

WHITE BOOK 2009

Editor:

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TABLE OF ACRONYMS

BiH	Bosnia and Herzegovina
District	District Brcko
EDMWS system	Electronic Document Management and Workflow System
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
FDI	Foreign Direct Investments
FIC	Foreign Investors Council
FIAS	Foreign Investment Advisory Services
HJPC BiH	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
ITA BiH	Indirect Taxation Authority of Bosnia and Herzegovina
MOFTER BiH	Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina
OECD	Organization for Economic Co-operation and Development
RS	Republika Srpska
USAID SPIRA	United States Agency for International Development - Streamlining Permits and Inspections Regimes Activity

1. FOREWORD

The White Book is a publication produced on an annual basis by the Foreign Investors Council (FIC). Its purpose is to suggest to the authorities of Bosnia and Herzegovina (BiH) a prioritized agenda of reforms in order to address key obstacles to investments and to support BiH on its path to joining the European Union.

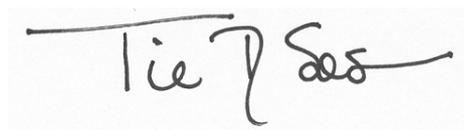
BiH has not been immune to the global financial and economic crisis. The country has been affected in many ways; the economic downturn hit exports and imports, inflow of foreign investment and public spending. Fortunately, the stability and the liquidity of the financial sector has been maintained while the stand-by agreement with the International Monetary Fund will provide additional stability to the public sector. Therefore, it is essential for all levels of the government to turn their attention to the challenges that the private sector faces.

Although many have hoped that signing of the Stabilization and Association Agreement with the European Union would accelerate economic reforms in the country - that did not happen due to numerous reasons. Overall, government officials lack a coherent policy towards the economy and a clear vision on how to set priorities and manage and implement reforms. Despite the fact that international financial institutions have approved significant funds for BiH, the authorities are not undertaking the required steps to fulfill agreed conditions they have earlier accepted to implement. Although the funds for these projects could be easily mobilized and used to support the local economy - unfortunately this has not transpired. Development of key policies and consistent implementation of reforms is the only way to make BiH more attractive for new investment and to keep the present investors. It is imperative that authorities at all levels continue to push through reforms in order for the country to prosper. The FIC Members will spare no effort to support the governments with the implementation of reforms.

We sincerely hope that our voice will be heard and that members of parliament at all levels of government will find this document useful. The White Book provides an overview of challenges faced by the private sector and concrete recommendations to overcome these challenges. We urge government officials to use this document as a starting point for initiating reforms, and a simple guide on how to improve legislation and provide better and more efficient service to the private sector and all citizens.

We would like to thank FIAS IWB - Invest in the Western Balkans program for the readiness to provide resources and support to the FIC in the development and printing of the White Book 2009 edition.

Last but not least, we would also like to thank the numerous FIC Members for devoting their time and resources in the preparation and the development of the FIC White Book 2009.



Tie Sosnowski

President of the Board of Directors and on behalf of Board of Directors

2. EXECUTIVE SUMMARY

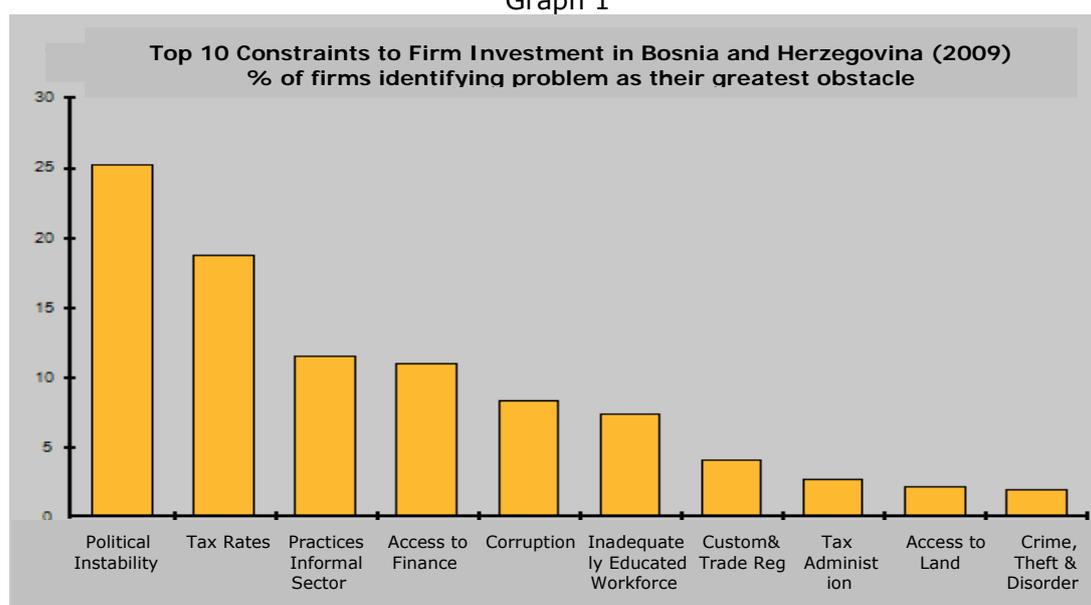
Leadership in the implementation of the reforms remains indispensable to Bosnia and Herzegovina. The global economic and financial crisis has put even more pressure on all the governments to accelerate reforms. Having in mind that FDIs decreased in the whole region, it is important to keep existing investors in the country. However, the global economic crisis is not the only reason for the decrease of foreign investments in BiH. Other reasons are political instability, lack of commitment toward reforms and an unpredictable business environment. A slow pace in implementing reforms is discouraging for both domestic and foreign investors.

In the latest World Bank Doing Business Report for 2010, BiH has improved its overall ranking in the Ease of Doing Business in comparison to 2009. Among 183 countries monitored, BiH is ranked 116 in 2010 vs. 119 in 2009. However, BiH is still well behind the neighboring countries as they are reforming faster than BiH. As a result, FYR Macedonia is ranked 32nd, Montenegro 71st, Albania 82nd, Serbia 88th, Croatia 103rd.

The FIC is primarily concerned with improving the legal and regulatory framework in BiH. At the same time we would like to emphasize the importance of practical steps that government officials can take in order to improve the work process within the institutions. Often a lack of public access to information, unclear procedures and different practices within the same or in different institutions make conducting business in BiH even more difficult.

Over the last year modest improvements have been seen in the areas that FIC is monitoring, though some practical and simple recommendations were not taken into account. The process of obtaining construction permits, temporary residence permits, land registry documents and court registration in certain municipalities have improved dramatically. All improvements have been noted and highly appreciated by both private sector and individual citizens. Below is a World Bank Enterprise Survey (2009) snapshot of the obstacles to investment and doing business as perceived by companies. The graph presents the top 10 constraints as identified by companies in BiH.

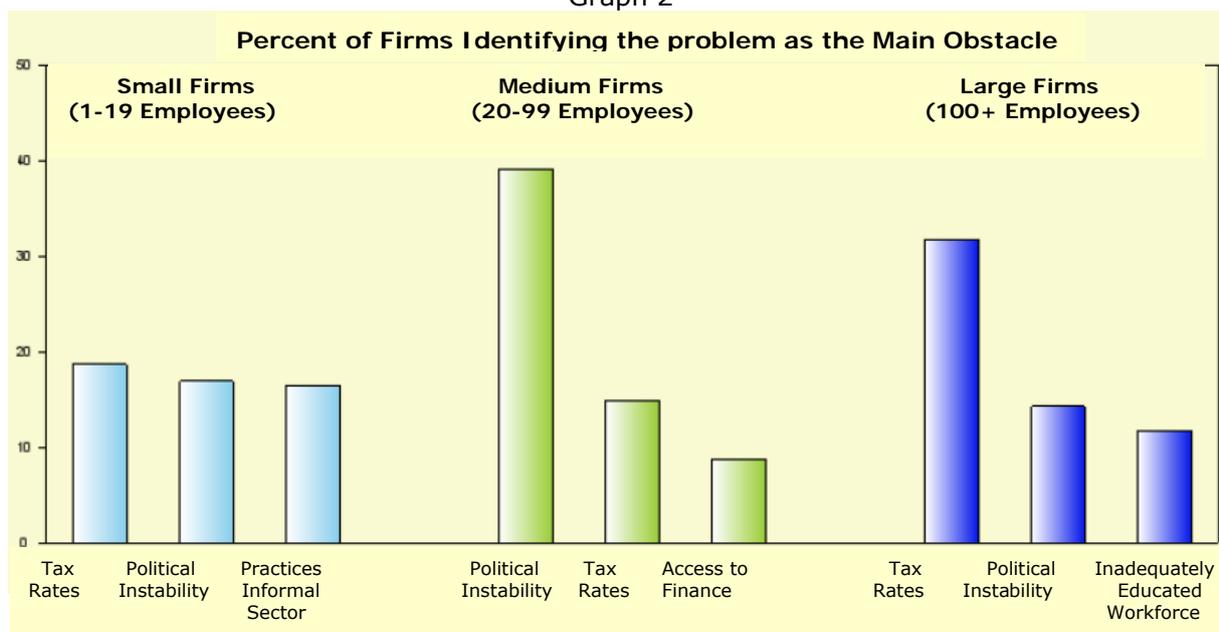
Graph 1



Source: www.enterprisesurveys.org/ExploreEconomies/?economyid=26&year=2009

The second graph shows the top three constraints broken down by large, medium, and small companies in BiH. It is evident that political instability and tax related areas are of huge importance to companies. For a large company that has operations across the whole country the biggest challenge remains the fulfillment of all regulations defined by the entity and District authorities which are usually not harmonized. For example, the non existence of a single economic space within the country penalizes employees whose permanent residence is different from their workplace due to the different tax regimes between the two entities and the District.

Graph 2



Source: www.enterprisesurveys.org/documents/EnterpriseSurveys/Reports/Bosnia_and_Herzegovina-2009.pdf

When it comes to the predictability of the business environment, companies are not adequately informed of the legal and regulatory changes that have been made and how they will be enforced. Moreover the private sector is rarely involved in the process of drafting new laws and bylaws. In some instances, copies of the proposed legislation are not shared with the wider public, while public consultations are not properly announced or are often organized on very short notice.

Inspection authorities often impose lump fines on companies without following the laws and regulations. Inspectors are finding issues that were either not formulated with sufficient precision in the legislation or have not been clearly defined in the secondary legislation. Even when an inspector accepts a company report, a year later, the same company report will be subject to revision by another inspector coming from the same institution. The message that is indirectly sent to foreign investors is extremely negative and could further discourage existing and new investors in BiH.

It is also important to note that in the process of further reforms the media plays a crucial role. It is important for the media to investigate and provide in-depth analyses of the actual situation to the wider public. Educating the media on key economic topics and the European Union integration process is crucial.

The White Book 2009 covers eight topics. Out of the eight assessed topics, four were monitored last year including: (i) registering a business, (ii) obtaining residence and work permits for foreign employees, (iii) taxes and (iv) obtaining construction permits. The

additional four topics FIC Members marked as areas where improvements are urgently needed were: (v) labor rights and tax related issues, (vi) company law, (vii) law on enforcement procedure and (viii) company liquidation law in FBiH.

The issues presented in this publication reflect experiences that our Members faced in the business environment. In certain sections we are only emphasizing issues our Members are facing in one BiH entity, but it does not mean that the same or similar problems do not exist in another BiH entity or the District. As in the previous edition we are not attempting to present an exhaustive survey of all reforms needed. We have identified a short list of priority reforms that can be implemented within the next 12 months.

