic tests confirmed in competition practice, and to put more effort in conducting proper analysis of market conditions.

This is of particular importance as the Competition Law bestows a great deal of 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 economics in order to be able to interpret the Commission's arguments and decisions properly. This is another argument against one of the proposed amendments to the Competition Law (to shift the competency from the Administrative Court to the Appellate Commercial Court), since the judges of the Administrative Court have just begun to acquire the proper understanding of competition law matters. Still, decisions by the Administrative Court often lack a proper statement of reasons, limiting their scope to repeating the Commission's findings, without analysing the arguments of the parties. This is a severe deficiency, as it prevents proper argumentation and development of practice and jeopardises 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.

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, and Bosnia and Herzegovina.
- 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.
- The right balance between the Commission's role to sanction illegal behaviour and to promote competition rules is to be determined, i.e. competition advocacy should not be overlooked and the Commission should promote competition law principles more effectively.

STATE AID

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
A consistent and effective enforcement of the Law, particularly in relation to public companies;	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 should they fail to do so;	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, including utmost use of the IPA project;	2009		√	
Increased public presence of the Commission (e.g., press releases and conferences, seminars and training, as well as its own website);	2011		√	
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;	2011			√
Addressing in a timely manner and with the authority controversial decisions of the government so as to present an independent check on unlawful aid.	2012		√	

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 the most recent amendments to the Rules on Granting State Aid in December 2010. As of 20 June 2013, more than 40 sessions of the

State Aid Control Commission (the "Commission") have been held in total, resolving around 230 cases.

According to the latest available edition of the Commission's Annual Report on State Aid, the value of the granted state aid in 2011 was EUR 808.70 million (an increase of 6.2% in comparison to 2010 and a decrease of 2.7% in comparison to 2009). State aid accounted for 2.6% of GDP in 2011, whereas for 2010 the figure was 2.64%, and in 2009 it was 2.86%, i.e. the decrease in 2011 was slightly less steep. Compared with the EU Member States, the Republic of Serbia did not provide a high amount of state aid in 2011, but the share of state aid in the GDP is still relatively high (around 2% of GDP in Serbia in comparison to 0.6% in the EU). Also, in Serbia only 20% of granted state aid is horizontal in comparison to 80% in the EU.

POSITIVE DEVELOPMENTS

The amended rules on granting state aid were meant to ensure objectivity 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 will prove vital.

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

An EU IPA project, *Support to State Aid Authorities in the Republic of Serbia for the Alignment of State Aid Schemes with EU Acquis*, started on 1 September 2012 and ended at the beginning of March 2013. The project's aim was to support the State Aid Control Commission in aligning identified state aid schemes with the legal framework and the EU acquis.

The State Aid Control Commission's decisions and annual reports are available on the website of the Ministry in charge, 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. In the past period, the Government made a few serious interventions on the market, most notably the nationalisation of the former U.S. Steel factory, the break-down of state-influenced Agrobanka, and buy-out of the minority shareholder in Telekom Srbija. 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, have 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. In its April 2013 Report on Serbia, the European Commission states that "issues remain in the field of state aid". In particular, according to the EC Report, "the independence of the State Aid Control Commission must be further demonstrated, confirmation received that all state aid measures are notified to the Commission and approved by it and adjustment of existing aid schemes must be pursued."

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 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 enterprises and other state actors is paramount. Public presence in topics relevant to state aid control is important in building recognisability, raising 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.

Finally, as mentioned above, the application of criteria on "undertaking in dire circumstances" as part of the rules on granting of state aid still appears to leave room for abuse.

FIC RECOMMENDATIONS

- Consistent and effective enforcement of the Law, particularly in relation to public enterprises.
- 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.
- Professed operational independence is not sufficient – a change in the Law is needed to ensure the status of an independent body for the State Aid Control Commission.
- Continued harmonisation with EU standards and established state aid control practice of the European Commission.
- Increased public presence of the Commission (e.g. press releases and conferences, seminars and training, 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 controversial decisions of the Government in a timely manner and with authority so as to present an independent check on unlawful aid.

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Professional training of competent bodies and courts, consumers' associations, sector organisations and other market participants; development of their mutual co-operation; stronger capacity building;	2011		√	
Professional training and education of institutions/traders/consumers to be performed by full-range market participants;	2012		√	
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;	2011			√
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).	2011		√	

CURRENT SITUATION

The Law on Consumer Protection (hereinafter: the "Law") has been in force for more than two years, and it is generally in compliance with certain EU directives in the area of consumer protection. Apart from the Law, other pieces of legislation relevant for the position of consumers are the following: Law on Trade, Law on Electronic Commerce, Law on Contracts and Torts, Law on Advertising, Law on Protection of Competition, Law on General Product Safety, Law on Market Surveillance, Law on Electronic Signature, etc.

Inter alia, the Law facilitates balance between traders and consumers, (traditionally distorted to the detriment of consumers); envisages stricter requirements for traders who must provide consumers with clear information about the product they are selling; prohibits unfair contract provisions in consumer contracts and dishonest business practices; regulates consumer rights characteristic for contracts in tourism and real estate time-sharing, and introduces the guarantee for goods and services, as well as guarantees in the case of insolvency of the trader. The term "consumer dispute" has been defined, as well as the out-of-court settlement of consumer disputes.

The legal framework is partly complemented by the adoption of four by-laws determining the conditions and manner of keeping records on consumers' associations, envisaging forms related to real estate time-sharing, etc. However, important by-law(s) dealing with e.g. the category of vulnerable consumers and their legal protection still have to be enacted (as indicated in the Remaining Issues section below). Thus, the FIC's conclusion that the full implementation of the Law has still not been secured still stands, since not all sector by-laws were passed, and the competence of the bodies in charge of monitoring the implementation of the Law is still not clearly regulated.

The institutional and strategic consumer protection network is gradually and continuously being developed (as evidenced by consumers' associations and alliances). At the time of the release of information concerning this topic - June 2013 - the list of registered associations available on the official website of the Ministry of Foreign and Internal Trade and Telecommunications (the "Ministry") includes 26 consumer alliances/associations. On the other hand, approximately 70 consumers' associations (with different organizational structure and activities) are registered with the Serbian Business Registers Agency in this moment, the ensuing conclusion is that the consolidation, i.e. grouping of the relevant associations/alliances and the decrease of the number of participants in this area will follow.

The adoption of entirely new law on consumer protection could be expected within next year. The draft law introduces new institutional and law enforcement tools and mechanisms, regulates contract on sale of goods in detail, introduces the term of *"commercial guarantee"*, and envisages forming of the Centre for Resolution of Consumer Disputes. It also sets out the enhancing the role of administrative bodies and expanding the range of misdemeanour provisions, whilst strengthening

inspection control in this area. At the time of writing this text, the public hearings are being held with regard to the draft of the new law. Even though the initial, general comments to the draft are mostly positive, the numerous amendments were already proposed by different market participants.

POSITIVE DEVELOPMENTS

At the end of 2012, the National Council for Consumer Protection was formed as an expert, advisory body, to improve the system of consumer protection and the cooperation between the authorities, organizations and other consumer protection entities, including representatives of consumers' associations, experts, chambers of commerce, and the like.

The Government adopted the Draft National Strategy for Consumer Protection (2013–2018) in July 2013, in order to improve the level of consumer protection. This strategy prescribes the significant extension of obligations of local authorities, creation of the unified register of consumers' queries and claims, and enhancement of the role of out-of-court settlement of consumer disputes, aiming to unburden the courts and achieve more efficient enforcement of consumers' rights and the establishment of closer regional and international cooperation in this field. The Strategy envisages the establishment of a consumer protection fund, while the means of such a fund would be used for financing consumers' associations, out-of-court resolution of consumer disputes and similar purposes. The Government's position regarding the application and scope of this strategy, as well as its adoption is still to be ascertained (a number of public hearings were held with regard to the draft strategy, and the comments are mostly positive).

The IPA project Strengthening Consumer Protection in Serbia, the beneficiary of which is the Ministry, has an important role in developing this area, preparing regulations and strategies, monitoring and strengthening the institutional framework, facilitating cooperation between all relevant market participants, and further harmonizing legislation and practice with the one in the EU.

Moreover, the fact is that consumer organizations have strengthened in the meantime. The National Consumer Organisation of Serbia (NOPS) has been established and is serving as an independent, non-governmental and non-partisan alliance of consumer organizations. Additionally, certain organisations in the field (e.g. Consumer Centre of Serbia, Centre for Consumer Education and Protection Belgrade, Consumers' Association of Vojvodina, FORUM-Niš) also have good coordination and consumer protection advocacy.

REMAINING ISSUES

Although solutions provided by the Law regulate many aspects of consumer protection, numerous legal standards and vague terms (e.g. professional care, vulnerable consumer, reasonable decision) represent a challenge for the bodies in charge, courts and consumers. The terms of 'conformity/non-conformity and guarantee' have been weakly tested in practice and are subject to different interpretations by all the participants in the application of the Law.

Certain provisions of the Law still remain inapplicable in practice (e.g. those relevant to claims/complaints), so it would be preferable for these provisions to be strengthened by announced forthcoming amendments to the Law.

The Law foresees consumer protection in the sphere of services considered to be of general economic interest and introduces the special category of vulnerable consumer, even though 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 for Protection of Vulnerable Consumers, followed by by-law(s), is expected to be adopted by the bodies in charge. Yet, we are uncertain how and when vulnerable consumer rights would be institutionally secured, especially in 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.

In May 2013, the Constitutional Court declared as unconstitutional provisions of the Civil Procedure Code, regulating the possibility of filing collective claims. The competent authorities are expected to take a stand on this matter, as well as necessary steps to ensure judicial protection of collective consumer interests in the coming period.

In the sphere of e-commerce and digital consumer protection (which is in constant expansion), significant obstacles have not been removed, while the resolving of existing problems requires a systematic approach, efficiency and a favourable legal framework. Some of the key issues concern personal data protection and privacy, regulation of the quality of information available to customers, etc.

FIC RECOMMENDATIONS

- Professional training (and licencing) of competent bodies and court staff, consumers' associations, sector organisations and other market participants; development of their mutual co-operation; enhance capacity building;
- Forming of a body in charge of efficient protection of consumers' economic interests;
- Extension of the jurisdiction and powers of the inspection and creation of a system for effective monitoring of consumer markets;
- Strengthening the role of local initiatives and local consumer associations in protection and promotion of consumer rights;
- 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, regular check-up and updates of Serbian legislation with international and EU principles in this matter.

PROTECTION OF USERS OF FINANCIAL SERVICES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further work on the harmonisation of regulations regarding the protection of consumers of financial services with international and EU principles;	2012		√	
Timely adoption of remaining by-laws required under the Law.	2012			√

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 became 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 Contracts and Torts will apply to 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 individu-

als 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 in Article 5 of the Law, which stipulates the following basic principles of user protection:

- the right to an equal relationship with the provider of financial services;
- the right to protection from discrimination;
- the right to information;
- the right to a determined or determinable contractual obligation; and
- 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 the obligation to specify reasons for cancellation, etc. In addition, special provisions of the Law regulate the procedure for the protection of user rights, involving in particular the powers of the National Bank of Serbia (hereafter '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.

In addition to the above, an important novelty introduced by this Law is the impossibility of assignment of debt that individuals have towards banks stemming from loan contracts, leasing contracts, overdraft contracts, credit card issue and use contracts and account opening and maintenance contracts, to anyone other than one Bank.

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 from 1 January to 31 December 2012 this body received 2,617 complaints in connection with the business activities of financial institutions (87.7% of which were submitted against banks). Considering that this is a 58.4% increase compared to the same period in 2011, it is obvious that this law attracted significant attention from the general public, experts and bodies in charge.

Also, the Centre for the Protection and Education of Users of Financial Services devoted special attention to education of users of financial services in 2012, by way of providing answers to 934 questions sent by users in relation to financial products and services and their rights in that respect, as well as to 19,546 citizens' phone calls and 1,171 questions sent by e-mail. Additionally, NBS held 32 educational workshops in 24 towns in Serbia with the same purpose, pertaining to various financial matters.

It is also important to note that on 31 May 2013 NBS has issued a recommendation to the banks regarding the manner of resolving the problems of users of Swiss franc-indexed housing loans, as well as the recommendation by which the banks are suggested to appropriately regulate the relationship with users of loans in relation to the excess amounts already collected on the basis of the increase of variable indeterminable elements of interest rate for loans approved before the date of application of the Law, i.e. to calculate that amount as an early loan settlement.

REMAINING ISSUES

Contrary to the practice of European countries, the Law does not allow the assignment of debt that individuals have towards banks stemming from loan contracts, leasing contracts, overdraft contracts, credit card issue and use con-

tracts and account opening and maintenance contracts, to anyone other than one Bank, this being a solution non-intrinsic to comparative law, as well as regulations governing contractual relations.

As far as the application of the Law is concerned, the key issues that still 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 on the protection of consumers of financial services with international and EU principles.
- Timely adoption of remaining by-laws required under the Law.
- Further education of users of financial services regarding their rights.

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 related 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		√	
Introduction of measures which would prevent the abuse of bidders' rights to legal remedies;	2012		√	
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.	2010		√	

The general impression is that the adoption of the new Public Procurement Law (Official Gazette of RS No 124/2012), whose application commenced on 1 April 2013, created a favourable legal framework for reform in this area. Yet, it is still early to talk about positive results of the implementation of the new Public Procurement Law. On the other hand, the systematic application of the new Law's favourable solutions could lead to a higher level of control of the planning and implementation of public procurements, implementation of anti-corruption measures and protection of the rights of interested persons.

CURRENT SITUATION

In 2012, the situation in the field of public procurements remained unchanged in comparison to the previous period. According to the 2012 report of the Public Procurement Office, the share of negotiated procedures without prior publication of a call for tenders is still high and amounts to about 20%. The share of negotiated procedures in the overall value of public procurements is even higher – 28%. The huge value of procurements carried out without prior publication of a call for tenders,, accompanied by a high level of irregularities, resulted in a high average share of irregular procedures – 64% of the total value of negotiated procedures conducted for reasons of "urgency" in 2012. Of all public procurements in 2012, 83% were realised in the pre-election (first quarter) and the election (second quarter) period, and only 17% in the second half of the year. In the first half of 2012, the average rate of irregularities in negotiated procedures conducted as "urgent" was 72%. According to the report of the State Audit Institution, in 2012, during the audit of only 1% of the controlled institutions, it was found that the value of goods and services which had been procured contrary to the law amounted to RSD 85 billion. The ten-year trend of non-application of the anti-corruption policy from Article 19 of the 2008 Public Procurement Law was continued in 2012. The administrative capacities of the Public Procurement Office, as the institution which plays an important role in law enforcement, were not increased.

POSITIVE DEVELOPMENTS

The key changes introduced by the new Law are the following:

- compliance with the European Union directives;
- more complete and simpler definition of the contracting authority;

- clearer specification of the subject of public procurement of works;
- reduction of the number of exceptions to the application of the Law;
- tightening of the conditions for the application of exceptions;
- mechanisms of ex ante control with respect to the implementation of most commonly used negotiated procedures;
- mechanisms for the prevention of conflicts of interest and corruption in public procurement;
- partial centralisation of procurements;
- encouragement and, under certain circumstances, obligation to carry out electronic procurements;
- introduction of a new procedure – competitive dialogue and stipulation of two new forms of existing procedures – system of dynamic procurements and framework agreement;
- de minimis public procurement is regulated in a way that allows transparency of procedure and competition;
- obligation to publish the tender documentation is prescribed, publication is more effectively regulated and mandatory content of notifications on public procurements is defined;
- environmental and energy efficiency standards are included as possible parts of technical specifications;
- the method of calculation of estimated value is specified;
- the manner in which the decision on the award of contracts is enacted is clearly prescribed, as well as procedures and time limits for the conclusion of the contracts;
- possibilities of amendment of contracts are prescribed clearly and restrictively;
- procurements in the field of the defence and security are regulated for the first time;
- competencies and powers of the Public Procurement Office are increased;
- the composition and manner of work of the Republic Commission for the Protection of Rights have been changed and new powers given to it, such as fines for non-compliance with the procedure for the protections of rights and failure to implement decisions, control of implementation of the Commission's decisions, the annulment of contracts, conduct of misdemeanour proceedings in the first instance and submission of proposal for dismissal;
- on the one hand, the system for the protection of rights has been made more efficient through simplification of the procedure, and on the other, through definition of new possibilities, such as proposal and imposing of temporary injunctions;
- misdemeanours are prescribed for all serious violations of the Law and penalties are, on the one hand, tightened, and on the other, ranked by the seriousness of the misdemeanour;
- the duration of the prescription period in case of misdemeanours is extended to three years;
- the publication of final decisions made in misdemeanour proceedings is prescribed.

For the first time, the contracting authority's obligation to develop a public procurement plan and to submit it to the Public Procurement Office is established, as well as the obligation of the contracting authority to make a plan for the execution of public procurements. The recommendation from the previous editions of the White Book has been fulfilled by adopting a set of preventive measures in order to prevent corruption and conflicts of interest. Furthermore, contracting authorities which spend more than RSD 1 billion per year on public procurements are required to enact internal plans for corruption prevention and to form special services that will control the rationality of planning of specific procurements in terms of the needs and the activities of the contracting authority, as well as the criteria for drawing up technical specifications, method of market research, validity of the criteria for the award of contracts, contract execution, and especially the quality of delivered goods and services or performed works, the supplies status and method of use of goods and services. The special service will submit a report on the conducted control along with recommendations to the head of

the contracting authority and to the authority that supervises the operations of the contracting authority. The new institute of civil supervisor, responsible for reviewing procurement procedures whose value exceeds RSD 1 billion, is introduced. The civil supervisor has constant access to procedures, documentation and the contracting authority's communication with interested parties and bidders. We specifically underline here that the Law stipulates the duty of the contracting authority to ask for an opinion from the Public Procurement Office on the justifiability of application of the negotiated procedure, before launching the negotiated procedure.

REMAINING ISSUES

The manner of application of the new Law will be monitored. The first effects of the Law can be expected in 2014, when contracting authorities will begin to submit plans and reports on the execution of public procurements. It is also expected that the Public Procurement Office, in cooperation with the Anti-Corruption Agency, will develop a plan to combat corruption, whereby the part of the Law on the prevention of corruption and conflicts of interest will be completed.

FIC RECOMMENDATIONS

- Synchronised action of the Public Procurement Office and Anti-Corruption Agency for the purpose of developing an applicable plan for combating corruption.
- Expansion of the administrative and expert capacities of the Public Procurement Office and State Audit Institution in order to effectively control the contracting authorities in terms of planning and execution of public procurements.
- Active cooperation of the Public Procurement Office, the Ministry of Finance, Anti-Corruption Agency, Budget Inspection, the State Audit Institution and the Government of the Republic of Serbia on the implementation of the new Law on Public Procurement.

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 PPP Law, particularly the new Public Procurement Law;	2011		√	
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;	2012			√
Prompt adoption of any and all remaining by-laws to the PPP Law;	2012	√		
The competent ministry should provide guidelines for the interpretation of the PPP Law;	2012			√
Improved communication between the central and local authorities on the potential of the PPP concept and implementation of intended projects would be most welcome;	2009			√
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.	2012		√	

CURRENT SITUATION

The adoption of the Law on Public-Private Partnership and Concessions (Official Gazette of the Republic of Serbia No 88/2011) in late 2011 marked a significant progress within the legal framework for public-private partnership (hereinafter: the "PPP") and concessions in the Republic of Serbia, given that the matter has been regulated for the first time by a single piece of legislation. In addition to this law, the Law on Public Utilities (Official Gazette of RS No 88/2011) and the Law on Public Property (Official Gazette of RS No 72/2011) were also adopted in the same period, while the Law on Public Procurement (Official Gazette of RS No 124/2012) was adopted in 2012, thus changing the legal framework for PPP and concessions in its entirety, with a significant level of mutual cohesion of these laws.

In addition to the clearly regulated procedure of awarding public contracts (PPP contracts with or without elements of concession) in the Law on Public-Private Partnership and Concessions, as well as the procedure of entrustment of utility services in the Law on Public Utilities, the most important changes for PPP in these laws relate to the definition of principles for the formation of prices of utility service (Article 25 of the Law on Public Utilities), and to the establishment of the Commission for Public-Private Partnership (hereinafter: the "PPP Commission"). In the Decision on Establishment of Commission for Public-Private Partnerships (Official Gazette of RS nos. 13/2012, 108/2012 and 44/2013), the PPP Commission has been designated as a body which must issue a positive opinion in order for a particular PPP project to be realised, a significant difference from its responsibilities set in the law.

However, these important changes did not take hold in practice. Until today, according to the publicly available information, five projects were approved by the PPP Commission from April 2012, while a number of other projects that might be realised in this way are being announced.

POSITIVE DEVELOPMENTS

The Law on Public-Private Partnership and Concessions prescribes that two by-laws have to be adopted within 90 days from the law entering into force (December 2011), regulating the supervision of realisation of public contracts, as well as their registration in the Register of Public Contracts. In addition, The Commission for PPP has to adopt the value-for-money methodology (hereinafter: the "Methodology").

So far, the Decree on the Supervision of Realisation of Public Contracts on Public-Private Partnership (Official Gazette of RS No 47/2013) and the Rulebook on Manner of Keeping and Content of the Register of Public Contracts (Official Gazette of RS No 57/2013), while the Methodology was subject to public discussion in January 2013, but

there is no publicly available information on whether it was adopted or not.

The Decree on the Supervision of Realisation of Public Contracts on Public-Private Partnership provides for exceptionally wide powers of the ministry competent for finance matters, or the equivalent authority of the autonomous province, in respect of the subject of supervision. In addition, both the public and private partner are obliged to compile a report on the realisation of a public contract (on the form which has been prescribed by the decree), and the public partner has been obliged to submit that report to the competent authority semi-annually. In case the competent authority identifies irregularities in the realisation of the public contract, it has to prepare a notice with recommendations for remedying these irregularities, which then has to be complied with by contracting parties (the public and private partner) within 15 days of receipt. It is very important to note that any deviation from contracted rights and obligations of the public and private partner during the realisation of the public contract is deemed an irregularity. It remains to be seen how the competent authorities will exercise such wide discretionary powers when supervising the realisation of public contracts.

The Rulebook on Manner of Keeping and Content of the Register of Public Contracts is fairly simple as it prescribes the forms and deadlines for registration of public contracts, and contains rules of administrative nature. However, it also contains a provision on access to the public contract, stipulating that free public access to the public contract will not be provided if it could significantly jeopardise the exercise of economic interests of public and private partners. This provision has been criticised by the Commissioner for Information of Public Importance and Personal Data Protection, which has announced that it might challenge it before the Constitutional Court of the Republic of Serbia.

In addition to normal activity, the only improvement in respect of PPP is activity of the PPP Commission. The Internet page of the PPP Commission became operational in the second half of 2012 (although without much content), which has made the PPP Commission finally visible to the general public. In addition, the PPP Commission, in June 2012, became a member of the European PPP Expertise Centre (EPEC), which gathers PPP authorities from 39 states, and functions with the support of the European Investment Bank, the European Commission, and EU member and candidate states. Membership in EPEC is of exceptional importance for the building of administrative capacities of the PPP Commission, as well as for identification and implementation of the comparative best practices in PPP.

REMAINING ISSUES

The Register of Public Contracts, which would have to be established as a sub-portal of the public procurement portal, is not yet existent or operational, although the new public procurement portal has become operational in accordance with the Law on Public Procurement.

In addition, activities of the PPP Commission have to be intensified towards the adoption of the templates of public contract and direct agreement (agreement which could be concluded between the financier of PPP project and the private partner), so as to enable easier realisation of PPP projects for potential partners.

Finally, regarding the problems that might arise in practice, the potentially most important ones are the following:

a. Article 15 of the Law on Public-Private Partnership and Concessions prescribes that the establishment of a special purpose vehicle (hereinafter: the "SPV") by the private and public partners is mandatory for the realization of a PPP project, although it is common in comparative practice that a PPP project could be realised even without the establishment of the special company (so-called contractual PPP, which, without further normative elaboration, is recognised in the Article 8 of the Law on Public-Private Partnership and Concessions). Mandatory establishment of the SPV for the purpose of realisation of the PPP projects creates additional costs for potential private partners and further complicates already complex procedure;
b. Inconsistency within the Article 46 of the Law on Public-Private Partnership and Concessions which does not allow for definitely concluding whether the foreign law could govern the public contract, which is of particular importance for foreign investors;
c. Limitations from Article 16 and 17 of the Law on Public Property, which prescribe that immovables which are entirely or partially used by the authorities of the Republic of Serbia, autonomous province and unit of local self-government for the fulfilment of their rights and obligations cannot be subject to enforcement,

be mortgaged, or encumbered in another way. Such a broad definition makes pointless the provisions of the Law on Public-Private Partnership and Concessions on financing, which are otherwise very favourable for potential financiers, and which direct to the application of the law regulating public property, as practically no immovable in public ownership can be encumbered or be subject to enforcement.

FIC RECOMMENDATIONS

- Urgent adoption of the Methodology, unless already adopted.
- Changes of the Law on Public-Private Partnership and Concessions so as to fully enable the contractual PPP: i.e. realisation of PPP projects without the establishment of SPV, in accordance with comparative examples (e.g. Green Paper on public private partnerships and Community law on public contracts and concessions [COM (2004) 327 final]).
- Changes of the Law on Public-Private Partnership and Concessions, or issuance of adequate guidelines of the PPP Commission, in respect of the governing law of the public contract.
- Changes of the Law on Public Property which would enable the encumbering of immovables in public ownership, as well as enforcement proceedings thereon, for the purpose of realisation of direct financing agreements related to PPP projects.
- Activities of the PPP Commission on adoption of proper templates of public contracts and direct financing agreements.
- Activity of the PPP Commission on the building of capacities of potential public partners for the realisation of PPP projects, and exchange of good comparative practices which might enable the better realisation of PPP projects in the Republic of Serbia.

TRADE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Devote more attention to by-laws because the lack of by-laws makes the Trade Law largely inapplicable in practice;	2011		√	
Harmonisation with EU regulations is needed;	2012		√	
Obtaining training for the state authorities in relation to the implementation of the Law in every-day life;	2012		√	
Simplification of the importation procedure;	2012		√	
Providing clear guidelines on the contents of the documents accompanying goods;	2012		√	
Providing special regulation for private brand products;	2012	√		
Enabling harmonisation through policies, standards and guidelines;	2012		√	
Taking a uniform position on the interpretation of regulations.	2012		√	

CURRENT SITUATION

Upon identifying deficiencies of the Law on Trade of the Republic of Serbia, after two years of its application, the area of trade was improved at the beginning of 2013 with the adoption of amendments to the Law on Trade (Official Gazette of the Republic of Serbia 53/2010 i 10/2013). In this way the needed simplification of the Law has been achieved, thus giving the basis for reaching a solution for some practical problems from the past. Nevertheless, those that should apply this Law in their everyday business, traders first of all, or those who act on the opposite side as control subjects, inspection bodies primarily, still face some practical problems. The disadvantages are primarily reflected either in the absence of any by-laws that would provide guidelines for the application of the Law, or in the existence of by-laws that did not keep pace with the amendments of the Law, thus preventing consistent implementation of the Law in practice.

The improvement made in the Law on Trade has not been followed with changes of other relevant regulation applicable in the field of trade. We will point out only a few specific problems that traders encounter when it comes to the implementation of relevant 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 certain groups of products in Serbia. Such seemingly minor defects sometimes make it impossible to import these kinds of products. Local government bodies' efforts to help harmonise the required certificates, so that the problem can be overcome in the future, seem inadequate.

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 imports 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 packaging. Still, we would like to point out that the whole 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 imports 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.

Additionally, new amendment of the Trade Law has entitled local authority to decide on working hours of the traders on its territory and to limit the time for selling of certain products where consumption may influence on public order (alcohol and beer…). This provision limits the constitutional freedom of entrepreneurship and discriminate selling of certain products without proper cause and without any frame set by the law, and therefore may lead to discretion of the local authority.

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 packaging. 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.

In addition, we must deal with a certain absurdity in the field of exports of domestic products, even if the improvement of domestic export should be in focus when it comes to the promotion of the national economy. Namely, in practice it is not possible to organise an aggregate shipment comprising of foods of animal origin produced from a variety of local producers and collected in the warehouse of the trader of such goods. It is impossible to send such a shipment from the warehouse of a trader, even if the warehouse is properly registered for export and under the supervision of a competent veterinary inspector. We would like to emphasise that the activity described above was feasible in the past, until mid-2010, or the adoption of amendments to the Law on Veterinary Medicine, to be more precise. The fact that it is perfectly legal to export aggregate shipments of products as described in cases that such shipments refer to the products that have been imported into Serbia by a trader (so-called re-export), speaks additionally to the absurdity of the described problem.

POSITIVE DEVELOPMENTS

Amendments to the Law on Trade introduced Private Label products in Serbian legislation for the first time. This was not done explicitly, but rather by expanding the definition of the producer. By specifying that a producer is a legal entity, entrepreneur, or a natural person that produces a product, or represents itself as such, by putting onto the product its business name, logo, or other recognisable mark or way, the legislation has actually made it possible to consider the trader of private brand products as their manufacturer, by marketing such products under its own brand, putting their name or trademark on the product.

Further improvement of business has been enabled through the possibility of transporting goods accompanied only with the documents related to the transportation of goods, which certainly contributes to the simplification in this segment of business and provides relevant cost savings. We still hope for the concretisation of a described provision, since it is necessary to elaborate on the subject matter supporting it with related sub-legal regulations expected to be adopted in the near future.

Some improvements have been made in the area of sales incentives. Namely, it is not necessary to state the period of validity of the previous price of items on sale anymore.

The obligation of providing the study of impact no longer exists, and neither does the Centre for Development of Trade as a separate state body. The previous competences of the Centre, which were related to the monitoring of trade and the market, were transferred to the authority of the Ministry of Foreign and Internal Trade and Telecommunications.

A new instrument of judicial protection – legal action against unfair competition – has been introduced.

Bearing in mind all the above mentioned improvements made in the Law on Trade in the previous period, it is clear that a tendency to enable free and undisturbed trade and its development surely exists. The described amendments

certainly made the difference and represent a significant move towards the achievement of that objective.

REMAINING ISSUES

The elimination of the defects regarding the import of products as described in 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 information (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 the 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.

One of the incentives prescribed by the 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).

Finding simple solutions to overcome any differences in the practical solutions of Serbia and neighbouring countries in the region which can be done through the conclusion of bilateral agreements by relevant government institutions (Ministry level), or by issuing instructions by the same government institutions.

Encouraging exports of domestic products and their placement in related markets in the region, by allowing aggregate shipments that go from the warehouse of the trader registered for export, would contribute to the development of the national economy as a whole, and consequently trade as its important segment.

The freedom of entrepreneurship should be fully respected. Any exception should be introduced only by the law for justified reasons and not transferred further to local authority to decide.

Last, but not the least, we must point out that not enough has been done in the field of secondary legislation. The obligation to make the Law applicable through the enactment of its secondary legislation still remains, in order to provide clear guidelines to the state authorities and business community with ensured legal safety in this area.

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 state authorities in relation to the implementation of the Law in every-day life.
- Simplification of the importation procedure.
- Allowing aggregate shipments that go from the warehouse of the trader registered for export.
- 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.
- Limitation of entrepreneurship and limitation in selling of certain products should be done only by the Law.
- Taking a uniform position on the interpretation of regulations.

INSPECTION CONTROL

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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;	2012		√	
Consistent implementation of uniform rules on sanitary and phytosanitary border inspection procedures for the food and beverage industry, excluding the possibility of arbitrary interpretation.	2012		√	

There are several inspections affecting business conditions to a great extent, such as those of the trade, agriculture, communal, and tax inspection services. In the text below we will try to provide the overall situation that business is facing, while keeping phyto-sanitary and sanitary inspections in focus.

CURRENT SITUATION

Within the 14 ministries there are 34 different inspections, representing a very complex system of inspection supervision over business activities. These inspections have different tasks/jurisdictions, but there is also a rather high number of grey areas where these tasks are intercepted, where inspections themselves are declared not accountable, and those where companies are not able to get clear instructions as to whom to turn for a specific problem/situation. Additionally, inspections are not well manned with qualified people to go into the field and investigate. For example, the communal inspection, which has the resources but not the authority to go into the field, is forwarding requests to market inspection, which is accountable but does not have the appropriate resources.

One of the issues which escalated in 2013 was the illicit trade of different products (grey economy) in green markets, where it is evident that none of the inspections has full accountability (cut tobacco, chocolate, coffee, etc.) to inspect, control, and further process the cases of illicit activities.

Currently, there is little co-ordination between actions taken by different inspections in order to tackle the issue appropriately, but each inspection does perform separate checks (limited by their resources), which sometimes results in multiple visits to the same companies and controls of the same operations/issues. This division of roles and responsibilities increases the costs for registered firms, but at the same time enables individuals in the grey area to continue their illegal work, as no inspection is responsible for their supervision and control.

As a consequence, unfair competition is increasingly present and it creates an additional burden for the ones that work in line with the law, fulfilling their obligations towards the state.

To conclude, the grey economy is severely affecting all stakeholders in society, the economy in general as well as the state budget, leading to the worsening of the investment climate for existing and potential investors.

Competencies in the area of sanitary and phyto-sanitary 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 Phyto-sanitary 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.

POSITIVE DEVELOPMENTS

As of 1 January 2012, chemicals (excluding crop protection products) 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 RS No 92/11).

As of 23 January 2012, the new instructions for the official sampling of food and animal feed of vegetable and mixed origin at import has been in force, and consequently, the number of sampling is reduced, but the back-up documentation needed for getting certificates (hard copy of previous analysis, previous certificates, etc) remains an issue.

As of January 2013, no additional documentation is needed, meaning that relevant documentation is issued based on import documents, similarly to the import process implemented in Croatia. The necessary certificate for import custom clearance is given, while the importer is obliged to get proper analysis proving the safety of products from domestic laboratories (not older than six months).

REMAINING ISSUES

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

1. The 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 phyto-sanitary 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;
6. Improper enforcement of new legislation coming from different inspectors (mainly at the starting point of implementation, but also present in later stages), where they are applying their individual understanding of legislation and where it happens that for the same situation you receive different answers and in different time frame;
7. Improper education of inspectors and lack of a professional upgrade;
8. The FIC believes that the enforcement of sanitary and phyto-sanitary border measures applying to the 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;
9. Different studies on the grey economy and inspections' work have shown that, aside from the two inspections mentioned above, which have diagonally different ways of working, adequate co-ordination and the joint activities of different inspections are not being implemented in practice. These issues need to be addressed in order to have an impact on the reduction of the grey economy and the improvement of the economic environment as a whole.

A specific problem in the food and beverages industry:

10. Sanitary and phyto-sanitary 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 Phyto-sanitary Measures (SPS Agreement) that is obligatory for all members, including Serbia as an aspiring WTO member, sanitary and phyto-sanitary 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 phyto-sanitary border inspection procedures for food and the beverage, cosmetics, and tobacco industries (leaf tobacco, 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 the completion of border inspection procedures.

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

- Adequate and timely education of inspectors with the purpose of applying all parts of the law properly and equally.

- More co-ordinated activities and higher interactivity between different inspections with the purpose of fast re-action and a more efficient tackling of problems which the economy is dealing with (the grey economy, the overlapping of accountability of different inspections, lack of accountability, transferring accountability to other inspections and similar).

These measures would greatly enhance the process of importing 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			√
Passing by-laws to enable the proper application of laws and avoid ambiguities in interpretation;	2009			√
Improvement or replacement of Customs IT system (ISCS);	2011		√	
No further trade liberalisation should be pursued without industries' consent and positive impact assessment of relevant sectors;	2012			√
Continuous education and training of customs officers;	2010			√
Better online system of information and introduction of online services within the customs procedure;	2011			√
Minimising usage of paper documentation and transferring to available electronic communication.	2012			√

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 World Customs Organization (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 Alba-

nia, Bosnia and Herzegovina, 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 announced 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 two years ago, 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 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
- Increase efficiency of resolution of claims that are in the customs administrative procedure;
- Change the date of issuance of the customs invoice – it is recommended that this be the final date of clearance of goods, and not the date of declaration.

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 the implementation of simplified processes, secure linkage with companies and automated clearance;	2011			√
Enable full implementation of the simplified procedures provided by the legal framework;	2011			√
Define simplified export clearance process for shipments up to EUR 1,000 applicable to all postal operators;	2012		√	
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

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 – exempt from customs duty and partially 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 mini-

mis) 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 low value, non-commercial shipments and to EUR 70 for shipments containing gifts (Official Gazette of RS, No 74/2011).