Table 1 Addressing Obstacles in 2009

Area	Issues	Key Recommendations
Business Registration	<p>Legislation: FBiH</p> <ul style="list-style-type: none"> • Unclear definition of the cases that may result in a suspension of registration procedure • Notarization of changes and amendments to founding act requested <p>Practical Aspects: BiH</p> <ul style="list-style-type: none"> • Inadequate availability of general information on registration procedure • Lack of consistency in processing registration applications in courts • Collective annual leaves and unannounced leaves (except sick leave) are not timely notified to parties involved <p>FBiH</p> <ul style="list-style-type: none"> • Hours for consultation with registration judges in Municipal Court Sarajevo has been canceled 	<p>Legislation: FBiH</p> <ul style="list-style-type: none"> • The Business Registration Law should more precisely define which facts may lead to a suspension of registration procedure • The Business Registration Law needs to be amended such that the notarization is no longer a requirement for every change in the founding act <p>Practical Aspects: BiH</p> <ul style="list-style-type: none"> • Publish all information on the registration procedure on web pages of all institutions involved in the procedure • Implement laws consistently in processing registration applications in courts • Organize court's operations to provide continuous services to end users • Long-term solution is moving the registration process outside the court like in the neighboring countries, and the establishment of One-Stop-Shop online registration <p>FBiH</p> <ul style="list-style-type: none"> • Reinstate in the Municipal Court Sarajevo hours for consultation with end users
Temporary Residence and Work Permit	<p>Legislation: FBiH</p> <ul style="list-style-type: none"> • Work permit can not be obtained without employment contract for certain categories of foreign citizens • Laws and practice related to the procedure of issuing work permits without the approval of temporary residence in the Canton of Sarajevo are not harmonized 	<p>Legislation: FBiH</p> <ul style="list-style-type: none"> • Allow the issuance of work permits in BiH on the basis of a valid documentation regarding the temporary posting from the home country • Harmonize the BiH Law on Movement and Stay of Aliens and Asylum and the FBiH Law on Employment of Foreigners <p>Practical Aspects: BiH</p> <ul style="list-style-type: none"> • Improve communication and coordination of workflow between the Service for Foreigners' Affairs and the courts responsible for the registration of business

Area	Issues	Key Recommendations
	<p>Practical Aspects: BiH</p> <ul style="list-style-type: none"> • Inconsistency in the implementation of the laws and lack of coordination between state agencies and institutions in the information exchange <p>FBiH</p> <ul style="list-style-type: none"> • Non compliance with laws regarding working hours of a foreign citizen 	<p>entities</p> <ul style="list-style-type: none"> • Publish all information on obtaining /extending temporary residence and work permit procedure on web pages of all institutions involved in the process <p>FBiH</p> <ul style="list-style-type: none"> • Respective institutions to act in line with regulations and positive practices in regard to working hours per week for foreign citizens
<p>Company Law</p>	<p>Legislation: BiH</p> <ul style="list-style-type: none"> • Legislation do not provide for conversion of the debt and liability into equity • Prohibition of financial assistance <p>FBiH</p> <ul style="list-style-type: none"> • Legislation do not provide for establishing branch offices of foreign companies • Non harmonized wording in the respective legislation regarding stock subscription and payment • Deadlines in the respective legislation need to be coordinated to submit applications for approval of public share offering • Lack of harmonization of the Company Law articles (244, 247) related to provision of materials to shareholders for the Shareholders' Meeting • Existence of the Law provision requiring vote of confidence for Supervisory Board Members • Age limit for Supervisory Board Members set at 65 • Limitations regarding appointment as Supervisory Board Member <p>Practical Aspects: FBiH</p> <ul style="list-style-type: none"> • Insufficient information and participation of the private sector in consultations during 	<p>Legislation: BiH</p> <ul style="list-style-type: none"> • Incorporate in the Laws an option for conversion of loans and other receivables into equity shares or ownership interest, and specify terms for such conversion or swap • Financing a purchase of equity shares/stakes should be regulated and defined in more details in legislation <p>FBiH</p> <ul style="list-style-type: none"> • Allow for the establishment of a branch office as envisioned in the majority of jurisdictions. The legal frameworks between the entities and the District should be harmonized • FBiH Company Law and the FBiH Securities Market Law should be harmonized in regard to stock subscription and payment and deadline for submission of applications for approval of public share offering • Harmonize respective Articles of the Company Law (244,247) related to provision of materials to shareholders for the Shareholders' Meeting • Provision requiring a Shareholders' Meeting to be convened for a mandatory vote of confidence for the Supervisory Board Members after two years' term needs to be removed • Extend the age limit for Supervisory Board Members to at least 70 years of age • Affiliated companies should be exempted from the limitations regarding appointment as Supervisory Board Member, taking into account specific features of state and private ownership <p>Practical Aspects: FBiH</p> <ul style="list-style-type: none"> • Involve private sector in the process of changing and amending laws • During drafting of laws and secondary

Area	Issues	Key Recommendations
	<p>drafting of laws and secondary legislation. In addition, draft amendments to laws and secondary legislation are not made publicly available</p>	<p>legislation organize public consultations with the private sector and make publicly available draft of all legislation allowing representatives of the private sector (domestic and foreign companies) to provide feedback</p>
<p>Taxes</p>	<p>Legislation: BiH</p> <ul style="list-style-type: none"> • Unclear provisions on personal income tax and social security contributions • Paying social security contributions using straight-line rates • VAT refund to foreign persons • Lack of harmonization between VAT Law and instructions • Inefficient forced collection on debtors' bank accounts <p>FBiH</p> <ul style="list-style-type: none"> • A permanent business unit in FBiH cannot be registered as a taxpayer • Production companies prevented from using the tax relief <p>Practical Aspects: BiH</p> <ul style="list-style-type: none"> • Bilateral Agreements signed/ratified by the BH authorities are not publicly available <p>FBiH</p> <ul style="list-style-type: none"> • Implementation of bilateral Agreements by the tax authorities 	<p>Legislation: BiH</p> <ul style="list-style-type: none"> • Laws regulating taxation of personal income for individuals residing in FBiH, the RS and the District and earning their income in one of the other two administrative units need to be harmonized to ensure that all persons enjoy equal treatment regarding recognition of tax deductions • The Rulebooks on Personal Income Tax in RS, FBiH and the District need to precisely define recognition of tax deductions for foreign nationals sent on duty in BiH who pay social security contributions in their home countries, as well as techniques for recognizing other deductions these persons are entitled to under the Personal Income Tax Laws of FBiH, RS and the District. • Initiate reform of the health and retirement insurance system • In VAT Law or respective secondary legislation specifically identify all situations in which a tax payer without a registered business in BiH is entitled to VAT refund levied in BiH • Harmonize the Instructions for completing VAT form with the BiH Law on VAT and the ITA BiH internal instructions to allow tax deduction for incoming invoices that are received by 10th of the month or before the submission of the VAT application • The entity laws regulating payment transactions should be upgraded by including mechanisms by which all company bank accounts will be blocked <p>FBiH</p> <ul style="list-style-type: none"> • Supplement the Rulebook on Taxpayer Registration and Identification to allow the registration of foreign legal entities which constitute permanent business units in FBiH as taxpayers • The Corporate Income Tax Law regulation should specify a final date for submitting the Investment Plan as a basis to use the tax relief for production companies <p>Practical Aspects:</p> <ul style="list-style-type: none"> • Publish all bilateral Agreements on website of the BiH Ministry of Treasury and Finance. The Ministry to issue the Instructions for

Area	Issues	Key Recommendations
		implementation of Agreements that is aligned with interpretations and positive taxation practice of the OECD countries
Labor Rights and Tax Related Issues	<p>Legislation: BiH</p> <p>Lack of harmonization of principles of accounting and the contribution rate on different government levels (entities, District and cantons in FBiH) for:</p> <ul style="list-style-type: none"> • Annual leave bonus • Commuting allowance • Sick leave payment • Maternity leave payment • Refunding employer's costs for sick and maternity leaves • Taxation of severance pay for employees being retired or being laid off in the District 	<p>Legislation: BiH</p> <p>Harmonize principles of accounting and the contribution rate on different government levels (entities, District and cantons in FBiH) for:</p> <ul style="list-style-type: none"> • Annual leave bonus • Commuting allowance • Sick leave payment • Maternity leave payment • Refunding of employer's costs for sick and maternity leaves • Regulate taxation of severance pay for employees being retired or being laid off in the District <p>Practical Aspects:</p> <ul style="list-style-type: none"> • Establish mechanisms that will enable refund to employers at all levels
Law on Enforcement Procedure	<p>Legislation: BiH</p> <ul style="list-style-type: none"> • Process of determination of debtor's property does not include authentic document • Abuse of the proceeding in case when an objection is submitted against a writ of execution • Unclear definition of real property value • Abusing process of determining selling price • Lack of precise regulation regarding execution on movable property • Rules for administering course of auction are not precise • Different interpretation of provisions on real estate sale • Different courts practices in making decisions on settlement • Incomplete information about debtor's debt • Deadline not defined properly in: • Settlement on petitioner's 	<p>Legislation: BiH</p> <ul style="list-style-type: none"> • Amend Law to include authentic documents in addition to enforceable documents for the purposes of identifying judgment debtor's property • The Law should preclude stalling of collection of claims, primarily for promissory notes and checks. For example, in case an objection is submitted against a writ of execution, the execution proceedings should continue while the debtor (not the petitioner-creditor) should be instructed to file civil action instead • Avoid dilemmas regarding suspension of execution proceedings, the Law needs to define more precisely the meaning of "a part of the creditor's claim", i.e. it needs to specify an exact amount/percentage of the claim, such as 1/3 or the like • Define a mechanism to prevent abuses in the process of determining the selling price • Introduce recording for a pending execution on a passenger motor vehicle in the vehicle records with the competent office of the Ministry of Internal Affairs and in the vehicle registration certificate. This would prevent sale of a vehicle before a petitioner's claim is satisfied, as well as a factual transfer of a vehicle by granting a power of attorney to other persons to use the car

Area	Issues	Key Recommendations
	<p>claims</p> <ul style="list-style-type: none"> • Hearing to split sales • Decision on settlement 	<ul style="list-style-type: none"> • The Law should define the course of auction in detail in order to avoid abuses • Law should clearly define the meaning of the provisions that a real property "may be sold without restrictions on the lowest price" • The Law should define decision on satisfaction of claims, i.e. clearly determine to which extent a creditor has been satisfied in cases where the creditor is also the buyer of the pledged real property • The Law should specify that employers are obligated to list all present debts of the employee, whether actual or potential, in the certificate of employee's salary, and also the Law needs to ensure that the creditor who was first issued a certified permission will have precedence in garnishment • The Law should clearly define a deadline to satisfy petitioner's claims, such as within 15, 30 or 60 days • The Law should define a specific timeframe within which the court must schedule a hearing to split the sales proceeds • The Law should define a specific deadline in which judge has to issue a decision on settlement e.g. within 15 or 30 days
<p>Construction Permits</p>	<p>Legislation: FBiH, Canton Sarajevo</p> <ul style="list-style-type: none"> • The respective laws do not precisely define construction permit transfer in Canton Sarajevo <p>RS</p> <ul style="list-style-type: none"> • The Urban Planning Law does not define treatment of telecommunication sector <p>Practical Aspects: BiH</p> <ul style="list-style-type: none"> • Inefficient processing of applications 	<p>Legislation: FBiH, Canton Sarajevo</p> <ul style="list-style-type: none"> • The respective laws should regulate the issues of construction permit transfer in Canton Sarajevo <p>RS</p> <ul style="list-style-type: none"> • In the Urban Planning Law incorporate telecommunication infrastructure to cover set up of network, equipment and facilities <p>Practical Aspects: BiH</p> <ul style="list-style-type: none"> • Improve processing of requests for construction permits in the whole BiH • Comply with legal deadlines • Develop a priority system where officials will sort all incoming requests according to certain criteria: private or civil sectors, project value, for a large scale investment projects introduce special treatment, etc.
<p>Company Liquidation Law in FBiH</p>	<p>Legislation:</p> <ul style="list-style-type: none"> • Vague wording of liquidation procedure • Different practices in courts regarding submission of documents for liquidation 	<p>Legislation:</p> <ul style="list-style-type: none"> • The Law should more adequately address the course of liquidation procedure as well as the position, rights and obligations of liquidator • The Law needs to include a list of all the documents that a liquidation petitioner is

Area	Issues	Key Recommendations
	<ul style="list-style-type: none"> • Different practices in courts regarding submission of a certificate proving payment of tax liabilities upon launching liquidation procedure <p>Practical Aspects:</p> <ul style="list-style-type: none"> • Inability to access a list of companies being liquidated in the court register 	<p>required to submit and timeline for their submission</p> <ul style="list-style-type: none"> • The obligation to record the liquidation procedure with the Companies Register and to include words “under liquidation” in the company name during liquidation should be included in the Law <p>Practical Aspects:</p> <ul style="list-style-type: none"> • Practice in courts needs to be harmonized, and relevant regulations need to define that the tax administration shall have the same position as all other creditors of a company being liquidated

3. ABOUT FOREIGN INVESTORS COUNCIL

Foreign Investors Council is an independent business association gathering foreign investors that have invested over 4 billion EUR in BiH and employ over 10.000 employees. Our mission is to promote pro-business initiatives and deliver practical support to all investors by improving the business environment in the country through an ongoing dialogue with BiH authorities.

Through the following activities the FIC provides benefits and value added services to the members:

(i) Advocate for Change by...

- Advocacy activities
- Launching various initiatives aimed to improve the legal and regulatory environment in specific sectors
- Developing the publication White Book. Its purpose is to suggest to the authorities of BiH a prioritized agenda of reforms in order to address key obstacles to investments

(ii) Government Relations by...

- Organizing regular forums with the high ranking officials
- Cooperating with government officials and other relevant stakeholders
- Organizing adhoc Support Teams to provide a common voice to respective authorities

(iii) Provide Networking Opportunities by...

- Fostering cooperation among its members
- Opportunity to sponsor projects/events

(iv) Share Valuable Information by...

- Regular forums and meetings
- Quarterly newsletter

Membership is open to foreign and domestic legal entities and individuals that share the objectives of the FIC and wish to participate in FIC activities.

Join the most dynamic business association in BiH and help to create a unique impact on the business environment.