Also, upon recommendations given in the White Book 2012, in accordance with Article 179, paragraph 4 of the Customs Decree (Official Gazette of RS, No 93/2010), the Customs Administration Head Office issued an Explanation about the export procedure for shipments with low economic impact (Customs Administration Head Office document 148-03-030-05-3/2013 of 29 January 2013) enabling all postal operators to use a simplified customs export procedure for shipments with values up to EUR 1,000.

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 Customs 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 the customs information system is developed to be able to support the processes. Interconnection of the Customs' and companies' systems with two-way data exchange is necessary to enable true trade facilitation, standardisation and simplified procedures. In other words, it is necessary to ensure express customs clearance of express shipments, which currently, upon their arrival here, are not express anymore. This is very important for further trade liberalisation and as a support for foreign direct investments.

Introducing de minimis shipments for which no payments of either customs or VAT duties are required, up to a defined value, is also important. The current definition of low-value non-commercial shipments is such that they are exempt from customs duties up to a value of EUR 50, but not from payment of VAT. De minimis has been introduced in Europe because the cost of collecting these duties is higher than their value. This is very important for further e-commerce development.

Simplified customs export clearance procedure is provided to all postal operators in a way that the solution designed for public postal operators is applied to private postal operators, too. As a next step, this solution has to be simplified, aligned with private postal operators' operational procedures, and the value threshold increase must be considered (proposal: EUR 5,000). This issue is very important for further export support.

FIC RECOMMENDATIONS

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

- Efficient Customs information system development to enable and ensure the implementation of simplified procedures, secure interconnection with companies and automated clearance;
- Enable full implementation of the simplified procedures provided by the legal framework;
- Introduction and definition of de minimis shipments for which customs duties and VAT will not be collected up to the defined value;
- Further develop simplified export clearance procedure for shipments up to EUR 1,000 and consider increasing the value threshold to EUR 5,000;
- 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 practices developed in the past to full implementation of the current 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
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;	2011		√	
Public campaigns to increase awareness, and appropriate training for economic operators;	2009		√	
Development of a system for coordination, information exchange and co-operation of all relevant players on a permanent basis, with concrete and effective activities and results undertaken;	2011			√
Proper development of the NEPRO portal and improvement of the administrative body's visibility in the public, as well as in its overall capacity;	2011			√
Abandoning direct market interference measures in favour of controlling competition infringements, general product safety, and information given to the consumers.	2012			√
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 obligations for producers and distributors related to product safety; information procurement and publication; and administrative oversight and customs issues. A 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 the 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.

The 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

Online NEPRO system of public informing, as the domestic equivalent to the European Rapid Alert Point of Exchange, has been established with the aim of informing the consumers on hazardous products. However, there is no sufficient level of consciousness on NEPRO's activities (it is not widely known, not present in media and it does not transmit RAPEX's announcements). During 2012 only 9 announcements have been made by NEPRO. Therefore, it can be considered that the impact on the market of this portal is relatively low. No improvement of the system regarding approachability, statistics, or analysis 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. 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.

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 analysis and hotspot identification, as well as the 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
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;	2012		√	
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;	2011		√	
Continuous public campaigns and activities, with an accent on education and security are necessary;	2009		√	
Further networking of the administrative bodies and development of additional e-government services 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 also contains certain provisions concerning distance selling relations between traders and consumers (including over the Internet), thus transposing EU Directive 97/7/EC. The secondary legal framework, including rules regulating matters such as financial transactions, tax regulations or auditing, are also important for e-commerce.

Informal estimates have indicated an increase in the number of e-commerce transactions in Serbia, to an estimated 1.2 million transactions in 2012 (around 1 million on foreign websites, and an additional 165,000 on local websites), amounting to approximately EUR 180 million value of turnover. This figure only relates to credit card information released by the National Bank of Serbia (NBS); after factoring in other channels, the end result is likely much higher, with different estimates attributing from around 1.4% to almost 10% of the total retail trade to e-commerce. After the recent entry of PayPal in Serbia, e-commerce on the market should grow exponentially in the near future.

POSITIVE DEVELOPMENTS

Statistics regarding the use of computers, broadband penetration and e-commerce is steadily improving each year (as an example, broadband penetration had improved to around 38% in 2012 from 31% in 2011). There are no major issues with the primary legal framework related to e-commerce - electronic signatures and contracts are considered valid in Serbia, and there are several certified issuers of e-signature equipment. There are developed mechanisms for consumer protection in distant selling (above-store level) and there are fiscal and tax benefits in place for e-commerce activities (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 steadily developing, e-commerce should continue to grow as a convenience service, even in troubled economic times.

Revisions and amendments to the E-Commerce Law and the Consumer Protection Law have been suggested and drafted by the Ministry of Foreign and Internal Trade and Telecommunications, in order to further harmonise these rules with the acquis communautaire. These amendments have yet to be adopted by the Serbian Parliament. E-invoices for business are being increasingly supported and developed for the market. Furthermore, plans have been outlined for updating and combining the e-signature, e-document and e-archiving rules in a new Electronic Business Law. On the other hand, changes to the financial regulations relevant for e-commerce have been implemented only partially. While an exception was introduced in the law for e-services, allowing Serbian citizens to open accounts with foreign e-payment providers such as PayPal, the foreign exchange framework is still

restrictive. The hotly contested Law on Electronic Currency has not been adopted, and the relevant provisions should be implemented in the future Law on Payment Services.

Several large app providers and e-payment systems have recently entered the Serbian market, including the long-awaited arrival of PayPal. The introduction of efficient and accessible e-payment mechanisms should greatly benefit e-commerce in general. While there have been certain deficiencies in importing and exporting goods, further developments in this field are expected.

REMAINING ISSUES

While the main body of laws relevant for e-commerce is generally a blueprint of corresponding EU rules and should in principle provide for an effective legal framework, the two main issues relate to the inadequate practice of the authorities and non-compatibility of certain related regulations. Furthermore, certain related legislation – the fiscal and customs rules, e-archiving, rules on accounting, etc. are not harmonised with a modern e-commerce framework, slowing down its greater implementation. Inefficient enforcement of the rules has further had a negative impact on trust in e-commerce. Generally, the problems lie in a number of small obstacles, which increase the commercial risk and expenses for prospective e-business.

The arrival of PayPal has been followed by a significant increase in e-commerce; however there have been certain problems with adapting to the corresponding increase in cross-border transactions. Many consumers have complained about seemingly arbitrary, inefficient, or an overly strict treatment of foreign packages at customs. PayPal has not yet allowed the possibility of e-payment to Serbia, limiting Serbian business in exporting products through this platform. The adoption of a clear, consistent, and robust electronic currency legal framework, regulating both e-money and foreign exchange issues, should be high on the agenda.

Lack of capacity and limited market scope is reflected by the continued hesitation of large economic players to enter the e-market. The volume of business-to-business (b2b) commerce is still inadequate. Due to transport infrastructure, complex regulations and certain peripheral issues, trade margins are still high and most companies seldom engage in cross-border e-commerce. Education and practice are the only possible answer to issues of trust in the online environment (both for public administration and the business sector), a key constraining factor in Serbia, as well as globally. Data safety and security is increasingly put to the forefront in e-commerce transactions, and this should be a particularly developing field in the future.

One of the issues is the fact that in accordance with Regulation on postal services general conditions (Official Gazette of RS, No 2/11, 24/10, 58/10, 13/11 i 65/11), which play an important role in the e-commerce value chain, it is not allowed to perform a shipment delivery with a consignee's digital signature on the delivery scanner's screen. Thus, paper copies of delivery sheets still have to be produced, filled-in and archived.

FIC RECOMMENDATIONS

- Updating the legal framework in line with recent developments in the European Union in the field of e-commerce and consumer protection.
- Amending the second-tier, related legal framework, in areas such as e-archiving, auditing, foreign exchange etc.
- A coordinated approach by the authorities, including a clear and coherent top-down policy is required in order to ensure smooth enforcement and a favourable environment for e-commerce. Sharing know-how among public officials, including inspectors, is paramount.
- A coherent e-payment environment is necessary, liberalising both electronic payment and collection.
- Continuous public campaigns and activities, with a focus on education and security are necessary.
- Allow a shipment delivery with a consignee's digital signature on the delivery scanner's screen.

LAW ON PAYMENT TRANSACTIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
A full application of regulations related to the Register of Bills of Exchange;	2011		√	
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.	2012			√

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 said account, in accordance with the Law and the agreement upon opening and maintaining such an account, concluded with the bank.

There are 20 related by-laws currently in force.

POSITIVE DEVELOPMENTS

The Law was not amended during the years of 2012 and 2013. All by-laws that were in force during 2012 are still in force, with the exception of the Decision on the Manner of Cash Flow Management (Official Gazette of RS, No 89/2011), which was replaced by the Decision on Cash Flow Management (Official Gazette of RS, No 60/2012).

By-laws that were adopted during the years 2011 and 2012, including the particularly important Decision on Detailed Terms, Contents and Manner of Keeping the Register of Bills of Exchange and Mandates (Official Gazette of RS, No 56/2011), were applied in the previous period and therefore their implementation is gradually becoming a routine both for business entities and competent government bodies.

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.

As a candidate for membership in the European Union, Serbia will be required to harmonise regulations on payment transaction with the legal framework of the European Union. The Law should be further amended in order to become harmonised with the legal framework of the European Union.

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

- 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.
- The Law should be further amended in order to become harmonised with the legal framework of the European Union.

LAW ON PAYMENT DEADLINES

CURRENT SITUATION

The Law on Payment deadlines (the "Law") was passed in December 2012 and its application started on 31 March 2013.

As of its adoption, and especially in the period following its application, this Law has been continuously debated and commented on not only by the private sector but also by the general public in Serbia, since the stance about the Law varies depending on the sector from which the entity covered by this Law is coming.

The main aim of the Law, as presented prior to its adoption, was to create a safe and controlled business environment, by stipulating precise criteria and deadlines for payment of debts by the public sector to the private sector. Accordingly, the deadline for payment of pecuniary obligations is limited to 45 days when the public sector is the debtor (the sole exception being for the Health Fund with payment deadline which should decrease from 150 days, as of application of the Law, to 90 days from 1 January 2015), and 60 days when the private sector is the debtor towards the public sector.

Although the main focus of the government is on the transactions between the public and private sector, the Law also sets out strict deadlines for payments in transactions between private entities, limiting, to a certain extent, the autonomy of the will of parties in commercial transactions, and imposes sanctions for parties not abiding by the rules of the Law.

The deadline for payment between private entities is in general limited to 60 days, with certain exceptions to the rule, the main of which being: (i) payment in instalments, when the deadline is limited to 90 days, whereas at least 50% of the pecuniary obligation has to be paid within the half of the agreed deadline; (ii) in case when the debtor provides the creditor with an irrevocable bank guarantee or by the approved bill of exchange by the bank, the deadline for payment may be agreed freely.

Given that the Law has entered into force less than six months ago, meaning that the first payments under the Law were due on 15 May for the public sector, and 1 June for the private sector, there is no relevant practice based on which it is possible to fully assess the results of the Law, and notably abiding of the public and private sector to the rules set out therein.

POSITIVE DEVELOPMENTS

Even though the time which has passed since the adoption of the Law is insufficient for determining the positive effects of the Law, we are of the view that the following positive signals could be emphasised even at this moment:

1. Introduction of financial discipline for the public sector – Namely similar legislation exists and was adopted in the past period in numerous EU countries. It is a clear indication that such kind of legislation is needed, especially in countries which are not fully developed, and the application of which may present a good signal for potential foreign investors. This relates especially to co-operation between foreign investors and the public sector, since in the past, several international companies left Serbia for the reason of non-payment of obligations of the public sector.

2. Deadlines for the public sector – Stipulating a 45-day deadline for payment of debts by the public sector (save for the Health Fund) is a positive step, since at present, the timeframe in which the public sector is making payments to the private sector is much longer. Accordingly, by application of the Law, the liquidity of the private sector that co-operates with the public sector should be significantly improved. Furthermore, the deadlines envisaged for the Health Fund, although being longer than for the rest of the public sector, are also a significant step forward, having in mind that at present the average payment term by the Health Fund is more than 200 days.

3. Proactive stance of the Ministry of Finance – Given that the FIC is the member of the government working group for implementation of the Law, we had the chance to see that the Ministry of Finance is very actively working on the implementation of this Law. Namely, before entering into force as well as after that, the Ministry of Finance has held various meetings and workshops with various entities involved and covered by the Law (such as the public administration, courts, tax administration and others) in order to prepare for and enabling full implementation of the Law in practice.

REMAINING ISSUES

Although solutions provided by the Law in respect to the public sector are rather clear and logical, there are several

aspects with regards to relations between private entities which have to be further improved and reconsidered in terms of eventual changes to the Law.

The key remaining issues are the following:

1. Strictness with regards to transactions between commercial entities in private sector – Complete exemption of autonomy of the will of parties being commercial entities in agreeing the deadlines for payment may turn commercial entities to try to avoid the Law by agreeing on consignation or commission deals.

2. Applicability of the Law to long-term complex projects – The solutions of the Law are rather simple and tend to be applicable to all relations between commercial entities. However, for long-term complex projects which are performed in multiple phases, the Law does not provide any exemptions which would be applicable for such projects.

3. Pecuniary compensation of 20,000 RSD – This compensation is defined as compensation for the creditor when a debtor fails to make a payment within deadlines envisaged by the Law. The amount of the compensation is applicable irrespective of the amount due by the debtor. Open issues regarding this pecuniary compensation are (i) that it may be unfair in the case of non-payment of some minor amounts, in which case the pecuniary compensation may occur as significantly higher than the initial debt; and (ii) in practice it may happen that one debtor who has received multiple minor invoices by the same creditor (for each of its retail outlets) with the same maturity date could be obliged to pay this compensation for each outstanding invoice.

4. Payments by state owned pharmacies – Under the Law, the payment terms for state owned pharmacies are the same as for the Health Fund. Such a solution may once again create unfair market competition.

FIC RECOMMENDATIONS

- Facilitation of rules regarding private entities by stipulating either (i) longer payment deadlines; or (ii) additional exemptions from the envisaged 60-day term for payment.
- Amendments related to the pecuniary fine in case of non-payment in prescribed deadline. Such amendments should relate to both (i) stipulating the fine as a certain percentage of the unpaid invoice; and (ii) stipulating that the creditor who has multiple minor invoices maturing on the same date against the same debtor, is entitled to only one compensation for all such invoices.
- Continuation of training of all subjects involved in the application of this Law in order to have the same practice of both the Ministry of Finance and courts in respect of the application of the Law.
- Adopting amendments to the Law in order to provide special rules for long-lasting complex projects.
- Amendments to the Law regarding the pharmaceutical industry in order to achieve fair competition and conditions for all participants.

FOREIGN EXCHANGE OPERATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Modernise codes of payment and adjust them to today's transactions;	2012	√		
Ensure that the offsetting of mutual receivables in foreign payment operations and financial derivative operations is fully in accordance with international practice and standards;	2010		√	
Allow cash-pooling between companies;	2012			√
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;	2011			√
Enable the issuance of guarantees based on the order of a non-resident in transactions between two non-residents in all non-credit operations;	2011			√
Enable netting between affiliated companies globally;	2012			√
Ease reporting obligations (from the opening of a simple bank account to the registration of loans);	2012	√		
Adjust and harmonise applicable legislation in this area, and resolve issues that are still unclear.	2012		√	

CURRENT SITUATION

At the end of 2012 one more "wave" of significant changes in regulations on foreign exchange operations took place. Amendments to the Law on Tax Procedure and Tax Administration, which entered into force in October 2012, ceased the operation of the Foreign Exchange Inspectorate and transferred its competences to the Tax Administration. Furthermore, in December 2012, the National Assembly adopted extensive amendments to the Law on Foreign Exchange Operations (hereinafter: the "Law"), that entered into force on 25 December 2012.

These amendments continued the trend of a gradual liberalisation of capital movements, with the simultaneous elimination and simplification of certain administrative procedures in order to reduce costs for companies and citizens.

In order to enable full implementation of the introduced amendments, the Government and the National Bank of Serbia ("NBS") are obliged to adopt the necessary by-laws within six months of the Law entering into force.

POSITIVE DEVELOPMENTS

Although the vast majority of amendments to the Law represent a positive change, thus improving the legal framework, here we will present only some of the most important changes, following the structure of the Law.

a. Current Transactions

Setting off debts and claims based on the realised foreign trade of goods and services and based on foreign credit operations in foreign currency has been considerably facilitated. Namely, the "green light", i.e. the approval of the Ministry of Finance is no longer required for performing these activities. New by-laws will no longer regulate conditions for performing these operations, but only the method, thus introducing further liberalisation of foreign exchange set-off. The NBS adopted the Decision on Set-off on the Grounds of Foreign Credit Operations in Foreign Currency, while at the time of this writing, the Government by-law on set-off of debts and claims based on the realised foreign trade of goods and services is still pending. Additionally, setting off debts and claims can now be performed by a foreign legal entity's branch.

Transactions involving the transfer of debts and claims that arise from residents' realised foreign trade of goods and services have been subject to significant relaxation as well. The debtor/creditor of the underlying transaction does not have to be a party to the transfer agreement. From now on, after the signing of the transfer agreement between the

transferor and the recipient of claims and debts, the transferor will only have to inform the debtor/creditor about the performed transfer. Even though it seems quite legitimate that the transfer of claims does not require the consent of the debtor (only the information about the transfer), we must note that the same cannot be said for the transfer of debts, bearing in mind that the creditor should give permission for a change of the debtor (as indicated in the recommendations of the Council). The Law regulates all the aspects of these operations, including the minimum content of the transfer agreement, thus making the by-laws redundant. For the first time, the transfer of debts and claims can be performed by non-residents, while residents – public enterprises and legal entities with state capital or in the process of restructuring/privatization – are allowed to transfer claims and debts only on the basis of the agreement, consents or statements executed by all the participants in the transaction, with the previous approval of the Government. At the same time, the obligation to report on these operations has been abolished.

With the adoption of the new by-laws, the ones that previously regulated setting off debts and claims will no longer apply, while with the entering into force of the Law, the by-laws concerning the transfer of claims and debts arising from foreign trade activities of residents have been set aside.

b. Capital Transactions

The new article 11a of the Law regulates the effectuation and collection of payments for the purpose of buying and selling shares of legal entities by residents abroad and by non-residents in Serbia. This will allow the transfer of capital based on portfolio investments – investments falling outside the scope of direct investments (acquiring a stake of up to 10% in a legal entity).