4. OBSTACLES TO INVESTMENT

The 2009 edition of the White Book is looking into eight areas that are important for the future inflow of investments in the country. The issues presented in this publication reflect experiences that our Members are facing in the business environment. In certain sections we are only emphasizing issues our Members are facing in one BiH entity, but it does not mean that the same or similar problems do not exist in another BiH entity or the District.

The following areas are covered:

- Business Registration
- Temporary Residence and Work Permits
- Company Law
- Taxes
- Labor Rights and Tax Related Issues
- Law on Enforcement Procedure
- Construction Permits
- Company Liquidation Law of FBiH

Each section provides (i) table summarizing strengths, weaknesses, and governance authorities in the area, (ii) narrative overview of the key issues and (iii) summary of major recommendations for reforms.

4.1 BUSINESS REGISTRATION

Compared to the previous year, the business registration procedure has been slightly shortened. In the World Bank "Doing Business 2010" Report, BiH has advanced from being ranked 162 in 2009 to being ranked 160 in 2010. In April 2009, the Council of Ministers of BiH tasked the BiH Ministry of Foreign Trade and Economic Relations (MOFTER BiH) with reforming the BiH Foreign Direct Investment Policy Law and streamlining the registration procedure for foreign investors. These reforms are expected to produce results next year.

Table 2

Business Registration	
<p>Improvements:</p> <ul style="list-style-type: none"> • The court registration process for companies registering for the first time shortened from 5 - 45 days to 5 - 20 days • An electronic application form for company registration made available on web pages of some courts 	<p>Weaknesses:</p> <p>BiH</p> <ul style="list-style-type: none"> • A number of institutions at different levels are involved in the registration procedure • Entity regulations regulating the registration procedure need harmonization • Practical implementation of laws is not consistent, practices used by officials vary • Officials are inefficient, resulting in delays in application processing • Valid documents not accepted (e.g. e-banking payment slips) • There are no services providing information to interested parties, information is not collected in a single place and in an electronic form <p>FBiH</p> <ul style="list-style-type: none"> • Processing status changes is complex
<p>Key Institutions Involved:</p> <ul style="list-style-type: none"> • ITA BiH, MOFTER BiH • Respective entity ministries, entity offices for statistics, pension and health insurance, tax authorities • Cantonal ministries • Municipal courts, inspections 	

The number of institutions involved in the entire registration procedure has remained unchanged over the previous year, 13 in FBiH, and 11 in RS, and these institutions come from all levels of government: state, entity, cantonal and municipal levels. Below are listed the issues related to the business registration procedure outlined by FIC Members.

SURVEY: ISSUES AND RECOMMENDATIONS

- **BOSNIA AND HERZEGOVINA**
- **Inadequate Availability of General Information on Registration Procedure**

ISSUE

Information related to the registration procedure is not publicly available in a single location. Due to the existence of umbrella legislation, entity legislation and cantonal legislation in FBiH, the registration procedure varies dramatically. The lack of information services for interested parties in relevant institutions and the lack of updated web pages have a significant impact on the slow process of gathering information such as: which documents should be submitted, the amount of fees, contact details, etc. Another example concerns

cantonal legislation that is unavailable. Cantonal legislation¹ is not posted on cantonal government web pages; Official Gazette offices (e.g. in the Herzegovina-Neretva Canton and Zenica-Doboj Canton) do not keep all the published regulations in their archives. In addition, instructions regarding the registration procedure are currently available on web pages of certain courts, however, they have not been standardized for all courts.

RECOMMENDATION

Information on the registration procedure needs to be posted on web pages of all institutions involved in the procedure provided they have a web page, or bulletin boards in these institutions should be used to post contact details of the department/person where the required information is available. Parties would find it much easier to understand the procedure if instructions were developed, reference laws were identified and all information relating to the registration process was provided.

Registration instructions should be harmonized among all courts, and end users should be able to simply input information in these instructions.

- **Lack of Consistency in Processing Registration Applications in Courts**

ISSUE

While the Business Registration Laws are clear and specify the documents required to register a company, it is often the case that additional documents not required by law are requested by courts, or that a judge will make conflicting conclusions in one and the same case. For example, the Managing Director of a company has changed. In addition to a certificate confirming no outstanding fines issued against the company, the party is requested to provide the same certificate for the person being relieved of the duty. Even though regulations do not require a certificate of no criminal record to be provided for the person being relieved of his/her duty, such document is required in practice.

RECOMMENDATION

Laws need to be implemented consistently. If a party has failed to provide full documentation with its application the first time, a judge should issue a single conclusion listing all the shortcomings in the submitted documents. This would avoid unnecessary delays in the current procedure when several requests are made for different alterations in a single case, in spite of the fact that all the shortcomings could have been noted in just one conclusion.

- **Collective Annual Leaves and Unannounced Leaves Do Not Contribute to Courts' Efficiency**

ISSUE

Certain courts have introduced the practice of collective annual leaves. Given the current economic crisis, the volume of pending cases in courts as well as incoming cases, this introduction of collective annual leave has brought the business sector, which generates revenues to finance all governmental institutions, into a difficult position. On average, companies must wait for a minimum of three months to have a hearing scheduled. An additional postponement of three or four working weeks used for collective annual leaves results in further delays in case resolution. A company that is forced to wait for two or three

¹ Except Sarajevo Canton

months to have its status changes registered will often find that a company's other related activities are also affected. For example, a new Managing Director of a company was appointed and he is a foreign national. If the court needs two months to register this change, then the process of issuing a work permit to this foreign national will be delayed; signing of all contracts on behalf of the company will be deferred, etc.

If the judge is on an annual leave/sick leave/training/seminar/internship, the case will remain pending until further notice, which leads to unwarranted delays in the registration procedure and other procedures managed by courts.

RECOMMENDATION

The court's operation needs to be organized that it provides continuous services to the private sector and citizens. All leaves (excluding sick leaves) need to be planned in advance and timely notified to parties involved. In case of extended sick leaves a respective registration request should be assigned to another judge.

- **FEDERATION OF BiH**
- **Unclear Definition of Cases that May Result in a Suspension of Registration Procedure**

ISSUE

The FBiH Business Registration Law² provides that if a competent registration court suspects the existence of a fact that may decide whether the registration application complies with the registration law or other laws, and if another court of law is to determine such fact, the registration procedure will be suspended until a final resolution is passed ending the procedure before the other court. There were cases when this provision was interpreted in very broad terms and the registration procedure was suspended even in cases when the company was involved in a parallel litigation that was unrelated to the status change being registered. Due to the length of time required to end litigation proceedings, such groundless suspension of the registration procedure results in irreparable losses and creates difficulties in a company's everyday operations.

RECOMMENDATION

Since the Law does not specify which facts are decisive for the registration with a court registry, there should be a more detailed definition of the facts that may lead to a suspension of registration procedure.

- **Notarization of Changes and Amendments to Founding Act**

ISSUE

Under recent amendments to the FBiH Business Registration Law³, all changes in the company's founding act must be notarized to be accepted by the competent court in order to register the status change. By requiring notarization for any changes or additions to the founding act, the registration procedure has been further complicated and made more expensive. Furthermore, these new legislative amendments have caused additional

² Article 55, Paragraphs 2 and 3

³ FBiH Official Gazette 43/09

disharmony in the regulatory framework between the entities, with notaries in FBiH having significantly higher authority than their RS counterparts.

RECOMMENDATION

The FBiH Business Registration Law needs to be amended such that the notarization is no longer a requirement for every change in the founding act.

- **Hours for Consultation with Registration Judges at the Municipal Court Sarajevo**

ISSUE

The Municipal Court in Sarajevo has canceled consultation hours. Businessmen believe these hours are valuable in cases when court decisions or conclusions ordering supplementation and/or correction of the application and submitted documents are not clear, or when they need to check what a general position of the registration court judge is on issues that have not previously been dealt with in a court practice.

RECOMMENDATION

Since hours for consultation are scheduled in other courts as a matter of typical practice, this practice should also be reinstated in the Municipal Court in Sarajevo.

Summary of Recommendations

BUSINESS REGISTRATION

- **Legislation:**
 - FBiH**
 - The Business Registration Law should more precisely define which facts may lead to a suspension of registration procedure
 - The Business Registration Law needs to be amended such that the notarization is no longer a requirement for every change in the founding act
- **Practical Aspects:**
 - BiH**
 - Publish all information on the registration procedure on web pages of all institutions involved in the procedure
 - Implement laws consistently in processing registration applications in courts
 - Organize court's operations to provide continuous services to end users
 - Long-term solution is moving the registration process outside the court, like in the neighboring countries, and the establishment of One-Stop-Shop online registration
 - FBiH**
 - Reinstate in the Municipal Court Sarajevo hours for consultation with end users

4.2 TEMPORARY RESIDENCE AND WORK PERMIT

The entry into force of the Law on Movement and Stay of Aliens and Asylum of BiH⁴ and the relevant by-laws⁵, and the Law on Employment of Foreign Nationals and Stateless in RS⁶ the process of obtaining a temporary residence and work permits for foreign citizens is made easier in certain segments depending on the entity in which the foreign national applies for a work permit.

In early 2009, the FBiH Parliament did not adopt the proposed changes and amendments to the FBiH Law on Employment of Foreigners⁷, so the Law on Movement and Stay of Aliens and Asylum of BiH and the Law on Employment of Foreigners FBiH are not in compliance. In year 2009 drafting the Law on Employment and Work of Foreigners and Migrants in BiH is planned within a program of the Ministry of Civil Affairs⁸.

Table 3

Temporary Residence and Work Permit	
<p>Improvements:</p> <ul style="list-style-type: none"> • At the state level by-laws adopted regulating the area of issuing temporary residence and work permits • In RS Law on Employment of Foreign Nationals and Stateless adopted • Service for Foreigners' Affairs⁹ accepts the submission of one criminal record certificate when extending the residence permit • Foreigners with an approved permanent residence in BiH have the same rights to work as BiH citizens • Some information about the process of obtaining a temporary residence is available on the web page¹⁰ of the BiH Ministry of Security • Register of foreigners formed 	<p>Weaknesses:</p> <p>BiH</p> <ul style="list-style-type: none"> • Lack of harmonization between the state Law on Movement and Stay of Aliens and Asylum and FBiH Law on Employment of Foreigners • Inconsistency of government institutions in implementing the regulations • Lack of communication and information exchange between institutions • The procedure of extending the work permit requires certified copies of documents which have been previously submitted <p>FBiH</p> <ul style="list-style-type: none"> • Inability to issue work permits to foreign nationals who are engaged on a temporary basis in the FBiH with the already existing contract in their home country
<p>Key Institutions Involved:</p> <ul style="list-style-type: none"> • Ministry of Security of BiH, Service for Foreigners' Affairs • Respective entity ministries and employment Bureaus • Cantonal employment Bureau 	

Below are listed some issues related to the Temporary Residence and Work Permit procedure that FIC Members are outlining.

⁴ Official Gazette BiH 36/08

⁵ Official Gazette BiH 81/08, Rulebook on Entry and Stay of Aliens

⁶ Official Gazette RS 24/09

⁷ Official Gazette FBiH 8/99

⁸ BH Council of Ministers, Annual Program of Activities for 2009, www.vijeceministara.gov.ba

⁹ Ministry of Security BiH

¹⁰ www.msb.gov.ba

SURVEY: ISSUES AND RECOMMENDATIONS

- **BOSNIA AND HERZEGOVINA**
- **TEMPORARY RESIDENCE PERMIT**
 - **Inconsistency in Implementation of Laws and Lack of Coordination Between State Agencies and Institutions in the Information Exchange**

ISSUE

When extending the permit for the temporary residence, a foreign citizen is required to provide the Service for Foreigners' Affairs at the BiH Ministry of Security with certified copies of documents that have already been delivered in the previous year/years. At the same time, the BiH Law on Movement and Stay of Aliens and Asylum¹¹ requires a competent court for the registration of business entities immediately, or at the latest within seven days of registering a business entity or changes to the data, to automatically deliver the complete information on registration/modification of data to the Service for Foreigners' Affairs. Changes in the register of business entities referred to in the Act relate to: change in the owner of shares/stake, members of the management/trustee and supervisory board members of the registered legal entity. The practice leads to the failure by the judicial and state institutions to act in accordance with this Law and to exchange information. Previous experience has not shown that the competent courts respect or follow this practice and legal obligations.

RECOMMENDATION

Service for Foreigners' Affairs has already set up some registers of foreign persons and entered the data/information regarding their position in the legal entities. Accordingly, it is necessary to create a practice of mutual communication and coordinated workflow between the Service for Foreigners' Affairs and the courts responsible for the registration of business entities. Law courts are required to provide full information on registration / modification of data to the competent Service for Foreigners. This would avoid the obligation to provide the documents that have already been provided in the previous year/ years to the Service for Foreigners' Affairs.

- **FEDERATION OF BIH**
- **WORK PERMIT**
 - **Laws and Practice Related to Procedure of Issuing Work Permits without Approval of Temporary Residence in the Canton of Sarajevo are not Harmonized**

ISSUE

BiH Law on Movement and Stay of Aliens and Asylum¹² does not foresee the need for a foreign citizen to first come to BiH in person in order to register his/her stay and then start the process of obtaining a work permit without the approval of temporary residence. The employer may initiate the procedure of issuing work permits.

¹¹ Article 86

¹² Articles 77, 80

FBiH Law on Employment of Foreigners¹³ and the practice of the Employment Service Department of the Sarajevo Canton require that the procedure of issuing work permit starts with the submission of the document certifying a place of residence, as is stated on the formal application form¹⁴ for the issuance of work permits by the Department. In December 2008, the FBiH Ministry of Labor and Social Policy distributed to the Cantonal Employment Service Departments the document¹⁵ stating: "The Ministry considers that, until FBiH Law on Employment of Foreigners is harmonized, the provisions of the Law on Movement and Stay of Aliens and Asylum shall apply, both in case of issuing work permit without approval of temporary residence and in case when possession of work permit is exempted. However, the Sarajevo Cantonal Department still requires submission of the approval of temporary residence.

RECOMMENDATION

It is necessary to harmonize the BiH and FBiH laws regarding the issuance of work permits for the first time for applicants who are foreign citizens. During the transitional period it is necessary for the Employment Service Department of the Sarajevo Canton to act in accordance with the document distributed by the FBiH Ministry of Labor and Social Policy.

- **Work Permit can not be Obtained Without Employment Contract for Certain Categories of Foreign Citizens**

ISSUE

International tenders for the construction works and installation which are announced by legal entities from BiH, in most cases are awarded to foreign legal entities which do not have headquarters in BiH. The reason for this is that for specific industries in BiH there is not enough qualified workforce, and there is a need for engaging foreign nationals whose knowledge is necessary for the implementation of these projects. Projects can last for several years and during their lifetime foreign legal entities in BiH engage their own personnel, foreign nationals, who possess specific skills. In order for the employees of a foreign legal entity who will remain in BiH for more than three months to get a work permit, the FBiH Law on Employment of Foreigners stipulates that they have to previously conclude an employment contract with the employer based in BiH.

RECOMMENDATION

In other countries there is a possibility of issuing a work permit on the basis of the assignment/posting from the home country where the foreign national is based on a permanent employment contract and, if necessary, may be engaged in projects implemented by his company in another country. There are two solutions of the stated problem: (i) amend Article 84 of BiH Law on Movement and Stay of Aliens and Asylum "paragraph o" so that it reads "foreigners who perform tasks related to the delivery, installation and servicing of machinery or equipment, if their work does not last longer than 6 months continuously or more than a total of two years with interruptions" or (ii) change the FBiH Law on Employment of Foreigners and allow the issuance of work permits in BiH on the basis of a valid documentation regarding the temporary posting from the home country that is issued by the Ministry of Labor, so that the foreigners do not have to submit a contract signed with the employer based in BiH.

¹³ Article 7

¹⁴ <http://www.juszzks.com.ba/ba/zahtjev-za-izdavanje-radne-dozvole.html>

¹⁵ Official letter 03-34/10-1979/08

- **Non Compliance with Laws Regarding Working Hours of a Foreign Citizen Living in FBiH**

ISSUE

In the current practice the Employment Service of the Canton Sarajevo refuses to extend the work permit to a foreign citizen whose full-time lasts less than 40 hours per week. A foreigner can obtain a work permit for the work time of 20 hours per week only if the redistribution of his working time is such that he/she will perform tasks in two different positions in two different states. In a decision that will be adopted by the founder, and which will define the redistribution of working time for a foreign national, it must be clearly explained that his physical presence in workplace in both countries is possible and logical. In addition, it is necessary to provide proof of employment in another country. The registration of a foreign citizen who has received a work permit shall be made for a 20 hour workweek only if they provide evidence that a foreign citizen is also employed abroad. If the evidence is not provided, the application must be made for 40 hour workweek.

The above practice is in violation of the applicable laws. FBiH Law on Employment of Foreigners does not define working hours that an employee, who is a foreign citizen, must be engaged for in order to gain a work permit. FBiH Labor Law¹⁶, which regulates the employment relationship provides that the full-time employees' workweek cannot be longer than 40 hours, which represents the upper limit on the duration of the full-time work week. Full-time cannot be longer than 40 hours per week, but there is no hindrance to establish a shorter duration through the collective agreement, rulebook, or employment contract. There is no legal limit for the full-time employment to last less than 40 hours per week because the regulation of this issue is within the exclusive jurisdiction of the employer.

RECOMMENDATION

It is necessary to harmonize the practice and to act in accordance with the law. Another option is to adopt policies which will define lower limits for duration of the full-time employment of foreign nationals/employees.

¹⁶ Official Gazette FBiH 43/09, Article 29

Summary of Recommendations

TEMPORARY RESIDENCE AND WORK PERMIT

• **Legislation:**

BiH

- (i) Enable foreigners who perform tasks related to the delivery, installation and servicing of machinery or equipment, if their work does not last longer than 6 months continuously or more than a total of two years with interruptions to be excluded to obtain the work permit or (ii) change the FBiH Law on Employment of Foreigners and allow the issuance of work permits in BiH on the basis of a valid documentation regarding the temporary posting from the home country that is issued by the Ministry of Labor

FBiH

- Harmonize the BiH Law on Movement and Stay of Aliens and Asylum and the FBiH Law on Employment of Foreigners

• **Practical Aspects:**

BiH

- Improve communication and coordination of workflow between the Service for Foreigners' Affairs and the courts responsible for the registration of business entities
- Publish all information on the obtaining/extending temporary residence and work permit procedure on web pages of all institutions involved in the process

FBiH

- Respective institutions to act in line with regulations and positive practices in regard to working hours per week for foreign citizens

4.3 COMPANY LAW

A new Company Law was enacted in RS in December 2008¹⁷, and is scheduled to take effect on 01 January 2010. The most recent amendments to the FBiH Company Law were also enacted in December 2008. In spite of the fact that the Legislative Committee of the FBiH House of Representatives and the House of Peoples was required to publish a consolidated text of the Law within 90 days of the Law appearing in the Official Gazette, as of August 2009 the consolidated text is yet to be published.

Table 4

Company Law	
Improvements: -	Weaknesses: BiH <ul style="list-style-type: none"> • Lack of harmonization between entity and District laws • Vague wording of some Law articles, leading to dilemmas in practical implementation FBiH <ul style="list-style-type: none"> • Lack of harmonization between the FBiH Company Law and the FBiH Securities Market Law • Insufficient information and participation of the private sector in consultations during drafting of laws and secondary legislation. In addition, draft amendments to laws and secondary legislation are not made publicly available
Key Institutions Involved: <ul style="list-style-type: none"> • Respective entity ministries 	

Below are listed some of the issues related to the Law on Company that FIC Members are outlining.

SURVEY: ISSUES AND RECOMMENDATIONS

- **BOSNIA AND HERZEGOVINA**
- **Conversion of Debt and Liability into Equity**

ISSUE

The Laws in FBiH and the District, and the new RS Law¹⁸ do not provide for the conversion of loans and other receivables into shares or ownership interest. There is an exception in the District regarding receivables related to certain cases involving employees, but even here a capital increase is conditional; the RS Law also provides for exceptions in cases of a debt swap relating to public revenues and in certain cases relating to the privatization procedure. The Law treats the issuance and conversion of receivables solely in the form of convertible bonds. This restriction prevents companies from borrowing from international financial institutions and private funds in the form of convertible loans (i.e. a loan that could be converted to equity – to shares or ownership interest).

¹⁷ Official Gazette 127/08

¹⁸ Should enter into force on 01.01.2010.

RECOMMENDATION

The Laws need to incorporate an option for conversion of loans and other receivables into equity shares or ownership interest, specifying terms for such conversion or swap.

- **Prohibition of Financial Assistance**

ISSUE

The Law in FBiH with a single sentence defines prohibition of share purchase financing, prohibiting a joint-stock company from issuing or guaranteeing advances, short-term or long-term loans for the sale of own equity shares¹⁹. This prohibition does not explicitly refer to limited liability companies; however, applying provisions of this Law pertaining to joint-stock by way of analogy to limited liability companies²⁰, this prohibition appears to also apply to this form of company. Brčko District has a similar legal provision, while the new RS Law defines this issue with a somewhat higher degree of precision for both a corporation and a limited liability company. This imprecise prohibition of share purchase financing, especially in FBiH, creates legal uncertainty as to whether certain legal transactions are permitted, in particular those carried out during take-over/acquisition of companies.

RECOMMENDATION

The issue of financing purchase of equity shares/stakes should be defined in more details in the FBiH Law. Clarification is required as to whether the prohibition applies to limited liability companies, to direct and indirect financing, including what constitutes indirect financing, and under what terms is the financing permitted.

- **FEDERATION OF BIH**
- **Establishing Branch Offices of Foreign Companies**

ISSUE

Unlike Laws in RS and the District, the FBiH Law does not provide for the establishment of branch offices of a foreign legal entity. The FBiH Law only allows for subsidiaries. In FBiH, foreign legal entities are only able to establish a separate company, or a representative office with operations limited to market research, conducting marketing/promotional activities and informative activities and representing a foreign company.

RECOMMENDATION

A branch office is an organizational part of the company and does not have capacity of a legal entity. A branch office has its own place of operation and representatives (managers), and transacts business with third parties on behalf and for the account of the company. The FBiH Law should allow for the establishment of a branch office, as provided for in the majority of jurisdictions. In addition, the legal frameworks in the entities and the District need to be harmonized.

¹⁹ FBiH Company Law, Article 237

²⁰ FBiH Company Law, Article 310

- **Stock Subscription and Payment**

ISSUE

The FBiH Law²¹ provides that a cash payment for shares of a new issue may be made in installments, within a time period that cannot exceed “six months” from the day the Securities Commission of FBiH passes a Decision on a successful share issue. Under the FBiH Securities Market Law, a share issue is deemed a success if the amount paid is the amount defined by the resolution on share issue as the lowest amount for a successful issue – i.e. if this amount has been subscribed and paid.

RECOMMENDATION

The wording of the FBiH Company Law and the FBiH Securities Market Law need to be harmonized.

- **Deadline to Submit Applications for Approval of Public Share Offering**

ISSUE

The FBiH Law²² provides that the Supervisory Board of a company is required to submit to the FBiH Securities Commission an application for the approval of a public share offering not later than 30 days from the adoption of the resolution on the share capital increase. The FBiH Securities Market Law defines the deadline to submit an application for the approval of a public share offering as 90 days from the day the resolution on share issue was adopted, or 60 days prior to the day defined under the resolution as the day when the subscription and payment of shares begins.

RECOMMENDATION

The deadlines in the FBiH Company Law and the FBiH Securities Market Law need to be coordinated.

- **Provision of Materials to Shareholders**

ISSUE

The FBiH Law²³ fails to precise the need to provide, in addition to providing a draft agenda, draft resolutions that are listed under items on the agenda for the Shareholders’ Meeting. The problem of exercising one’s right to access materials prepared for the Shareholders’ Meeting is present in the following cases: (i) the Supervisory Board has failed to advertise the convening of the Shareholders’ Meeting upon a request submitted by authorized persons; (ii) five months after the end of a business year, the Supervisory Board has failed to convene the Shareholders’ Meeting to decide on the annual report.

RECOMMENDATION

In these cases, the person submitting the request and having authority to directly convene the Shareholders’ Meeting should be required to prepare draft resolutions, ensuring thereby

²¹ FBiH Company Law, Article 135, Paragraph 1

²² FBiH Company Law, Article 143, Paragraph 2

²³ FBiH Company Law, Article 244

that the right of access to these documents, as defined under Article 247 of the Law, may be exercised in full. Harmonize 244 and 247 Articles of the Law.

- **Vote of Confidence for Supervisory Board Members**

ISSUE

The FBiH Law²⁴ stipulates that the Chairperson and Members of the Supervisory Boards are appointed for a period of four years; however, two years after their appointment, the Shareholders' Meeting is to hold a vote of confidence for Members of the Supervisory Board. Given that the second paragraph in the same Law Article provides for an option to remove the Chairperson and Members of the Supervisory Board even before the end of their term, this mandatory vote of confidence following the first two years of their term appears unnecessary.

RECOMMENDATION

The wording of the Law needs to be adjusted and the provision requiring the Shareholders' Meeting to be convened for a mandatory vote of confidence for Members of the Supervisory Board after two years' term needs to be removed.

- **Age limit for Supervisory Board Members**

ISSUE

The FBiH Law²⁵ defines age limit for the appointment of a Supervisory Board Member at 65 years of age. Considering that Supervisory Board Members have a specific supervisory role, which is their primary duty, and considering the fact that years of service have generally been increasing, the age limit for Supervisory Board Members should be extended. The FBiH Labor Law provides an option for employment beyond 65 years of age, while state-level regulations on appointment of justices and prosecutors set the age limit at 70.