Building on the regulations on the capital markets, the Law offers the possibility to residents (legal entities, entrepreneurs and individuals) to invest in foreign investment funds. This type of investment can be made exclusively through residents – companies for managing investment funds and investment companies.

Besides changes reflecting harmonisation with the new definition of foreign credit operations, the Law also abolished certain restrictions related to these transactions. Namely, residents - individuals are now allowed to incur debt abroad, i.e. to take credits and loans with a maturity term exceeding one year, while under the same condition, residents - foreign legal entity branches are now allowed to borrow funds from their non-resident founders. As the FIC itself has recommended deleting the problematic provision prescribing that the guarantees, sureties and other instruments from Article 18 of the Law are to be issued in the currency of the underlying transaction, we emphasize the deletion of this provision from the Law as another improvement.

Furthermore, aside from banks, non-residents and residents (same for the resident individuals) are enabled to transfer claims and debts based on foreign credit operations. The terms and method of performing these activities are simplified and fully regulated by the Law in the same manner as the above described transfer of claims and debts arising from the realised foreign trade of goods and services.

The requirement that financial loans to majority-owned non-residents or collaterals for credit operations between two non-residents, can be granted only from the profit that the resident realised through business operations abroad, has been abolished.

Finally, the obligation to register foreign credit operations has been replaced with the obligation to report to the NBS on said operations. Such reporting should be rather simple and will be regulated in the new by-law. In addition, effectuating payments under certain foreign credit operations will be possible only if the residents previously report them to the NBS.

c. Payment Operations

Regarding foreign payment operations, the Law introduces the legal basis for performing the electronic sale-and-purchase of goods and services by residents abroad. Residents can now perform payments via foreign institutions to which foreign currencies are transferred for effectuating and collecting payments related to electronic trading abroad. This novelty allowed PayPal, one of the best known online payment services providers, to enter the Serbian market, thus securing easier and safer access to internet commerce, which should, in the mid and long-term, lead to strengthening effective competition in the country. We note that, under the Law, funds of residents kept with the foreign electronic currency institutions are not considered as deposits held in bank accounts abroad.

Effecting and collecting payments by a resident to/from

another non-resident, and not the non-resident who was the initial creditor/debtor under allowed current or capital transaction, can be performed under simplified terms, stipulated directly in the Law. Given that resulting from the transfer of claims and debts between two non-residents, these operations can be performed on the basis of: (i) an agreement, signed between all parties in the operation, or (ii) a statement of the resident, confirming it was informed about the transfer, and thus practically authorising the subject transfer. The Law stipulates the minimum of content for such an agreement/statement. A resident - public enterprise and a legal entity with state capital or in the process of restructuring/privatization can perform these operations with an additional restriction, i.e. with the previous approval of the Government.

Additionally, the grounds for foreign currency payments, collection and assignment in the country are extended as follows: for guarantee operations, when the underlying operation is executed in a foreign currency; for payment of salaries to residents - individuals assigned to temporary work abroad, based on the contract for the execution of construction works abroad; for transfers to a foreign exchange account of a family member held with the bank in the country, with evidence of kinship up to the third degree; under operations regulated by the laws on capital markets, deposit insurance and in other cases prescribed by law.

d. FOREX Control

In order to harmonise with the Law on Tax Procedure and Tax Administration, provisions which regulated the competences and organisation of the Foreign Exchange Inspectorate have been removed from the Law.

Amendments to the Law on Tax Procedure and Tax Administration put out of force the Decree on Detailed Terms and Conditions of Supervising Foreign Exchange Transactions between Residents and Non-residents, thereby releasing residents from the many obligations of indirect reporting on foreign exchange transitions, submitting documents, as well as record keeping requirements on concluded foreign trade transactions in the control book.

REMAINING ISSUES

The amendments to the Law introduced significant changes in the direction of further liberalisation of foreign exchange transactions in Serbia. Although changes aim to improve and render more precise the legal frame through deregulation and reducing administrative barriers to capital flows, some changes cannot be properly evaluated yet, considering that (at the time of this writing) there are still by-laws to be adopted in order to complement the Law. In this respect, the adoption of the NBS' regulation on the matter of reporting on foreign credit operations, after which the supposed reduction of administrative expenditures should become "measurable" in practice, is particularly awaited.

Despite the introduced changes, foreign exchange operations in Serbia are still significantly restrictive in order to protect and maintain macroeconomic stability. However, we consider it is necessary to expand the list of liberalised transactions, whenever justified and possible, especially when it comes to groups of affiliates, which tend to simplify financial relations within the group. Therefore, the issue of liberalisation of foreign credit and deposit operations remains, in order to enable provision of more sophisticated banking services, such as full "cash management" packages. Also, the Law still does not envisage the issuance of guarantees and other forms of warranties upon order and in favour of a non-resident, under non-credit transactions between two non-residents.

Therefore, the future policy in this area should be focused on further liberalisation of current and capital transactions, when sustainable and in line with the Stabilisation and Association Agreement, in order to harmonise regulations with EU legislation and international standards in this area.

FIC RECOMMENDATIONS

- Modernise codes of payment and adjust them to today's transactions.
- Adopt the remaining by-laws in the statutory term.
- Allow cash-pooling between affiliated 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 at present.
- Enable the issuance of guarantees and other forms of warranties based on the order and in favour of a non-resident, in all non-credit transactions between two non-residents.
- Enable residents-individuals to give warranties and other security instruments by order and in favour of non-resident creditors.
- Simplify as much as possible the by-laws regulating set-off when participants in the transaction are affiliated parties, in order to enable global netting between affiliated companies.
- Ease reporting obligations (from the opening of a simple bank account to facilitated communication with the NBS regarding reporting, through less formal procedures).
- Regulate the provisions on the transfer of debts from realised foreign trade of goods and services of residents from Article 7 of the Law, by prescribing the requirement of the creditor's consent in the debt transfer, in order to protect the interests of creditors in the underlying transaction.
- 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
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;	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 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 and 91/2010, hereafter known as 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.

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.

In accordance with this Law, 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.

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.

Bearing in mind that all authorised persons have an obligation to obtain a license, the Administration for the Prevention of Money Laundering organised professional licensing exams for entities subject to the Law.

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; insurance companies and banks.

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.

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 increase 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 co-operation 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		√	
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.	2012		√	

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).

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"), 17 requests for the protection of rights submitted to the Commissioner were resolved in May 2013, while 57 inspectional supervisions were performed, 46 of which resulted with a warning to controllers regarding irregularities in the processing of personal data.

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. Issues related to exporting data outside of Serbia are gaining momentum in practice and therefore an improvement in this area is necessary. As a minimum it would be advisable for the Commissioner to publish a list of countries which are not members of the Convention but are considered to provide an adequate level of personal data protection according to certain criteria.

During the course of 2012 the Law was slightly amended, by which the use of personal data for the purpose of collecting funds for humanitarian needs was regulated. Namely, processing without consent has become allowed for the purposes of collecting funds for humanitarian needs; and for those data controllers who already process personal data for specific legal purposes, processing for the purpose of collecting funds for humanitarian needs was also enabled. Furthermore, in the case of collecting funds for humanitarian needs, an exception was made to the rule that the processing of personal data is not allowed if such processing is performed for purposes other than those for which it was originally intended.

POSITIVE DEVELOPMENTS

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, 126 out of 489 cases pertaining to personal data were resolved by the Commissioner in May 2013, including the preparation of 33 opinions pertaining to the application of the Law. According to the same source, the total number of registered data controllers has increased to 1,006, which is almost twice as much compared to the previous 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. A New Handbook for data controllers was also published in November 2012, which describes the procedure of registration of data collections in a detailed manner and with examples. However, the aforementioned number of opinions issued by the Commissioner with regard to the application of the Law in May 2013 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.

Likewise, bearing in mind the implementation of the Law in practice, the need for more precise and comprehensive legal regulation in this area has become increasingly more evident. Namely, provisions of the Law do not govern nor regulate certain areas and issues, such as video surveillance, biometric data, direct marketing, etc. In the absence of adequate normative solutions, difficulties arise in the implementation of the Law regarding personal data processing in these areas. Besides regulating the mentioned areas and issues, there is also

a need for further harmonisation of the Law with international standards. Thus, it is necessary to fully harmonise the Law with the Directive of European Parliament and EU Council no. 95/46 and with Convention no. 108 of the European Council on the protection of persons in relation to automatic processing of personal data. That being said, the Commissioner stressed the need for amendments and changes to the Law, by submitting to the Government and relevant ministries the suggestions on the much-needed normative activities.

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.
- Amend the provisions of the Law in relation to areas that are not regulated and fully harmonise the provisions of the Law with long-established and accepted European standards.

TAX

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		√	
The tax return form for foreign branches should be aligned with the same tax return for domestic companies (i.e. the use 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);	2010			√
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);	2012			√
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.	2012			√
Some of the problems require amendments of the CIT Law:				
Provisions of the CIT Law regulating deductibility of marketing expenses should be amended in a way to allow a full deductibility of marketing expenses;	2010		√	
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			√
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;	2011			√
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;	2012			√

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 several by-laws governing the implementation of CIT Law provisions.

The CIT Law underwent two sets of changes, one in December 2012 (amendments published in the Official Gazette of the RS, No 119/2012, entered into force on 25 December 2012) and another in May 2013 (amendments published in the Official Gazette of the RS, No 47/2013, entered into force on 30 May 2013). The changes are numerous and significant, especially the ones from December 2012 - apart from raising the rate from 10% to 15%, these changes mostly represent the clarification of ambiguous legal provisions, and their improvements in line with the practice. In addition, significant novelties were introduced, especially with

respect to transfer pricing, the taxation of non-residents from jurisdictions with preferential tax treatment with 25% withholding tax, the application of double taxation treaties, tax credit for investments in development, and other matters.

Several tax incentives were abolished (for concession activity, for manufacturing operations in free trade zones, for carrying out business in undeveloped regions, tax credits for investment in fixed assets in certain industry sectors), and conditions for obtaining the remaining tax incentives were tightened and stricter limitations were imposed on their use.

POSITIVE DEVELOPMENTS

Amendments to the CIT Law from December 2012, as well as from May 2013 have brought many improvements.

The most significant changes in this respect are listed below:

- Tax depreciation is recognised for each fixed asset, the useful life of which is longer than one year, and which can be recognised as a fixed asset in accordance with IAS/IFRS, regardless of the individual acquisition value;
- Expenses for advertising and marketing are recognised for tax purposes up to the amount of 10% of total annual turnover (instead of the previous limit of 5% of total annual turnover);
- The recognition of expenses on the basis of receivables write-off for tax purposes is made significantly easier by clarifying the main condition for such recognition relating to the impossibility of collection. Namely, it is now sufficient to file a claim for collection against a debtor before the regular court rather than, as it was previously required, to provide evidence of unsuccessful collection through the court (which was often impossible to obtain). Filing a claim is not necessary in cases when this would cause higher costs to a taxpayer than the amount of claim. For debtors undergoing liquidation or bankruptcy procedures, it is enough to report a claim as part of these procedures. The amendments from May 2013 also added a clarification whereby it is also enough if a taxpayer initiate enforcement procedure for the collection of a claim. It has also been clarified that if written-off or corrected receivables are subsequently collected, this should not be included in the taxpayer's income, provided that such write-offs/corrections were not recognised as expenses for tax purposes;
- Losses incurred from the sale of receivables are recognised as expenses in the amount presented in the income statement prepared in accordance with IAS/IFRS;
- If a taxpayer realised income in connection to expenses that are not recognised for tax purposes in accordance with Article 7a of the CIT Law, such income is not included in the tax base;
- It has been clarified that capital gains can only be realised by alienation against consideration of assets which are used for business, or, in the case of securities, which are considered long-term financial placements. Also, for the purpose of determining the capital gain, a sale price is always a contract price, and only in cases of transactions with related entities, the sale price is the market price if the contract price is below the market price;
- The residual value of assets that remains following the liquidation of a company is deemed a dividend, not a capital gain, and accordingly this residual value (dividend) is exempt from the tax base of a resident shareholder;
- Interest income from bonds issued by the central government, an autonomous region, local municipalities, or the National Bank of Serbia, is also excluded from the resident taxpayer's tax base;
- Non-residents can exercise their right to beneficial withholding tax rates and other benefits from the double taxation treaties subsequently, after a payment is made to them with a Serbian tax withheld at source. This right may be exercised by subsequently submitting a tax residency certificate (for the purpose of application of a double taxation treaty) to the Tax Administration, in which case a non-resident is entitled to a refund of excess tax paid. Tax residency certificates are recognised even if the forms used are issued by foreign countries, which makes it easier to directly apply double taxation treaties;
- Tax credit from Article 48 of the CIT Law is also recognised for investment in the development of new products, materials, processes, and services, which are recognised as intangible assets;
- The conditions for the use of a foreign tax credit by resident taxpayers for foreign taxes paid on profits of foreign subsidiaries and dividends paid by such subsidiaries has been relaxed in the sense that the condition of holding at least 25% of shares in a foreign subsidiary for the period of at least one year is lowered to 10% of shareholding within the same period. Also, the foreign

tax credit can be granted (under more strict limitations) for foreign withholding tax on interest and royalties earned abroad (not only interest and royalties earned from foreign subsidiaries), as well as on rental income, and dividends paid out by entities in which a resident taxpayer does not hold at least 10% within the period of one year;
- Financial leasing companies are put in an equal position with banks with respect to the calculation of the thin capitalisation rule (interest and related expenses calculated on the amount of the loan, not to exceed ten times the value of own equity, are recognised for tax purposes);
- The deadline for the filing of a tax return and tax income statement is extended to 180 days from the expiry of a tax year, and a duty to submit annual financial statements alongside with the tax return has been abolished;
- Capital gains realised in one year will not influence the amount of monthly prepayments for the next year.

Improvements of the CIT Law provisions regarding transfer pricing should be particularly highlighted as follows:

- The threshold for considering two parties as related has been significantly lowered from the previous 50% to the current 25% of capital or voting rights. The criterion of a 'single largest shareholding', which often led to absurd situations, has been abolished. For the first time, the definition of a related person has been extended to include spouses and relatives of a taxpayer;
- In addition to the existing three methods for determining the arm's length prices, the CIT Law has been supplemented with two more: transaction net margin method and transactional profit split method. Furthermore, the Law proposes the possibility that any other method for determining the arm's length prices can be applied if such method is more appropriate for a particular situation or if it is not possible to determine the price via prescribed methods. There is no more hierarchy in choice of methods, and the one that is most appropriate to circumstances should be applied, with a possibility to apply a combination of methods. Furthermore, the Minister adopted a bylaw published on 12 July 2013, which provides details on, inter alia, the choice and manner of application of the methods for determining the arm's length prices;
- The Minister of Finance may prescribe interest rates that will be deemed "arm's length" interest rates for the purpose of determining the "arm's length" interest on loans between related parties. However, taxpayers will have the right to apply the general rules on determining the "arm's length" price of a transaction to establish arm's length interest rate, instead of the interest rate determined by the Minister;
- Amendments introduced the requirement to prepare transfer pricing documentation (the content of which was prescribed by the Minister in a bylaw published on 12 July 2013), in which a taxpayer will have to separately present the value of transactions with related parties at market prices. The manner in which the values of individual related parties' transactions at arm's length prices are presented in the transfer pricing documentation is set out in line with the OECD Transfer Pricing Guidelines (the "OECD Guidelines"). The effect of transfer pricing is determined at the level of individual related-party transactions, whereby this effect is always reflected in the increase of a tax base. Special rules are introduced with respect to arm's length price range, integrated or disaggregated approach in analysis of transactions with individual related parties, and on including the difference between transfer prices and arm's length prices in the tax base;
- The Minister of Finance is required to rely on relevant international sources, primarily on OECD Guidelines, when adopting bylaws for the implementation of the transfer pricing rules.

REMAINING ISSUES

- The provisions governing taxation of permanent establishments continue to be scarce and vague, and do not provide sufficient guidance as to what constitutes a permanent establishment; a methodology for establishing taxable income; and the filing and payment of CIT in situations when a foreign business is not registered in Serbia, etc.;
- According to the currently applicable legislation, branches of non-resident entities are not eligible for tax incentives, including tax credits for investment in fixed assets and in development as intangible 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;

- Deductibility of marketing expenses is limited to 10% 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;
- 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., the Law on Accounting and Auditing and International Accounting Standards [IAS], specifically IAS 38) and generally accepted interpretations of the professional community;
- 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;
- The CIT Law does not contain a single provision governing the taxation of investment funds. This results in a distortion of the tax neutrality of investment funds and different forms of investment funds; in particular closed-ended and open-ended funds;
- Taxation of cross-border corporate reorganisations remains unclear, as the currently applicable legislation completely lacks provisions regarding the taxation of such reorganisations;
- 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 to introduce greater flexibility in this area.

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

- Provisions of the CIT Law regulating deductibility of advertising and marketing expenses should be amended in a way to allow a full deductibility of such expenses;
- 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 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;	2011	√		
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.	2012	√		
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.	2008			√
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.	2012		√	
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.	2012		√	

CURRENT SITUATION

- Taxation of individuals is governed by the Personal Income Tax Law (the "PIT Law"), last subject to amendments in June 2013, by means of which the tax reform started at the end of 2012 has continued. The newly adopted amendments reduced the income tax rate from 12% to 10%.
- Securities received as a reward (stock options, etc.) by an employee from its employer or from an entity which is considered to be related party with the employer, are regarded as the salary of that employee. The market value of securities at the time of their ownership transfer represents the taxable base in this specific case. The difference between the market value of securities and their discounted value paid by an employee at the time of their acquisition is also considered the taxable base. Securities acquired as a reward (i.e., stock options) from an entity which is considered the employer's related party and for which the burden of cost is borne by the employer will be regarded as salary at the moment of posting of such an expense in the business books of the employer.
- Abolishing the immovable property income as a separate income category in the PIT Law has led to the incorporation of such income in the capital income category. The same is in line with the economic nature of such income. On the other hand, income generated by subleasing real estate is considered as other income of an individual.
- Usage of property and services of a legal entity by its shareholder-individual for private purposes is taxed as other income. The amendment in question has made such income more onerous in terms of taxation, bearing in mind the higher tax rate and the fact that such income would be now subject to annual personal income tax.