RECOMMENDATION

Given the increasing years of service and other applicable laws in FBiH, the Law needs to extend the age limit for Supervisory Board Members to at least 70 years of age.

- **Limitations Regarding Appointment as Supervisory Board Member**

ISSUE

The FBiH Law²⁶ defines that Managing Director and Managing Board Member in a corporation cannot act as Chairperson or Member on the Supervisory Board or Managing Board of another company or institution. This provision was intended to prevent conflict of interest, but the way it was conceived makes it very restrictive, needlessly limiting the rights of a shareholder to nominate one/same person to represent the shareholder on the Supervisory Board of his/her subsidiary or on several Supervisory Boards in his/her subsidiaries.

²⁴ FBiH Company Law, Article 259, Paragraph 2

²⁵ FBiH Company Law, Article 260

²⁶ FBiH Company Law, Article 264, Paragraph 1

Also, this provision does not lead to harmonization of legislation across BiH. The Company Law in the RS limits such appointments to not more than five companies, defining also that membership on the Supervisory Boards of affiliated companies is considered as membership on a single Supervisory Board.

RECOMMENDATION

Affiliated companies should be exempted from this limitation, taking into account specific features of state and private ownership.

Summary of Recommendations

COMPANY LAW

- **Legislation:**

- **BiH**

- Incorporate in the Laws an option for conversion of loans and other receivables into equity shares or ownership interest, and specify terms for such conversion or swap
- Financing purchase of equity shares/stakes should be regulated and defined in more details

- **FBiH**

- Allow for the establishment of a branch office of foreign legal entity as envisioned in the majority of jurisdictions. The legal frameworks between the entities and the District should be harmonized
- The FBiH Company Law and the FBiH Securities Market Law should be harmonized in regard to stock subscription and payment and deadline for submission of applications for approval of public share offering
- Harmonize respective Articles of the Company Law (244,247) related to provision of materials to shareholders for the Shareholders' Meeting
- Provision requiring a Shareholders' Meeting to be convened for a mandatory vote of confidence for the Supervisory Board Members after two years' term needs to be removed
- Extend the age limit for Supervisory Board Members to at least 70 years of age
- Affiliated companies should be exempted from the limitations regarding appointment as Supervisory Board Member, taking into account specific features of state and private ownership

- **Practical Aspects:**

- **FBiH**

- Involve private sector in the process of changing and amending laws
- During drafting of laws and secondary legislation organize public consultations with the private sector and make publicly available draft of all legislation allowing representatives of the private sector (domestic and foreign companies) to provide feedback

4.4 TAXES

Inconsistency and complexity of the enterprise taxation system remains an impediment to investments for companies operating throughout the country. BiH is ranked as 154 among 181 countries in regards to easiness to pay taxes.²⁷

Table5

Taxes	
<p>Improvements:</p> <ul style="list-style-type: none"> In the District a working group established to draft the Law on Corporate Tax and the Law on Income Tax, which should come into effect from 01 January 2010. 	<p>Weaknesses:</p> <p>BiH</p> <ul style="list-style-type: none"> International bilateral Agreements on Dual Taxation Avoidance and Agreements signed with international institutions are not publicly available, there is lack of instructions how to implement these Agreements Uneven interpretations and practices applied by tax authorities in different administration units under the same tax laws Unequal treatment of employees who live in different administration units Unclear legal provisions regarding taxation of foreign nationals who are employed in their home country and were sent on duty to BiH, who pay their social security obligations in their home country Paying social security contributions using straight-line rates VAT refund mechanisms are not functioning properly in a business practice Lack of information and communication between tax authorities and end users Inefficient forced collection on debtors' bank accounts <p>FBiH</p> <ul style="list-style-type: none"> Inability to register a permanent business unit as a taxpayer Derogation of tax relief to production companies
<p>Key Institutions Involved:</p> <ul style="list-style-type: none"> ITA BiH, state ministry of finance Entity ministries of finance and tax authorities Cantonal tax authorities Municipal/local tax offices 	

Below are listed some of the issues related to taxation that FIC Members are outlining.

²⁷ PricewaterhouseCoopers Survey: Paying Taxes 2009

SURVEY: ISSUES AND RECOMMENDATIONS

- **BOSNIA AND HERZEGOVINA**

- **Implementation of International Agreements**

ISSUES

BiH

International bilateral Agreements on dual taxation avoidance, the Agreements on social insurance, as well as on the accession of BiH to international institutions, such as the World bank, International Finance Corporation, European Bank for Reconstruction and Development, and other institutions, are not publicly available. In addition, there is no any single registry/central database in which all agreements inherited, signed by SFRY, and agreements/contracts signed and/or ratified by BiH could be found. The state ministry has not transferred the competencies for implementation of international agreements to lower-level institutions (entity ministries of finance/tax administration units) that are supposed to ensure their implementation.

FBiH

In order to exercise a tax relief provided for under an international Double Taxation Avoidance Agreement, taxpayers are instructed by the FBiH Tax Authority to seek approval from the BiH Ministry of Finance and Treasury for every business situation in which a certain tax relief may apply. As a result, the Ministry receives a large number of applications for approval regarding the application of such international agreements, while taxpayers have to wait extended periods to be issued such approval.

RECOMMENDATIONS

The BiH Ministry of Treasury and Finance should publish all the valid Agreements on dual taxation signed into by BiH or inherited by BiH as the legal successor of ex SFRY, as well as agreements with other countries, adopted but still not ratified, or those still in the process of adoption. All bilateral agreements should be filed in the registry of agreements/database and made publicly available to all taxpayers. It is necessary that the BiH Ministry of Finance and Treasury issues the Instructions for implementation of Agreements that is aligned with interpretations and positive taxation practice of the OECD countries, since the majority of current dual taxation agreements constitute standardized OECD international agreement on dual taxation.

PERSONAL INCOME TAX

- **Unclear Provisions on Personal Income Tax and Social Security Contributions**

ISSUES

BiH Citizens

Employees who live in RS and are employed in FBiH have a different tax treatment because they are not entitled to tax-deductible expenses²⁸ and are paying personal income tax

²⁸ The basic personal allowance, allowance for dependent family members

assessed on a higher tax base than their colleagues in the company who reside in FBiH (the entity where their employer is registered). There is no precise definition for the payment of social security contributions for employees residing in one entity and earning their income in the other entity.

Foreign Nationals Who are Employed in their Home Country and are on Duty in BiH

FBiH and RS have unclear legal provisions regarding taxation of foreign nationals who are employed in their home country and were sent on duty to BiH, and who pay their social security obligations in their home country. According to the Laws of Personal Income Tax of FBiH and RS, aliens are considered resident for tax purposes and are entitled to the same tax deductions as other taxpayers who are residents in FBiH and RS. Due to different social security systems in their home country, it is not clear whether and which contributions paid in his/her home country by an employee on duty in BiH may be recognized as tax-deductible expenses in FBiH or RS.

FBiH

Foreign persons cannot register as taxpayers in FBiH because the Rulebook²⁹ on Identification Numbers and Tax Registration for Taxpayers did not provide an option for foreign nationals and legal entities headquartered abroad to register as taxpayers in FBiH. This Rulebook has not been harmonized with the Personal Income Tax Law and the Corporate Income Tax Law. These laws require foreign persons to register as taxpayers, and they also mandate tax registration for legal persons that constitute a permanent business unit in FBiH under the Corporate Income Tax Law.

RECOMMENDATIONS

BiH Citizens

Laws regulating taxation of personal income for individuals residing in FBiH, RS and the District and earning their income in one of the other two administrative units need to be harmonized to ensure that all persons enjoy equal treatment regarding recognition of tax deductions.

In addition, FBiH and RS Salary Contribution Laws need to precisely define the obligation to pay social security contributions for individuals residing in FBiH, RS and the District and earning their income in one of the other two administrative units, as well as where and how these persons may exercise their social rights (health care, retirement benefits, child allowance, unemployment allowance).

Foreign Nationals Who are Employed in their Home Country and are on Duty in BiH

The Rulebooks on Personal Income Tax in RS, FBiH and the District need to precisely define recognition of tax deductions for foreign nationals sent on duty in BiH who pay social security contributions in their home countries, as well as techniques for recognizing other deductions these persons are entitled to under the Personal Income Tax Laws of FBiH, RS and the District.

²⁹ FBiH Official Gazette 39/02, 1/03

FBiH

The Rulebook on Identification Numbers and Tax Registration for Taxpayers in FBiH³⁰ needs to be amended or supplemented, enabling tax registration for foreign individuals who are taxpayers under the FBiH Personal Income Tax Law. A system also needs to be developed and linked with institutions authorized to carry payment transactions to ensure that these persons can pay their tax obligations without any administrative obstacles and that their payments are properly registered by the relevant tax authority.

- **Paying Social Security Contributions Using Straight-Line Rates**

ISSUE

There is a disharmony in the social security system between (i) the calculation and payment of social security contributions and (ii) the exercise of social rights by employers and employees paying contributions on their full income. FBiH and RS Salary Contribution Laws define that social security contributions are paid applying straight-line rates on employees' gross salaries. In FBiH, the amount of contributions is 41.5% of one's gross salary, while in RS the rate is 30.6% of one's gross salary. Since these rates are straight-line rates, i.e. the base on which contributions are calculated is not capped, taxpayers that pay higher salaries to their employees also have higher obligations to pay with respect to salary contributions. On the other hand, employees who pay higher amounts of social security contributions do not receive higher quality health services than those employees who pay their contributions calculated on a minimum base.

The situation is only slightly different with respect to retirement insurance rights. An employee who pays higher contributions will indeed be entitled to a higher pension than an employee who paid his/her contributions on a minimum base. However, the Retirement Insurance Fund of FBiH has limited the amount of pension such that the highest pension in FBiH during 2008 was KM 1,393. In RS, the highest pension during the same period was KM 1,450, however there is no cap on the amount of pension in RS. If the law permitted that high contributions are paid to commercial health and life insurance funds with insurance companies rather than to the FBiH and RS Health Insurance and Retirement Insurance Funds, then the insured parties who pay higher contributions could receive a higher quality health care. Also the amount of pension could be several times higher than the amount of pension defined under the FBiH Retirement Insurance Fund regulations. The legislation creates a situation where employers officially pay minimum permitted salaries or do not register their employees at all, which has direct impact on amount of collected contributions.

RECOMMENDATION

A thorough reform of the health and retirement insurance systems needs to be launched in order to achieve greater efficiency in collecting revenues for health and retirement funds, and also to accord adequate treatment to social security beneficiaries who pay higher contributions.

Since the reform of the health and retirement insurance systems will require several years, it would be beneficial if, as an urgent measure, a maximum limit was put on the bases serving to assess contributions.

³⁰ FBiH Official Gazette 39/02, 1/03

▪ **VAT Refund to Foreign Persons**

ISSUE

BiH VAT Law³¹ provides an option for foreign legal entities who do not have a registered business in BiH to refund an incoming tax assessed on sale of goods and provision of services by a BiH taxpayer or tax assessed on goods imported into BiH. The Rulebook³² on VAT Law provides that foreign legal entities that do not have a registered business in BiH³³ and buy goods or receive services from taxpayers in BiH (related to transaction of business abroad) are entitled to VAT refunding to be exercised by submitting a request to ITA BiH. As this Rulebook only covers freight companies, persons displaying goods in fairs, airlines and the like, there are misunderstandings in practice as to when a foreign taxpayer is entitled to a VAT refund for VAT levied in BiH.

RECOMMENDATION

The Rulebook on VAT Law or some other piece of secondary legislation should specifically identify all situations in which a tax payer without a registered business in BiH is entitled to refund VAT levied in BiH. The explanation should be in line with the EU directives on indirect taxation and the methodology of VAT refunding used in EU countries that apply these directives.

▪ **Lack of Harmonization between Instructions and the VAT Law**

ISSUE

The Law introduces a VAT obligation payment at the earliest occurrence of the following: (i) delivery of goods or services, (ii) issuance of invoices in accordance with this Law and (iii) payment or partial payment made before the issuance of invoices.

The provisions of the Law are fully in line with the EU directives. However, the instructions for completing the VAT form prescribe that the input tax can only be deducted for the invoices that were issued and received in the month for which the VAT form is being submitted. In practice, this provision creates problems for taxpayers in the service sector.

RECOMMENDATION

It is necessary to harmonize the Instructions for completing VAT form with Articles 17 and 32 of the BiH VAT Law and the ITA BiH internal instructions that allow tax deduction for incoming invoices received by 10th of the month or before the submission of the VAT form. In addition, it is necessary to allow deduction of input tax by the same criteria as the formation of a tax liability or, in other words, the deduction of input tax in the same month at the earliest occurrence of the following actions: (i) delivery of goods or services, (ii) issuance of invoices in accordance with this Law; and (iii) payment or partial payment made before the issuance of invoices.

³¹ Article 53

³² Article 93

³³ Carriers, individuals who exhibit goods at trade fairs, air cargo services and etc.