POSITIVE DEVELOPMENTS

- The residual value has been incorporated in the capital income group; i.e., the income in question is taxed in the same manner as a dividend.
- The tax residency issue has been regulated more precisely in accordance with the latest amendments. By acceptance of a 'physical day of presence' method, uncertainties present in the past have been significantly eliminated.
- The coverage of business-related expenses of individuals that are not employed with the payer are no longer regarded as other income of an individual.
- The write-off of receivables of banks towards its clients-individuals is no longer subject to taxation as other income, under the condition that lawsuit costs are greater than the amount of receivables towards the client and under condition that such write-off, in accordance with the Corporate Income Tax Law, are considered an expense in the business books of a bank.

REMAINING ISSUES

- Amendments to the law treating employees' profit participation as other income for taxation purposes is not in correspondence with the economic nature of such income. This income should be treated as salary since the same is made in connection with the work of such employees performed for their employers.
- A specific problem is the compensation of expenses to individuals 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 continued to apply the Decree on the Compensation of Expenses and Severance Pay to Employees in State Bodies. The Ministry of Finance and the Ministry of Labour, Employment and Social Policy issued several opinions in the past confirming that the Decree should be applied by all 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.
- The introduction of subsidiary guarantees for adult members of the household of a sole proprietor for the tax liability of the sole proprietor; i.e., stipulating that such persons are liable with their own property for tax liabilities of a sole proprietor is not in line with provisions of the Company Law and the Law on Enforcement and Security.

FIC RECOMMENDATIONS

- The application of the cedular system of taxation of personal income remains a problem of the Serbian system, to which there is no adequate solution. This system was abandoned as unclear and unjust by criteria of many

advanced tax jurisdictions, and the Serbian government should consider the introduction of a synthetic system which would enable Serbian tax legislation to keep up with advanced tax systems.

- The provision that stipulates subsidiary guarantee of adult members of a household with their own property in the case of a sole proprietor failing to fulfil their tax obligation should be deleted from the PIT Law.

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 a registered office in Serbia to register for VAT purposes;	2007			√
The Ministry of Finance / 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.;	2007			√
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.	2011			√
The rule for the place of supply of services should be revised in accordance with the EU VAT Directive;	2011			√
The provision of services without consideration should be revised and harmonised with the EU VAT Directive; i.e., subject to VAT would be the use of goods forming part of the assets of the business for the private use of a taxable person or of his staff or, more generally, for purposes other than those of his business (where VAT on those goods or the component parts thereof was wholly or partly deductible) and the supply of services carried out free of charge by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business;	2011	√		
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.	2011		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2012	√		
With respect to turnover required for VAT registration, it should be clarified that supplies taxable outside Serbia are included in the VAT registration threshold.	2012	√		
Interest charged in case of financial leasing should be VAT exempt.	2012			√

CURRENT SITUATION

Value Added Tax is governed by the 2004 Law on Value Added Tax (the "VAT Law").

Since its adoption, the VAT Law was amended on two occasions, in 2007 and in 2012.

For the first time since the introduction of VAT, the Law on Amendments to the VAT Law from September 2012 increased the general VAT rate from 18% to 20%, as well as VAT compensation from 5% to 8%, with amended rates being effective as of 1 October 2012. The reduced rate of 8% remains the same.

The 2012 amendments to the VAT Law constitute the most significant changes in the VAT system since the introduction of VAT to Serbia. The majority of amendments are effective as of 1 January 2013.

POSITIVE DEVELOPMENTS

- In the case of supply that is subject to VAT which is performed by a VAT taxpayer registered in Serbia, the 2012 amendments to the VAT Law introduce for the first time the obligation for calculating VAT by the VAT taxpayer who is the recipient of goods and services (so-called 'reverse charge' mechanism for supplies of secondary raw materials and supplies in the construction industry). The possibility has been introduced for the supply of buildings, which is otherwise VAT-exempt, to be VAT taxable (option to tax), thus removing the barrier presented by the VAT Law in practice for financial leasing of real-estate property;
- VAT exemption is introduced for supplies of goods for which, at the moment of purchase, no input VAT deduction was allowed, which eliminates double taxation. Also, the right to subsequent entitlement to deduct input VAT for equipment and buildings used in performing a commercial activity is regulated, as is the entitlement to deduction of input VAT with respect to goods purchased before registration for VAT;
- The amendments prescribe that free of charge services are subject to VAT only if they are carried out by a taxable person for purposes other than those of his or her business, and not for all cases, as previously prescribed prior to the amendments, contributing to harmonisation with the European Union VAT Directive and providing a foundation for eliminating many problems in practice;
- The minimum turnover requirement in the calendar year for an entity to remain in the VAT system has been eliminated. Domestic companies performing supplies taxable abroad are now allowed to register for VAT, which is of considerable importance for IT companies, companies providing advisory services in the area of marketing, etc. Also, VAT refunds to foreign taxpayers were introduced, allowing for Serbian companies to apply for VAT refunds in other countries, as the majority of countries allow refunds on the basis of reciprocity;
- The tax treatment of the provision of advertising materials is further regulated, as well as what are considered services provided electronically; tax treatment of foreign exchange differences; and foreign currency contractual clauses: with the introduction of the notification of Tax Authorities only of changes that are relevant for taxation purposes, and not of all changes in the VAT registration form, including the introduction of a zero VAT rate for supplies of goods within tax free zones, etc.

REMAINING ISSUES

- The major obstacle in the current VAT system relates to the absence of the possibility for foreign companies without legal presence in Serbia to register for VAT purposes, resulting in situations whereby foreign companies performing supplies in Serbia do not have any means to recover VAT paid in Serbia. Namely, the 20% 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 the 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 tax debtors through the 'reverse charge mechanism', which is cash-neutral);

- Relevant rules for applying the VAT Law are still scattered throughout various by-laws, instead of being brought together within a single piece of legislation (currently 21 rulebooks and 3 decrees);
- The VAT Law prescribes the obligation for the VAT taxpayer to notify the Tax Authorities of any changes in information that is kept by the Serbian Business Registers Agency and which is reported in the VAT registration form, and to do so within five days of the occurrence of the change, whereas in fact the Serbian Business Registers Agency should officially notify the Tax Authorities of such changes;
- To reflect the changes in the European Union VAT Directive, the provision related to the place of supply of services should be amended. As a general rule, it is stipulated that the place of supply of services provided to another taxpayer is the place where the service recipient performs a commercial activity. There are also exceptions to this general rule. These amendments have been adopted by all EU countries and they went into effect on 1 January 2010. Harmonisation with the European Union VAT Directive is of crucial importance, as existing provisions result in double taxation or double non-taxation of services traded between Serbian and European Union taxpayers;
- Amendments to the Law allow for a VAT refund to a foreign taxpayer under conditions of reciprocity. However, Serbia has established reciprocity with a very small number of countries. This has a negative effect on companies in Serbia, given that due to absence of reciprocity these companies are unable to exercise their rights to a refund of VAT paid in another country that also applies the reciprocity rule.
- Interest in case of financial leasing is included in the tax base for VAT calculation. Financial leasing is a financial service and this places an additional burden on financial leasing compared to other forms of financing, above all bank loans.

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 Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law which will replace the large number of rulebooks that treat only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and would simplify the application of regulations not just for taxpayers, but also for inspectors of the tax authority. The Tax Administration should issue comprehensive guidelines for acting in tax supervisions 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 the 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;

- Amendments to the VAT Law specify that a taxpayer who is a tax debtor for the supply of goods and services performed by a foreign entity shall calculate VAT (applying the so-called reverse charge mechanism) at the moment when the supply is performed. In practice this is often impossible to apply, especially for services for which the price is not contracted in a fixed amount, but depends on a contracted calculation. At the moment of supply, or up to the deadline for filing a tax return, the taxpayer frequently does not have the supplier's invoice or information on the amount of the compensation, and cannot know what the taxable amount is. For this reason, it should be specified that for supplies by a foreign entity the obligation for VAT calculation by the recipient of goods and services occurs either at the moment when: 1) An invoice is received for the goods or services provided by the foreign entity; or 2) When an advance payment is made to the foreign entity, whichever of these two events occurs earlier.
- The Serbian Ministry of Finance and the Tax Authority need to initiate appropriate procedure before the proper authorities for establishing reciprocity with all European countries in respect of VAT refunds to foreign entities.
- Amendments to the VAT Law should specify that interest in the case of financial leasing should not be included in the taxable amount (i.e., should be VAT exempt), in the same manner as has been done in European Union countries.

D. TAX PROCEDURE

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011			√
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.	2008	√		
Special tax departments should be established within the Administrative Court with judges exposed to more training with regard to the understanding of tax issues.	2011			√

CURRENT SITUATION

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

- The Law on Tax Procedure and Tax Administration (Official Gazette of the Republic of Serbia, No. 80/2002, latest amendment from May 2013, the "PTA Law");
- The Law on General Administrative Procedure (Official Gazette of the Republic of Serbia, No. 33/97, last amended in May 2010, the "GAP Law");
- The Law on Administrative Disputes (Official Gazette of the Republic of Serbia, No. 111/2009).
- 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 gov-

erning 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

Significant changes of ZPPA came into force in May 2013, which, among others, provide for the following:

- With a view to harmonise the application of the regulations that falls within the jurisdiction of Ministry of the Finance, starting from 30 May 2013 official opinions issued by the Minister of Finance, or by a person authorised by him, are binding for the Serbian Tax authorities;
- The presumption of receiving tax documents for a period of 15 days from the submission of documents to the post is introduced;
- The de-registration from the register of business entities shall not be possible without a certificate of tax clearance issued by the authorised tax authorities;
- As of 1 January 2014, the submission of individual tax returns in electronic form will be required before any income payment subject to withholding tax. The payment of income will not be possible before the tax authorities confirm formal and mathematical accuracy of the data provided in individual tax returns;
- To ensure the effective implementation of signed double tax treaties (DTT), besides the residence certificate issued in accordance with Serbian legislation in POR form, these amendments also allow for taxpayers to use a certified translation of the residence certificate in the form prescribed by authorities of the country with which Serbia has signed a DTT;
- Provisions on an informational tax return are made more precise, determining that legal entities as well as individuals have a filing obligation whereby penalties are prescribed in case that this return is not submitted;
- The interest on due taxes is calculated for the calendar number of days from the date the tax payment was due in comparison to the total number of days in 1 year (365 or 366) by the decursive calculation method, whereby interest is not added to the main tax debt.

REMAINING ISSUES

- The existing regulatory framework governing tax procedure still does not provide sufficient protection to taxpayers against voluntary decisions of tax authorities, although some improvements have been made by giving the binding power to the opinions issued by the relevant minister.
- 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 both small stores and the biggest companies in the Republic of Serbia.
- The tax authorities routinely fail to respect the deadlines for the issuance of decisions on appeals that have been lodged by taxpayers.
- 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.
- Special tax departments should be established within the Administrative Court with judges exposed to more training with regard to the understanding of tax issues.

E. LATEST DEVELOPMENTS IN THE SERBIAN TAX SYSTEM

CURRENT SITUATION

Serbia has in recent years established a social consensus on the need to improve the environment for attracting new investment, as well as the improvement of existing business undertakings.

This is supported by the fact that Serbia until the end of 2012 had a corporate tax rate of 10%, which was one of the lowest in Europe (since 1 January 2013, the corporate tax rate has been 15%). At the same time, over the last few years, there has been a tendency towards introducing various taxes and non-tax payments, resulting in an effective burden on the economy that is much greater than can be concluded on the basis of existing tax forms. Non-tax charges have increased significantly in the period from the start of the global financial crisis. Thus, according to a study done by NALED in 2011, 370 non-tax contributions paid by the industry were identified in Serbia, and this number does not include charges such as administration fees, fines, penalties, etc.

POSITIVE DEVELOPMENTS

The new Government in September 2012 abolished 138 parafiscal levies imposed by the Law on Financing of Local Government or by special laws (on forests, water, wine, roads, livestock, tourism, etc.). Among other things, the obligation to pay communal taxes for firms for entrepreneurs and small legal entities was abolished, as well as the obligation to pay so-called 'sumarina' (the tax for forest protection); 'the dinar for health care' for the Budget Fund introduced by the Tobacco Law; etc. This step deserves praise as a clear sign that the new government will actively work to abolish the widespread practice of introducing parafiscal levies and that existing taxes will be reduced to a reasonable level.

REMAINING ISSUES

The introduction of new taxes and duties in the middle of a financial year and without previous notice to taxpayers that would allow them to adjust their business activities to the new fiscal burden.

Lack of by-laws or late adoption of relevant by-laws may affect the planning and results of operations.

The financing of local municipalities is not yet regulated in a systematic way since the law regulates only the types of local taxes and does not provide any thresholds or guidelines for determining the amount of taxes and hence the very diversity among municipalities in terms of the amount of those taxes.

Despite positive effects of the Law on Financing Local Governments, such as the abolishment of the communal tax on business signs for entrepreneurs mentioned above, the law introduces uneven communal business signs tax rates for certain sectors. For instance, corporations and SMEs providing banking, insurance services, oil and gas companies, tobacco industry, postal, mobile and fixed telephony services, electrical services, casinos, gambling, night bars and discos are required to pay a yearly communal tax on business signs equivalent to 10 average wages, while the tax rate for all other sectors amounts to three average wages. Recent practices show that local governments quite often set the tax rate for these sectors at the maximum amount of 10 average wages, despite the fact that this is merely the maximum tax rate that may be levied under law. This significantly increases operational costs of companies in the affected sectors.

FIC RECOMMENDATIONS

- The FIC believes that any new tax burden to businesses and individuals in Serbia should be introduced through tax laws that should be shaped by the Ministry of Finance, not by funds, agencies or other ministries. The goal would be to prevent the introduction of new levies or altering the basic elements of the law through acts passed by the Government or other bodies without the active participation of the Ministry of Finance.
- The FIC believes that it is necessary to review all of the remaining para-fiscal levies and financial burden on busi-

nesses for which business doesn't receive adequate benefit in the form of certain rights, services or goods.

- The FIC believes that it is reasonable to consider the needs of a more comprehensive review of the entire legal and sub-legal tax framework, including the procedures for the adoption of by-laws governing the financial obligations of the economy, to ensure transparency and predictability of the regulatory framework in Serbia.
- We recommend amending Law on Financing Local Governments and introducing the same communal tax rate for all sectors.

ENVIRONMENTAL REGULATIONS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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;	2011		√	
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;	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 conducive to private sector investment and growth;	2010			√
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;	2010			√
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;	2012			√
Introduction of follow-up systems, as well as a deposit for packaging material;	2010			√
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;	2009	√		
Further education of citizens related to environmental protection, waste management and communal waste recycling;	2011		√	
Adoption of the Law on the Rational Use of Energy;	2009	√		
Continue the enactment of local and regional waste management plans;	2009		√	
Adoption of national plans for special types of waste management.	2009			√

CURRENT SITUATION

The practice of previous years has continued and Serbia continued to issue regulations on protecting the environment during the year 2013. Also, the use of the system of incentives for the reuse and use of waste as secondary raw materials for energy production and manufacturing of plastic bags has continued.

In accordance with the Waste Management Law and the Law on Packaging and Packaging Waste, the collecting of empty packaging is being carried out. In 2013, any company that is placing its products on the market is obliged to collect for reuse 23%, and 19% of the total issued waste. Operators Sekopak and Eko 21 take over packaging of pesticides and export it for incineration. However, there is no systemic solution for taking care of pesticides' packaging waste in Serbia.

POSITIVE DEVELOPMENTS

By its importance, the adoption of the Law on the Efficient Use of Energy stands out. It regulates the terms and conditions of the efficient use of energy and energy products, the energy management system, the minimum energy efficiency requirements, funding, incentives and other measures in this area, etc. Its adoption was one of recommendations of the White Book 2012. The basic principles of the law are: increasing the safety of the supply of energy and its efficient use, increasing the economic competitiveness, reducing negative impacts on the environment, and encouraging responsible behaviour towards energy. The law also established the manner of financing and co-financing the activities in this area, including the establishment of the budget fund for improving the energy efficiency of Republic of Serbia, starting from 2014. Subordinate legislation necessary to implement the Law will be issued in the period between 8 - 18 months.

Also, in accordance with the provisions of the Law on Planning and Construction and the regulations on the conditions, content and manner of the issuance of certificates on the energy performance of buildings, the permits have been handed to the first organisations authorised to issue energy passports.

In December 2012 the Law on Amendments to the Law on Energy was adopted, by which refinements of the procedures required by the Law were carried out. This should contribute to a more effective implementation of the Law.

The Rules of Procedure of notification, i.e. exchange of information, on a Seveso installation or a complex whose activities may lead to chemical hazards with trans-boundary effects were adopted.

Cement plants in Serbia have continued to dispose of waste tires, municipal waste and waste oil. There has been excellent cooperation in this field with the Ministry responsible for environmental protection and integrated permits (IPPC) have been issued to all three cement plants. During 2012 and 2013, the representatives of manufacturers and distributors of pesticides began training clients in terms of triple rinse empty containers, through winter lectures to producers, and distributed brochures and posters with detailed instructions. Also, instructions on how to rinse containers were added to all manuals for Plant Protection Products (PPP).

REMAINING ISSUES

- A legal framework for the trade of waste is not provided and the market of waste in not developed.
- The recording and reporting system is not developed enough to complete the national and local register of pollution sources.
- There is no system of incentives for investing in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, environmental investments, recycling, etc.)
- Limited number of IPPC permits issued and waste management permit process is complicated and time consuming.
- Thermal treatment of hazardous waste, especially PPP packaging, is not being carried out and waste is not being taken over from PPP for several reasons, such as: lack of permits and inexistence of appropriate preparation lines for this type of waste.

FIC RECOMMENDATIONS

- Support to the new and acceleration of existing procedures for obtaining IPPC permit for waste management, as well as the training of employees in local authorities regarding the issuance of such licenses.
- Support the establishment of new and development of existing companies engaged in the production and/or services in the field of environmental protection, and the establishment of new and development of existing companies engaged in the production of energy from alternative sources.
- The introduction of economic incentives for investment in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, eco-innovation, etc.).

- Support public-private partnerships that will work with local authorities in order to help the implementation of the Government's waste management policy as a necessary condition for the implementation of any program that is related to investments and growth of the private sector.
- Encourage the establishment of partnerships between public and private participants, together with local authorities to help the implementation of the Government's waste management policy, which is a necessary precondition for the establishment of an appropriate program that will provide a framework for further investments and growth in the private sector.
- Continue creating local and regional waste management plans.

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 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 time-frame for the completion of border inspection procedures.	2011		√	
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.	2012		√	

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. The 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. In addition, the sanitary inspection is also responsible for control of products for general use, including cosmetics.

The new food law is being prepared at the time of writing this White Book.

POSITIVE DEVELOPMENTS

As of 23 January 2012, a new instruction has been in force for official sampling of food and animal feed of vegetable and mix origin at import, with sampling numbers being reduced, through the requirement for back-up documentation needed for getting certificates remains (hard copies of previous analyses, previous certificates, etc)

As of January 2013, no additional documentation is needed, meaning that the needed documentation is issued based on import documents, similarly to the Croatian import process. The necessary certificate for import custom clearance is given, while an importer is obliged to get proper analysis proving safety of products from domestic laboratories (not older than six months).

REMAINING ISSUES

The key problem identified by the FIC is the enforcement of border inspection procedures, which are 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. The number of samples taken, sampling procedures and costs of laboratory analyses 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 the discretion to decide on the above-mentioned issues arbitrarily;

3. Even though the costs of laboratory analyses are covered by the importer, sanitary or phytosanitary border inspection officials have the discretion to determine the

laboratory processing of samples. In addition, costs of analyses 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 believes that the 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 (leaf tobacco, 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 analyses 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.

- Align the new Food Law, the Law on inspections and other legal acts with EU regulations, in what would significantly simplify import processes and procedures on the one hand, and ensure, on the other, that the control of goods/products would be performed in a co-ordinated manner, on the market, with different inspections (phyto, sanitary, communal, market, tax inspection, etc.) joining forces to create the needed results, with the sole purpose of protecting consumers.

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. QUALITY CONTROL AND LABELLING OF FOODSTUFFS

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2011	√		
Consistent enforcement of the Rulebook on the Labelling and Marking of Packaged Foodstuffs by the relevant authorities.	2011		√	
National Reference Laboratory				
The FIC recommends giving this topic utmost priority within the Ministry of Agriculture's plans for the future, as funds have already been secured.	2010		√	
Furthermore, we recommend that the Ministry of Agriculture 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.	2012			√

CURRENT SITUATION

Changes to the Food Safety Law announced in May 2013 will bring the control of food of non-animal origin to the scope of work of sanitary inspection of the Ministry of Health. The national reference laboratory should become an independent entity, separated from the Ministry of Agriculture, Forestry, and Water Management. It is expected that the announced changes will enable a better control of the market when it comes to food, particularly in the domain of quality control, as well as overcoming the cases of overlapping inspections jurisdictions.

With the adoption of the new Rulebook on labelling, presentation and advertising of foodstuffs (Official Gazette 85/2013) in October 2013 the previous Rulebook on labelling (Off. Gazette 4/2004, 12/2004 and 48/2004) ceased to be valid. With these changes, the Rulebook is partially compliant with European Directive 2000/13/EZ on Labelling, presentation and advertising of foodstuff, however, not with the subsequent Directive 1169/2011.

POSITIVE DEVELOPMENTS

Food Safety Law is announced to be changed so as to achieve its full compliance with relevant EU regulations.

Adoption of the Rulebook on labelling, presentation and advertising of foodstuff brought a significant improvement in bringing this regulation closer to full alignment with relevant EU directive, allowing picture of fruit to be shown on packaging of soft drinks, nectars, and soft drink syrups. This change resolved unequal conditions in the market for importers and export-

ers, since they were forced to change the packaging for Serbian market, thus increasing complexity and costs, which resulted in lower competitiveness of Serbian producers.

REMAINING ISSUES

Despite the announced changes, Draft Food Safety Law has not been publicly available yet.

FIC RECOMMENDATIONS

- Adopt changes to the Food Safety Law, in line with relevant EU regulations, enabling a coordinated food market control, as well as quality control by an independent institution.
- A consistent enforcement of the Rulebook on the Labelling and Marking of Packaged Foodstuffs by the relevant authorities.
- Timely alignment of the Rulebook with relevant EU regulation (esp. Directive 1169/2011)

3. QUALITY STANDARDS IN MILK 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. 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;	2010		√	
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;	2010			√
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;	2012			√

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 one relevant area, namely production, where the FIC can provide the 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

Compared to the previous period, there were no radical improvements. It seems that the current system of safe food production is beginning to function, though with all its flaws and shortcomings threatening to seriously undermine the quality of what we eat in the long run. One such recent example is the crisis over excessive amounts of aflatoxin in milk.

REMAINING ISSUES

Although there is a 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 requirements in raw milk production in Serbia. The basic reason of the insufficient implementation of the requirements prescribed in the stated Rulebooks is the non-existence of a National Reference Laboratory for raw milk quality assessment. Presently, raw milk at buy-off is tested by methods of diverse accuracy, placing producers into an unequal position. Although in many cases the farmers have the ability to analyse the milk which they produce in authorised laboratories created for this purpose, in practice this is still rare, except when there are discrepancies in results of testing conducted, for the most part, by milk processors.

Although the Food Safety Law clearly prescribes the foundation of the National Reference Laboratory as a supervisor of the existing accredited laboratories, it has not yet been established. Consequently, the 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.

One of the consequences is that the authorised laboratories are not operating at full capacity as the number of analyses performed for the primary producers of milk is very small, particularly in terms of the examination of microorganisms and somatic cells. The cost of such analyses is high due to their unprofitability and thus they eventually lose the ability to generate additional revenue in this sector. Also, faced with the reduction in surrounding markets caused by the entry of Croatia into the EU, large milk processors are now instructed to use such expensive services of certified laboratories, thereby reducing their competitiveness in obtaining licenses to export milk to the EU.

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 from the EU's pre-accession funds as well as an EU Twinning project on food safety and animal welfare in 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 the implementation of a single system of raw milk quality assessment, the establishment of the National Reference Laboratory or a laboratory for raw milk quality testing should be supported;
- In order to establish a long-term security monitoring of the entire milk production chain and thus bring order to the complete monitoring and control of agricultural inputs which enter the production chain of raw milk, and to ensure security for consumers and dairy farmers, the activation of the NRL is crucial.
- The FIC believes that lessons learned from the process of improvement within the areas of milk and juice production can be used throughout the food production sector.

4. SUBSIDIES

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adopt four-year strategies for all major sectors of agricultural production, setting mid-to-long-term subsidy policies;	2010			√
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;	2010			√
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	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 member states' policies. Subsidies as an economic instrument should be aimed at achieving the efficiency and sustainability of farm production, in order to generate preconditions for the extended competitiveness of the export sector and achieve high quality in production. We must keep in mind the fact that subsidies for exports will be abolished when Serbia accedes to the World Trade Organization (WTO). This implies that

export competitiveness should be supported through subsidies for direct farm production.

The Serbian Government should identify the agricultural sector as one of the key drivers of growth and therefore provide the sector with predictability in terms of a long term strategy as the main precondition for stable operations and a further enhancement of Serbia's agriculture trade balance. We believe that the agricultural sector in Serbia has a lot of potential. However, without stronger Government support with respect to a clear long-term strategy for subsidies, the productivity of the sector will not improve. Productivity may be low both in sense of low yield per land unit or head of cattle (milk, for example) and low productivity of land and capital. The reason for low productivity is a poor breed composition, a low level of land irrigation, and low utilisation of inputs and seed on one hand, and obsolete equipment, technology and infrastructure on the other.

After refocusing the subsidy system from payments per surface (ha) to payments per unit of produce (kilogram), through the adoption of the Act on conditions and method of using the subsidies for crop farming and potato production in 2012, in September 2012 by the Government, the subsidy system was brought back to the payment of funds per hectare of registered land. These steps gave rise to confusion among subsidy users and a lack of predictability, which is the key factor in planning and implementing activities in the agricultural sector.

POSITIVE DEVELOPMENTS

One of improvements is the Government's decision to allocate RSD 41 billion in agricultural subsidies under the Budget Law for 2013, since the anticipated amount for 2012 was only RSD 19.9 billion. Also, the Government adopted the regulatory framework for the field of subsidies in January 2013, with the Law on agricultural incentives and rural development and the timely issuance of Act on the allocation of agricultural incentives and rural development in 2013 defining the scope of funds for incentives.

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 2010–2013 and represents a summary of legislative, institutional and financial activities of the Ministry of Agriculture, however without clear references to the exact amounts planned for the implementation of the programme for agriculture or percentages indicating changes compared to some other years.

FIC RECOMMENDATIONS

- Adopt four-year strategies for all major sectors of agricultural production, by 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 to all legal and natural persons under equal conditions, regardless of the past or present growing areas, in order to secure the transparency of the process, the rewarding of efficient producers, and the recognition of specialisation and professionalization 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, 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.	2010			√
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.	2012			√

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 and the Health and Safety Executive, the Chemicals Regulation Directorate (UK), have launched 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. The Twinning Project ended in June 2013. However, the path forward is still unclear.

At the EU level, 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, 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 there is no positive development.

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.

The 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. LIVESTOCK PRODUCTION

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Laws and by-laws must be applied in a uniform manner across the board and without exceptions;	2012			√
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;	2012			√
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;	2012			√
Increase of exports to the EU has to be supported by the application of quality standards including traceability practices and good farming practice.	2012			√

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, the participation of 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 (the number of conditional heads, overall volume of livestock products, etc.) Reasons for such a negative trend in livestock production are: the disparity of prices; the loss of market; the lack of export (it is not possible to provide quantities for quotas of products which can be exported); a reduced standard of living in the domestic population as a whole; damaged relations between primary production and the processing industry; a monopoly on the side of processors (and buyers of 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 entire 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.

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.

The national laboratory for testing of livestock food and animal products – the department for dairy production has begun its work within the Faculty of Agriculture in

Novi Sad. This laboratory is building a database of dairy animals based on an analysis of milk samples and milk yield of individual animals on the national level (project LabIS).

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 Ministry of Agriculture, Forestry and Water Management; as well as a Directorate for Veterinary Affairs whose scope of work is directed towards the harmonisation of domestic legislation with EU legislation, among other matters.

REMAINING ISSUES

Once Serbia joins the EU, 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. The production of food which satisfies the safety needs of consumers;

2. 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;

3. The development of a general, co-ordinated, and integrated national system for disease control and monitoring;

4. The introduction of modern technologies in the selection and reproduction and improvement of the animal genetic pool;

5. 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 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.	2008			√
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.	2012		√	
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.	2011		√	
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. Regulation adopted in October 2012.	2012	√		
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. Regulation adopted, came into force on January 1st 2013.	2012	√		
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.	2012		√	

CURRENT SITUATION

The tobacco industry is one of the strongest and most vital sectors of the Serbian economy, despite the economic crisis, contributing 11% of total Government tax revenues and 2.9% of Serbia's GDP in year 2012. Three leading global tobacco companies have established their production capacities locally, while the level of foreign investments in the tobacco industry exceeded 1.2 billion EUR, which clearly demonstrates investors' mid and long-term commitment to Serbia. Taking into account Serbia's EU aspirations and the economic significance of the tobacco industry, the importance of keeping a predictable fiscal and regulatory environment heading towards a gradual alignment with

the relevant EU directives over a number of years, is crucial to ensure sustainability and further industry development.

POSITIVE DEVELOPMENTS

In the last 12 months, the introduction of a multi-annual plan on excise tax for cigarettes (2013 - 2016) and other tobacco products by means of adoption of the new Excise Tax Law has been the most significant legislative development in the area of tobacco, being another step toward a smooth and gradual harmonisation with the respective EU directive (2011/64/EU). The abolition of a separate earmarked tax for a health-related budget fund, established by the Tobacco Law in 2005, and its merging with the specific component of excise tax represents another positive development in the direction of transparent public finances. Moreover, new fiscal forestalling regulation came into force on 1 January 2013, bringing more clarity and predictability for both the tobacco industry and Government excise revenues.

REMAINING ISSUES

a) Illicit trade of cut tobacco – A set of tax driven price increases, particularly the simultaneous increase of both VAT and excise tax on cigarettes in October 2012, have led to a fast-growing illegal market for cut tobacco. The illicit trade spread very quickly throughout Serbia across many different urban and rural locations (e.g. green markets, street vendors, registered retail outlets, the Internet etc.). Consequently, this phenomenon led to the substantial and sudden decline in the legal cigarette market, resulting in a significant decrease of anticipated state revenues in 2013. In addition, due to direct negative implications of growing illicit trade of cut tobacco, the sustainability of the entire tobacco industry supply chain has been affected (growers, manufacturers, distributors and retailers) as well as the legal employment and GDP they generate. Moreover, the illegally sold cut tobacco affects consumers in an adverse manner due to its unknown origin, uncontrolled production, storage and transport conditions and incompliance with the law, i.e. illegal cut tobacco is made available to minors, it does not contain legally prescribed health warnings, it is unlawfully advertised, etc.

b) Law on Excise Tax - the Excise Tax Law is a step in the right direction, since it envisages further harmonisation with the EU in the area of tobacco taxation. Bearing in mind the importance of the tobacco tax policy and its predictability for both Government revenues and the tobacco industry, it is critical to ensure full implementation of the existing excise tax calendar.

c) Law on Advertising – The advertising law adopted in 2005 already contains very restrictive provisions in relation to tobacco advertising. However, some of its provisions are not precise enough, thus allowing arbitrary interpretation and posing difficulties in the implementation of the Law for both relevant government inspections and industry. The FIC encourages the adoption of a new advertising law, based on the existing draft from 2010, which contains further reasonable restrictions of tobacco advertising, in line with the respective EU Directive and the best regulatory practices of the EU Member States, but also brings clarity of critical provisions enabling the tobacco industry to operate in the level playing field.

d) Cigarette trade regime - Any change in the area of Serbia's import customs trade regime for cigarettes (e.g. the SAA, CEFTA, the free trade agreement with Ukraine, or any other bilateral FTA), may have severe negative consequences for the predictability of the domestic regulatory environment and additional consequences for employment, and macroeconomic stability, while it may also threaten the position of Serbia as a favourable investment destination.

e) Ministry of Health Action Plan – The draft version of this plan contains certain extreme provisions that may have severe consequences for the entire tobacco industry supply chain from leaf tobacco farmers to producers and retailers, but also for the further expansion of the illicit trade, state tax revenues, employment levels and the hospitality sector as a whole.

FIC RECOMMENDATIONS

- Further focus and efficient law enforcement of all relevant government institutions on the issue of illicit trade of cut tobacco is needed in order to combat this phenomenon with numerous negative implications for the entire society. Experiences of numerous EU member states show that this phenomenon is not a one-time issue and that

it can only be tackled over a longer period with anticipated, continuous and resolute engagement of all relevant government institutions.

- Full implementation of the Law on Excise Tax – any changes of the current excise tax calendar for cigarettes and other tobacco products stipulated by the Excise Tax Law would seriously jeopardise the predictability of the tobacco related regulatory environment. Namely, as the experience of numerous EU member states shows, any sharp increase of excise tax on cigarettes may lead to a further growth of the black market and the distortion of domestic tobacco industry with consequent strong negative implications for the state budget and real economy.

- Urgent adoption of the new Advertising Law based on the 2010 draft. The FIC believes that the regulator has to set forth clear rules in tobacco advertising which would be effectively enforced and which would create a level playing field for all market participants. This draft contains reasonable further restrictions of tobacco advertising in line with the relevant EU directive and brings more clarity on tobacco products advertising, in particular in reference to Article 64 of the current Law (articles 87-90 of the draft new Law). Hence, the FIC urges the Government to adopt the draft and send it further for the Parliament procedure as soon as possible.

- Any potential reduction of the current customs rate on cigarettes or granting any other concession for imports of cigarettes from EU Member States or to any other third party could have severe consequences on the Serbian economy, budget and trade deficit, employment levels and macroeconomic stability. The FIC strongly believes that Serbia must keep the current customs regime in the area of tobacco.

- Having in mind comprehensive further restrictions envisaged by the draft Action plan of the Health Ministry, we strongly believe that, prior to its adoption by the Serbian Government, transparent dialogue and consultations between Government, the tobacco industry and all third parties which would be affected by these measures (leaf farmers, retailers, hospitality sectors, suppliers etc.) would be necessary.

- The FIC strongly supports open and transparent dialogue between regulators and the tobacco industry in general, following the principles of participation, openness, accountability, effectiveness and coherence adopted by the EU. The FIC firmly stands behind its belief that it is of utmost importance that the local regulators understand 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 in certain areas of regulation, the expertise of the tobacco companies is especially important to develop regulation that is technically viable, practically workable and enforceable.

INSURANCE SECTOR

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Correct the articles from the original draft of the Insurance Law – 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-lifeand pass a special law on insurance contracts.	2012			√
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. In order to stimulate development of private health insurance, modify and amend: The Law on Personal Income Tax (Article 14.b and Article 21); The Law on Compulsory Social Insurance (Article 13); The Law on Corporate Income Tax (Article 9).	2012		√	
The Government of the Republic of Serbia (the Ministry of Finance 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.	2010			√
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.	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 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:

- Licensing of insurance companies – mandatory requirements related to assets, organisation, internal documents, policy, and business plans;
- 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;
- Issues related to actuaries and internal audit;
- Reinsurance;
- Activities of insurance agents and brokers and related licenses;
- 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"):

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

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

- The authority of the Ministry of Health for the issuance and withdrawal of licenses for voluntary health insurance;
- Mandatory priority of the social components of health insurance (no client can be denied insurance);
- 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 or reinsurance activities only. The period of adaptation related to the separation of the activities – until December 31, 2013 – 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 2013, compared to the same period in 2012, the insurance market reported an overall growth of 2.29%, equivalent to RSD 15.25 billion.

The market structure is also showing some signs of change. The share of gross life insurance premiums written is at 19.28%. This rate is encouraging but still low compared to the majority of European countries.

In connection with non-life types of insurance, in 2012 car insurance was a leading insurance product. Car insurance is an important market segment, related to both Casco insurance with a market share of 11.27%, and compulsory car insurance with a 31.45% 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 62%.

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.

Insurance Law

The existing Insurance Law has sustained many changes, formal rather than essential, which would allow for the development of the insurance industry, connection with other industries and equal market competition without discrimination of particular players on the insurance market.

In spite of the extensive and integral text of the Law, it stipulates that the majority of important issues will be resolved under a large number of by-laws, whose adoption is generally within the competence of the National Bank of Serbia, which has discretionary authority to resolve these issues and make strategic decisions.

Article 14 of the Law stipulates that it is not possible to carry out life and non-life insurance activities at the same time (exclusive of Article 25 of the Law); this obligation has been postponed under Article 234 of the last amendment of the Law (Official Gazette of RS No 119/12) until 31 December 2013, which largely discriminates the already split insurance companies through the unnecessary multiple increase of tax expenditures of both life and non-life companies, duplication of administrative work and costs of engaging staff, and reduces their

operational and financial capacities when participating in open procurement procedures.