▪ **Inefficient Forced Collection on Debtors' Bank Accounts**

ISSUE

The fact that companies may have more than one transaction account with different banks causes problems in cases of the forced collection. Frequently a debtor company that is subject to a forced collection procedure has only one of its transaction accounts blocked. This makes it possible for such company to continue fulfilling its financial obligations to other companies without any problems using its remaining accounts with other banks. During forced collection actions, blocking of a debtor's transaction account does not mean that all of its bank accounts with other banks will be blocked automatically. An additional problem is that the forced collection against a debtor company is not enforced in a single place, in only one of the debtor's banks. In such cases, the insolvent company is able to choose personally which outstanding obligations will be satisfied and in which order.

This contravenes provisions of the entity Financial Payments Laws, which provide a precise order of payment for obligations of an insolvent debtor. Once a single account of a debtor is blocked, the company should be treated as an illiquid participant in payment transactions in all other banks where the company has bank accounts, and all these bank accounts should be blocked until a full satisfaction of all obligations that are subject of the forced collection. The more accounts an illiquid debtor has with different banks, the more complicated and inefficient is the procedure of collecting creditors' claims, thus creating legal uncertainty.

RECOMMENDATION

The entity laws regulating payment transactions should be upgraded by including mechanisms by which all company bank accounts will be blocked.

- **FEDERATION OF BiH**
- **CORPORATE INCOME TAX**
 - **A Permanent Business Unit Cannot be Registered as a Taxpayer**

ISSUE

FBiH Corporate Income Tax Law provides for the instrument of a permanent business unit as a mean of taxing non-resident legal entities transacting business in FBiH. The Rulebook on Corporate Income Tax Law imposes an obligation on permanent business units of foreign legal entities to register as taxpayers in FBiH and pay corporate income tax through annual tax returns, as any other taxpayer in FBiH. However, the Rulebook on Identification Numbers and Tax Registration for Taxpayers in FBiH³⁴ did not provide an option for legal entities headquartered abroad to register as taxpayers in FBiH. As a result of this discord between these Rulebooks, foreign legal entities cannot register as taxpayers in spite of the fact that the Corporate Income Tax Law requires them to register as taxpayers. This legal disharmony gives rise to confusion and tax-related dilemmas as to whether there are grounds to apply withholding tax to foreign legal entities whose business in the territory of FBiH constitutes a permanent business unit.

³⁴ FBiH Official Gazette 39/02, 1/03

RECOMENDATION

Amend or supplement the Rulebook on Identification Numbers and Tax Registration for Taxpayers in FBiH to enable foreign legal entities which constitute permanent business units in FBiH to register as taxpayers.

- **Application of Tax Relief to Production Companies**

ISSUE

The FBiH Corporate Income Tax Law allows tax payer who, during a period of five successive years, has made investments in production on the territory of the FBiH worth not less than KM 20 million, to be exempted from the obligation to pay corporate income tax for a period of five years, beginning the first investment year during which not less than four million KM must be invested. In order to start using this tax relief, the taxpayer is required to submit an Investment Plan, approved by an authorized body or person of the taxpayer, for investing at least KM 20 million over a five-year period.

The Rulebook does not specify a final date for submitting this Investment Plan, and this lacking information in the Regulation results in a situation where competent tax authorities refuse to allow this tax relief to be exercised claiming that the Investment Plan was submitted late. Due to this formal shortcoming, numerous taxpayers were prevented from using this tax relief for the tax year 2008, or have sought protection of their rights by filing legal actions against the FBiH Tax Authority.

RECOMMENDATION

FBiH Rulebook on Corporate Income Tax should specify a final date for submitting the Investment Plan as a basis to use the tax relief in the future. In addition, the use of this tax relief for 2008 should be approved for all legal entities who have qualified for this relief regardless of when they have submitted their five-year Investment Plan.

Summary of Recommendations

TAXES

• **Legislation:**

BiH

- Laws regulating taxation of personal income for individuals residing in FBiH, RS and the District and earning their income in one of the other two administrative units need to be harmonized to ensure that all persons enjoy equal treatment regarding recognition of tax deductions
 - Regulations on Personal Income Tax in FBiH, RS and the District need to precisely define recognition of tax deductions for foreign nationals sent on duty in BiH who pay social security contributions in their home countries, as well as techniques for recognizing other deductions these persons are entitled to under the Personal Income Tax Laws of FBiH, RS and the District
 - Initiate reform of health and retirement insurance system
 - The Law on VAT or respective secondary legislation should specifically identify all situations in which a tax payer without a registered business in BiH is entitled to VAT refund levied in BiH
 - Harmonize the Instructions for completing VAT form with the BiH Law on VAT and with the ITA BiH internal instructions to allow tax deduction for incoming invoices that are received by 10th of the month or before the submission of the VAT application
 - The entity laws regulating payment transactions should be upgraded by including mechanisms by which all company's' bank accounts will be blocked
- FBiH**
- Supplement the Rulebook on Taxpayer Registration and Identification to allow registration of foreign legal entities which constitute permanent business units in FBiH as taxpayers
 - The Corporate Income Tax Law regulation should specify a final date for submitting the Investment Plan as a basis to use the tax relief for production companies

• **Practical Aspects:**

BiH

- Publish all bilateral Agreements on website of the BiH Ministry of Treasury and Finance. The Ministry to issue the Instructions for implementation of Agreements that is aligned with interpretations and positive taxation practice of the OECD countries

4.5 LABOR RIGHTS AND TAX RELATED ISSUES

The labor market's regulatory framework in BiH is not harmonized. This situation presents a challenge to companies operating across the country, the practical result of the application of different laws and regulations is an unequal treatment of employees in the company. For example, for the same job at the same company, two persons living in different places³⁵ have different net salaries due to differences in the tax policy or have different conditions of maternity leave.

Table 6

Labor Rights and Tax Related Issues	
Improvements: -	Weaknesses: BiH <ul style="list-style-type: none"> • Lack of harmonization of laws, rules and practices among entities, District and in FBiH cantons • Unequal treatment of employees depending in which administration unit they live and in which part of BiH is a company headquarter • Lack of harmonization in regard to: <ul style="list-style-type: none"> (i) Annual Leave Bonus (ii) Commuting Allowance (iii) Sick Leave Payment (iv) Maternity Leave Payment (v) Refunding of Employer's Costs for Sick and Maternity Leaves • Different taxation of severance pay for employees being retired or being laid off
Key Institutions Involved: <ul style="list-style-type: none"> • Respective entity ministries and tax authorities • Cantonal tax authorities • Municipal tax authorities 	

As a result of varying types and amounts of contributions, computation methods and practices, companies have found themselves in a delicate position while implementing laws and regulations, and are facing a series of practical problems in the process. The table below presents an overview of different types of payments and tax treatment at BiH level for meal allowance, annual leave bonuses, commuting allowance, sick leave and maternity leave payments.

Table 7

Type of Payment	Legal and Tax Framework					
	FBiH		RS		BD	
	Regulation	Tax treatment	Regulation	Tax treatment	Regulation	Tax treatment
Meal allowance	Max 2% of the average salary in FBiH according to data published by the Federal Office of Statistics	Nontaxable	Costs of 1 meal during one business day amounting to 50% of the meal allowance base rate	Taxable	Not defined	Taxable
Annual leave bonus	1 average net salary in FBiH for 3 months preceding payment or 70% employee salary paid during the last 3 months ³⁶	Nontaxable	At least one employee salary or 3 unit labor costs defined in industry or individual collective agreements,	Taxable	Not defined	Taxable

³⁵ Residence is in different cantons or administrative unit within the BiH

³⁶ Whichever is more favorable to the employee

	Legal and Tax Framework					
	FBIH		RS		BD	
			whichever is more favorable to the employee			
Commuting allowance	Up to the full price of the commuting pass	Nontaxable up to the amount defined under relevant legislation	Full price of the commuting pass	Nontaxable up to the actual price of the monthly commuting pass for public transportation	Not defined	Taxable
Sick leave	At a minimum, 80% salary is paid; 50-80% average salary in FBIH is refunded for sick leaves over 42 days	Taxable for payments made. Sick leave payment is not considered income, and is not subject to the personal income tax. All contributions are paid	At a minimum, 70% salary is paid; 70% average net employee salary is refunded for sick leaves over 30 days (no refund under 30 days)	Taxable for payments made	At a minimum, 80% salary is paid; 80% average net salary in FBIH is refunded for sick leaves over 42 days (no refund up to 42 days)	Taxable for payments made
Maternity leave	No obligation to pay; the employee receives between 50% of her average salary and the average salary in FBIH for a period of 12 months	Taxable for payments made by the employer	100 % average salary the employee has received in the past three months. 92% net salary is refunded (11 of 12 net monthly salaries – taxes and contributions are paid by the employer)	Taxable for payments made	100% employee salary. 100% net salary is refunded (taxes and contributions are paid by the employer)	Taxable for payments made

Below are the issues faced by FIC members and recommendations for the improvement.

SURVEY: ISSUES AND RECOMMENDATIONS

- **Annual Leave Bonus**

ISSUE

In RS and the District, the annual leave bonus is considered taxable income and is subject to payment of contributions, while FBIH has adopted a special Decree stipulating that this type of allowance, up to a prescribed amount, is not considered a taxable income.

RECOMMENDATION

Legal frameworks in the entities and the District need harmonization. It is assumed that this type of payment may become taxable in FBIH. This will require adjustments of the rates for contributions and personal income tax in FBIH so that the costs of these payments to employees are not exceedingly high and significantly higher than in other parts of BiH.

- **Commuting Allowance**

ISSUE

In FBiH and RS, the commuting allowance is not taxable up to legally-defined limits. The legal framework in the District does not provide for commuting allowance and such allowance is considered to constitute income that is subject to taxes and contributions.

RECOMMENDATION

Commuting allowance should be identified in the District, so that the District legislation is harmonized with the FBiH and RS legislation in this respect.

- **Sick Leave Payment**

ISSUE

The FBiH umbrella Health Insurance Law is applied differently at cantonal levels, and the entities and the District Health Insurance Laws are not harmonized. In FBiH (in most of the cantons) and the District, the cost of a sick leave lasting up to 42 days is paid by the employer. The minimum payment the employer is obligated to make to the employee is 80% of the employee's salary. For leaves over 42 days, the cost of sick leave is paid by the Health Insurance Fund. In RS, the cost of sick leave under 30 days is paid by the employer, with the minimum payment the employer is required to make to the employee at 70% of the employees salary. For leaves over 30 days, the cost is paid by the Health Insurance Fund.

RECOMMENDATION

Legislation in different cantons in FBiH requires harmonization, and so do legal frameworks in the entities and the District. There should be a single duration of sick leave defined for both the employer and the Fund. For example, a period under and over 30 days could be defined and the amount of 70% salary could be defined as a minimum payment to an employee during a period of temporary work inability.

- **Maternity Leave Payment**

ISSUE

The legal framework in FBiH does not require that payments to employees on maternity leave are paid by the employer, transferring this obligation to the Cantonal Centers for Social Work. Some Cantons make no payments whatsoever, leaving young mothers with virtually no rights to exercise. On the other hand, Cantons that do make maternity leave payments have limited these amounts to 50% of either the employee's salary or the average salary in FBiH, depending on the Canton.

Legal frameworks in RS and the District are harmonized and provide for employer's obligation to pay child-bearing women monthly amounts of 100% employee's average monthly salary for the past three months prior to maternity leave. Payments made on this basis are refunded to the employer 100%, which means that the only net costs to be borne by the employer are contributions paid on these types of remuneration. An additional problem is the change of address of a young mother: if she changes the Canton or another administrative unit in BiH, she will be prevented from exercising her right to maternity payment. For instance, if a young mother has changed her Canton of residence within a period less than 1 year prior to childbirth, she will not be entitled to receive maternity payment neither in the Canton she came from, nor in the Canton she came to.

RECOMMENDATION

Regulations and practices regarding maternity payments need to be harmonized at Cantonal level in FBiH, and the FBiH legal framework needs to be harmonized with the RS and District regulations in respect of (i) defining maternity payment as 100% employee’s average monthly salary for the past three months prior to maternity leave and (ii) the employer’s obligation to bear the costs of contributions for this type of employee’s payment.

At the same time, relations between Cantons or administrative units in BiH need to be coordinated in terms of exercising one’s right to maternity payment irrespective of whether the young mother has changed Cantons or administrative units where she resides.

- **Refunding Employer’s Costs for Sick and Maternity Leaves**

ISSUE

FBiH has disharmonious practices and uneven amounts of refunds for sick leaves over 42 days at Cantonal level, ranging from 50% to 80% average net salary in FBiH. As the average net salary in FBiH is generally lower than an employee’s net salary, this means employers are forced to pay higher costs (in terms of the net salary and the contributions) for employees on sick leave than the amount they will be refunded. With respect to maternity leaves, the employer is not refunded because the employer itself is not obligated to pay its employees who are on maternity leave. In addition, refunding in some Cantons in FBiH is not provided on the grounds that “the Fund has no money allocated for such purposes.”