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 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 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.

Third Party Liability Auto insurance market

Third party liability auto insurance is by far the most important segment of the insurance market (31.5% of the total in 2012) in Serbia and the technical check points, which carry out the obligatory annual inspection of all motor vehicles, are by far the most important distribution channel for these insurance policies. Art. 44 and 45 of the Law on Compulsory Traffic Insurance prohibit making any commission payments to these technical check points - directly and/or through related parties - which exceed 5% of the mediated premium. For many years this legal provision has - with notable differences in the conduct of the singular companies - been largely disregarded by the market, which paid commission rates of up to 50% in spite of the legal prohibition.

At the end of 2011, the National Bank of Serbia, as the insurance supervisory authority, started a series of activities such as "moral suasion" throughout the Insurance Association and/or on site inspections intended to construe these legal provisions very strictly and to state that the NBS was no longer willing to tolerate the widespread adverse market practices.

Initially the supervisory authority's intervention caused the market to change its behaviour and limit its commission payments to levels compatible with legal provisions. However, already after a short period of only two or three months, market behaviour returned in most cases to the status quo ante. In the wake of inspections, many companies have been fined for their misdemeanours; some even had their management licenses revoked; and some, particularly important ones which are also notorious as particularly aggressive transgressors with regards to commission over-payments, even months after inspection, have not - or not yet - been sanctioned.

Presently any company acting in full compliance with the law, and the National Bank of Serbia's strict interpretation of it, sees its third party liability auto insurance portfolio collapse with frightening speed. Without a more or less aggressive infringement of the legal provisions it is simply impossible in today's market to defend one's market share and much less to increase it.

The alternative of either losing a very important business portfolio or operating in a grey area of illegality is an unacceptable choice for any foreign investor. An equitable interpretation of the applicable legal provisions as well as their immediate and equal enforcement are indispensable prerequisites for a functioning market and a situation compatible with the general rules of the rule of law, the applicable Serbian law and European legal standards.

POSITIVE DEVELOPMENTS

Compared to the recommendations from the White Book 2012, there have been improvements concerning voluntary health insurance in corporate contracts, relaxing the cost of the gross salary by up to RSD 5,214 premium per employee. The new Draft Insurance Law is still publicly unavailable.

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

REMAINING ISSUES

Insurance Law

Many articles of the Law provide that the National Bank of Serbia shall regulate some important issues under by-laws, which may cause big problems in the implementation of the Law, because of the time needed to either adopt the new by-laws or amend the existing ones. Therefore, the disputed matters should be resolved in the text of the Law itself. A loose definition of a discretionary right of the regulatory authority may cause big problems in the Law's implementation, because of the lack of predictability (which is one of the basic values of the rule of law), in resolving particular issues and regulating the insurance market.

In 2007 (Official Gazette No 101/2007), a term was stipulated for the splitting of composite insurance companies until the end of 2009. After that, the same term was postponed three more times: until the end of 2011, the end of 2012, and, most recently, until the end of 2013. Nevertheless, the last Draft Insurance Law aims at abolishing this obligation altogether, without regulating the status of companies that have fulfilled their statutory obligation and split the insurance business into life and non-life.

To that effect, it is necessary to include the provisions under which the functions of life and non-life insurance would become united and tax issues between them resolved, in those companies that have split their insurance business into life and non-life.

It is also necessary to provide for the integration of companies that practice the life and non-life business separately, if those companies have the same shareholders and/or if the same shareholders own the controlling block of shares in both companies. In line with the integration of the relevant companies, it is necessary to include the provisions stipulating that the National Bank of Serbia will issue an integral license for practicing all types of insurance that were practiced separately by the companies.

It is not possible to regulate insurance contracts adequately under the Law governing the statutory matters (Insurance Law). On the model of the law of European countries and pursuant to the EU Directives and Guidelines, the insurance industry should be regulated by three different laws: the Insurance Supervisory Law - ISL, the Insurance Contract Law – ICL and the Law on Insurance Brokers and Agents. Whereas the ISL regulates primarily the relation between the supervisory authority and the insurance company and the statutory matters, the ICL defines the relationship between the Insured and the Insurer, i.e. the contractual obligations between them, and the Law on the Insurance Brokers and Agents governs the way of selling insurance through other licensed parties and/or alternatively tripartite law.

Third Party Liability Auto insurance market

The most important line of business for the Serbian insurance market is still burdened and characterised by market misbehaviour and illegal practices aimed at remunerating the major distribution channel (technical check points) in line with the market requirement ranging up to 30/40% of the premium written. This phenomenon is currently limiting the market attractiveness to foreign investors and/or for those already present limiting their willingness to further invest in Serbia.

FIC RECOMMENDATIONS:

- Amend the Articles referring to the adoption of the by-laws and loosely defined discretionary right of the regulatory authority and resolve the matters of dispute within the Law itself, or define the terms for the adoption of new by-laws.
- Under the new Insurance Law, it is necessary to provide for the integration of insurance companies that practice life and non-life business separately, if those companies have the same shareholders and/or if the same shareholders own the controlling block of shares in both companies. Pursuant to the integration of the companies, it is necessary to include the provisions regulating that the National Bank of Serbia will issue an integral licence for practising all types of insurance that were practised separately by the companies.

- Adopt a new set of the Insurance Laws: the Insurance Supervisory Law (ISL), the Insurance Contract Law (ICL) and the Law on the Insurance Brokers and Agents.

- In relation to MTPL create a level playing field in line with European standards by working in two directions:

  a). Strengthen the action of the regulatory body to enforce the legal provisions to the entire market with penalties that should be provided promptly and indiscriminately;

  b). Change the regulatory framework leveraging best practises already present in other markets and in line with European Union standards. Possible initiatives being:
  (i) MTPL price liberalisation which would immediately favour both the traditional distribution channels (independent outlets) as well as the development of prospective alternatives such as internet and bank outlets;
  (ii) Allow insurance companies to perform car registrations on their own business premises;
  (iii) Revise the number and timelines of mandatory technical checks for newer vehicles.

- 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
Initiation of an amendment to the provision of the Law on Corporate Income Tax;	2009			√
Initiation of an amendment to the Law on Value-Added Tax concerning interest taxation;	2009			√
The request of the leasing sector for a dialogue with tax authorities in respect of setting the business rules of leasing operations in Serbia;	2010			√
The organisation of task forces and meetings between 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 acceptable for both parties;	2011	√		
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;	2011			√
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;	2012			√
Initiation of an amendment to Article 10 of the Law on Financial Leasing whereby the Lessor could represent in insurance cases;	2012			√
Operative leasing should be regulated by the law as leasing in which not all risks and benefits are transferred to a client;	2012		√	
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.	2012			√

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.

During the last two years a stable leasing market was recorded, and the value of leasing contracts showed an upward trend again. 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 the real estate business, the abolition of the minimum term for the conclusion of leasing contracts), as well as an absence of a minimum deposit, made leasing a serious competitor to other available sources of funding on the 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. International Data on European Level suggests that this is especially the case for funding the support of Small- and Medium Enterprises. Initiation and continued efforts to adopt changes within the framework of the leasing industry would contribute to the additional gain of current values with the national and international business entities.

POSITIVE DEVELOPMENTS

The following was done over the course of 2012:

- Proposed amendments to the Law on Value-Added Tax were adopted making VAT in real estate leasing transactions neutral and real estate leasing much more attractive for potential lessees;

- The Ministry of Finance passed the Rulebook on criteria for determining when a delivery of goods under a leasing or rental contract is considered sale of goods, which defines different taxation rules for financial and operating leasing transactions.

REMAINING ISSUES

Due to the current provision of the Law on Corporate Income Tax, the right to claim a tax credit on the leased asset is being denied for both the lease company (in total) and lessee (except for the portion of investment made in the last year of the finance lease contract which qualifies for a tax credit). Consequently, acquisition of fixed assets under a financial lease contract is a less appealing alternative than, for example, financing asset acquisition through a lending arrangement. Initiating the adoption 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% [40% for small enterprises] of the investment made, provided it does not exceed 33% [70% for small enterprises] 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 a financial leasing contract 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;

Initiating amendments 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;

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 the 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;

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 the adoption of 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:

- 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;

- The abovementioned methodology is not favourable because interests are not recognised in their entirety in the majority of cases, nor are they 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 de-stimulating 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.

Initiating amendments to the Decision on public car parks of local government where the lessee would be considered the user of the public car park in the case of vehicles provided by way of 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 finance lease, 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, i.e. the laws regulating financial leasing – since otherwise those decisions would have to envisage a special rule for the provision of vehicles by way of 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 governments, which are not in accordance with the legal system of the Republic of Serbia;

Initiating amendments to Article 10 of the Law on Financial Leasing to enable a lessor to act as an intermediary in insurance operations. Leasing companies should be enabled to act as intermediaries in insurance operations, like commercial banks, since under 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 a necessary condition for the conclusion of the Contract on financial leasing. By enabling leasing companies to act as intermediaries in insurance operations, their work with clients would be facilitated in a way that all documentation for the approval of financial leasing and issuance of an insurance policy could be done in one place, on the leasing company's premises, at the time of signing a contract on financial leasing. On the other hand, leasing companies could then expand their operations, in what would provide them with stability at a time of world economic crisis, based on the potential profit from insurance mediation;

To regulate operating leasing under the law. Reasons are the following:

- Operating leasing makes up 18% of total placements of leasing companies operating in Serbia. It is a financial product (off-balance sheet financing), present everywhere in the world as an alternative way to procure and use fixed assets. Due to its off-balance nature, it is highly sought by companies. Individuals often choose operating leasing due to the absence of legal limitations on the debt level, though there are internal rules of leasing companies pertaining to debt level;

- The regulation of operating leasing creates a safer and more transparent business environment. In operating 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 presentation of financial statements on both sides is unclear, making the economic environment uncertain because ambiguities are used for early budget revenues, even though the time in question should be the time when VAT will be paid, since the total obligation is undisputed. The rules defined by Rulebook on criteria for determining when a delivery of goods under a leasing or rental contract is considered sale of goods are welcomed by the leasing industry in Serbia because they have cleared some taxation concerns regarding the differentiation of financial and operating leasing transactions, though they have not provided a comprehensive solution for conducting operating leasing business in Serbia;

- 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 operating leasing is the consequence of stiff limitations which apply to financial leasing (primarily for individuals). The regulation of operating leasing could result in an equalising of the rules for both types of leasing;

- Operating leasing is currently offered through an inappropriate form of leasing. Operating leasing is much closer to financial leasing than to classic leasing. The separation of operating from financial leasing according to accounting standards is done based on eight criteria, which best shows how similar these products are;

- The importance of better regulation of operating leasing worldwide has been recognised and thus international accounting bodies have prepared the draft changes of IAS 17 directed at the presentation of total operating leasing in the financial statements of clients (abolition of off-balance). It is the best evidence that operating risk is a financial product. The competent institutions in Serbia will probably be interested in regulating and supervising after this change of accounting standards;

- The manner of definition of operating 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 operating 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.

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 a 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;

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;

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 would 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.
- 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 government, 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 act as an intermediary in insurance operations.
- Operating leasing should be regulated under the law as leasing in which not all risks and benefits are transferred to a client.
- The Insurance Law should 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.

OIL AND GAS INDUSTRY

CURRENT SITUATION

The oil and gas sector is one of the most stable sectors in the Serbian economy, and it has seen a great expansion in the last couple of years. In 2013, this sector will contribute with around 16% to Serbia's budget, and the investments made in the last four years were worth more than RSD 200 billion. It is also one of the sectors in which significant investments will be made in the upcoming period.

As far as regulations governing this area are concerned, in spite of great expectations, market liberalisation generally introduced in 2011 has had no effects, primarily due to frequent amendments to tax regulations, and introduction and increase of excise tax for certain types of petroleum products. As a consequence, the planning process of the companies in the sector was affected, as most of the companies were oriented towards import of petroleum products.

On the other hand, a great number of regulations, particularly those governing the construction of energy infrastructure and facilities as well as those related to safety and fire protection are over 40 years old. In the meantime, technology has made significant advancements, and the applicable legislation is an obstacle for the implementation of certain investments. Further, new areas of business have opened (supply of ships, automated petrol stations, use of compressed natural gas as fuel, etc.) for which there is no adequate legal basis. This hinders the implementation of significant investments in these areas, due to the inability to obtain all necessary licenses, and is a loss for the state budget in terms of uncollected taxes. Obsolete regulations in this area and the lack of timescale for the adoption of new regulations in related areas affect the operations of companies in the oil and gas sector, and are a barrier to further expansion of investments in this sector.

The level of control of the main institution on the market is insufficient (e.g. low institutional capacity of market inspection) and legislation is mainly inadequate. Also, there is no adequate monitoring and control of sales and quality of petroleum products in the Serbian market. The absence of adequate control has resulted in market supplies of poor quality products on a frequent basis, and such products are not safe from the aspect of consumer protection. Finally, the absence of adequate control of petroleum products on the market leads to great losses both for companies and the state budget. A typical example is the abolition of the excise duty on fuel oil for heating in 2012, which due to the absence of an adequate market control resulted in the use of fuel oil as fuel and the loss of several hundred million Euros in the state budget. A similar situation occurred in the first half of 2013 after the abolition of excise taxes on pure biodiesel. Both problems were resolved by re-introducing the excise tax. In general, nothing has been done in terms of monitoring and control of marketing and quality of products.

POSITIVE DEVELOPMENTS

The liberalisation of the market of crude oil and petroleum products came into effect on 1 January 2011 superseding the Regulation on the requirements and method of importing and processing crude oil, and/or petroleum products, and the Regulation on petroleum products pricing, which had governed the market at the time. Although this action, taken by the state, should represent the termination of the long-time state monopoly and interference in terms of imports, refining and pricing of crude oil and petroleum products, the expected effects were few.

The effects of market liberalisation in 2011 were partially revoked by simultaneous entry into force of the amendments to the Excise Tax, which introduced the so-called "dual excise tax" (higher excise tax on imported goods). However, in June 2011, the Law amending the Law on Excise Tax was adopted stipulating a uniform excise tax for all motor fuels, on the one hand, and for all diesel fuels, on the other, while the new Rulebook on technical and other requirements for liquid, petroleum-derived fuels dated 8 September 2011 liberalised imports of liquid, petroleum-derived fuels.

During the previous year certain improvements have been made by adopting and implementing international and in particular European standards and regulations in the area of fire protection. The adoption of regulations in this area will ensure an adequate protection and possibilities for fast and adequate interventions. Outdated legal regulations are currently replaced and the new ones should define in more detail preventive activities to be implemented in the phase of drafting and adopting city plans, drafting of project documentation for the construction of new facilities, inspection of facilities upon completion of construction and during exploitation.

REMAINING ISSUES

Although a new legal framework for governing fire protection has been adopted and implemented, there is still a need to adopt or amend a great number of by-laws. Preventive activities should be directed more to regulations that will govern the construction of facilities, storage of chemical waste, sales and use of pyrotechnical agents, as well as to identifying the climatic regions of Serbia. The activities should also be directed to the adoption of technical regulations that will define the fire protection measures in public and industrial facilities.

In addition to laws governing the area of fire protection, regulatory activities should be focused on the adoption of regulations which will also define the activities in the area of production and sale of explosives and other hazardous materials, as well as the storage of hazardous materials, flammable liquids and gases, including the Law on Explosive Substances and the Law on Flammable Liquids and Gases, together with relevant by-laws.

FIC RECOMMENDATIONS

- The legislator should establish a clear legal framework to ensure further liberalisation of the crude oil and petroleum products market (fuel quality, required storage capacities, equal opportunities for importers and domestic producers), and to prevent any market participant from affecting the operations of other companies in the oil and gas sector by using a dominant position in retail and wholesale pricing ("margin squeeze").
- The legislator should ensure consistency in respect of compliance with strategic documents and coordinate the national strategy related to the oil and petroleum products sector with tax policy and amendments to tax laws.
- The legislator should establish a clear legal framework for the area of fire protection and construction of energy infrastructure and facilities.
- Improve monitoring of petroleum products as well as the related legal framework, by adopting relevant regulations under the competence of the line ministries, and improve the efficiency of control institutions in view of preventing illegal market activities.
- Prior to the adoption of regulations in the relevant field, a dialogue should be initiated with the companies in the oil and gas sector since the FIC supports open and transparent dialogue between the legislator and representatives of the sector.

PHARMACEUTICALS

CURRENT SITUATION

Production of medicines is one of the most important branches of the economy globally, not only from the viewpoint of economic activity, but also from the point of impact on the health of the population. The pharmaceutical sector is important for Serbia's economy (employing over 7,000 workers, export of drugs in 2012 was over EUR 150 million, the state earned more than EUR 50 million from various taxes, contributions, duties, fees). The pharmaceutical sector is a reliable partner of the Serbian health system, given that it ensures regular supply of all necessary drugs.

Serbia's health insurance system belongs to the Bismarck-type systems – social health insurance based on compulsory contributions for health insurance, on principles of solidarity and equity. The majority of hospitals and healthcare facilities are state owned, while the Republic Health Insurance Fund (RFZO) does not operate as a modern health insurance institution but as a state agency for collecting contributions used for health care financing. It is completely dependant on external authority – Government of the Republic of Serbia. The main revenue comes from employees' wages and employers' income.

According to the Medicines and Medical Devices Agency of Serbia (ALIMS) data, the drug market in Serbia in 2011 was worth EUR 715 million, or 95 EUR per capita per year, which is significantly lower than in the neighboring countries (e.g. Croatia, Bulgaria, Romania).

The manufacture and distribution of drugs in Serbia is regulated by the Law on Medicines and Medical Devices adopted in 2004. Numerous other laws also regulate various aspects of the production and trade of drugs: Patent Law, Law on Health Care (sanitary control, health safety of dietary supplements...), Law on Health Insurance (solidarity in financing healthcare, defining the insurers' rights...), regulations on internal and external trade (with a detailed description of measures for the protection of competition), Law on Environmental Protection, waste management and other environmental laws, as well as a set of financial laws relating to legal persons involved in the trade of goods and services.

However, the legal frame is incomplete and not aligned with EU legislation on many important aspects, thus creating high uncertainty in the healthcare sector, and allowing for non-transparent procedures to be implemented on different levels, including the decisions of the government and the RFZO. There are no timelines for several important decisions, while existent timelines are often too long and usually not adhered to.