In RS, refunding is provided for employees on a sick leave for more than 30 days, amounting to 70% of the employee’s average salary. Maternity payment refunding includes 11 net monthly salaries of the employee on maternity leave. In the District, refunding is done for employees on a sick leave over 42 days and amounts to 80% of the employee’s average salary. Maternity payment refunding includes 100% net monthly salary of the employee on maternity leave.

A sample comparative overview of employers’ costs for the paid sick leave and refunding of these costs in the entities and the District is provided in the table below:

Table 8

Description	FBiH	RS	BD
Net wage of employees in regular work	1.000	1.000	1.000
Personal deduction	300	300	290
Payment to employee on regular work	930	944	929
Net wage of employee on sick leave	800	700	800
Basis for calculation of contributions	1.159	1.009	1.151
Contributions paid by employer	481	309	420
Basis for tax	500	400	510
Tax	50	32	51
Payment to employee on sick leave	750	668	749
Total cost to employer	1.281	1.009	1.220
Possible refund to employer	634	661	590
Total cost to employer after the refund	647	348	630

RECOMMENDATION

Harmonize the entity and District legislative frameworks and define (i) that the basis to calculate the amount of refund is the employee’s average monthly salary during the last three active months, (ii) define a single refunding coefficient of 80% for all administrative units in BiH, and (iii) provide for refunding costs for sick leaves over 30 days. Harmonize regulations and practices with respect to sick leave refunding at Cantonal levels in FBiH.

Refunding maternity payments in FBiH and RS should be harmonized with the legislative framework in the District by refunding 100% net salary of the employee on maternity leave, and by establishing instruments to secure refunding of employers at all levels; otherwise, this situation will produce an unattractive and insecure business climate.

- **Taxation of Severance Pay for Employees Being Retired or Being Laid Off in the District**

ISSUE

The RS and FBiH legislation contains virtually identical solutions regarding severance pay for employees retiring or being laid off. However, the District Personal Income Tax Law does not exempt severance pay from taxation, defining it as a taxable income that is also subject to any applicable contributions.

RECOMMENDATION

Since the District does not have its own Labor Law and applies the Labor Law of the entity in which the company is registered, the Personal Income Tax Law in the District needs to be harmonized with the Personal Income Tax Laws in RS and FBiH, exempting thereby severance pay from taxation in the District.

Summary of Recommendations

LABOR LAW AND TAX RELATED ISSUES

- **Legislation:**
 - BiH**
 - Harmonize principles of accounting and the contribution rate on different government levels (entities, District and cantons in FBiH) for:
 - (i) Annual leave bonus
 - (ii) Commuting allowance
 - (iii) Sick leave payment
 - (iv) Maternity leave payment
 - (v) Refunding of employer’s costs for sick and maternity leaves
 - Regulate taxation of severance pay for employees being retired or being laid off in the District
- **Practical Aspects:**
 - BiH**
 - Establish mechanisms that will enable refund to employers at all levels, otherwise, an uncertain business environment is being created

4.6 LAW ON ENFORCEMENT PROCEDURE

In order to ensure effectiveness of the executive process and collection of receivables, it is necessary to amend the existing entities Law on Enforcement Procedure.

Table 9

Law on Enforcement Procedure	
Improvements: -	Weaknesses: BiH
Key Institutions Involved: <ul style="list-style-type: none"> • Respective entity ministries • Courts 	<ul style="list-style-type: none"> • Unclear regulation • Inconsistency in implementation of the Law, violation of the Law • Uneven practice of judges in various courts and the judges in the same court • Lack of extraordinary remedy so that there is no higher court then cantonal in FBiH/district in RS; so the court practice is exercised only on these levels • Different court taxes

Below are listed some of the issues related to the entities Law on Enforcement Procedure that FIC Members are outlining.

SURVEY: ISSUES AND RECOMMENDATIONS

- **BOSNIA AND HERZEGOVINA**
- **Process of Determination of Debtor's Property Does Not Include Authentic Document**

ISSUE

Under the Law, a petitioner may request, as a part of his/her petition for execution that is based on an enforceable document, that the court orders the judgment debtor or other persons to submit to the court details of judgment debtor's property before a writ of execution is issued. This option is not available if the petition for execution is based on an authentic document, which means that the petitioner cannot request the court to seek information on debtor's property from the debtor and other persons. In practice, however, these are authentic documents that are frequently used to institute execution proceedings (in particular promissory notes).

RECOMMENDATION

The Law needs to be expanded to include authentic documents in addition to enforceable documents for the purposes of identifying judgment debtor's property.

- **Abuse of the Proceeding in Case when an Objection is Submitted Against a Writ of Execution**

ISSUE

Article 50 of the Law defines that, in case a writ of execution was passed based on an authentic document, the debtor may challenge such writ of execution by submitting

objections that must include a “reasoning”. Paragraph 4 of this Article states that, in case a writ of execution is challenged in full or only in the part where the claim was found to be valid, a petition for execution will be considered to constitute a legal action. In such case, the court has to act pursuant to provisions of civil procedure, which effectively means that the case in question will be forwarded to the civil procedure department for decision. According to Paragraph 5 of the same Article, in case a debtor submits such an objection, the court will defer execution and will continue with the execution instituted on the creditor’s petition only after the writ of execution becomes final if the creditor wins the civil action.

This legal solution has proven inadequate in practice because it leaves room for debtors to submit groundless objections and stall payment of their obligations, needlessly prolonging court proceedings. Specifically, the Law does not specify the way and the degree in which an objection submitted by the debtor must provide reasons. Therefore, the debtor may state all kinds of allegations in the reasoning of an objection regardless of their grounds and accuracy. This legal solution is particularly deficient in cases of promissory notes and checks, whose purpose is to ensure a quick collection of claims.

RECOMMENDATION

The Law needs to preclude such stalling of collection of claims, primarily for promissory notes and checks. For example, in case an objection is submitted against a writ of execution, the execution proceedings should continue while the debtor (not the petitioner-creditor) should be instructed to file civil action instead. Another possible solution would be to prevent the debtor from making arbitrary and groundless allegations in his/her objections by limiting the civil procedure only to allegations made in the related objection.

- **Unclear Definition of Real Property Value**

ISSUE

The Law provides that persons who qualify for satisfaction of their claims from sale proceeds of a real property may ask that execution be discontinued if the appraised value of the real property in question does not cover even a part of the petitioner’s claim. In practice, the words “a part of the claim” lead to different interpretation by courts.

RECOMMENDATION

To avoid any dilemmas regarding suspension of execution proceedings, the Law needs to define more precisely the meaning of “a part of the creditor’s claim”, i.e. it needs to specify an exact amount/percentage of the claim, such as 1/3 or the like.

- **Abusing Process of Determining Selling Price**

ISSUE

The Law provides that persons collecting their claims through the sale may agree, in a statement made for the court record, that the real property may be sold in an auction for a price lower than the price defined in certain paragraphs of the Law. In practice, this frequently leads to abuse and prearranged auctions among ranked creditors.

RECOMMENDATION

These cases need to be defined such that a mechanism is ensured to prevent these identified abuses.

- **Execution on Movable Property**

ISSUE

In cases of execution against movable property, it is often a case in practice that the debtor will sell the movable to avoid execution. In practice, this problem is particularly common when execution proceedings are instituted on motor vehicles. To avoid a payment of debt, the defendant may sell the motor vehicle before the execution proceedings and thereby avoid meeting his/her obligations to a petitioner.

RECOMMENDATION

Regulations should provide for recording a pending execution on a passenger motor vehicle in the vehicle records with the competent office of the Ministry of Internal Affairs and in the vehicle registration certificate. This would prevent sale of a vehicle before a petitioner's claim is satisfied, as well as a factual transfer of a vehicle by granting a power of attorney to other persons to use the car.

- **Rules for Administering Course of Auction are not Precise**

ISSUE

The Law defines the method of sale and scheduling of a court hearing for auction and sale; however, articles of the Law do not include provisions on rules for administering course of an auction. It happens in practice that out of five interested buyers, three "buyers" immediately bid for a price that is substantially above the appraised value. Following this, a list of three best bidders is produced which will not include bids made by other prospective buyers. Later on, three best bidders withdraw their bids and the court at the third hearing will have to issue a decision to suspend the execution proceedings, including all the consequences which a restart of execution entails (e.g. statute of limitations).

RECOMMENDATION

To avoid abuses in the auctioning procedure, the Law needs to define the course of auction in detail because currently each court determines the terms and course of auction on its own.

- **Different Interpretation of Provisions on Real Estate Sale**

ISSUE

The Law also provides that at the third hearing, "a real property may be sold without restrictions on the lowest price". Different courts interpret this provision differently, permitting purchases for KM 1 in some cases and prohibiting such purchases in other cases.

RECOMMENDATION

The Law needs to clearly define the meaning of the provision that a real property "may be sold without restrictions on the lowest price".

- **Different Courts Practices in Making Decisions on Settlement**

ISSUE

Some courts pass decisions detailing satisfaction of claims according to which the buyer (petitioner) is satisfied for an amount of KM 1 (i.e. they permit purchases for KM 1), while other courts pass decisions according to which the buyer is satisfied in the amount of appraised value of the real property in question, regardless of price that was paid for the property.

RECOMMENDATION

The decision detailing satisfaction of claims needs to be clearly defined by determining the extent to which a creditor has been satisfied in cases where the creditor is also the buyer of the pledged real property.

- **Incomplete Information About Debtor's Debt**

ISSUE

The Law provides that a debtor may sign a certified document to give permission to collect a creditor's claims by garnishing a part of his/her salary and by paying such money directly to the creditor as described in the document. Such document has the legal effect of a writ of execution (signed and stamped, and sent by registered mail with a return receipt). In addition to cases when employers simply do not act in accordance with this permission, the greatest problem in practice has proven to be the fact that employers sign and stamp certificates of monthly salary for an unlimited number of loans for a single employee, and also the fact that for each new loan, employers do not provide new creditor with information on employee's present level of debt. This results in a situation where the creditor, who was issued the first certificate of monthly salary and the certified permission, is unable to enforce an activated permission because subsequent permissions have already been activated for the purpose of garnishment. This situation is further complicated in case of guarantors (once activated, a potential obligation becomes a real obligation).

RECOMMENDATION

The Law needs to specify that employers are obligated to list all present debts of the employee, whether actual or potential, in the certificate of employee's salary, and also the Law needs to ensure that the creditor who was first issued a certified permission will have precedence in garnishment.

- **Deadline Not Defined Properly in:**
 - **Settlement on Petitioner's Claims**

ISSUE

The Law stipulates that in the process of settling the petitioner's claims, the petitioner will be settled immediately after the court issues a decision to settle the claim. Since the Law does not provide a specific timeframe, this leaves room for varying interpretations in practice.

RECOMMENDATION

The Law should clearly define a deadline to satisfy petitioner's claims, such as within 15, 30 or 60 days.

- **Hearing to Split Sales**

ISSUE

After certain conditions defined in the Law are met, the court will schedule a hearing to split the sales proceeds if there is more than one petitioner or third parties who qualify for satisfaction of their claims. The Law does not provide a specific timeframe within which the court must schedule a hearing to split the sales proceeds.

RECOMMENDATION

The Law needs to define a specific timeframe within which the court must schedule a hearing to split the sales proceeds.

- **Decision on Settlement**

ISSUE

The Law stipulates that after the hearing is completed, the judge will, without delay, issue a decision to settle claims of petitioners and other persons who qualify for the settlement of their claims.

RECOMMENDATION

The Law should define a specific deadline in which judge has to issue a decision on settlement e.g. within 15 or 30 days.

Summary of Recommendations

LAW ON ENFORCEMENT PROCEDURE

• **Legislation:**

BiH

- Amend Law to include authentic documents in addition to enforceable documents for the purposes of identifying judgment debtor's property
- The Law should preclude stalling of collection of claims, primarily for promissory notes and checks. For example, in case an objection is submitted against a writ of execution, the execution proceedings should continue while the debtor (not the petitioner-creditor) should be instructed to file civil action instead
- Avoid dilemmas regarding suspension of execution proceedings, the Law needs to define more precisely the meaning of "a part of the creditor's claim", i.e. it needs to specify an exact amount/percentage of the claim, such as 1/3 or the like
- Define a mechanism to prevent abuses in the process of determining the selling price
- Introduce recording for a pending execution on a passenger motor vehicle in the vehicle records with the competent office of the Ministry of Internal Affairs and in the vehicle registration certificate. This would prevent sale of a vehicle before a petitioner's claim is satisfied, as well as a factual transfer of a vehicle by granting a power of attorney to other persons to use the car
- The Law should define the course of auction in detail in order to avoid abuses
- Law should clearly define the meaning of the provisions that a real property "may be sold without restrictions on the lowest price"
- The Law should define decision on satisfaction of claims, i.e. clearly determine to which extent a creditor has been satisfied in cases where the creditor is also the buyer of the pledged real property
- The Law should specify that employers are obligated to list all present debts of the employee, whether actual or potential, in the certificate of employee's salary, and also the Law needs to ensure that the creditor who was first issued a certified permission will have precedence in garnishment
- The Law should clearly define a deadline to satisfy petitioner's claims, such as within 15, 30 or 60 days
- The Law should define a specific timeframe within which the court must schedule a hearing to split the sales proceeds
- The Law should define a specific deadline in which judge has to issue a decision on settlement e.g. within 15 or 30 days

4.7 CONSTRUCTION PERMITS

Generally speaking, some progress has been made in this area over the past few years. However, according to the World Bank "Doing Business" report for 2010, published in September 2009, the number of procedures, the time required and the costs of construction permits and approvals, as well as the time required for all inspection visits and for securing all required connections have remained on the same level as before in BiH. Of a total of 183 countries included in the research, BiH ranked 136 in the simplicity and rate of procedure. An investor has to complete 16 procedures that require, on average, some 250 days. While the report presented data aggregated at BiH level, there has been a significant reduction in the number of days required to obtain permits in certain segments of the procedure in some municipalities.

Table 10

Construction Permits	
<p>Improvements:</p> <ul style="list-style-type: none"> • A Manual has been developed including procedures and relevant laws to obtain all required permits and approvals • The procedure of issuing land-registry certificate has been significantly shortened • The urban permit issuance procedure in Banja Luka has been automated and significantly accelerated (a pilot project) • Reforms of the Urban Planning and Construction Laws have been initiated in cantons in FBiH, but the rate of their adoption is still slow 	<p>Weaknesses:</p> <p>BiH</p> <ul style="list-style-type: none"> • Different legislation in entities, the District, and among cantons in FBiH • Lack of spatial, regulation and master plans • Vague wording in laws leaves room for different interpretation by officials • Lack of harmonization in the procedure among different municipalities and different practices in processing applications by municipal officials • Failure of competent institutions to honor legally-defined timeframes • Unresolved property and legal relations
<p>Key Institutions Involved:</p> <ul style="list-style-type: none"> • Respective entity ministries, roads directorates • Cantonal respective ministries, institutes for planning and constructions, public enterprises • Municipalities 	

In a majority of cases, investors are still facing issues related to vague wording in different laws, lack of harmonization in procedures, non-transparent procedures and inefficient administrative staff who is supposed to provide an adequate and timely support to investors. In addition to entity laws in FBiH, there are also cantonal laws regulating issue of permits and approvals, which further complicates the process for the investor because experience gained in one municipality cannot be relied on when obtaining permits in another municipality. Through the cooperation between local institutions and international donors the procedure of issuing certain permits and approvals for construction in some municipalities in BiH has been considerably shortened and streamlined for end users; however, this process continues to be arduous and lengthy in other municipalities.

With the launch of a pilot project in Banja Luka and the introduction of the EDMWS system for electronic document management and tracking, the procedure of issuing an urban permit

has been reduced in length from 90 to 30 days. Between March 2009, when this system was commissioned, and the end of August 2009, the system processed 1460 applications³⁷. This well designed system and efficient application processing have shown that the process of issuing approvals/permits may be significantly improved to the benefit of both investors and municipal bodies.

In light of the complexity of the regulatory framework regulating the issuance of construction permits, the USAID SPIRA Project has developed an Investors Reference Manual – Construction Regulations, which includes comprehensive information about regulations, the procedure itself, appeals procedure, relevant departments and many other practical pieces of information. The Manual is posted at the web site of the BiH Ministry of Foreign Trade and Economic Relations and the Ministry committed to continue updating the Manual.

The input of land-registry folios into an electronic database in BiH is at its final stage, and therefore the procedure of obtaining a land-registry certificate has been considerably shortened. If the folio is digitalized, the certificate can be immediately obtained after the request is submitted. The challenge for the governments remains the process of update and harmonization of data between the cadastre and land registry information³⁸. The Municipality of Gradiska is exceptional in this respect because all land-registry records have been destroyed there, and investors are forced to use only cadastral records.

SURVEY: ISSUES AND RECOMMENDATIONS

- **BOSNIA AND HERZEGOVINA**
- **Inefficient Processing of Applications**

ISSUE

The rate of processing of received applications and the treatment of investor varies from municipality to municipality, the greatest variation being between developed and undeveloped municipalities. Officials in undeveloped municipalities are more willing to support the investor, while in more developed municipalities one has to wait longer to get permits due to the greater inflow of applications. In general, the main obstacles in the application processing procedure are inconsistent interpretation of laws, unclear procedure, inadequate staff efficiency and number of staff, no coordination in data sharing among institutions/officials, and a lack of understanding regarding investors' needs. Variation in the time required is considerable: some municipalities take 15 days, while others need a whole year to issue certain approvals/permits. In spite of the Administrative Procedure Law mandating a period of 30/60 days to process an application, in extreme cases decisions may take up to two years.

RECOMMENDATIONS

By introducing procedures and a system of electronic data exchange among institutions involved in the entire procedure of issuing approvals and permits, the process could see significant improvements and reduction in the time required. Since pilot projects launched in some cities have yielded great results, these good practices need to be implemented in all municipalities and the system needs to be improved on a continuous basis. Municipalities could organize consultations for investors to provide clarifications regarding laws and to

³⁷ Banja Luka City administration

³⁸ Unit for implementation of the World Bank Project for Land Registry Administration in FBiH within the FBiH Ministry of Justice, Land Registry Project

answer any questions. A 2008 White Paper recommendation was to develop a system whereby officials would sort incoming applications using parameters such as: private or civil sector, project value, introduction of a VIP treatment for large investment projects.

- **FEDERATION OF BiH**
- **Construction Permit Transfer in Canton Sarajevo**

ISSUE

If during the construction, ownership rights over the property under construction should be transferred, the process of transfer of the construction permit is not precisely defined neither by the Law on Spatial Planning and Land Use of FBiH nor by the Law on Physical Planning of Sarajevo Canton. A vague wording of the Laws leads to different practices applied by the municipalities. Uneven practices are an impediment to the efficient process of transferring the construction permit for the property.

RECOMMENDATION

To eliminate doubts on a construction permit transfer process, it is necessary to define in the respective Laws the conditions for transferring the construction permit from one to another investor. Also, it is necessary to adopt a new Law on Construction at the FBiH level and also at the cantonal level, which would in turn streamline the process of issuing all related permits. The new Law needs to eliminate the issuance of the urban permit as a separate permit, and to precisely regulate conditions and procedures for issuing construction permits and for transferring construction permit from the moment the construction permit is issued until the usage permit is issued or, in other words, until the final certificate for the object is issued.

- **REPUBLIKA SRPSKA**
- **Law Does Not Define Treatment of Telecommunication Sector**

ISSUE

The RS Urban Planning Law does not include the telecommunication sector and fails to clearly define the landline infrastructure and mobile networks. Since the field of telecommunications infrastructure has not been defined by the Law, municipalities have no clear procedure for the issuance of permits in this field. This is the reason some municipalities need 15 days while others require as much as one year to process all documents required for a permit. An additional problem is the fact that the installation of a base station is not provided for in the spatial plan, but some municipalities do provide for it in their master and regulation plans, which further complicates the procedure.

RECOMMENDATION

To resolve any dilemmas in obtaining permits, the RS Urban Planning Law needs to incorporate the telecommunication infrastructure to cover set up of network, equipment and facilities.

Summary of Recommendations

CONSTRUCTION PERMITS

- **Legislation:**

- **FBiH, Canton Sarajevo**

- Regulate issues of construction permit transfer in Canton Sarajevo
- **RS**
 - In the RS Urban Planning Law incorporate telecommunication infrastructure to cover the set up of network, equipment and facilities

- **Practical Aspects:**

- **BiH**

- Improve processing of requests for construction permits in the whole BiH
 - Comply with legal deadlines
 - Develop a priority system where officials will sort all incoming requests according to certain criteria: private or civil sectors, project value, for a large scale investment projects introduce special treatment

4.8 COMPANY LIQUIDATION LAW IN FBiH

Although the procedure of liquidation (winding-up) of a company is conducted when company has sufficient financial assets to cover all liabilities, this procedure may still be lengthy due to imprecise regulations and different practices used by different courts.

Table 11

Company Liquidation Law in FBiH	
Improvements: -	Weaknesses: <ul style="list-style-type: none"> • Vague wording in the legislation • Uneven practices applied by judges within the courts in the process of liquidation
Key Institutions Involved: <ul style="list-style-type: none"> • Respective entity ministries • Courts 	

Below are the issues related to the Company Liquidation Law in FBiH faced by FIC members and recommendations.

SURVEY: ISSUES AND RECOMMENDATIONS

- **Vague Wording of Liquidation Procedure**

ISSUE

Liquidation of companies in FBiH is regulated by the Liquidation Law and the Company Law. The legislation do not provide adequately for the liquidation procedure itself, nor do they provide adequately for the position of liquidator during the procedure and for the activities a liquidator may or must take. For instance, there are no rules defining the moment at which the liquidator may terminate employment contracts of employees of the company being liquidated; there are no rules defining which legal transactions the liquidator may effect on behalf of the company, and which transactions are not permitted (this relates primarily to incurring new liabilities on behalf of the company unrelated to the liquidation procedure); there are no rules defining the moment at which the liquidator may start converting a company's assets into cash and which conversion method is to be applied, etc. In practice, this gives rise to numerous difficulties and results in a legal uncertainty. In order to address legal gaps they face, some courts of law in FBiH have been applying corresponding provisions of the Bankruptcy Proceedings Law to those aspects of the liquidation procedure that were not addressed by the Liquidation Law and the Company Law. However, there is no legal basis for such subsidiary application of the Bankruptcy Proceedings Law, which leads to different interpretations in practice and application of provisions of the Bankruptcy Proceedings Law to liquidation.

RECOMMENDATION

The Liquidation Law needs to more adequately address the course of liquidation procedure as well as the position, rights and obligations of the liquidator; alternatively, the Liquidation Law should include a provision allowing for an adequate application of provision of the Bankruptcy Proceedings Law to those aspects of the liquidation procedure that have not been defined.

- **Different Practices in Courts Regarding Submission of Documents for Liquidation**

ISSUE

The regulations do not include a comprehensive list of documents the petitioner needs to submit to the court along with the petition for initiating a liquidation procedure. This has led to great variations in practices used in different courts. Some documents, which are considered mandatory by certain courts and without which these courts will not even receive a petition for initiating a liquidation procedure, are not at all required by other courts. In addition, it is not clear when and what types of documents need to be submitted in the course of procedure³⁹.

RECOMMENDATION

The Liquidation Law needs to include a list of all documents that a liquidation petitioner is required to submit, and also to precisely define schedule for the submission of required documents.

- **Different Practices in Courts Regarding Submission of a Certificate Proving Payment of Tax Liabilities upon Launching Liquidation Procedure**

ISSUE

Certain courts of law in FBiH require that, along with the liquidation petition, a certificate must be submitted proving payment of company's tax liabilities, issued by the relevant tax authority. The court in Sarajevo refuses to receive any liquidation petition lacking this certificate. However, this practice currently has no adequate legal basis. Other courts in FBiH do not require this certificate to prove payment of tax liabilities of the company before liquidation is instituted: instead, the tax administration, together with all other creditors of the company, registers its claims against the company and collects them in the course of liquidation procedure.

RECOMMENDATION

The practice in courts regarding this issue needs to be harmonized, and relevant regulations need to define that the tax administration shall have the same position as all other creditors of a company being liquidated.

- **Inability to Access a List of Companies Being Liquidated in the Court Register**

ISSUE

One of the latest amendments to the Company Law⁴⁰ was the deletion of paragraphs⁴¹ defining that the liquidation procedure had to be recorded in the Companies Register and that the company name during liquidation had to include the words "under liquidation". The purpose of these provisions were to ensure that companies under liquidation could be easily

³⁹ Which documents must be submitted along with the petition, and which documents are to be submitted later in the procedure.

⁴⁰ FBiH Official Gazette 84/08

⁴¹ Article 73, paragraphs 2 and 3

recognized and that the general public was informed of the company's liquidation. After these provisions had been removed from the Company Law, a legal gap was created in this respect because other provisions of the Company Law and the Liquidation Law do not provide for a similar obligation to record the initiation of liquidation procedure with the Companies Register and to inform the public accordingly.

RECOMMENDATION

The obligation to record the liquidation procedure with the Companies Register and to include words "under liquidation" in the company name during liquidation should be included in the Law.

Summary of Recommendations

COMPANY LIQUIDATION LAW IN FBiH

- **Legislation:**
 - The Law should more adequately address the course of liquidation procedure as well as the position, rights and obligations of the liquidator
 - The Law needs to include a list of all documents that a liquidation petitioner is required to submit and timeline for their submission
 - The obligation to record the liquidation procedure with the Companies Register and to include words "under liquidation" in the company name during liquidation should be included in the Law

- **Practical Aspects:**
 - Practice in courts needs to be harmonized, and relevant regulations need to define that the tax administration shall have the same position as all other creditors of a company being liquidated

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