The pharmaceutical industry is only occasionally and declaratively involved in the narrowed scope of the decision-making process, without the opportunity to make a real contribution, and allow the transfer of know-how from other markets. As a result, regulations are often non-sustainable and non-implementable. At the same time, patient associations are being marginalized, and have no influence in deciding which drugs are going to be reimbursed.

POSITIVE DEVELOPMENTS

In November 2012, the pharmaceutical industry and association of wholesalers reached a deal with the Serbian government on the payment of the complete RFZO debt from the previous years towards wholesalers as well as on the introduction of reasonable deadlines (150 days in 2013, gradually coming down to 90 days in 2015) for future payments.

REMAINING ISSUES

Despite the aforementioned improvements some problems still exist, primarily as a result of the unequal treatment of domestic and foreign drug manufacturers in the recently adopted Law on the Terms of Settlement of Financial Obligations in Commercial Transactions. Another problem is the inconsistent interpretation of the law that regulates the relationship with wholesalers' pledged receivables.

Insolvency of the pharmaceutical sector

All segments of the pharmaceutical sector are insolvent. The first generator of insolvency is the state, which does not pay the real costs for the uninsured persons (estimated at about EUR 60 million per year), and allows firms undergoing restructuring or privatization not to pay their contributions for compulsory health insurance for many years (loss of approximately over RSD 120 billion). The second generator of insolvency is the RFZO, because dedicated financial funds for pharmacies and hospitals are significantly lower than the actual consumption of drugs, resulting in either non-payment to the wholesalers or extension of payment terms. The other insolvency generators are wholesalers, owing around EUR 400 million to domestic drug manufacturers (most of the debtors are

in bankruptcy). At the end of this chain are pharmaceutical companies, with drained internal reserves, due to the aforementioned situation.

The inconsistent application of the Law on the assumption of the commitments of healthcare institutions towards wholesalers for the delivered drugs and on the conversion of these commitments into public debt (RS Official Gazette No 119/12) brought the legal uncertainty due to different interpretations of the law by the relevant Ministries, especially with regard to the treatment of the wholesalers' pledged receivables. Different interpretations of the period in which the claim arose and should be converted into public debt are adding to the confusion, (though the law specifies that the public debt covered by the claims arose in 2012, in some ministries' interpretations there is an apparent tendency to cover public debt and receivables from the previous years).

Tax and commercial burden to business

Serbia's customs policy, in line with the general trend of liberalisation of foreign trade, in multilateral relations with the EU (Stabilisation and Association Agreement), the WTO, CEFTA, the EFTA, and the FTA bilateral relations with Russia, Belarus, Kazakhstan and Turkey do not provide "protection taxes" for imported finished medicines. The same approach should be taken when it comes to raw materials and other production materials, (currently, customs duties range from 1% to 5% depending on the heading, or 3.5% on average). Also, the approval of customs quotas even for products that are clearly not produced in Serbia is very bureaucratic and slow.

Equal treatment of the entire pharmaceutical sector must be ensured in both import of drugs and/or materials, and supply of drugs in the domestic pharmaceutical market. Unequal treatment of domestic producers and importers is apparent in the recently adopted Law on the Terms of Settlement of Financial Obligations in Commercial Transactions (RS Official Gazette No 119/2012) since domestic producers are legally required to execute payments from wholesalers within 60 days, while this provision does not apply to importers (offering payment terms to wholesalers of 210 days or longer).

Of particular concern is the fact that applicable regulatory standards in Serbia are not aligned with international and European standards, resulting in additional costs to the industry. The first example is the introduction of the control label on the drug's outer packaging, as an attempt to implement effective protection against forgery introduced in 2011. Another example is the draft Law on Waste Management which envisages that the costs of managing and exporting pharmaceutical waste collected from citizens in pharmacies will be borne by the drug manufacturers, depending on their share in total sales of drugs in Serbia.

"Dualism" of drug prices

Prices of medicines are under strict administrative control, while the process of determining the price of medicines is long, non-transparent and includes double pricing of drugs:

a. After obtaining marketing authorization (MA) by ALIMS, according to the Law on Drugs, Article 58, the Government determines the maximum allowed wholesale price of the drug, on the basis of a joint decision of the Ministry of Health and Ministry of Trade. Without this decision medication cannot be marketed. Taking into consideration that the decision is an act of the Government, as the holder of executive power, and not an administrative act, there is no prescribed time limit for the passing of the respective decision. Accordingly, there is no specific term for acting upon the submitted requests. As a result, in the past we had a situation where more than 500 drugs with issued MA waited for 18 months before government approved maximum prices, and during that period were prohibited from entering the market. Article 58 of the Law on Drugs stipulates an exception to the rule that the maximum prices are established by the Government on the basis of a joint proposal of the Minister of Health and Minister of Trade. According to this exception, decisions on the wholesale price maximum limit can by made by the Minister of Health only, at the request of the market authorization holder, in case of an urgent need for the administration of the medicine for which a market authorization has been granted, i.e. for the "protection of public health interest and prevention of harmful consequences to life and health of a patient or group of patients". Such broad criteria leave considerable room for different interpretation, thus allowing the abuse of the provision by the competent authority. Indeed, there is evidence that this exception has been abused in the past for discretionary approvals of certain drugs in a non-transparent way. An additional problem is the fact that the maximum allowed wholesale price is determined according to the exchange dinar-euro exchange rate occasionally published in an Ordinance on Price Calculation of Drugs

for Human Use. However, there are no timelines for the regular issuance of the Ordinance, despite significant national currency fluctuations against the euro. As a result, pharmaceutical companies were faced with up to 20% loss in 2012, due to the difference between the actual exchange rate, and the one used for the calculation of drug prices, before the Ordinance was finally passed in November 2012.

b. Only after the government decided on the maximum allowed wholesale price of drugs, the holder of the marketing authorization has the right to apply for the medication to be put on the List of Drugs that are prescribed and dispensed at the expense of the compulsory health insurance (Reimbursement List). However, the law provides that if the drug is to be reimbursed, RFZO again determines its price, based on prices in the reference countries (Italy, Slovenia and Croatia), and the price of drugs that are already on the List of Reimbursed Medicines. In this way, any drug that is on the Reimbursement List undergoes the administrative procedure for determination of the price twice, which not only significantly increases the costs for the marketing authorization holders, but more importantly, extends the waiting time before the drug becomes available to patients in the Republic of Serbia.

Lack of transparency in pricing and reimbursement process

Criteria for introduction on the Reimbursement List and removal from the List are not clear and transparent. Transparency in the work of Central Expert Commission and other committees is lacking, with no obligation of delivering decisions of committees to the applicant, and limited right to appeal, defined only as: "administrative proceedings may be brought against before the Administrative Tribunal".

The current RFZO reimbursement Rulebook is not aligned with the recently passed Law on Health Insurance stipulating that reimbursement submissions should be evaluated by the National Expert Commissions, instead of RFZO sub-committees, as stipulated by the RFZO Rulebook. The deadline for alignment expired at the end of March 2013.

Innovative drug companies are discriminated in the current RFZO Rulebook, with application for reimbursement allowed only twice a year, compared to throughout the year for generic drug manufacturers.

Administrative procedures and permits

The state administration is slow in issuing various permits, decisions, approvals for import, transport and distribution of raw materials and drugs, often with lack of coordination and communication between relevant ministries, ALIMS, RFZO and other state agencies.

According to the applicable legislation regulating the issuance of a market authorization for medicines, the first condition that must be fulfilled to place a medicine on the market is that the Serbian Medicines and Medical Devices Agency (ALIMS) has granted a marketing authorization (MA) for that medicine. The Law stipulates a deadline of 210 days for the issuance of MA, with accelerated procedure and deadline of 150 days for drugs that get an MA in the EU under the centralized procedure. Even though the proposed timelines are unnecessarily long, (in comparison, the deadline for the MA issuance through accelerated procedure in the FYR Macedonia is 15 days), in practice even these deadlines are not met, and the average waiting time is more than one year.

List of OTC Products

Drugs that can be dispensed without a doctor's prescription and for which citizens are paying from their pocket (so called Over-the-Counter, OTC products) can significantly relieve the health budget, as the reduction in the number of doctor visits result in double savings for the state. List of OTC products in Serbia is not in line with similar lists in the EU that contain a significantly higher number of drugs.

FIC RECOMMENDATIONS

- The legal framework needs to be completed and aligned with EU regulations. Transparency and predictability, as well as procedural fairness are fundamental prerequisites for sustainability of the pharmaceutical industry in Serbia.
- The Serbian Government should ensure a predictable decision-making process with clear timelines, including transparent consultative process with industry representatives.

- Serbia's health budget needs to be financially consolidated and more transparent, in order to bring business predictability and security of investment in the healthcare and pharmaceutical sector.
- Either through amendments to the Law on the assumption of the commitments of healthcare institutions towards wholesalers for the delivered drugs and for the conversion of these commitments into public debt, or by an act of the Ministry of Finance, wholesalers' pledged claims need to be treated as public debt, and as such regularly paid.
- Equalize tariff rates for drugs and raw materials for the production of drugs.
- Speed up the administrative approval of customs quotas for raw materials that are not produced in Serbia.
- Equalize the VAT rate for raw materials used for the production of drugs with the VAT rate for drugs.
- Synchronize payment terms in the whole chain of drug supply (manufacturer-wholesaler-pharmacy) with the payment terms specified by RFZO (150 days in 2013, 120 days in 2014, and 90 days from 1 January 2015), by amending the Law on the Terms of Settlement of Financial Obligations in Commercial Transactions.
- Abolish control labels on the drug's outer packaging, as it is an unnecessary cost for the industry and does not adequatly protect from forgery.
- Abolish the provision requiring drug manufacturers to cover the costs of managing and exporting pharmaceutical waste collected from citizens based on their share in total sales of drugs in Serbia.
- The practice of determining an upper limit for wholesale prices should be abandoned, since the Government already determines prices of prescription medicines. Limiting wholesales prices does not contribute to the development of a free market and competition but prevents market entrance for drugs that cannot meet the established upper limit; it is also an artificial barrier delaying market entrance for drugs that already have MA.
- The Ordinance on Price Calculation of Drugs for Human Use should be issued at least quarterly, or automatically whenever there is a 3% difference between the official exchange rate and the one from the current Ordinance.
- The pricing and reimbursement process needs to be transparent, with clear rules, with an obligatory explanation of the final decision, and the right to appeal. Relevant patient organisations should be included in the reimbursement decision-making process.
- Added value of health innovations needs to be recognized as a prerequisite for achieving the highest quality public health. A better and faster access to innovative therapy is needed, especially for groups of patients in utmost need. The local drug producers and drug importers have the same goals - to obtain the best therapy for the patients in Serbia.
- Expand the group of drugs that can be dispensed without a doctor's prescription, and remove them from the reimbursement List.

PRIVATE SECURITY INDUSTRY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2009		√	
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;	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 the 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 a solution – aside from a conflict of interest – results in new dilemmas, such as internationalisation vs. localisation.	2011		√	
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;	2010	√		
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 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 and has over 150 active security companies, but Serbia continues to be the only country in the region and in Europe that has not had a specific law on private security for decades.

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

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

paid all due taxes and contributions, whether its employees are paid regularly and what their labour status is, etc.

In this manner, accepting "the most advantageous" bid based on the lowest price actually has negative consequences because the net effects are less favourable for the Government (the alleged savings gained by selecting the "most advantageous" bidder are lower than the amount of revenues that the Government could collect if it were to regularly collect all taxes to which the bidder is subject under the law).

This issue deserves heightened attention by the state authorities themselves, but also by the Association of Private Security Companies, which should declaratively sanction its members if conducting illegal business (blacklisting).

Active promotion of the Serbian SRPS A.L2.002 national standard, which has been developed as a result of 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: "[T]his is the first national standard adopted in the last 50 years on the initiative of the local business sector, which was not created by transposing European or international standards into Serbian standardisation. It is a result of the effective work of 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 experiences puts these efforts in a negative context.

POSITIVE DEVELOPMENTS

During the year 2012 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 was initiated; several public discussions were held; and a mixed working group has been established, which has drawn important conclusions on the Draft Law on Private Security. According to the latest information, the finalised draft version of the Law has been sent to the relevant committees of the Parliament, and urgent adoption is expected.

Additional positive aspects are that world and European associations gathering private security companies and security professionals are present in Serbia through local representatives (Confederation of European Security Services (CoESS), 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 a 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 EU standards and create a positive environment for further investments in 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 the European models of legislation as far as possible, but also adjusted to local specific features; licensing of the companies should be handled by the Government (Min-

istry of Interior) or a government agency in order to avoid monopolisation of this sector and a conflict of interests.

- The goal of Law adoption is legislative regulation, but not a 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 legislation 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 implementation of the Law, would be that all persons employed on an open-ended basis, working for more than one year and meeting the legal prerequisites for the performance of security tasks, should automatically receive the basic license, valid for a period of three years (Transition Licence). The experience of some countries in the region shows that, despite high unemployment, the disproportionate costs of training and licensing make the private security industry unattractive to 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, associations, because such a solution – besides representing a conflict of interests – results in new dilemmas, such as internalisation vs. localisation.

- National standards are not to be imposed on economic operators because it certainly leads to the 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 other EU countries where they operate, in order to create a stimulating environment for further investment. Investors are willing to invest in Serbia in the development of security industry, which will be able to export security services and workforce in the forthcoming years.

HOMECARE PRODUCTS AND COSMETIC INDUSTRY

REGISTRATION OF BIOCIDES AND CHEMICALS AFTER ABOLITION OF THE CHEMICAL AGENCY

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
HAZARDOUS PACKAGING WASTE MANAGEMENT				
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 support, a lack of infrastructure for collection and for treatment of hazardous waste will remain a problem for which we have neither the capacity nor the authority to solve.	2012	√		
COSMETIC INDUSTRY				
As for the organisation of the 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.	2010			√
Technical requirements, regulated by by-laws, have to be in accordance with all applicable EU regulations - Cosmetic Directive (76/768/EEC) and the Cosmetic Regulation (1223/2009). Both regulations, as well as several other applicable EU regulations, have to be considered when the process of harmonisation of Serbian cosmetic regulations takes place.	2012		√	
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.	2012		√	

CURRENT SITUATION

Based on the decision adopted by the Government on 29 September 2012, the Chemicals Agency was closed, and all its obligations and rights were transferred to the Ministry of Energy, Development and Environmental Protection. The transition period started a few months before, due to the Agency's decreased activity, and continued in first few months of 2013 at the Ministry. The legal framework for the registration of chemicals came into force at the end of 2012 and in first quarter of 2013. As a result, documentation for the yearly registration process as well as the process itself were slower than before.

Biocides and the registration of biocides were not regulated by issuing needed by-laws, which evidently made this process significantly slower. After the abolition of the Chemicals Agency, the amendments to the Law on Biocides haven't been made yet, so this made an impact on steps like: time foreseen for the reply of the Ministry in the process; on the slower placing of some biocide products on the market; the question of projected fee for new products, etc.

With new by-laws accompanying the Law on Biocides in preparation, we will be in a position to follow EU legislation in this area, which will bring big changes in this field. With changed time for the process of registration for biocidal products, the possibility of the occurrence of different products on the market that can lead to serious consequences for

human health and the environment is opened up.

POSITIVE DEVELOPMENTS

After some months of a non-regulated process, the registration of new biocides was regulated by the end of the first quarter of 2013.

REMAINING ISSUES

When it comes to adopting new by-laws to account for the changes of EU regulations on chemicals and biocides, bringing some experts to help prepare technical dossiers for biocides will be needed for efficient work in this area.

FIC RECOMMENDATIONS

- The Government should encourage efforts by the Ministry of Environment to increase activities in handling chemicals in the Serbian market.
- Also, the framework for the next steps in the REACH registration process for local companies is needed for a period of five years, as stipulated in the EU.

COSMETIC INDUSTRY

CURRENT SITUATION

The Law which regulates cosmetic products regarding their safety is the Law on Health Safety of Products for General Use (Official Gazette of RS, No 92/2011). The competent authority responsible for the implementation of this Law is the Ministry of Health. Health safety of cosmetic products is regulated together with other products for general use (food contact materials, packaging materials, toys and products which come into contact with the skin).

On the other side, 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 under the jurisdiction of the Ministry of Foreign and Internal Trade and Telecommunications.

In accordance with the above mentioned regulations, cosmetic products which exist on the market of the Republic of Serbia can be controlled by the sanitary inspection of the Ministry of Health and the trade inspection of the Ministry of Foreign and Internal Trade and Telecommunications, while imported cosmetic products are also controlled by the border sanitary inspection of the Ministry of Health.

POSITIVE DEVELOPMENTS

During 2012, several working groups were formed within the Ministry of Health, responsible for the preparation of by-laws on conditions regarding safety of each group of products for general use.

The working group for cosmetics, during eight months of work, prepared the text of the by-law, using relevant EU regulation as a basis, and harmonised the requirements with the corresponding EU regulations, primarily with the Cosmetic regulation 1223/2009. The texts of the by-laws, prepared by the working group, has been sent to the relevant sector of the Ministry, so that it can go through necessary administrative procedure, currently on-going.

REMAINING ISSUES

The adoption of the Law on Health Safety of Products for General Use less than two years ago has created the basis for a range of by-laws, which would, in more detail, define the conditions regarding safety of each group of products for general use. None of these documents has been adopted yet; although it has been stipulated by the law that by-laws should be adopted within six months from the moment the law comes into force.

Also, although the text of the by-law referring to cosmetic products was prepared four months ago, there has been no progress or official indication by the ministry on when this document will be adopted.

FIC RECOMMENDATIONS

- In order to harmonise the regulations in the area of cosmetics with corresponding EU regulations, it is necessary to bring the process that has started to the end, and to speed-up administrative procedures of adopting regulations within the Ministry of Health. Keeping in mind that EU regulations referring to cosmetic products are constantly updated, it is necessary that by-laws come into force as soon as possible, so that the harmonised text remains valid.

- By bringing into force the by-law on the safety of cosmetic products, not only will harmonisation of technical requirements with existing EU requirements be achieved, but also, the first step will also be made toward the organisation of control in the way that it exists in the EU. Our recommendation is that the competent authorities should focus more on in-market control, a practice in European countries, while import control should be mainly focused on product information file (product dossier), and only where necessary, laboratory checks of the product. The current border sanitary control should be moved to a part of the regular in-market control.

- Also, the existence of a specific regulation referring to cosmetic products will avoid the existing differences between the requirements of different ministries (especially in the scope of product labelling). This is the consequence of the application of general regulations that do not refer specifically to cosmetic products and neglect their specificities.

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